

TOWNSHIP OF MIDDLESEX  
CUMBERLAND COUNTY, PENNSYLVANIA  
ORDINANCE NO. <sup>3</sup><sub>(3-81)</sub> OF 1981

AN ORDINANCE AMENDING ORDINANCE NO. 15-70 (THE MIDDLESEX TOWNSHIP ZONING ORDINANCE) ORIGINALLY ENACTED ON AUGUST 5, 1970, TO ADD THERETO AN ARTICLE MORE FULLY ESTABLISHING AND DEFINING FLOOD PLAIN ZONING AREAS AND REGULATING THE USE AND DEVELOPMENT OF LAND AND STRUCTURES THEREIN AND PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT THEREOF.

BE IT ENACTED AND ORDAINED and it is hereby enacted and ordained by the Board of Supervisors of this Township as follows:

SECTION 1: Ordinance No. 15-70, (THE MIDDLESEX TOWNSHIP ZONING ORDINANCE) originally enacted on August 5, 1970, as subsequently amended, is hereby further amended by adding and supplementing thereto the following new Article XVII which shall be incorporated into said Zoning Ordinance:

ARTICLE XVII

FLOOD PLAIN AREAS

SECTION 17.00 General Provisions

1. Purpose. The purpose of these provisions is to prevent the loss of property and life, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

- A. regulating uses, activities, and development which, acting alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities and frequencies.
- B. restricting or prohibiting certain uses, activities, and development from locating within areas subject to flooding.
- C. requiring all those uses, activities, and developments that do occur in flood-prone areas to be protected and/or floodproofed against flooding and flood damage.
- D. protecting individuals from buying lands and structures which are unsuited for intended purposes because of flood hazards.

2 Applicability. These provisions shall apply to all lands within the jurisdiction of Middlesex Township and shown on the Official Zoning Map as being located within the boundaries of any flood plain area determined by the Federal Emergency Management Agency, and approved by the Board of Township Supervisors.

3. Abrogation and Greater Restrictions. This Article supplements prior articles of this Zoning Ordinance. To the extent that this imposes greater requirements or more complete disclosures in any respect, or to the extent that the provisions of this Article are more restrictive, it shall be deemed and interpreted to control such other provisions of the Zoning Ordinance.

4. Compliance. No structure or land shall hereafter be used and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this Article and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this ordinance.

5. 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 land outside the flood plain areas, or that land uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Middlesex Township or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

SECTION 17.01 Definitions. Unless otherwise expressly stated, the following words shall, for the purpose of this Article XVII, have the meaning herein indicated:

1. "Building" - a combination of materials to form a permanent structure having walls and a roof, including but not limited to all mobile homes and trailers used for human habitation.
2. "Designated Flood Plain Areas" - a relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation in a 100 year flood as designated in Section 17.02 hereinbelow.
3. "Developer" - any landowner, agent or such land owner or tenant with the permission of such landowner, who makes or causes to be made a subdivision of land or a land development and the subdivision of land.
4. "Development" - any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, the placement of mobile homes, streets and other paving, utilities, mining, dredging, filling, grading, excavation, or drilling operations, and the subdivision of land.
5. "Dwelling" - a building designed and constructed for residential purposes in which people live.

6. "Flood" - a temporary inundation of normally dry land areas.
7. "Flood Fringe" - that portion of the flood plain outside the floodway.
8. "Flood Plain Area" - relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation in a 100 year flood.
9. "Floodproofing" - any combination of structural and non-structural 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.
10. "Flood-Prone 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.
11. "Floodway" - the channel of a river or other watercourse and the adjacent land areas required to carry and discharge a flood of the one hundred (100) year magnitude without increasing the water surface elevation of that flood more than one (1) foot at any point.
12. "Identified Flood-Prone Area" - the flood plain area specifically identified hereinbelow 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).
13. "Mobile Home" (Floodplain Management Purposes) - 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 does not include recreational vehicles or travel trailers.
14. "Obstruction" - any wall, dam, wharf, embankment, levee, pile abutment, projection, excavation, channel, rectification, culvert, building, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or floodprone area, which may impede, retard, or change the direction of the flow of water either in itself or by catching or collecting debris carried by such water or is placed where the flow of the water might carry the same downstream to the damage of life and property.
15. "One hundred (100) year flood" - a flood that, on the average, is likely to occur once every one hundred (100) years i.e. a flood that has a one percent (1%) chance of occurring each year, although the flood may occur in any year).

16. "Regulatory Flood Elevation" - the 100 year flood elevation plus a freeboard safety factor of one and one-half (1½) feet.
17. "Structure" - anything constructed or erected on the ground or attached to the ground, including but not limited to, buildings, factories, sheds, cabins, mobile homes, and other similar items.

## SECTION 17.02 Establishment of Flood Zoning Areas

### 1. Description of Areas

#### A. Basis of Flood Areas

The various Flood plain areas shall include land subject to inundation by waters of the one hundred (100) year flood. The basis for the delineation of these areas shall be the Flood Insurance Study (FIS) the results of which are graphically presented on the Flood Boundary and Floodway Map (Flood Boundary Map), Township of Middlesex, prepared by the Federal Emergency Management Agency, dated June 15, 1981, all incorporated herein.

- (1) The Floodway Area (FW) is delineated for purposes of this ordinance using the criteria that a certain area within the flood plain must be capable of carrying the waters of the one hundred (100) year flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The Floodway Area is shown on the Floodway Boundary Map. The lands in this Area are specifically defined in Floodway Data Table of the Flood Insurance Study, Township of Middlesex, Pennsylvania ("Flood Insurance Study").
- (2) The Flood-Fringe Area (FF) shall be that land of the 100 year flood plain not included in the Floodway Area. The basis for the outermost boundary of this Area shall be the one hundred (100) year flood elevations contained in the flood profiles and also contained in Table of the Flood Insurance Study (FIS) and as shown on the accompanying Flood Boundary Map. At any given point, however, elevation, rather than location relative to the one hundred (100) year flood boundary, shall be the determining factor as to the definition of the Flood-Fringe District.
- (3) The General Flood Plain Area (FA) shall be that flood plain area for which no detailed flood profiles or elevations have been provided. They are shown on the Maps accompanying the FIS prepared by FIA. Where the specific 100 year flood elevation cannot be determined

for this area by the Zoning Officer to his satisfaction, using other sources of data such as the U. S. Army Corps of Engineers, Flood Plain Information Reports, or U.S. Geological Survey-Flood Prone Quadrangles, then the Zoning Officer may require the applicant for the proposed use, development or activity to determine this elevation in accordance 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, or computations shall be submitted in sufficient detail to allow a thorough technical review by the Township.

B. Overlay Concept.

- (1) The Flood Plain Areas described above shall be overlays to the existing underlying districts as shown on the Official Middlesex Township Zoning Map, and as such, the provisions of the Flood Plain Areas shall serve as a supplement to the underlying district provisions.
- (2) In the event of any conflict between the provisions or requirements of any of the Flood Plain Areas and those of any underlying zoning district, the more restrictive provisions shall apply.
- (3) In the event any provision concerning a Flood Plain Area is declared inapplicable or illegal as a result of any legislative or administrative actions or judicial decision, the regulations of the underlying district shall remain applicable.

2. Zoning Map. The boundaries of the Flood Plain Areas are established as shown on the Floodway Boundary Map which is declared to be a part of this Ordinance and which shall be kept on file at the Middlesex Township Municipal Building for public inspection.

3. Interpretation of Area Boundaries Initial interpretations of the boundaries of the Flood Plain Areas shall be made by the Zoning Officer. Should an applicant dispute the boundaries of any of the Areas, the Zoning Hearing Board shall make the necessary determination. The person questioning or contesting the location of the Area boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

4. Boundary Changes. The delineation of any of the flood plain areas may be revised by the Board of Township Supervisors where natural or man-made changes have occurred, or more detailed studies conducted or undertaken by the U. S. Army Corps of Engineers River Basin Commission or other qualified agency or individual and such studies provide the basis for such change. However, prior to any such change, approval must be obtained from the Federal Insurance Administration (FIA).

## SECTION 17.03 Area Provisions

1. General. All uses, activities, and development occurring within any flood plain area shall be undertaken, only, in strict compliance with the provisions of this Ordinance and with all other applicable codes and ordinances of such as the Middlesex Township Subdivision Control Ordinance of 1968. In addition, all such uses, activities and development shall be undertaken only in compliance with Federal or State law including Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1334) and the Pennsylvania Water Obstructions Act of 1913. Under no circumstances shall any use, activity and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.

Prior to any proposed alteration or relocation of any stream or watercourse within the Township, any required permit shall be obtained from the Pennsylvania Department of Environmental Resources, Dams and Encroachment Division. Further, documentation shall be submitted substantiating notification of the proposal has been given to all affected adjacent municipalities. The Federal Insurance Administration and the Pennsylvania Department of Community Affairs shall also be notified in advance of any such alteration or relocation.

2. Floodway Area (FW). In the Floodway Area (FW) no development shall be permitted except where the effect of such development on flood heights is fully offset by accompanying improvements which have been approved by all appropriate local and State Authorities as required above.

### A. Permitted Uses

In the Floodway Area the following uses and activities are permitted provided that they are in compliance with the provisions of the underlying district and are not prohibited by any other ordinance and provided that they do not require structures, fill or storage of materials and equipment:

- (1) Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- (2) Public and private recreational uses and activities such as parks, day camps, picnic grounds, golf courses, boatlaunching and swimming areas, hiking, and horseback riding trails, wildlife and nature preserves, game farms, fish hatcheries, trap and skeet game ranges, and hunting and fishing areas.
- (3) Accessory residential uses such as yard areas, gardens, play areas, and porous paving areas

- (4) Accessory industrial and commercial uses such as yard areas, porous paving and loading areas, airport landing strips, etc.

B. Uses Permitted by Special Exception

The following uses and activities may be permitted by Special Exception as allowed by the Zoning Hearing Board provided that they are in compliance with the provisions of the underlying district and are not prohibited by any other provision of the Middlesex Township Zoning Ordinance:

- (1) Structures, except mobile homes, accessory to the uses and activities of Section A above.
- (2) Utilities and public facilities and improvements such as railroads, streets, bridges, transmission lines, pipe lines, water and sewage treatment plants, and other similar or related uses.
- (3) Water-related uses and activities such as marinas, docks, wharves, piers, etc.
- (4) Extraction of sand, gravel, and other materials.
- (5) Temporary uses such as circuses, carnivals, and similar activities.
- (6) Storage of materials and equipment provided that they are not buoyant, flammable or explosive, and are not subject to major damage by flooding, or provided that such material and equipment is firmly anchored to prevent flotation or movement, or can be readily removed from the area within the time available after flood warning.
- (7) Other similar uses and activities provided they cause no increase in flood heights or velocities. All uses, activities, and structural developments shall be undertaken in strict compliance with the floodproofing provisions contained in all other applicable codes and ordinances.

3. Flood-Fringe Area (FF). In the Flood-Fringe Area (FF) the development and use of land shall be permitted in accordance with the regulations of the underlying district provided that all such uses, activities, or development shall be undertaken in strict compliance with the floodproofing and related provisions contained in all other applicable codes and ordinances, and further provided that mobile homes shall not be permitted in Flood-Fringe Areas.

4. General Flood Plain Area (FA). In the General Flood Plain Area (F

development or use of land shall be permitted in accordance with the regulations of the underlying zoning district provided that all such uses, activities, or development shall be undertaken in strict compliance with the floodproofing and related provisions contained in all other applicable codes and ordinances.

SECTION 17.04 Special Exceptions and Variances - Additional Factors To Be Considered. In passing upon applications for Special Exceptions and Variances the Zoning Hearing Board shall consider all relevant factors and procedures specified in other sections of the Zoning Ordinance and:

1. The danger to life and property due to increased flood heights or velocities caused by encroachments. No special exceptions or variance shall be granted in any Floodway for any proposed use, development, or activity that will cause any increase in flood levels during the one hundred (100) year flood.
2. The danger that materials may be swept on to other lands or downstream to the injury of others.
3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
5. The importance of the services provided by the proposed facility to the community.
6. The requirements of the facility for a waterfront location.
7. The availability of alternative locations not subject to flooding for the proposed use.
8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
9. The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
10. The safety of access to the property in times of flood of ordinary and emergency vehicles.
11. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
12. The effect upon the Township Flood Insurance Program.

13. Such other factors which are relevant to the purposes of this Ordinance.

The Zoning Hearing Board may refer any application and accompanying documentation pertaining to any request for a special exception or variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for protection and other related matters.

Special exceptions and/or variances shall only be issued after the Zoning Hearing Board has determined that the granting of such will not result in (a) unacceptable or prohibited increased flood heights, (b) additional threats to public safety, (c) extraordinary public expense, (d) create nuisances, (e) cause fraud or victimization of the public, (f) jeopardy to the Township Flood Insurance Program, or (g) conflict with local laws or ordinances.

SECTION 17.05 Existing Structures in Flood Plain Areas. A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions may be continued subject to the following conditions.

1. Existing structures or uses located in any floodway area shall not be expanded or enlarged unless the effect of the proposed expansion or enlargement on flood heights is fully offset by accompanying improvements.
2. Any modification, alteration, repair, reconstruction, or improvement of any kind to a structure or use located in any flood plain area to an extent or amount of less than fifty (50) percent of its market value, shall be elevated and/or floodproofed to the greatest extent possible regardless of its location in the flood plain area.
3. The modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use regardless of its location in a flood plain area to an extent or amount of fifty (50) percent or more of its market value shall be undertaken only in full compliance with the provisions of this ordinance and any other applicable ordinance.

## SECTION 2.

If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance.

It is hereby declared as the intent of the Board of Supervisors of this Township that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

ENACTED AND ORDAINED this 7th day of June, 1981.

TOWNSHIP OF MIDDLESEX  
Cumberland County, Pennsylvania

By Albert W. Brown  
Chairman, Board of Supervisors

By David C. W. [unclear]  
Member, Board of Supervisors

By Robert M. Epler  
Member, Board of Supervisors

ATTEST:

Robert M. Epler  
Secretary

(TOWNSHIP SEAL)