

ORDINANCE NO: 43

AN ORDINANCE REQUIRING ALL PERSONS, PARTNERSHIPS, BUSINESSES AND CORPORATIONS TO OBTAIN A BUILDING PERMIT FOR ANY CONSTRUCTION OR DEVELOPMENT, PROVIDING FOR THE ISSUANCE OF SUCH BUILDING PERMITS; SETTING FORTH CERTAIN MINIMUM REQUIREMENTS FOR NEW CONSTRUCTION AND DEVELOPMENT WITHIN THE AREAS OF UPPER MILFORD TOWNSHIP WHICH ARE SUBJECT TO FLOODING; AND ESTABLISHING PENALTIES FOR ANY PERSONS WHO FAIL, OR REFUSE TO COMPLY WITH, THE REQUIREMENTS OR PROVISIONS OF THIS ORDINANCE.

BE IT ENACTED AND ORDAINED by the Township of Upper Milford, Lehigh County, Pennsylvania, and it is hereby enacted and ordained by the authority of the same as follows:

ARTICLE I: GENERAL PROVISIONS

Section 1.00 Intent

The intent of this Ordinance is to:

- A. Promote the general health, welfare and safety of the community.
- B. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
- C. Minimize danger to the public health by protecting water supply and natural drainage.
- D. Reduce financial burdens imposed on the community, its governments units, and its residents, by preventing excessive development in areas subject to flooding.

Section 1.01 Applicability

- A. It shall be unlawful for any person, partnership, business or corporation to undertake, or cause to be undertaken, any construction or development anywhere within the Township unless a building permit has been obtained from the Zoning and Codes Enforcement Officer.

- B. Except as herein provided to the contrary, all procedures and requirements with respect to applications for and issuance of building permits shall be in conformity with the provisions of the Upper Milford Township Building Permit Ordinance(s) and the Upper Milford Township Zoning Ordinance and Subdivision and Land Development Ordinance.
- C. A Building Permit shall not be required for minor repairs to existing buildings or structures.

Section 1.02 Abrogation and Greater Restrictions

This Ordinance supercedes any other conflicting provisions which may be in effect in identified floodplain areas. However, any other ordinance provisions shall remain in full force and effect to the extent that those provisions are more restrictive. If there is any conflict between any of the provisions of this Ordinance, the more restrictive shall apply. Furthermore, all ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 1.03 Severability

If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

Section 1.04 Warning and Disclaimer of Liability

The degree of flood protection sought by the provisions of this Ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside any identified floodplain area, or that land uses permitted within such areas will be free from flooding or flood damages.

ARTICLE II: ADMINISTRATION

Section 2.00 Building Permits Required

Building Permits shall be required before any construction or development is undertaken within any area of Upper Milford Township.

Section 2.01 Issuance of Building Permits

- A. The Zoning and Codes Enforcement Officer shall issue a building permit only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of this and all other applicable codes and ordinances of this Township.
- B. Prior to the issuance of any Building Permit, the Zoning and Codes Enforcement Officer shall review the application for the permit to determine if all other necessary governmental permits required by State and Federal laws have been obtained, such as those required by Act 537, the Pennsylvania Sewage Facilities Act; the Pennsylvania Dam Safety and Encroachment Act; the U.S. Clean Water Act, Section 404, 33 U.S.C. 1134; and the Pennsylvania Clean Streams Act. No permit shall be issued until this determination has been made.
- C. No encroachment, alteration, or improvement of any kind shall be made to any watercourse until all adjacent municipalities which may be affected by such action have been notified by the Township and until all required permits or approvals have been first obtained from the Department of Environmental Protection, Regional Office, Wilkes-Barre.

In addition, the Federal Insurance Administration, FEMA, and the Pennsylvania Department of Community and Economic Development, shall be notified by the Township prior to any alteration or relocation of any watercourse.

Section 2.02 Application Procedures and Requirements

- A. The application for such a building permit shall be made in writing, to the Zoning and Codes Enforcement Officer, on forms supplied by the Township. Such applications shall contain the following:
 - 1. Name and address of applicant.

The entire building or structure shall be completed according to the filed and approved plans upon which the issuance of the permit was based within one (1) year of the issuance of said permit.

Time extensions shall be granted only if a written request is submitted by the applicant, which sets forth sufficient and reasonable cause for the Zoning and Codes Enforcement Officer or approve such a request.

Section 2.08 Inspection and Revocation

- A. During the construction period, the Zoning and Codes Enforcement Officer or other duly authorized official shall inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable Township Laws and Ordinances. He shall make as many inspections during and upon completion of the work as are necessary.
- B. In the discharge of his duties, the Zoning and Codes Enforcement Officer shall have the authority to enter any building, structure, premises or development in the identified floodplain area, upon presentation of proper credentials, at any reasonable hour to enforce the provisions of this ordinance.
- C. In the event that the Zoning and Codes Enforcement Officer discovers that the work does not comply with the permit application or applicable Laws and Ordinances, or that there has been a false statement or misrepresentation by any applicant, the Zoning and Codes Enforcement Officer shall revoke the Building Permit and report such fact to the Board of Supervisors for whatever action it considers necessary.
- D. A record of all such inspections and violations of this Ordinance shall be maintained at the Township Offices.

Section 2.09 Fees

Applications for the Building Permits shall be accompanied by a fee, payable at the Township based upon the estimated costs of the proposed construction as determined by the Zoning and Codes Enforcement Officer at the following rates:

Estimated Cost

Fees

\$ 0.00 to \$ 2,000.00

\$ 10.00

Each additional \$1,000.00 or part
thereof beyond the first \$ 2,000.00

\$ 1.00

Section 2.095 Appeals

Any person aggrieved by the Zoning Officer's estimate of the costs of the proposed construction may appeal to the Zoning Hearing Board. Such appeal must be filed, in writing, within thirty (30) days after the determination by the Zoning Officer. Upon receipt of such appeal, the Zoning Hearing Board shall set a time and place not less than ten (10) nor more than thirty (30) days for the purpose of hearing the appeal. Notice of the time and place of the hearing of the appeal shall be given to all parties at which time they may appear and be heard. The determination of the estimated cost by the Zoning Hearing Board shall be final in all cases.

Section 2.10 Enforcement

A. Notices

Whenever the Zoning and Codes Enforcement Officer or other authorized municipal representative determines that there are reasonable grounds to believe that there has been a violation of any provisions of this Ordinance, or of any regulation adopted pursuant thereto, the Zoning and Codes Enforcement Officer shall give notice of such alleged violation as hereinafter provided. Such notice shall (a) be in writing; (b) include a statement of the reasons for its issuance; (c) allow reasonable time not to exceed a period of thirty (30) days for the performance of any act it requires; (d) be served personally upon the property owner or his agent as the case may required by certified mail, return receipt requested, restricted delivery; provided, however, that such notice or order shall be deemed to have been property served upon such owner or agent when a copy thereof has been served with such notice by any other method authorized or required by the laws of this state; (e) contain an outline of remedial action which, if taken, will affect compliance with the provisions of this Ordinance.

B. Penalties

Any person who fails to comply with any or all of the requirements or provisions of this Ordinance or who fails or refuses to comply with any notice, order of direction of the Zoning and Codes Enforcement Officer or any other authorized employee of the Township shall be guilty of an offense and, upon conviction, shall pay a fine to the Township of not less than Twenty-Five Dollars (\$25.00) not more than Six Hundred Dollars (\$600.00) plus costs of prosecution. In default of such payment, such person shall be imprisoned in the county prison for a period not to exceed ten (10) days. Each day during which any violation of this Ordinance continues shall constitute a separate offense. In addition to the above penalties all other actions are hereby reserved including an action in equity for the proper enforcement of this Ordinance. The imposition of a fine or penalty for any violation of, or noncompliance with, this Ordinance shall not excuse the violation or noncompliance or permit it to continue and all such persons shall be required to correct or remedy such violations and noncompliances within a reasonable time. Any development initiated or any structure or building constructed, reconstructed, enlarged, altered, or relocated, in noncompliance with this Ordinance may be declared by the Township Board of Supervisors to be a public nuisance and abatable as such.

Section 2.11 Appeals

- A. Any person aggrieved by an action or decision of the Zoning and Codes Enforcement Officer, refusing to grant a modification to the provisions of this Ordinance covering the development of land or the manner of construction or materials to be used in the erection, alternation, modification etc. of a building or structure, or by any of the requirements of this Ordinance, may appeal to the Zoning Hearing Board. Such Appeal must be filed, in writing, within thirty (30) days after the decision or action of the Zoning and Codes Enforcement Officer.
- B. Upon receipt of such Appeal the Zoning Hearing Board shall set a time and place within not less than ten (10) nor more than thirty (30) days, from the purpose of considering the Appeal. Notice of the time and place at which the Appeal will be considered shall be given to all parties.
- C. Any person aggrieved by an decision of the Zoning Hearing Board may seek relief therefrom by Appeal to the Court of Common Pleas as

2. Name and address of owner of land on which proposed construction is to occur.
3. Name and address of contractor.
4. Site location.
5. Listing of other permits required.
6. Brief description of proposed work and estimated costs.
7. A plan of the site showing the exact size and location of the proposed construction as well as any existing buildings or structures.

B. If any proposed construction or development is located within, or partially within, any identified floodplain area, applicants for Building Permits and Special Permits shall also provide the following specific information:

1. A plan of the entire site, drawn at a scale of one (1) inch being equal to one-hundred (100) feet or less, showing the following:
 - a. north arrow, scale, and date.
 - b. a location map showing the vicinity in which the proposed activity or development is to be located within the municipality.
 - c. topography based upon the National Geodetic Vertical Datum showing existing and proposed contours at intervals of two (2) feet.
 - d. all property and lot lines including dimensions, and the size of the site expressed in acres or square feet.
 - e. the location of all existing streets, drives, and other accessways with information concerning widths, pavement types, and construction, and elevations.
 - f. the location of any existing bodies of water or watercourse buildings, structures and other public or private facilities,

and any other natural or man-made features affected, or affecting by, the proposed activity or development.

- g. the location of the identified floodplain area boundary line, floodway line if available, information and spot elevations and information concerning the flow of water including direction and velocities.
- h. a general plan of the entire site accurately showing the location of all existing and proposed buildings, structures, and any other improvements, including the location of any existing or proposed subdivision and land development in order to assure that:
 - i) all such proposals are consistent with the need to minimize flood damage;
 - ii) all utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage; and
 - iii) adequate drainage is provided so as to reduce exposure to flood hazards.

2. Plans of all proposed buildings, structures and other improvements, drawn at suitable scale showing the following:

- a. detailed architectural or engineering or drawings including building size, floor plans, sections, and exterior building elevations, as appropriate.
- b. the proposed lowest floor elevation (including basement) of any proposed building based upon National Geodetic Vertical Datum.
- c. complete information concerning flood depths, pressures, velocities, impact and uplift forces and other factors associated with a one-hundred (100) year flood.

- d. detailed information concerning any proposed flood-proofing measures.
- e. cross-section drawings for all proposed streets, drives, and other accessways and parking areas, showing all right-of-way and pavement widths.
- f. profile drawings for all proposed streets, drives, and vehicular accessways including existing and proposed grades.
- g. plans and profiles of all proposed sanitary and storm sewer systems, water supply systems, and other utilities and facilities.
- h. soil types.

3. The following data and documentation:

- a. A document, certified by a registered professional engineer or architect which states that the proposed construction has been adequately designed to withstand the one-hundred (100) year flood elevations, pressures, velocities, impact, and uplift forces and other hydrostatic, hydrodynamic and buoyancy factors associated with the one-hundred (100) year flood.

Such statement shall include a description of the type and extent of floodproofing measures which have been incorporated into the design of the structure and/or the development.

- b. detailed information needed to determine compliance with Section 4.02 G., Storage, and Section 4.03, Development Which May Endanger Human Life, including:
 - i) the amount, location and purposes of any materials or substances referred to in Section 4.02G and 4.03 which are intended to be used, produced, stored or otherwise maintained on site.

- ii) for any proposed structure regulated under Section 4.03, a description of the safeguards incorporated into the design of the structure to prevent leaks or spills of the above mentioned materials or substances during a one-hundred (100) year flood.
- c. the appropriate component of the Department of Environmental Protections' "Planning Module for Land Development."
- d. where any excavation or grading is proposed, a plan meeting the requirements of the Department of Environmental Protection, to implement and maintain erosion and sedimentation control.
- e. where a non-residential structure is intended to be made watertight below the base flood level:
 - i) a registered professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction, and shall certify that the design and methods of construction are in accordance with the accepted standards of provisions of NFIP Section 60.3 (c) (3) (ii) or Section 60.3 (c) (8) (ii); and
 - ii) a record of such certifications which includes the specific elevation (in relation to the mean sea level) to which such structures are flood-proofed shall be maintained by the Township.

Section 2.03 Review by County Conservation District

A copy of all applications and plans for any proposed construction or development in any identified floodplain area to be considered for approval shall be submitted by the Zoning and Codes Enforcement Officer to the Lehigh County Conservation District for review and comment prior to the issuance of a Building Permit. The recommendations of the Lehigh County Conservation District shall be considered by the Zoning and Codes Enforcement Officer for possible incorporation into the proposed plan.

Section 2.04 Review of Application by Others

A copy of all plans and applications for any proposed construction or development in any identified floodplain area to be considered for approval may be submitted by the Zoning and Codes Enforcement Officer to any other appropriate agencies and/or individuals (e.g. the Township Planning Commission, the Township Engineer, etc.) for review and comment.

Section 2.05 Changes

After the issuance of a Building Permit by the Zoning and Codes Enforcement Officer, no changes of any kind shall be made to the application, permit, or any of the plans, specifications or other documents submitted with the applicaiton without the written consent or approval of the Zoning and Codes Enforcement Officer. Requests for any such change shall be in writing, and shall be submitted by the applicant to the Zoning and Codes Enforcement Officer for consideration.

Section 2.06 Placards

In addition to the Building Permit, the Zoning and Codes Enforcement Officer shall issue a placard which shall be displayed on the premises during the time construction is in progress. This placard shall show the number of the building permit, the date of its issuance and be signed by the Zoning and Codes Enforcement Officer.

Section 2.07 Start of Construction

Start of Construction shall include substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of the slab or footings, the installation of piers, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structures.

provided by the Laws of this Commonwealth including the Pennsylvania Floodplain Management Act.

ARTICLE III: IDENTIFICATION OF FLOODPLAIN AREAS

Section 3.00 Designation of Floodplain Areas

For purposes of this Ordinance, the areas considered to be floodplain within the Township shall be those areas identified as being subject to the one-hundred (100) year flood in the Flood Insurance Study prepared for the Township by the Federal Insurance Administration dated November, 1999, and the accompanying maps prepared for the Township by FEMA, or the most recent revision thereof.

The identified floodplain area shall consist of the following specific areas:

- A. FW (Floodway Area) - the areas identified as "Floodway" in the AE Zone in the Flood Insurance Study prepared by FEMA. The term shall also include floodway areas which have been identified in other available studies or sources of information for those floodplain areas where no floodway has been identified in the Flood Insurance Study.
- B. FF (Flood-Fringe Area) - the remaining portions of the one hundred (100) year floodplain in those areas identified as an AE Zone in the Flood Insurance Study, where a floodway has been delineated. The basis for the outermost boundary of this area shall be the one hundred (100) year flood elevations as shown in the flood profiles contained in the Flood Insurance Study.
- C. FA (General Floodplain Area) - the areas identified as Zone A in the FIS for which no one hundred (100) year flood elevations have been provided. When available, information from other Federal, State and other acceptable sources shall be used to determine the one hundred (100) year elevation, as well as a floodway area if possible. When, no other information is available, the one hundred (100) year elevation shall be determined by using a point on the boundary of the identified floodplain area which is nearest the construction site in question.

In lieu of the above, the Township may require the applicant to determine the elevation with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional

engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Township.

Section 3.01 Changes in Floodplain Area Delineations

The areas considered to be floodplain may be revised or modified by the Board of Supervisors where studies or information provided by a qualified agency or person documents the need or possibility of such revision.

No modification or revision of any floodplain area identified in the Flood Insurance Study prepared by the Federal Insurance Administration shall be made without prior approval from the Federal Insurance Administration.

Section 3.02 Disputes

Should a dispute arise concerning the identification of any floodplain area, an initial determination shall be made by the Planning Commission and any party aggrieved by such decision may appeal to the Board of Supervisors. The burden of proof shall be on the Appellant.

ARTICLE IV: TECHNICAL PROVISION

Section 4.00 General

A. No encroachment, alteration, or improvement of any kind shall be made to any watercourse until all adjacent municipalities which may be affected by such action have been notified by the municipality and until all required permits or approvals have been first obtained from the Department of Environmental Protection, Regional Office, Wilkes-Barre.

In addition, the Federal Insurance Administrator and Pennsylvania Department of Community and Economic Development, shall be notified prior to any alteration or relocation of any watercourse.

B. Any new construction, development, uses or activities allowed within any identified floodplain area, shall be undertaken in strict compliance with the provisions contained in this Ordinance and any other applicable codes, ordinances and regulations.

Section 4.01 Special Requirements for FW, FE and FA Areas

- A. With any FW (Floodway Area), the following provisions apply:
1. Any new construction, development, use, activity, or encroachment that would cause any increase in flood heights shall be prohibited.
 2. No new construction or development shall be allowed, unless a permit is obtained from the Department of Environmental Protection, Bureau of Dams, Waterways and Wetlands.
- B. Within any FE (Special Floodplain Area), no new construction or development shall be allowed unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase in elevation of the one hundred (100) year flood more than one (1) foot at any point.
- C. Within any FE (Special Floodplain Area) or FA (General Floodplain Area), the following provisions apply:
1. No new construction or development shall be located within the area measured fifty (50) feet landward from the top-of-bank of any watercourse, unless a permit is obtained from the Department of Environmental Protection, Bureau of Dams, Waterways and Wetlands.
 2. Any new construction or development, which would cause any increase in flood heights shall be prohibited within any floodplain area.

Section 4.02 Elevation and Floodproofing Requirements

A. Residential Structures

Within any FW, FF or FA, the lowest floor (including basement) of any new or improved residential structures shall be at least one and one-half (1 ½) feet above the one hundred (100) year flood elevation.

B. Non-residential Structures

1. Within any FW, FF, or FA, the lowest floor (including basement) shall be at least one and one-half (1 ½) feet above the one hundred (100) year flood elevation, or be designed and constructed so that the space enclosed by such structure shall remain either completely or essentially dry during any flood up to that height.
2. Any structure, or part thereof, which will not be completely or adequately elevated, shall be designed and constructed to be completely or essentially dry in accordance with the standards contained in the publication entitled "Flood-Proofing Regulations" (U.S. Army Corps of Engineers, June, 1972 as amended March 1992), or some other equivalent standard, for that type of construction.

C. Space below the lowest floor.

1. Fully enclosed space below the lowest floor (including basement) is prohibited.
2. Partially enclosed space below the lowest floor (including basement) which will be used solely for the parking of a vehicle, building access, or incidental storage in an area other than a basement, shall be designed and constructed to allow for the automatic entry and exit of flood waters for the purpose of equalizing hydrostatic forces on exterior walls. The term "partially enclosed space" also includes crawl spaces.

Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:

- a. a minimum of two openings having a net total area of not less than one (1) square inch for every square foot of enclosed space.
- b. the bottom of all openings shall be no higher than one (1) foot above grade.

- c. openings may be equipped with screens, louvers, etc. or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

D. Accessory structures

Structures accessory to a principal building need not be elevated or floodproofed to remain dry, but shall comply, at a minimum, with the following requirements:

1. The structure shall not be designed or used for human habitation, but shall be limited to the parking of vehicles, or to the storage of tools, materials, and equipment related to the principal use or activity.
2. Floor area shall not exceed 600 square feet.
3. The structure will have a low damage potential.
4. The structure will be located on the site so as to cause the least obstruction to the flow of flood waters.
5. Power lines, wiring, and outlets will be at least one and one-half (1 ½) feet above the one-hundred (100) year flood elevation.
6. Permanently affixed utility equipment and appliances such as furnaces, heaters, washers, dryers, etc. are prohibited.
7. Sanitary facilities are prohibited.
8. The structure shall be adequately anchored to prevent flotation or movement and shall be designed to automatically provide for the entry and exit of floodwater for the purposes of equalizing hydrostatic forces on the walls. Designs for meeting this requirement must either be certified by a registered engineer or architect, or meet or exceed the following minimum criteria:
 - a. a minimum of two openings having a net total area of not less than one (1) square inch for every square foot of enclosed space.

- b. the bottom of all openings shall be no higher than one (1) foot above grade.
- c. openings may be equipped with screens, louvers, etc. or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

Section 4.03 Design and Construction Standards

The following minimum standards shall apply for all construction proposed to be undertaken within any identified floodplain area:

A. Fill

If fill is used, it shall:

- 1. extend laterally at least fifteen (15) feet beyond the building line from all points.
- 2. consist of soil or small rock materials only. Sanitary Landfills shall not be permitted.
- 3. be compacted to provide the necessary permeability and resistance to erosion, scouring, or setting.
- 4. be no steeper than one (1) vertical to two (2) horizontal, unless substantiated data, justifying steeper slopes are submitted to, and approved by the Zoning and Codes Enforcement Officer.
- 5. be used to the extent to which it does not adversely affect adjacent properties.

B. Drainage

Storm drainage facilities shall be designed to convey the flow of storm water runoff in a safe and efficient manner. The system shall insure proper drainage along streets, and provide positive drainage away from buildings. The system shall also be designed to prevent the discharge of excess runoff onto adjacent properties.

C. Water and Sanitary Sewer Facilities and Systems

1. All new or replacement sanitary sewer facilities, and private package sewage treatment plants (including all pumping stations and collector systems) shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into the flood waters. In addition, they should be located and constructed to minimize or eliminate flood damage and impairment.
2. Sanitary sewer facilities and systems shall be designed to prevent the discharge of untreated sewage into flood waters.
3. No part of any on-site sewage system shall be located within any identified floodplain area except in strict compliance with all state and local regulations for such systems. If any such system is permitted, it shall be located so as to avoid impairment to it, or contamination from it, during a flood.

D. Other Utilities

All other utilities, such as gas lines, electrical and telephone systems, shall be located, elevated (where possible) and constructed to minimize the change of impairment during a flood.

E. Streets

The finished elevation of proposed new streets shall be not more than one (1) foot below the Regulatory Flood Elevation.

F. Utilities

All utilities such as gas lines, electrical and telephone systems shall be placed above the Regulatory Flood Elevation and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

G. Storage

All materials that are bouyant, flammable, explosive, or in times of flooding, could be injurious to human, animal or plant life, and not listed in

Section 4.04, Development Which May Endanger Human Life, shall be stored at or above the Regulatory Flood Elevation and/or floodproofed to the maximum extent possible.

H. Placement of Buildings and Structures

All buildings and structures shall be designed, located and constructed so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum effect upon the flow and height of flood water.

I. Anchoring

1. All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent floatation, collapse, or lateral movement.
2. All air ducts, large pipes, storage tanks, and other similar objects or components located below the Regulatory Flood Elevation shall be securely anchored or affixed to prevent flotation.

J. Floors, Walls and Ceilings

1. Wood flooring used at or below the Regulatory Flood Elevation shall be installed to accomodate a lateral expansion of the flooring, perpendicular to the flooring grain without causing structural damage to the building.
2. Plywood used at or below the Regulatory Flood Elevation shall be of a "marine" or "water-resistant" variety.
3. Walls and ceilings at or below the Regulatory Floor Elevation shall be designed and constructed of materials that are water-resistant and will withstand inundation.
4. Windows, doors, and other components at or below the Regulatory Flood Elevation shall be made of metal or water-resistant materials.

K. Paints and Adhesives

1. Paints or other finishes used at or below the Regulatory Flood Elevation shall be of a "marine" or "water-resistant paint" or other finishing material.
2. Adhesives used at or below the Regulatory Flood Elevation shall be of a "marine" or "water-resistant" quality.
3. All wooden components (doors, trim cabinets, etc.) shall be finished with a "marine" or "water-resistant paint" or other finishing material.

L. Electrical Systems and Components

1. Electric water heaters, furnaces, air conditioning and ventilating systems, and other electrical equipment or apparatus shall be placed above the Regulatory Flood Elevation and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
2. Electrical distribution panels shall be at least three (3) feet above the one-hundred (100) year flood elevation.
3. Separate electrical circuits shall serve lower levels and shall be dropped from above.

M. Plumbing

1. Water heaters, furnaces, and other mechanical equipment or apparatus shall be placed above the Regulatory Flood Elevation and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
2. All on-site sewage disposal systems shall be designed and constructed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into the flood waters. In addition they should be located and constructed to minimize or eliminate flood damage and impairment.

3. All gas and oil supply systems shall be designed to prevent the infiltration of flood waters into the system and discharges from the system into flood waters. Additional provisions shall be made for the drainage of these systems in the event that flood water infiltration occurs.

N. Use of Openings in Enclosures Below a Structure's Lowest Floor

For all new construction and substantial improvement, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

1. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to the flooding shall be provided;
2. The bottom of all openings shall be no higher than one foot above grade; and
3. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

4.04 Development Which May Endanger Human Life

- A.** In accordance with the Pennsylvania Floodplain Management Act, and the regulations adopted by the Department of Community and Economic Development as required by the Act, any new or substantially improved structure which will be used for the production or storage of any of the following materials or substances or which will be used for any activity requiring the maintenance of a supply (more than 440 gallons or other comparable volume or any amount of radioactive substances) of any of the following materials or substances on the premises, shall be subject to the provisions of this section, in addition to all other applicable provisions.

1. Acetone
2. Ammonia
3. Benzene

4. Calcium carbide
5. Carbon disulfide
6. Celluloid
7. Chlorine
8. Hydrochloric acid
9. Hydrocyanic acid
10. Magnesium
11. Nitric acid and oxides of nitrogen
12. Petroleum products (gasoline, fuel, oil, etc.)
13. Phosphorus
14. Potassium
15. Sodium
16. Sulphur and sulphur products
17. Pesticides (including insecticides, fungicides and rodenticides)
18. Radioactive substances, insofar as such substances are not otherwise regulated.

- B. Within any FW (Floodway Area), any structure of any kind described in Section A. above shall be prohibited.
- C. Within any FF (Flood-Fringe Area) or FA (General Floodplain Area), any structure of the kind described in Section A. above shall be:
1. elevated or designed and constructed to remain completely dry up to at least one and one-half (1 ½) feet above the one-hundred (100) year flood; and
 2. designed to prevent pollution from the structure or activity during the course of a one-hundred (100) year flood.

Any such structure, or part thereof, that will be built below the Regulatory Flood Elevation shall be designed and constructed in accordance with the standards for completely dry flood-proofing contained in the publication "Flood-Proofing Regulations" (U.S. Army Corps of Engineers, June 1972 as amended March 1992), or with some other equivalent watertight standard.

Section 4.05 Special Requirement for Manufactured Homes

- A. Within any FW (Floodway Area), manufactured homes shall be prohibited.

- B. Within any FA (General Floodplain Area) or FE (Special Floodplain Area), manufactured homes shall be prohibited within the area measured fifty (50) feet landward from the top-of-bank of any watercourse.
- C. Where permitted within any floodplain area, all manufactured homes, and any improvement thereto, shall be:
 - 1. placed on a permanent foundation;
 - 2. elevated so that the lowest floor of the manufactured home is one and one-half (1 ½) feet or more above the elevation of the one hundred (100) year flood.
 - 3. anchored to resist flotation, collapse, or lateral movement.

ARTICLE V: ACTIVITIES REQUIRING SPECIAL PERMITS

Section 5.00 General

In accordance with the Department of Community and Economic Developments, administrative regulations implementing the Pennsylvania Floodplain Management Act, (Act 1978-166) the following obstructions and activities are prohibited if located entirely or partially within an identified floodplain area unless a Special Permit is issued:

- A. hospitals (public or private)
- B. nursing homes (public or private)
- C. jails or prisons
- D. new manufactured home parks and manufactured subdivisions, and substantial improvements to such existing parks and subdivisions.

Section 5.01 Special Permit Application Requirements

Application for a Special Permit shall consist of at least five (5) copies of the following items:

- A. A written request which includes the information specified in Section 2.02 pertaining to building permit application procedures.

B. The following documentation:

1. certification from the applicant that the site upon which the activity or development is proposed is an existing and single parcel, owned by the applicant or the client he represents;
2. certification from a registered professional engineer, architect, or landscape architect that the proposed construction has been adequately designed to protect against damage from a one-hundred (100) year flood;
3. a statement, certified by a registered professional engineer, architect, landscape architect, or other qualified person which contains a complete and accurate description of the nature and extent of pollution that might possibly occur from the development during the course of a one-hundred (100) year flood, including a statement concerning the effects such pollution may have on human life;
4. a statement certified by a registered professional engineer or landscape architect which contains a complete and accurate description of the effects that proposed development will have on one-hundred (100) year flood elevations and flows;
5. a statement certified by a registered professional engineer, architect, or landscape architect, which contains a complete and accurate description of the kinds and amount of any loose bouyant materials or debris that may possibly exist or be located on the site below the one-hundred (100) year flood elevations and flows;
6. the appropriate component of the Department of Environmental Protection's "Planning Module for Land Development";
7. where any evacuation or grading is proposed, a plan meeting the requirements of the Development of Environmental Protection to implement and maintain erosion and sedimentation control;
8. any other applicable permits such as, but not limited to, a permit for any activity regulated by the Department of Environment Protection under Section 302 of Act 1978-166; and

9. an evacuation plan which fully explains the manner in which the site will be safely evacuated before or during the course of a one-hundred (100) year flood.

Section 5.02 Application Review Procedures

Upon receipt of an application for Special Permit by the Township the following procedures shall apply in addition to those contained in Article II;

- A. Within three (3) working days following receipt of the application, a complete copy of the application and all accompanying documentation shall be forwarded to the County Planning Commission by registered or certified mail for its review and recommendation. Copies of the application shall also be forwarded to the Township Planning Commission and the Township Engineer for review and comment.
- B. If an application is received that is incomplete the Township shall notify the applicant, in writing, stating in what respect the application is deficient.
- C. If the Township decides to disapprove an application, it shall notify the applicant, in writing, of the reasons for the disapproval.
- D. If the Township approves an application, it shall file written notification, together with the application and all pertinent information, with the Department of Community and Economic Development, by registered or certified mail, within five (5) working days after the date of approval.
- E. Before issuing this Special Permit, the Township shall allow the Department of Community and Economic Development thirty (30) days, after receipt of the notification by the Department, to review the application and the decision made by the Township.
- F. If the Township does not receive any communication from the Department of Community and Economic Development during the thirty (30) day review period, it may issue a Special Permit to the applicant.
- G. If the Department of Community and Economic Development should decide to disapprove an application, it shall notify the Township and the applicant, in writing, of the reasons for the disapproval and the Township shall not issue the Special Permit.

Section 5.03 Special Technical Requirements

- A. In addition to the requirements of Article IV of this Ordinance, the following minimum requirements shall also apply to any proposed development requiring a Special Permit. If there is any conflict between any of the following requirements and those in Article IV, of this Ordinance or in any other code, ordinance or regulation, the more restrictive provision shall apply.
- B. No application for a Special Permit shall be approved unless it can be determined that the structure or activity will be located, constructed and maintained in a manner which will:
 - 1. Fully protect the health and safety of the general public and any occupants. At a minimum, all new structures shall be designed, located, and constructed so that:
 - a. the structure will survive inundation by waters of the one-hundred (100) year flood without any lateral movement or damage to either the structure itself, or to any of its equipment or contents below the one-hundred (100) year flood elevation.
 - b. the lowest floor (including basement) elevation will be at least one and one-half (1 ½) feet above the one-hundred (100) year flood elevation.
 - c. the occupants of the structure can remain inside for an indefinite period of time and be safely evacuated at any time during the one-hundred (100) year flood.
 - 2. Prevent any significant possibility of pollution, increased flood levels or flows, or debris endangering life and property.

All hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computation, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Township and the Department of Community and Economic Development.

ARTICLE VI: EXISTING STRUCTURES IN IDENTIFIED FLOODPLAIN AREAS

Section 6.00 Existing Structures

Structures existing in any identified floodplain areas prior to the enactment of this Ordinance, but which are not in compliance with these provisions, may continue to remain subject to the following:

- A. Existing structures located in any identified floodway areas shall not be expanded or enlarged, unless the effect of the proposed expansion or enlargement on flood heights is fully offset by accompany improvements.
- B. Any modification, alteration, reconstruction, or improvement of any kind to an existing structure, to an extent or amount of fifty (50) percent or more of its market value shall constitute a substantial improvement and shall be undertaken only in full compliance with the provisions of this Ordinance.
- C. Any modification, alteration, reconstruction or improvement of any kind to an existing structure, to an extent or amount of fifty (50) percent or more of its market value, shall be elevated and/or floodproofed to the greatest extent possible.

ARTICLE VII: VARIANCES

Section 7.00 General

If compliance with any of the requirements of this Ordinance would result in an exceptional hardship for a prospective builder, developer, or landowner, the Township may, upon request, grant relief from the strict application of the requirements.

Section 7.01 Variance Procedures and Conditions

Requests for variances shall be considered by the Township in accordance with the following:

- A. No variance shall be granted for any construction development, use or activity within any floodway area that would cause any increase in the one-hundred (100) year flood elevation.

- B. Except for a possible modification of the one and one-half (1 ½) foot freeboard requirement involved, no variance shall be granted for any of the other requirements pertaining specifically to development regulated by Special Permit (Art. V) or to Development Which May Endanger Human Life (Sec. 4.03).
- C. If granted, a variance shall involve only the least modification necessary to provide relief.
- D. In granting any variance, the Township shall attach whatever reasonable conditions and safeguards it considers necessary in order to protect the public health, safety and welfare, and to achieve the objectives of this Ordinance.
- E. Whenever a variance is granted, the Township shall notify the applicant in writing that:
 - 1. the granting of the variance may result in increased premium rates for flood insurance.
 - 2. such variances may increase the risks of life and property.
- F. In reviewing any request for a variance, the Township shall consider, but not be limited to, the following:
 - 1. that there is good and sufficient cause.
 - 2. that failure to grant the variance would result in exceptional hardship to the applicant.
 - 3. that the granting of the variance will not result in the unacceptable or prohibited increase in flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on, or victimization of the public, or conflict with any other applicable Federal, State or local ordinance and regulations.
- G. A complete record of all variance requests and related actions shall be maintained by the Township. In addition, a report of all variances granted during the year shall be included in the annual report to the Federal Insurance Administration.

Notwithstanding any of the above, however, all structures shall be designed and constructed so as to have the capability of resisting the one-hundred (100) year flood.

ARTICLE VIII: DEFINITIONS

Section 8.00 General

Unless specifically defined below, words and phrases used in this Ordinance shall be interpreted so as to give this Ordinance its most reasonable application.

Section 8.01 Specific Definitions

- A. Accessory use or structure - a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
- B. Basement - means any area of the building having its floor below ground level on all sides.
- C. Building - a combination of materials to form a permanent structure having walls and a roof. Included shall be all manufactured homes and trailers to be used for human habitation.
- D. Completely dry space - a space which will remain totally dry during flooding; the structure is designed and constructed to prevent the passage of water and water vapor.
- E. Construction - the construction, reconstruction, renovation, repair extension, expansion, alternation or relocation of a building or structure, including the placement of manufactured homes.
- F. Development - any man-made change to improved or unimproved real estate, including but not limited to the construction, reconstruction, renovation, repair, expansion, or alteration of buildings or other structures; the placement of manufactured homes; streets, and other paving; utilities; filling, grading and excavation; mining; dredging; drilling operations; storage of equipment or materials, and the subdivision of land.

- G. Essentially dry space - a space which will remain dry during flooding, except for the passage of some water vapor or minor seepage; the structure is substantially impermeable to the passage of water.
- H. Flood - a temporary inundation of normally dry land areas.
- I. Floodplain area - a relatively flat or low land area which is subject to partial or complete inundation from an adjoining or nearby stream, river or watercourse; and/or any are subject to the unusual and rapid accumulation of surface waters from any source.
- J. Floodproofing - means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
- K. Floodway - the designated area of a floodplain required to carry and discharge flood waters of a given magnitude. For the purposes of this Ordinance, the floodway shall be capable of accommodating a flood of the one-hundred (100) year magnitude.
- L. Historic structure - any structure that is:
1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register.
 2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district.
 3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
 4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

- a. By an approved state program as determined by the Secretary of the Interior; or
 - b. Directly by the Secretary of the Interior in states without approved programs.
- M. Identified floodplain area - the floodplain area specifically identified in this Ordinance as being inundated by the one- hundred (100) year flood. Included would be areas identified as Floodway (FW), Flood-Fringe (FF) and General Flood Plain (FA).
- N. Land Development - any of the following activities:
 - 1. The improvement of one lot or two or more contiguous lots, tracts, or parcels of land for any purpose involving:
 - a. A group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure; or
 - b. The division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups or other features.
 - 2. A subdivision of land.
- O. Lowest Floor - the lowest floor of the lowest fully enclosed area (including basement). An unfinished, flood resistant partially enclosed area, used solely for parking of vehicles, building access, and incidental storage, in an area other than a basement area is not considered the lowest floor of a building, provided that such space is not designed and built so that the structure is in violation of the applicable non-elevation design requirements of this Ordinance.
- P. Manufactured home - a transportable, single family dwelling intended for permanent occupancy, office or place of assembly, contained in one or more sections, built on a permanent chassis, which arrives at a site complete and ready for occupancy except for minor and incidental

unpacking and assembly operations, and constructed so that it may be used with or without a permanent foundation. The term includes park trailers, travel trailers, or other similar vehicles which are placed on a site for more than 180 consecutive days.

- Q. Manufactured home park - a parcel of land under single ownership which has been planned and improved for the placement of two or more manufactured homes for non-transient use.
- R. Minor repair - the replacement of existing work with equivalent materials for the purpose of its routine maintenance and upkeep, but not including the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or bearing support or the removal or change of any required means of egress, or rearrangement of requirements; nor shall minor repairs include addition to, alteration of, replacement or relocation of any standpipe water supply, sewer, drainage piping, electric wiring or mechanical or other work affecting public health or general safety.
- S. New construction - structures for which the start of construction commenced on or after May 6, 1987, and includes any subsequent improvements thereto.
- T. One hundred year flood - a flood that, on the average, is likely to occur once every one hundred (100) years (i.e. that has one (1) percent chance of occurring each year, although the flood may occur in any year).
- U. Person - an individual, partnership, public or private association or corporation, firm, trust, estate, municipality, governmental unit, public utility or any other legal entity whatsoever, which is recognized by law as the subject of rights and duties.
- V. Recreational vehicle - a vehicle which is (i) built on a single chassis; (ii) not more than 400 square feet, measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light-duty truck; (iv) not designed for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- W. Regulatory flood elevation - the one-hundred (100) year flood elevation plus a freeboard safety factor of one and one-half (1 ½) feet.

- X. Special permit - a special approval which is required for hospitals, nursing homes, jails and new manufactured home parks and substantial improvements to such existing parks, when such development is located in all, or a designated portion of a floodplain.
- Y. Structure - anything constructed or erected on the ground or attached to the ground including, but not limited to buildings, sheds, manufactured homes, and other similar items.
- Z. Subdivision - the division or redivision of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcels, or other divisions of land, including changes in existing lot lines for the purpose, whether immediate or future, of lease, transfer or ownership, or building, or lot development, provided however, that the division of land for agricultural purposes into parcels of more than ten (10) acres, not involving any new street or easement of access, shall be exempted.
- AA. Substantial damage - damage from any cause sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent or more of the market value of the structure before the damage occurred.
- BB. Substantial improvement - Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however include either:
1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or;
 2. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

This Ordinance shall be effective November 7, 2001.

Enacted and ordained into an Ordinance this 1st day of November, 2001.

ATTEST:

UPPER MILFORD TOWNSHIP

Kimberly D. Shaah
Secretary

Keith Huyett
Keith Huyett, Chairman

Richard F. Knauss
Richard Knauss, Supervisor

Susan Smith
Susan Smith, Supervisor

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