

**BOROUGH OF NEWTOWN  
ORDINANCE NO. 750**

**AN ORDINANCE OF NEWTOWN BOROUGH, BUCKS  
COUNTY, PENNSYLVANIA, AMENDING THE  
FLOODPLAIN PROVISIONS OF THE NEWTOWN  
BOROUGH ZONING ORDINANCE.**

**WHEREAS**, by Ordinance No. 742, the Council of Newtown Borough, Bucks County, Pennsylvania (“Council”) enacted a Zoning Ordinance amendment to establish a Floodplain Ordinance consistent with the Pennsylvania Floodplain Management Act of 1978;

**WHEREAS**, the Federal Emergency Management Agency (FEMA) requires amendments to that Ordinance in order to meet their requirements; and

**WHEREAS**, after careful study and consideration, Council has determined that certain provisions of the Zoning Ordinance related to floodplains should be amended to insure consistency with the Pennsylvania Floodplain Management Act of 1978 and FEMA requirements.

**NOW THEREFORE**, the Council of Newtown Borough, Bucks County, Pennsylvania does hereby enact and ordain the following:

**SECTION 1.** Section 508.B.2.b of the Zoning Ordinance is amended by deleting it in its entirety.

**SECTION 2.** Section 508.C.1 of the Zoning Ordinance is amended by deleting the first sentence thereof and replacing it with the following:

The Zoning Officer is hereby appointed to administer and enforce this Ordinance and is referred to herein as the Floodplain Administrator.

**SECTION 3.** Section 508.C.3.c of the Zoning Ordinance is amended by deleting it in its entirety and replacing it with the following:

In the case of existing structures, prior to the issuance of any Development/Permit, the Floodplain Administrator shall review the history of repairs to the subject building, so that any cumulative substantial damage concerns can be addressed before the permit is issued.

**SECTION 4.** Section 508.D.1.a of the Zoning Ordinance is amended by deleting it in its entirety and replacing it with the following:

- a. any areas of the Borough of Newtown, classified as Special Flood Hazard Areas (SFHAs) in the Flood Insurance Study (FIS) and the accompanying Flood Insurance Rate Maps (FIRMs) dated March 21, 2017 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.

**SECTION 5.** Section 508.G.2.f of the Zoning Ordinance is amended by deleting it in its entirety and replacing it with the following:

- f. Any modification, alteration, reconstruction, or improvement of any kind that meets the definition of “cumulative substantial damage” shall be undertaken only in full compliance with the provisions of this ordinance.

**SECTION 6.** Section 508.I.2 of the Zoning Ordinance is amended by deleting it in its entirety and replacing it with the following:

2. 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. Base flood - a flood which has a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood" or one-percent (1%) annual chance flood).
- c. Base flood discharge - the volume of water resulting from a Base Flood as it passes a given location within a given time, usually expressed in cubic feet per second (cfs).
- d. 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.
- e. Basement - any area of the building having its floor below ground level on all sides.
- f. 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.
- g. Cumulative substantial damage – flood related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damages occurred.

- h. 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.
- i. 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.
- j. 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 manufactured 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).
- k. Flood - a temporary inundation of normally dry land areas.
- l. Flood Insurance Rate Map (FIRM) - the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.
- m. Flood Insurance Study (FIS) - the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.
- n. 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.
- o. 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.
- p. Floodway - the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
- q. Historic structures – any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of 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 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 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.
- r. Identified Floodplain Area- this term is an umbrella term that includes all of the areas within which the community has selected to enforce floodplain regulations. It will always include the area identified as the Special Flood Hazard Area on the Flood Insurance Rate Maps and Flood Insurance Study, but may include additional areas identified by the community. See Sections D.1 and D.2 for the specifics on what areas the community has included in the Identified Floodplain Area.
- s. 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.
- t. Manufactured home - a structure, transportable in one or more sections, which is built on a permanent chassis, and is designed for use with or without a permanent foundation when attached to the required utilities. The term includes park trailers, travel trailers, recreational and other similar vehicles which are placed on a site for more than 180 consecutive days.
- u. Manufactured home park or subdivision – a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

- v. New construction - structures for which the start of construction commenced on or after March 21, 2017 and includes any subsequent improvements to such structures. Any construction started after December 18, 1979 and before March 21, 2017 is subject to the ordinance in effect at the time the permit was issued, provided the start of construction was within 180 days of permit issuance.
- w. New 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 on or after the effective date of floodplain management regulations adopted by a community.
- x. 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.
- y. Post-FIRM Structure - is a structure for which construction or substantial improvement occurred after December 31, 1974 or on or after the community's initial Flood Insurance Rate Map (FIRM) dated December 18, 1979, whichever is later, and, as such, would be required to be compliant with the regulations of the National Flood Insurance Program.
- z. Pre-FIRM Structure - is a structure for which construction or substantial improvement occurred on or before December 31, 1974 or before the community's initial Flood Insurance Rate Map (FIRM) dated December 18, 1979, whichever is later, and, as such, would not be required to be compliant with the regulations of the National Flood Insurance Program.
- aa. Recreational vehicle - a vehicle which is:
  - (1) built on a single chassis;
  - (2) not more than 400 square feet, measured at the largest horizontal projections;
  - (3) designed to be self-propelled or permanently towable by a light-duty truck,
  - (4) not designed for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- bb. Regulatory flood elevation - the base flood elevation (BFE) or estimated flood height as determined using simplified methods plus a freeboard safety factor of one and one-half (1 ½) feet.

- cc. 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.
- dd. 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 after the date of the permit and shall be completed within twelve (12) months after the date of issuance of the permit unless a time extension is granted, in writing, by the Floodplain Administrator. 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 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.
- ee. Structure – a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.
- ff. Subdivision - the division or re-division 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 or building or lot development: Provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than ten acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.
- gg. 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.
- hh. Substantial improvement - any reconstruction, rehabilitation, addition, or other improvement of a structure, of which the cost 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" or "cumulative substantial damage"

regardless of the actual repair work performed. The term does not, however, include 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.

- ii. 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.
- jj. Variance- A grant of relief by a community from the terms of a floodplain management regulation.
- kk. Violation - means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR §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.

**SECTION 7.** Whenever the requirements of this Ordinance are in conflict with other requirements of the Ordinances of the Borough of Newtown, the most restrictive, or those imposing the higher standards, shall govern.

**SECTION 8.** Provisions of this Ordinance are severable. If any Court of competent jurisdiction shall hold any section, clause, sentence, part or provision illegal, invalid or unconstitutional, such decisions of the Court shall not affect or impair any of the remaining sections, clauses, sentences, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Council of the Borough of Newtown that this Ordinance would have been enacted if such illegal, invalid or unconstitutional section, clause, sentence, part or provision had not been included herein.

**SECTION 9.** This Ordinance shall be effective on March 21, 2017 and shall remain in force until modified, amended or rescinded by Borough of Newtown, Bucks County, Pennsylvania.

DULY ENACTED this 14<sup>th</sup> day of February, 2017.



NEWTOWN BOROUGH COUNCIL

By: *Robert J. Walker*  
Robert J. Walker, President

Attest: *Judy S. Musto*  
Judy S. Musto, Secretary

Approved by: Charles F. Swartz, III, Mayor

Dated: 2/14/17

*Charles F. Swartz III*  
Charles F. Swartz, III, Mayor