

**BOROUGH OF WEST NEWTON  
WESTMORELAND COUNTY, PENNSYLVANIA**

**ORDINANCE NUMBER – 2011-1**

**AN ORDINANCE GOVERNING BUILDING IN FLOODPLAIN AREAS  
AND TO PREVENT FLOOD DAMAGE IN  
THE BOROUGH OF WEST NEWTON**

**WHEREAS**, the Borough of West Newton (hereinafter called the “Borough”) is desirous to promote the general health, safety and welfare of the community, and to utilize appropriate construction practices in order to prevent or minimize flood damage in the future, and to reduce financial burdens imposed upon the community by preventing excessive development areas subject to flooding,

**NOW THEREFORE** in consideration of the foregoing, the Borough of West Newton hereby enacts the following:

**ARTICLE I  
STATUTORY AUTHORIZATION**

The Legislature of the Commonwealth of Pennsylvania has, by the passage of the Pennsylvania Flood Plain Management Act of 1978, delegated the responsibility to local governmental units to adopt floodplain management regulations to promote public health, safety, and the general welfare of its citizenry. Therefore, the Council of West Newton Borough does hereby order as follows.

**ARTICLE II  
General Provisions**

**SECTION 1. Intent.**

The intent of this chapter 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 public health by protecting water supply and natural drainage.

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- C. Minimize danger to public health by protecting water supply and natural drainage.
- D. Reduce financial burdens imposed on the community, its governmental units and its residents by preventing excessive development in areas subject to flooding.
- E. Comply with federal and state floodplain management requirements.

**SECTION 2. 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 Floodplain Administrator.
- B. A building permit shall not be required for minor repairs to existing buildings or structures.

**SECTION 3. Abrogation and greater restrictions.**

This chapter supersedes 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 chapter, the more restrictive shall apply.

**SECTION 4. Severability.**

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

**SECTION 5. Warning and disclaimer of liability.**

The degree of flood protection sought by the provisions of this chapter is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur. Floods heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This chapter does not imply that areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the township or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

**ARTICLE III**  
**Definitions**

**SECTION 6. Word usage.**

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

**SECTION 7. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

**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.

**BASE FLOOD** - a flood that has a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood").

**BASE FLOOD ELEVATION (BFE)** - the elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-30 that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

**BASEMENT** – Any area of the building having its floor below ground level on all sides.

**BOROUGH** – The Borough of West Newton, Westmoreland County, Pennsylvania.

**BUILDING** – A combination of materials to form a permanent structure having walls and a roof. This shall include all manufactured homes and trailers to be used for human habitation.

**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.

**DEPARTMENT** – The Pennsylvania Department of Community and Economic Development.

**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.

**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.

**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION**– a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION** – the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FLOOD** – A temporary inundation of normally dry land areas.

**FLOOD INSURANCE RATE MAP (FIRM)** - the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY (FIS)** - the official report provided by the Federal Emergency Management Agency (FEMA) that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

**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 area subject to the unusual and rapid accumulation of surface waters from any source.

**FLOODPROOFING** – 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.

**FLOODWAY** – The designated area of a floodplain required to carry and discharge floodwaters of a given magnitude. For the purposes of this chapter, the floodway shall be capable of accommodating a flood of the one-hundred-year magnitude.

**HISTORIC STRUCTURE** – Any structure that is:

- A. 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 Nation Register;

- B. 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;
- C. Individually listed on a State Inventory of Historic Places in states with historic presentation programs which have been approved by the Secretary of Interior; or
- D. Individually listed on a Local Inventory of Historic Places in communities with historic preservation programs that have been certified either by an approved state program as determined by the Secretary of the Interior or directly by the Secretary of the Interior in states without approved programs.

IDENTIFIED FLOODPLAIN AREA – The floodplain area specifically identified in this chapter as being inundated by the one-hundred-year flood.

LAND DEVELOPMENT – Any of the following activities:

- A. The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving:
  - (1) 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
  - (2) 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, buildings or other features.
- B. A subdivision of land.

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 nonelevation design requirements of this chapter.

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 completed 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 part trailers, travel trailers, recreational and other similar vehicles which are placed on a site for more than 180 consecutive days.

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 nontransient use.

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 parts of a structure affecting the exit way requirements; nor shall minor repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, oil, waste, vent or similar piping, electric wiring or mechanical or other work affecting public health or general safety.

NEW CONSTRUCTION - Structures for which the start of construction commenced on or after September 29, 1978, and includes any subsequent improvements thereto.

ONE-HUNDRED-YEAR FLOOD / ONE PERCENT ANNUAL CHANCE FLOOD / BASE FLOOD – A flood that, on the average, is likely to occur once every 100 years (i.e., that has one-percent chance of occurring each year, although the flood may occur in any year.)

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.

RECREATIONAL VEHICLE – A vehicle which is built on a single chassis; not more than 400 square feet, measured at the largest horizontal projections; designed to be self-propelled or permanently towable by a light-duty truck; and not designed for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

REGULATORY FLOOD ELEVATION – The one-hundred-year-flood elevation, plus a freeboard safety factor of 1 ½ feet.

SPECIAL FLOOD HAZARD AREA (SFHA) - means an area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. It is shown on the FIRM as Zone A, AO, A1-A30, AE, A99, or, AH.

SPECIAL PERMIT – A special approval which is required for hospitals, nursing homes, jails and new manufactured home parks and subdivisions and substantial improvements to such existing parks when such development is located in all or a designated portion of a floodplain.

START OF CONSTRUCTION - includes substantial improvement and other proposed new development and means the date the Permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other

improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufacture 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, footings, 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 structure. For a substantial improvement, the actual start of construction means the first, alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE** – a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

**SUBDIVISION** – The division or revision 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, partition by the Court for distribution to heirs or devisees, transfer of ownership of building or for agricultural purposes into parcels of more than 10 acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.

**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 50% or more of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT** – Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50% 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:

- A. 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 Borough Floodplain Administrator or his designee and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

**UNIFORM CONSTRUCTION CODE (UCC)** – The statewide building code adopted by The Pennsylvania General Assembly in 1999 applicable to new construction in all municipalities whether administered by the municipality, a third party or the Department of Labor and Industry. Applicable to residential and commercial buildings, The Code adopted The International Residential Code (IRC) and the International Building Code

(IBC), by reference, as the construction standard applicable with the State floodplain construction. For coordination purposes, references to the above are made specifically to various sections of the IRC and the IBC.

VIOLATION - means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

**ARTICLE IV  
Administration**

**SECTION 8. Building permits required.**

Building permits shall be required before any construction or development is undertaken within any area of the Borough.

**SECTION 9. Designation of the Floodplain Administrator.**

The ~~Code Enforcement Officer~~, within the ~~Borough of West Newton~~ is hereby appointed to administer and enforce this ordinance and is referred to herein as the Floodplain Administrator.

Deleted: [Building Permit Officer, Zoning Officer, City Manager, etc.]
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Deleted: [Agency, Office, Department, etc.]

**SECTION 10. Duties and Responsibilities of the Floodplain Administrator**

- A. The Floodplain Administrator shall issue a 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.
- B. Prior to the issuance of any permit, the Floodplain Administrator shall review the application for the permit to determine if all other necessary government permits required by state and federal laws have been obtained, such as those required by the Pennsylvania Sewage Facilities Act (Act 1966-537, as amended); the Pennsylvania Dam Safety and Encroachments Act (Act 1978-325, as amended); the Pennsylvania Clean Streams Act (Act 1937-394, as amended); and the U.S. Clean Water Act, Section 404, 33, U.S.C. 1344. No permit shall be issued until this determination has been made.
- C. During the construction period, the Floodplain Administrator or other 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 municipal laws

and ordinances. He/she shall make as many inspections during and upon completion of the work as are necessary.

- D. In the discharge of his/her duties, the Floodplain Administrator 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.
- E. In the event the Floodplain Administrator discovers that the work does not comply with the permit application or any applicable laws and ordinances, or that there has been a false statement or misrepresentation by any applicant, the Floodplain Administrator shall revoke the Permit and report such fact to the Borough Council for whatever action it considers necessary.
- F. The Floodplain Administrator shall maintain all records associated with the requirements of this ordinance including, but not limited to, permitting, inspection and enforcement.
- G. The Floodplain Administrator shall consider the requirements of the 34 PA Code and the 2006 IBC and the 2006 IRC or latest revisions thereof.

**SECTION 11. Application procedures and requirements.**

- A. Application for such a building permit shall be made, in writing, to the Floodplain Administrator on forms supplied by the Borough. Such application shall contain the following:
  - (1) The name and address of the applicant.
  - (2) The name and address of the owner of land on which proposed construction is to occur.
  - (3) The name and address of the contractor.
  - (4) The site location.
  - (5) A listing of other permits required.
  - (6) Brief description of proposed work and estimated cost, including a breakout of flood-related cost and the market value of the building before the flood damage occurred where appropriate.
  - (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 entirely or partially within any identified floodplain area, applicants for building permits shall provide all the necessary information in sufficient detail and clarity to enable the Floodplain Administrator to determine that:
- (1) All such proposals are consistent with the need to minimize flood damage and conform with the requirements of this and all other applicable codes and ordinances.
  - (2) All utilities and facilities, such as sewer, gas, electrical and water systems, are located and constructed to minimize or eliminate flood damage.
  - (3) Adequate drainage is provided so as to reduce exposure to flood hazards.
  - (4) Structures will be anchored to prevent floatation, collapse, or lateral movement.
  - (5) Building materials are flood-resistant.
  - (6) Appropriate practices that minimize flood damage have been used.
  - (7) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities have been designed and/or located to prevent water entry or accumulation.
- C. Applicants shall file the following minimum information, plus any other pertinent information (e.g., any or all of the technical information as may be obtained or required by any other section herein) as may be required by the Floodplain Administrator to make the above determination:
- (1) A completed building permit application form;
  - (2) A plan of the entire site, clearly and legibly drawn at a scale of one inch being equal to 100 feet or less, showing the following:
    - (a) North arrow, scale and date.
    - (b) Topographic contour lines, if available.
    - (c) All property and lot lines, including dimensions, and the size of the site expressed in acres or square feet.
    - (d) The location of all existing and proposed buildings, structures and other improvements, including the location of any existing or proposed subdivision and land development.

- (e) The location of all existing streets, drives and other accessways.
  - (f) The location of any existing bodies of water or watercourses, identified floodplain areas and, if available, information pertaining to the floodway and the flow of water, including direction and velocities.
- (3) Plans of all proposed buildings, structures and other improvements drawn at suitable scale showing the following:
- (a) The proposed lowest floor elevation of any proposed building based upon National American Vertical Datum of 1988.
  - (b) The elevation of the one-hundred-year flood.
  - (c) If available, information concerning flood depths, pressures, velocities, impact and uplift forces and other factors associated with a one-hundred-year flood.
  - (d) Detailed information concerning any proposed floodproofing measures and corresponding elevations.
- (4) The following data and documentation:
- (a) Documentation, certified by a registered professional engineer or architect, to show that the cumulative effect of any proposed development within an FE (Special Floodplain Area), when combined with all other existing and anticipated development, will not increase the elevation of the one-hundred-year flood more than one foot at any point.
  - (b) A document, certified by a registered professional engineer or architect, which states that the proposed construction or development has been adequately designed to withstand the pressures, velocities, impact and uplift forces associated with the one-hundred-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.
  - (c) Detailed information needed to determine compliance with Section 26F, Storage, and Section 27, Development, which may endanger human life, including:
    - 1. The amount, location and purpose of any materials or substances referred to in Section 26F and Section 27 hereof

which are intended to be used, produced, stored or otherwise maintained on site.

2. A description of the safeguards incorporated into the design of the proposed structure(s) to prevent leaks or spills of the dangerous materials or substances listed in Section 27 during a one-hundred-year flood.
- (d) The appropriate component of the Pennsylvania Department of Environmental Protection's "Planning Module for Land Development."
  - (e) Where any excavation or grading is proposed, a plan must be submitted meeting the requirements of the Department of Environmental Protection and Westmoreland County Conservation District for the implementation and maintenance or erosion and sedimentation control.

#### **SECTION 12. Review by Westmoreland County Conservation District.**

A copy of all applications and plans for any proposed construction or development in any identified floodplain area shall be submitted by the developer to the Westmoreland County Conservation District for review and comment prior to the issuance of any building permit or, if the developer shall fail to so submit, by the West Newton Borough Floodplain Administrator. The recommendations of the conservation District shall be considered by the Floodplain Administrator for possible incorporation into the proposed plan.

#### **SECTION 13. Review of application by others.**

A copy of all plans and applications for any proposed construction or development in any identified floodplain area may be submitted by the Floodplain Administrator, at his sole discretion, to any other appropriate agencies and/or individuals (e.g., Planning Commission, Municipal Engineer, etc.) for review and comment.

#### **SECTION 14. Changes.**

After the issuance of a building permit by the Floodplain Administrator, no changes of any kind shall be made to the application, permit or any of the plans, specifications or other documents submitted with the application without the written consent or approval of said Floodplain Administrator. Requests for any such change shall be in writing and shall be submitted by the applicant to the Floodplain Administrator for consideration in accordance with the general application and review standards set forth herein.

#### **SECTION 15. Start of construction.**

Work on the proposed construction and/or development shall begin within six months and shall be completed within 12 months after the date of issuance of the building permit or the permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator. Construction and/or development shall be considered to have started with the preparation of land, land clearing, grading, filling, excavation of basement, footings, piers or foundations, erection of temporary forms, the installation of piling under proposed subsurface footings or the installation of sewer, gas and water pipes or electrical or other service lines from the street.

**SECTION 16. Inspection and revocation.**

- A. During the construction period, the Floodplain Administrator or other 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 municipal 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 Floodplain Administrator 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 chapter.
- C. In the event the Floodplain Administrator discovers that the work being performed does not comply with the permit application or any applicable laws and ordinances, or that there has been a false statement or misrepresentation by any applicant, the Floodplain Administrator shall revoke the building permit and report such fact to the Board for whatever action it considers necessary.
- D. A record of all such inspections and violations of this chapter shall be maintained as part of the official West Newton Borough records.

**SECTION 17. Fees.**

Applications for a building permit for construction or development in a flood-prone area shall be the same as fees for other building permits issued by West Newton Borough pursuant to Building Permit Ordinance, in accordance with a schedule of fees as may from time to time be adopted and amended by the West Newton Borough Council. In addition, the applicant shall be responsible for all reasonable fees charged by the Borough Engineer for his services rendered relative to the application and permit.

**SECTION 18. Enforcement.**

- A. Notices. Whenever the Floodplain Administrator or other authorized municipal representative determines that there are reasonable grounds to believe that there has been a violation of any provisions of this chapter or of any regulations adopted pursuant thereto, the Floodplain Administrator shall give notice of such alleged violation as hereinafter provided. Such notice shall:
- (1) Be in writing.
  - (2) Include a statement of the reasons for its issuance.
  - (3) Allow a reasonable time not to exceed a period of 30 days for the performance of any act it requires.
  - (4) Be served upon the property owner or his agent as the case may require; provided, however, that such notice or order shall be deemed to have been properly 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 the Commonwealth of Pennsylvania.
  - (5) Contain an outline of remedial action which, if taken, will effect compliance with the provisions of this chapter.
- B. Penalties. Any person who fails to comply with any or all of the requirements or provisions of this chapter or who fails or refuses to comply with any notice, order of direction of the Floodplain Administrator or any other authorized employee of the municipality shall be guilty of an offense and, upon conviction, shall pay a fine to the Borough of West Newton of not less than \$50.00 nor more than \$300.00, plus costs of prosecution and reasonable attorneys fees. Each day during which any violation of this chapter continues shall constitute a separate punishable offense. In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this chapter. The imposition of a fine or penalty for any violation of, or noncompliance with, this chapter 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 chapter may be declared by the West Newton Borough Council to be a public nuisance and abatable as such.

**SECTION 19. Appeals.**

- A. Any person aggrieved by any action or decision of the Floodplain Administrator concerning the administration of the provisions of this chapter may appeal to the West Newton Borough Council. Such appeal must be filed, in writing, within 30 days after the decision or action of the Floodplain Administrator.

- B. Upon receipt of such appeal, the West Newton Borough Council shall set a time and place within not fewer than 10 days nor more than 30 days for 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. The President of Council of the Borough of West Newton may postpone the date of the hearing for a reasonable time beyond such thirty-day period when, in his judgment, the petitioner has submitted good and sufficient reasons for such postponement.
- D. After the hearing held under this section, the West Newton Borough Council shall make findings as to compliance with the provisions hereof and regulations issued hereunder and shall issue an order, in writing, sustaining, modifying or withdrawing the notice served as provided in Subsection A hereof.
- E. The proceedings of such hearing, including the findings and decision of the West Newton Borough Council, a copy of every notice and all other records relating thereto shall be entered as a matter of public record in the Borough of West Newton. However, a transcript of the hearing need not be transcribed unless judicial review of the decision is sought as authorized by this section.
- F. Any person aggrieved by any decision of the West Newton Borough Council may seek relief therefrom by appeal to any court of competent jurisdiction, as provided by the laws of this Commonwealth, including the Pennsylvania Floodplain Management Act.<sup>1</sup>

**ARTICLE V**  
**Identification of Floodplain Areas**

**SECTION 20. Identification.**

The identified floodplain area shall be any areas of West Newton Borough, classified as special flood hazard areas (SFHAs) in the Flood Insurance Study (FIS) and the accompanying Flood Insurance Rate Maps (FIRMs) dated March 17, 2011 and issued by the Federal Emergency Management Agency (FEMA) or the most recent revision thereof, including all digital data developed as part of the Flood Insurance Study.

The above referenced FIS and FIRMs, and any subsequent revisions and amendments are hereby adopted by West Newton Borough and declared to be a part of this ordinance.

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<sup>1</sup> Editor's Note: See 32 P.S. §679.101 et seq.

## **SECTION 21. Description and Special Requirements of Identified Floodplain Areas**

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

### **A. Floodway Area (FW)**

1. Description - the area identified as Floodway in the FIS which represents the channel of a watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation by more than one (1) foot at any point.

This term shall also include floodway areas that have been identified in other available studies or sources of information for those special floodplain areas where no floodway has been identified in the FIS.

2. Special Requirements:
  - a. Any encroachment that would cause any increase in flood heights shall be prohibited.
  - b. No new construction or development shall be allowed, unless a permit is obtained from the Department of Environmental Protection Regional Office.

### **B. Special Floodplain Area (FE)**

1. Description - the areas identified as Zones AE and A1-30 in the FIS which are subject to inundation by the 1-percent-annual chance flood event determined by detailed methods and have base flood elevations (BFEs) shown.

2. Special Requirements:
  - a. 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 Regional Office.
  - b. In Special Floodplain Areas without a designated floodway, no new development shall be permitted unless it can be demonstrated that the cumulative effect of all past and projected development will not increase the BFE by more than one (1) foot.

### **C. Approximate Floodplain Area (FA)**

1. Description - the areas identified as Zone A in the FIS which are subject to inundation by the 1-percent-annual-chance flood event determined using approximate methodologies. Because detailed hydraulic analyses have not been performed, no BFEs or flood depths are shown.

2. Special Requirements:

- a. 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 Regional Office.
- b. When available, information from other Federal, State, and other acceptable sources shall be used to determine the BFE, as well as a floodway area, if possible. When no other information is available, the BFE 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 municipality 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 West Newton Borough.

**SECTION 22. Changes in identification of area.**

The identified floodplain area may be revised or modified by the West Newton Borough Council where studies or information provided by a qualified agency or person documents the need for such revision. However, prior to any such change, approval must be obtained from the FEMA. Additionally, as soon as practicable, but not later than six (6) months after the date such information becomes available, a community shall notify the FEMA of the changes by submitting technical or scientific data.

**SECTION 23. Boundary disputes.**

Should a dispute concerning any identified floodplain boundary arise, an initial determination shall be made by the Floodplain Administrator and any party aggrieved by this decision may appeal to the West Newton Borough Council as set forth elsewhere in this chapter. The burden of proof shall be on the appellant.

**ARTICLE VI  
Technical Provisions**

**SECTION 24. General provisions.**

- 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.
- B. No encroachment, alteration, or improvement of any kind shall be made to any watercourse unless it can be shown that the activity will not reduce or impede the flood carrying capacity of the watercourse in any way.
- C. Submit technical or scientific data to FEMA for a Letter of Map Revision (LOMR) within six (6) months of the completion of any new construction, development, or other activity resulting in changes in the BFE.
- D. Further, the Federal Emergency Management Agency and the Pennsylvania Department of Community and Economic Development shall be notified prior to any alteration or relocation of any watercourse.
- E. 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 chapter and any other applicable codes, ordinances and regulations.

**SECTION 25. Elevation and floodproofing requirements.**

- A. Residential structures.
  - 1. In AE, A1-30, and AH Zones,, any new construction or substantial improvement of a residential structure shall have the lowest floor (including basement) elevated up to, or above, the regulatory flood elevation.
  - 2. In A Zones, where no Base Flood Elevations are specified on the FIRM, any new construction or substantial improvement shall have the lowest floor (including basement) elevated up to, or above, the regulatory flood elevation in accordance with Section 21, C2b of this ordinance.
  - 3. In AO Zones, any new construction or substantial improvement shall have the lowest floor (including basement) at or above the highest adjacent grade at least as high as the depth number specified on the FIRM.
  - 4. The design and construction standards and specifications contained in the 2006 International Building Code (IBC) and in the 2006 International Residential Code

(IRC) or the most recent revisions thereof and ASCE 24 and 34 PA Code (Chapters 401-405 as amended) shall be utilized.

B. Nonresidential structures.

- (1) Within any identified floodplain area, any new construction or substantial improvement of a nonresidential structure shall have the lowest floor (including basement) elevated up to, or above, the regulatory 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 nonresidential structure, or part thereof, having a lowest floor which is not elevated to at least 1 ½ feet above the one-hundred-year flood elevation shall be floodproofed in a completely or essentially dry manner in accordance with the W1 or W2 space classification standards contained in the publication entitled "Flood-Proofing Regulations," published by the United States Army Corps of Engineers (June 1972, as amended, March 1992) or with some other equivalent standard. All plans and specifications for such floodproofing shall be accompanied by a statement certified by a registered professional engineer or architect which states that the proposed design and methods of construction are in conformance with the above-referenced standards.

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 floodwaters 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 square inch for every square foot of enclosed space.
  - (b) The bottom of all openings shall be no higher than one 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 or business 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, material and equipment related to the principal use or activity.
  - (2) The structure will have a low damage potential.
  - (3) The structure will be located on the site so as to cause the least obstruction to the flow of floodwaters.
  - (4) Power lines, wiring and outlets will be at least 1 ½ feet above the one-hundred-year flood elevation.
  - (5) Permanently affixed utility equipment and appliances such as furnaces, heaters, washers, dryers, etc., are prohibited.
  - (6) Sanitary facilities are prohibited.
  - (7) The structure shall be adequately anchored to prevent flotation or movement and shall be designed to automatically provide for the entry and exit of floodwaters for the purpose of equalizing hydrostatic forces on the walls. 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 square inch for every square foot of enclosed space.
    - (b) The bottom of all openings shall be no higher than one 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.

**SECTION 26. Design and construction standards.**

The following minimum standards shall apply for all construction and development proposed within any identified floodplain area:

- A. Fill. If fill is used, it shall:
- (1) Extend laterally at least 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 settling.
  - (4) Be no steeper than on one vertical to two horizontal feet unless substantiated data justifying steeper slopes are submitted to and approved by the Building Permit Officer.
  - (5) Be used to the extent to which it does not adversely affect adjacent properties.
- B. Drainage facilities. Storm drainage facilities shall be designed to convey the flow of stormwater runoff in a safe and efficient manner. The system shall ensure 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 water and sanitary sewer facilities and systems shall be located, designed and constructed to minimize or eliminate flood damages and the infiltration of floodwaters.
  - (2) Sanitary sewer facilities and systems shall be designed to prevent the discharge of untreated sewage into floodwaters.
  - (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 chance of impairment during a flood.
- E. Streets. The finished elevation of all new streets shall be no more than one foot below the regulatory flood elevation.
- F. Storage. All materials that are buoyant, flammable, explosive or, in times of flooding, could be injurious to human, animal or plant life and not listed in Section 27 hereof shall be stored at or above the regulatory flood elevation and/or floodproofed to the maximum extent possible.
- G. 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 floodwater.

H. Anchoring.

- (1) All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, 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.

I. Floors, walls and ceilings.

- (1) Wood flooring used at or below the regulatory flood elevation shall be installed to accommodate 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 flood 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 other water-resistant material.

J. Paints and adhesives.

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

K. Electrical components.

- (1) Electrical distribution panels shall be at least three feet above the one-hundred-year flood elevation.
- (2) Separate electrical circuits shall serve lower levels and shall be dropped from above.

L. Equipment. Water heaters, furnaces, air conditioning and ventilating units and other electrical, mechanical or utility equipment or apparatus shall not be located below the regulatory flood elevation.

- M. Fuel supply systems. All gas and oil supply systems shall be designed to prevent the infiltration of floodwaters into the system and discharges from the system into floodwaters. Additional provisions shall be made for the drainage of these systems in the event that floodwater infiltration occurs.

**SECTION 27. Development which may endanger human life.**

- A. In accordance with the Pennsylvania Floodplain Management Act,<sup>2</sup> and the regulations adopted by the Department 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 dangerous materials or substances; or will be used for any activity requiring the maintenance of a supply of more than 550 gallons, or other comparable volume, of any of the following dangerous materials or substances on the premises; or will involve the production, storage or use of any amount of radioactive substances shall be subject to the provisions of this section, in addition to all other applicable provisions. The following list of materials and substances are considered dangerous to human life:

Acetone  
Ammonia  
Benzene  
Calcium Carbide  
Carbon Disulfide  
Celluloid  
Chlorine  
Hydrochloric Acid  
Hydrocyanic Acid  
Magnesium  
Nitric Acid and Oxides of Nitrogen  
Pesticides (including Insecticides, Fungicides and Rodenticides)  
Petroleum Products (Gasoline, Fuel Oil, etc.)  
Phosphorus  
Potassium  
Radioactive Substances, insofar as such substances are not otherwise regulated  
Sodium  
Sulphur and Sulphur Products

- B. Within any FW (Floodway Area), any structure of the kind described in Subsection A above shall be prohibited.
- C. Within any FE (Special Floodplain Area) or FA (General Floodplain Area), any new or substantially improved structure of the kind described in Subsection A above shall be prohibited within the area measured 50 feet landward from the top of bank of any watercourse.

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<sup>2</sup> Editor's Note: See 32 P.S. §679.101 et seq.

D. Design standards.

- (1) Where permitted within any floodplain area, any new or substantially improved structure of the kind described in Subsection A above shall be:
  - (a) Elevated or designed and constructed to remain completely dry up to at least 1 ½ feet above the one-hundred-year flood; and
  - (b) Designed to prevent pollution from the structure or activity during the course of a one-hundred-year flood.
- (2) 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 floodproofing contained in the publication Flood-Proofing Regulations (United States Army Corps of Engineers, June 1972, as amended, March 1992), or with some other equivalent watertight standard.

**SECTION 28. Special requirements for subdivisions.**

All subdivision proposals and development proposals containing at least 50 lots or at least 5 acres, whichever is the lesser, in flood hazard areas where base flood elevation data are not available, shall be supported by hydrologic and hydraulic engineering analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant.

**SECTION 29. Special requirements for manufactured homes.**

- A. Within any FW (Floodway Area), manufactured homes shall be prohibited.
- B. Within an FA (General Floodplain Area) or FE (Special Floodplain Area), manufactured homes shall be prohibited within the area measured 50 feet landward from the top of bank of any watercourse.
- C. Where permitted within any floodplain area, all manufactured homes and any improvements thereto shall be:
  - (1) Placed on a permanent foundation.
  - (2) Elevated so that the lowest floor of the manufactured home is 1 ½ feet or more above the elevation of the one-hundred-year flood.

- (3) Anchored to resist flotation, collapse or lateral movement.
- D. An evacuation plan indicating alternative vehicular access and escape routes shall be filed with the Borough of West Newton for manufactured home parks and subdivisions, where appropriate.
- E. Installation of manufactured homes shall be done in accordance with the manufacturers' installation instructions as provided by the manufacturer. Where the applicant cannot provide the above information, the requirements of Appendix E of the 2006 International Residential Building Code or the U.S. Department of Housing and Urban Development's Permanent Foundations for Manufactured Housing, 1984 Edition, draft or latest revision thereto shall apply and 34 PA Code Chapter 401-405.
- F. Consideration shall be given to the installation requirements of the 2006 IBC, and the 2006 IRC or the most recent revisions thereto and 34 PA Code, as amended where appropriate and/or applicable to units where the manufacturers' standards for anchoring cannot be provided or were not established for the units(s) proposed installation.

**SECTION 30. Special requirements for recreational vehicles.**

Recreational vehicles in Zones A1-30, AH and AE must either

- a. be on the site for fewer than 180 consecutive days,
- b. be fully licensed and ready for highway use, or
- c. meet the permit requirements for manufactured homes in Section 29.

**ARTICLE VII  
Special Permits**

**SECTION 31. Activities requiring special permits.**

In accordance with the administrative regulations promulgated by the Department to implement the Pennsylvania Floodplain Management Act,<sup>3</sup> the following activities shall be prohibited within any identified floodplain area unless a special permit has been issued by the Borough of West Newton:

- A. The commencement of any of the following activities; or the construction, enlargement or expansion of any structure used, or intended to be used, for any of the following activities:
  - (1) Hospitals.

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<sup>3</sup> Editor's Note: See 32 P.S. §679.101 et seq.

- (2) Nursing Homes.
  - (3) Jails or Prisons.
- B. The commencement of, or any construction of, a new manufactured home park or manufactured home subdivision or substantial improvement to an existing manufactured home park or manufactured home subdivision.

**SECTION 32. Application requirements for special permits.**

Applicants for special permits shall provide five copies of the following items:

- A. A written request including a completed building permit application form.
- B. A small scale map showing the vicinity in which the proposed site is located.
- C. A plan of the entire site, clearly and legibly drawn at a scale of one inch being equal to 100 feet or less, showing the following:
  - (1) North arrow, scale and date.
  - (2) Topography based upon the National American Vertical Datum of 1988, showing existing and proposed contours at intervals of two feet.
  - (3) All property and lot lines, including dimensions, and the size of the site expressed in acres or square feet.
  - (4) The location of all existing streets, drives, other accessways and parking areas, with information concerning widths, pavement types and construction and elevations.
  - (5) The location of any existing bodies of water or watercourses, building, structures and other public or private facilities, including railroad tracks and facilities, and any other natural and man-made features affecting, or affected by, the proposed activity or development.
  - (6) The location of the floodplain boundary line, information and spot elevations concerning the one-hundred-year flood elevations and information concerning the flow of water, including direction and velocities.
  - (7) The location of all proposed buildings, structures, utilities and nay other improvements.
  - (8) Any other information which the municipality considers necessary for adequate review of the application.

- D. Plans of all proposed buildings, structures and other improvements, clearly and legibly drawn at suitable scale showing the following:
- (1) Sufficiently detailed architectural or engineering drawings, including floor plans, sections and exterior building elevations, as appropriate.
  - (2) For any proposed building, the elevation of the lowest floor (including basement) and, as required, the elevation of any other floor.
  - (3) Complete information concerning flood depths, pressures, velocities, impact and uplift forces and other factors associated with the one-hundred-year flood.
  - (4) Detailed information concerning any proposed floodproofing measures and corresponding elevations.
  - (5) Cross section drawings for all proposed streets, drives, other accessways and parking areas, showing all rights-of-way and pavement widths.
  - (6) Profile drawings for all proposed streets, drives and vehicular accessways, including existing and proposed grades.
  - (7) Plans and profiles of all proposed sanitary and storm sewer systems, water supply systems and any other utilities and facilities.
- E. The following data and documentation:
- (1) Certification from the applicant that the site upon which the activity or development is proposed is an existing separate 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 the one-hundred-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-year flood, including a statement concerning the effects such pollution may have on human life.
  - (4) A statement, certified by a registered professional engineer, architect or landscape architect, which contains a complete and accurate description of the effects the proposed development will have on one-hundred-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

amounts of any loose buoyant materials or debris that may possibly exist or be located on the site below the one-hundred-year flood elevation and the effects such materials and debris may have on one-hundred-year flood elevations and flows.

- (6) The appropriate component of the Department of Environmental Protections' "Planning Module for Land Development."
- (7) 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.
- (8) Any other applicable permits such as, but not limited to, a permit for any activity regulated by the Department of Environmental Protection under Section 302 of Act 1978-166.<sup>4</sup>
- (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-year flood.

### **SECTION 33. Application review procedures.**

Upon receipt of an application for a special permit by the Borough of West Newton, the following procedures shall apply in addition to those of Article III hereof:

- A. Within three working days following receipt of the application, a complete copy of the application and all accompanying documentation shall be forwarded to the Westmoreland County Planning Commission by personal delivery, receipt requested, or by registered or certified mail for review and recommendations. Copies of the application shall also be forwarded to the West Newton Borough Planning Commission and the Borough Engineer for review and comment.
- B. If an application is received that is incomplete, the Borough of West Newton shall notify the applicant, in writing, stating in what respect the application is deficient. No time deadlines imposed upon the Borough by this chapter or any statutory provision shall begin to run until the Borough shall determine the application to be complete.
- C. If the Borough of West Newton decides to disapprove an application, it shall notify the applicant, in writing, stating in what respect the application is deficient.
- D. If the Borough of West Newton approves an application, it shall file written notification, together with the application and all pertinent information, with the Department, by registered or certified mail, within five working days after the date of approval.

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<sup>4</sup> Editor's Note: See 32 P.S. §679.101.

- E. Before issuing the special permit, the Borough of West Newton shall allow the Department 30 days, after receipt of the notification by the Department, to review the application and decision made by the Borough.
- F. If the Borough does not receive any communication from the Department during the thirty-day-review period, it may issue a special permit to the applicant.
- G. If the Department should decide to disapprove an application, it shall notify the Borough of West Newton and the applicant, in writing, of the reasons for the disapproval, and the Borough shall not issue the special permit.

**SECTION 34. Special technical requirements.**

- A. In addition to the requirements of Article V hereof, 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 V of this chapter or in any other code, ordinance or regulation, the more restrictive provision shall apply.
- B. No application for 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 of the structure. 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-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-year flood elevation.
    - (b) The lowest floor (including basement) elevation will be at least 1 ½ feet above the one-hundred-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-year flood.
  - (2) Prevent any significant possibility of pollution, increased flood levels or flow or debris endangering life and property.
- C. All hydrologic and hydraulic analyses required hereunder 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 Borough of West Newton and the Department.

**ARTICLE VIII  
Existing Structures**

**SECTION 35. Existing structures.**

The provisions of this chapter do not require any changes or improvements to be made to lawfully existing structures. However, if and when an improvement is made to any structure existing within the area of a defined floodplain, the provisions of Section 34 hereof shall apply.

**SECTION 36. Improvements.**

The following provisions shall apply whenever any improvement is made to an existing structure located within any identified floodplain area:

- A. No expansion or enlargement of an existing structure shall be allowed within any floodway area that would cause any increase in the elevation of the one-hundred-year flood.
- B. No expansion or enlargement of an existing structure shall be allowed within any FE area that would, together with all other existing and anticipated development, increase the one-hundred-year flood elevation more than one foot at any point.
- C. Any modification, alteration, reconstruction or improvement of any kind to an existing structure, to an extent or amount of 50% or more of its market value, shall constitute a substantial improvement and shall be undertaken only in full compliance with the provisions of this chapter.

**ARTICLE IX  
Variances**

**SECTION 37. Compliance.**

If compliance with any of the requirements of this chapter would result in an exceptional hardship to a prospective builder, developer or landowner, the Borough of West Newton may, upon request, grant relief from the strict application of the requirements.

**SECTION 38. Procedures and conditions.**

Requests for variances shall be considered by the Borough of West Newton in accordance with the procedures contained in Section 18 hereof and 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-year flood elevation.
- B. No variance shall be granted for any construction, development, use or activity within any FE area that would, together with all other existing and anticipated development, increase the one-hundred-year flood elevation more than one foot at any point.
- C. Except for a possible modification of the 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 (Article VI) or to development which may endanger human life (Section 27).
- D. If granted, a variance shall involve only the least modification necessary to provide relief.
- E. In granting any variance, the Borough of West Newton may 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 chapter.
- F. Whenever a variance is granted, the Borough of West Newton shall notify the applicant in writing that:
  - (1) The granting of the variance may result in increased premium rates for flood insurance; and
  - (2) Such variances may increase the risks to life and property.
- G. In reviewing any request for a variance, the Borough of West Newton shall consider, at a minimum, 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 neither result in an unacceptable or prohibited increase in flood heights, additional threats to public safety or extraordinary public expense, nor create nuisances, cause fraud on, or victimize the public, or conflict with any other applicable state or local ordinances and regulations.
- H. A complete record of all variance requests and related actions shall be maintained by the Borough of West Newton. In addition, a report of all variances granted during the year shall be included in the annual report to the Federal Insurance Administration.

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

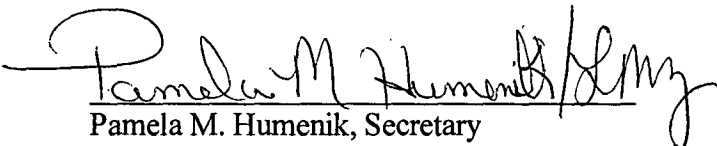
**ARTICLE X**  
**Enactment**

**THIS ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY UPON PASSAGE.**


ORDAINED AND ENACTED this 14th day of March 2011

  
George Molovich, Council President

ATTEST:

  
Pamela M. Humenik, Secretary

EXAMINED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

  
Mary Popovich, Mayor