

CHAPTER 120: FLOODPLAIN MANAGEMENT

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[HISTORY: Adopted by the Borough Council of the Borough of Newport 2-1-1994 by Ord. No. 278 (Ch. 8 of the 1985 Code). Amendments noted where applicable.]

GENERAL REFERENCES

Uniform construction codes - See Ch. 99.

Subdivision and land development - See Ch. 222.

Zoning - See Ch. 250.

Article I. General Provisions

§ 120-1. 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.
- 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.

§ 120-2. Applicability.

- A. It shall be unlawful for any person, partnership, business or corporation to undertake, or cause to be undertaken, any construction or reconstruction or development anywhere within the Borough unless an approved building permit has been obtained from the Building Permit Officer.
- B. A building permit shall not be required for minor repairs to existing buildings or structures, provided that no structural changes or modifications are involved.

§ 120-3. Abrogation and greater restrictions.

This chapter supersedes any other conflicting provision 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.

§ 120-4. Warning and disclaimer of liability.

- A. 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. Flood 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 outside any identified floodplain area, or that land uses permitted within such areas, will be free from flooding or flood damage.
- B. The grant of a permit or approval of a subdivision plan in the identified flood-prone area(s) shall not constitute a representation, guarantee or warranty of any kind by the Borough or by any official or employee thereof of the practicability or safety of the proposed use and shall create no liability upon the Borough, its officials or employees.
- C. This chapter shall not create liability on the part of Newport Borough Council 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 II. Administration

§ 120-5. Building permits required.

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

§ 120-6. Issuance of building permit.

- A. The Building Permit Officer shall issue a building permit only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of this and all other applicable codes, ordinances and requirements.
- B. Prior to the issuance of any building permit, the Building Permit Officer shall review the application for 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 Editor's Note: See 35 P.S. § 750.1 et seq.); the Pennsylvania Dam Safety and Encroachments Act (Act 1937-394, as amended Editor's Note: See 32 P.S. § 693.1 et seq.); the Pennsylvania Clean Stream Act (Act 1937-394, as amended Editor's Note: See 35 P.S. § 691.1 et seq.); the U.S. Clean Water Act, § 404, 33 U.S.C. § 1344. No permit shall be issued until this determination has been made.
- C. No encroachment, alteration or improvement of any kind shall be made to any watercourse until all adjacent municipalities which may be affected by such action have been notified by the Borough, and until all required permits or approvals have been first obtained from the Department of Environmental Protection Regional Office.[Amended 6-2-2009 by Ord. No. 335]
- D. In addition, the Federal Insurance Administrator and Pennsylvania Department of Community and Economic Development shall be notified by the Borough prior to any alteration or relocation of any watercourse.[Amended 6-2-2009 by Ord. No. 335]

§ 120-7. Application procedures and requirements.

[Amended 6-2-2009 by Ord. No. 335]

- A. Application for such a building permit shall be made, in writing, to the Building Permit Officer or other designated person on forms supplied by the Borough. Such application shall contain the following:
- (1) Name and address of applicant.
 - (2) Name and address of owner of land on which proposed construction is to occur.
 - (3) Name and address of contractor.
 - (4) Site location, including address.[Amended 6-2-2009 by Ord. No. 335]
 - (5) Listing of other permits required.
 - (6) Brief description of proposed work and estimated costs, including a breakout of the flood-related cost and the market value of the building before the flood damage occurred. [Amended 6-2-2009 by Ord. No. 335]
 - (7) A plan of the site showing the exact size and location of the proposed construction as well as any existing buildings or structures; said site should show elevation of land and indicate the floodplain area.
- B. If any proposed construction or development is located entirely or partially within or adjacent to any identified floodplain area, applications for building permits shall provide all the necessary information in sufficient detail and clarity to enable the Building Permit Officer or other designated officer 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.
- C. Applicants shall file the following minimum information plus any other pertinent information as may be required by the Building Permit Officer 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) Existing and proposed contours.

(b) The proposed lowest floor elevation of any proposed building based upon, North American Vertical Datum of 1988.

(c) The elevation of the one-hundred-year flood.

(d) If available, information concerning flood depths, pressures, velocities, impact and uplift forces and other factors associated with a one-hundred-year flood.

(e) Detailed information concerning any proposed floodproofing measures.[Added 6-2-2009 by Ord. No. 335]

(f) Supplemental information as may be necessary under 34 Pa. Code, Chapter 401-405, as amended, and Sec. 1612.5.1, Section 104.7 and 109.3 of the 2003 IBC and Section R106.1.3 and R104.7 of the 2003 IRC.[Added 6-2-2009 by Ord. No. 335]

(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 any 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 § 120-24F, "Storage" and § 120-25, "Development which may endanger human life, including:

[1] The amount, location and purpose of any materials or substances referred to in §§ 120-24F and 120-25 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 to prevent leaks or spills of the dangerous materials or substances listed in § 120-25 during a one-hundred-year flood.

(d) The appropriate component of the Department of Environmental Protection Planning Module for Land Development.

(e) Where any excavation of grading is proposed, a plan meeting the requirements of the Department of Environmental Protection.

§ 120-8. Review by County Conservation District.

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

§ 120-9. Review of application by others.

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

§ 120-10. Changes.

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

§ 120-11. Placards.

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

§ 120-12. Start of construction.

- A. 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 Building Permit Officer. 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.
- B. Time extensions shall be granted only if a written request is submitted by the applicant, which sets forth sufficient and reasonable cause for the Building Permit Officer to approve such request.

§ 120-13. Inspection and revocation.

- A. During the construction period, the Building Permit Officer 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. He may also determine whether the work complies with any other governmental rule, regulation, law, etc.
- B. In the discharge of his duties, the Building Permit Officer shall have the authority to enter any building, structure, premises or development in the identified floodplain area, upon presentation of proper credentials, at any reasonable hour to enforce the provisions of this chapter.
- C. In the event the Building Permit Officer 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 Building Permit Officer shall revoke the building permit and report such fact to the Newport Borough Council for whatever action it considers necessary. The Borough, in addition to any other actions or rights, shall have the right to institute actions to impose fines and penalties and institute action(s) for a court order or injunction requiring that the construction be halted, improvement removed, and the property be restored to the condition before construction or that all construction and steps comply with the provisions hereof or permit issued hereunder.

- D. A record of all such inspections and violations of this chapter shall be maintained.
- E. The requirements of 34 Pa. Code, Chapter 401-405 and the IBC (Section 109.3.3, 1612.5.1, 104.7 and 103.8) and the 2003 IRC (R106.1.3, 109.1.3 and R104.7) or latest revisions thereof pertaining to elevation certificates and record retention shall be considered.[Added 6-2-2009 by Ord. No. 335]

§ 120-14. Fees.

Applications for a building permit shall be accompanied by a fee payable to the Borough based upon the estimated cost of the proposed construction as determined by the Building Permit Officer at the following rates. (Note: Permit required on all work over \$1,000 except normal building maintenance. Inspections may be made as work progresses.)

- A. Building permit:
 - Estimated Cost
 - Fee
 - First \$2,000
 - \$10 (minimum)
 - Over \$2,000
 - \$1 per \$1,000
- B. Demolition: \$10.

§ 120-15. Enforcement; violations and penalties.

- A. Notices. Whenever the Building Permit Officer or other authorized Borough representative determines that there are reasonable grounds to believe that there has been a violation of any provision of this chapter, or of any regulation adopted pursuant thereto, the Building Permit Officer shall give notice of such alleged violation as hereinafter provided. Such notice shall be in writing, include a statement of the reasons for its issuance, allow a reasonable time not to exceed a period of 30 days for the performance of any act it requires, 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 either: mailed, certified mail, to the property address and last known or other address existing of record for the owner or his agent; in the event the certified mailing is not accepted, said notice shall be deemed properly served by mailing same to the same addresses, first class, postage prepaid, with return address and obtaining a certificate

of mailing from the post office; or, served by any other method authorized or recognized by law or rule of Pennsylvania, and 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 Building Permit Officer 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 Newport of not less than \$75 nor more than \$600 plus costs of prosecution. In default of such payment, such person shall be imprisoned in county prison for a period not to exceed 10 days. Each day during which any violation of this chapter continues shall constitute a separate offense. In addition to the above penalties, all other actions are hereby reserved including an action in equity for the proper enforcement of this 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 Newport Borough Council to be a public nuisance and abatable as such.[Amended 6-2-2009 by Ord. No. 335]

§ 120-16. Appeals.

- A. Any person aggrieved by any action or decision of the Building Permit Officer concerning the administration of the provisions of this chapter may appeal to the Borough Council of Newport. Such appeal must be filed, in writing, within 30 days after the decision or action of the Building Permit Officer.
- B. Upon receipt of such appeal, the Council shall set a time and place, within not less than 10 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. Any person aggrieved by any decision of the Council may seek relief therefrom by appeal to Court of Common Pleas, as provided by the laws of this commonwealth, including the Pennsylvania Floodplain Management Act. Editor's Note: See 32 P.S. § 679.101 et seq.

Article III. Identification of Floodplain Areas

§ 120-17. Identification.

[Amended 6-2-2009 by Ord. No. 335] The identified floodplain area shall be any areas of Newport Borough, subject to the one-hundred-year flood, which is identified as Zone A (Area of Special Flood Hazard) in the Flood Insurance Study (FIS) dated June 16, 2009, and the accompanying maps or the most recent revision thereof as issued by the Federal Emergency Management Agency, including all digital data developed as part of the Flood Insurance Study.

§ 120-18. Description of floodplain areas.

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

(1) FW (Floodway Area). The areas identified as “floodplain” in the AE Zone in the Flood Insurance Study prepared by FEMA. The term shall also include floodway areas which have been identified in other available studies or sources of information for those floodplain areas where no floodway has been identified in the Flood Insurance Study. For purposes of this chapter, the floodway is based upon the criteria that a certain area within the floodplain would be capable of carrying the waters of the one-hundred-year flood without increasing the water surface elevation of that flood more than one foot at any point.

(2) FF (Flood-Fringe Area). The remaining portions of the one-hundred-year floodplain in those areas identified as an AE Zone in the Flood Insurance Study where a floodway has been delineated. The basis for the outermost boundary of this area shall be the one-hundred-year flood elevation as shown in the flood profiles contained in the Flood Insurance Study.

(3) FA (General Floodplain Area). The areas identified as Zone A in the FIS for which no one-hundred-year flood elevations have been provided. When available, information from other federal, state and other acceptable sources shall be used to determine the one-hundred-year flood elevations, as well as a floodway areas, if possible. When no other information is available, the one-hundred-year elevation shall be determined by using a point on the boundary of the identified floodplain area which is nearest the construction site in question.

B. In lieu of the above, the Borough may require the applicant to determine the elevation with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Borough.

§ 120-19. Changes in identification of area.

[Amended 6-2-2009 by Ord. No. 335] The identified floodplain area may be revised or modified by the Newport 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 Federal Emergency Management Agency (FEMA).

§ 120-20. Boundary disputes.

Should a dispute concerning any identified floodplain boundary arise, an initial determination shall be made by the Building Permit Officer and any party aggrieved by this decision may appeal to the Borough Council. The burden of proof shall be on the appellant.

Article IV. Technical Provisions

§ 120-21. General.

- A. No encroachment, alteration or improvement of any kind shall be made to any watercourse until all adjacent municipalities which may be affected by such action have been notified by the Borough, and until all required permits or approvals have been first obtained from the Department of Environmental Protection Regional Office. In addition, the Federal Emergency Management Agency and Pennsylvania Department of Community and Economic Development shall be notified prior to any alteration or relocation of any watercourse.[Amended 6-2-2009 by Ord. No. 335]
- B. Any new construction, development, uses or activities allowed within any identified floodplain area shall be undertaken in strict compliance with the provisions contained in this chapter and any other applicable codes, ordinances and regulations.

§ 120-22. Special requirements for FW, FE and FA areas.

- A. Within any FW (Floodway Area), the following provisions apply:
 - (1) Any new construction, development, use, activity or encroachment that would cause any increase in flood heights shall be prohibited.
 - (2) No new construction or development shall be allowed, unless a permit is obtained from the Department of Environmental Protection Regional Office.[Amended 6-2-2009 by Ord. No. 335]
- B. Within any floodplain area:

(1) No new construction or development shall be located within the area measured 50 feet landward from the top-of-bank of any watercourse.

(2) Any new construction or development which would cause any increase in flood heights shall be prohibited within any floodway area.

§ 120-23. Elevation and floodproofing requirements.

[Amended 6-2-2009 by Ord. No. 335]

A. Residential structures. Within any identified floodplain area, 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. The design and construction standards and specifications contained in the 2003 IBC (Sec. 1612.4, 1603.1.6, and 3403.1) and in the 2003 IRC (Sec. R323.1.4, R323.2.1, and R323.2.2) and ASCE 24 (Sec. 2.4 and 2.5, Chap. 5) 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 1/2 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 U.S. 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.

(3) The design and construction standards and specifications contained in the IBC (Secs. 1603.1.2, 1603.1.6, 1605.2.2, 1606.5, 1612.5.1 and 3403.1), and ASCE 24 (Sec. 2.4 and Chap. 7) and 34 Pa. Code (Chapters 401-405, as amended) shall be utilized.

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.

(3) Consideration may be given to the requirements of 34 Pa. Code (Chapters 401-405, as amended) and the 2003 IRC (Secs. R323.2.2 and R323.1.4) and the 2003 IBC (Secs. 1612.4, 1612.5, 1202.3.2 and 1203.3.3).

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

(1) The structure shall not be designed or used for human habitation, but shall be limited to the parking of vehicles, or to the storage of tools, material, and equipment related to the principal use or activity.

(2) Floor area shall not exceed 600 square feet.

(3) The structure will have a low damage potential.

(4) The structure will be located on the site so as to cause the least obstruction to the floodwaters.

(5) Power lines, wiring, and outlets will be at least 1 1/2 feet above the one-hundred-year flood elevation.

(6) Permanently affixed utility equipment and appliances such as furnaces, heaters, washers, dryers, etc., are prohibited.

(7) Sanitary facilities are prohibited.

(8) The structure shall be adequately anchored to prevent flotation or movement and shall be designed to automatically provide for the entry and exit of floodwater for the 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.

§ 120-24. 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 solid or small rock materials only; sanitary landfills shall not be permitted.
- (3) Be compacted to provide the necessary permeability and resistance to erosion, souring or settling.
- (4) Be no steeper than 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 insure proper drainage along streets and provide positive drainage away from buildings. The system shall also be designed to prevent the discharge of excess runoff onto adjacent properties. The provisions contained in the 2003 IBC (Appendix G401.5) shall be utilized.[Amended 6-2-2009 by Ord. No. 335]

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.

(4) The design and construction provisions of the UCC and 34 Pa. Code (Chapters 401-405, as amended) and contained in the 2003 IBC (Appendix G, Secs. 401.3 and 401.4), the 2003 IRC (Sec. 323.1.6), the ASCE 24-98 (Sec. 8.3), FEMA #348, Protecting Building Utilities From Flood Damages, and The International Private Sewage Disposal Code (Chapter 3) shall be utilized.[Added 6-2-2009 by Ord. No. 335]

- 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 not 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 § 120-25, Development which may endanger human life, 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.
 - (3) The design and construction requirements of the UCC pertaining to this subsection as referred to in 34 Pa. Code (Chapters 401-405, as amended) and contained in the 2003 IBC (Secs. 1605.2.2, 1605.3.1.2, 1612.4 and Appendix G501.3), the IRC (Secs. R301.1 and R323.1.1) and ASCE 24-98 (Sec. 5.6) shall be utilized.[Added 6-2-2009 by Ord. No. 335]
- 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.[Amended 6-2-2009 by Ord. No. 335]

(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.

(5) The provisions of the UCC pertaining to this subsection and referenced in the 34 Pa. Code (Chapters 401-405, as amended) and contained in the 2003 IBC (Secs. 801.1.3, 1403.2, 1403.4, 1403.6 and 1404.2), the 2003 IRC (Secs. R323.1.7 & R501.3) and ASCE 24-98 (Chapter 6).[Added 6-2-2009 by Ord. No. 335]

J. Paints and adhesives.

(1) Paints or other finishes used at or below the regulatory flood elevation shall be of “marine” or “water-resistant” variety.

(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 finished material.

(4) The standards and specifications contained in 34 Pa. Code (Chapters 401-405, as amended) the 2003 IBC (Secs. 801.1.3, 1403.7 and Appendix G) and the 2003 IRC (Sec. R323.1.7)[Added 6-2-2009 by Ord. No. 335]

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.

(3) The provisions pertaining to the above provisions and referenced in the UCC and 34 Pa. Code (Chapters 401-405, as amended) and contained in the 2003 IBC (Sec. 1612.4), the IRC (Sec. R323.1.5), the 2000 IFGC (Secs. R301.5 and R1601.3.8) and ASCE 24 (Chapter 8) shall be utilized.[Added 6-2-2009 by Ord. No. 335]

L. Equipment.[Amended 6-2-2009 by Ord. No. 335]

(1) 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.

(2) The provisions pertaining to the above provision and referenced in the UCC and 34 Pa. Code (Chapters 401-405, as amended) and contained in the 2003 IBC (Sec. 1612.4), the 2003 IRC (Secs. R323.1.5) the 2000 IFGC (Secs. R301.5 and R1601.3.8) and ASCE 24 (Chapter 8) shall be utilized.

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

N. Uniform Construction Code coordination.[Added 6-2-2009 by Ord. No. 335]

(1) The Standards and Specifications contained 34 Pa. Code (Chapters 401-405, as amended) and not limited to the following provisions shall apply to the above and other sections and subsections of this chapter, to the extent that they are more restrictive and/or supplement the requirements of this chapter.

(2) International Building Code (IBC) 2003 or the latest edition thereof: Secs. 801, 1202, 1403, 1603, 1605, 1612, 3402, and Appendix G.

(3) International Residential Building Code (IRC) 2003 or the latest edition thereof: Secs. R104, R105, R109, R323, Appendix AEIOI, Appendix E and Appendix J.

§ 120-25. Development which may endanger human life.

A. In accordance with the Pennsylvania Floodplain Management Act, Editor's Note: See 32 P.S. § 679.101 et seq. and the regulations adopted by the Department of Community and Economic Development as required by the Act, any new or substantially improved structure which will be used for the production or storage of any of the following dangerous materials or substances, 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, 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:

- (1) Acetone.
 - (2) Ammonia.
 - (3) Benzene.
 - (4) Calcium carbide.
 - (5) Carbon disulfide.
 - (6) Celluloid.
 - (7) Chlorine.
 - (8) Hydrochloric acid.
 - (9) Hydrocyanic acid.
 - (10) Magnesium.
 - (11) Nitric acid and oxides of nitrogen.
 - (12) Petroleum products (gasoline, fuel, oil, etc.).
 - (13) Phosphorus.
 - (14) Potassium.
 - (15) Sodium.
 - (16) Sulphur and sulphur products.
 - (17) Pesticides (including insecticides, fungicides and rodenticide).
 - (18) Radioactive substances, insofar as such substances are not otherwise regulated.
- B. Within any FW (Floodway Area) any structure of the kind described in Subsection A, above, shall be prohibited.
- C. Where permitted within any floodplain area, any new or substantially improved structure of the kind described in Subsection A, above, shall be:
- (1) Elevated or designed and constructed to remain completely dry up to at least 2 1/2 feet above the one-hundred-year flood; and[Amended 6-2-2009 by Ord. No. 335]
 - (2) Designed to prevent pollution from the structure or activity during the course of a one-hundred-year flood.
- D. 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" (U.S. Army Corps of Engineers, June 1972, as amended March 1992), or with some other equivalent watertight standard.[Amended 6-2-2009 by Ord. No. 335]

§ 120-26. Special requirements for manufactured homes.

- A. Within any FW (Floodway Area), manufactured homes shall be prohibited.
- B. Within any FA (General Floodplain Area) or FE (Special Floodplain Area), manufactured homes shall be prohibited within the area measured 50 feet landward from the top-of-bank of any watercourse.
- C. Where permitted within any floodplain area, all manufactured homes, and any additions thereto, shall be:
 - (1) Placed on a permanent foundation.
 - (2) Elevated so that the lowest floor of the manufactured home is 1 1/2 feet or more above the elevation of the one-hundred-year flood.[Amended 6-2-2009 by Ord. No. 335]
 - (3) Anchored to resist flotation, collapse or lateral movement.
 - (4) 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 2003 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.[Added 6-2-2009 by Ord. No. 335]
 - (5) Consideration shall be given to the installation requirements of the 2003 IBC (Appendix G, Sec. 501.1-3) and the 2003 IRC (Sec. R323.2, R323.3, R102.7.1, and Appendix AE101, 604 and 605) or the most recent revisions thereto and 34 Pa. Code, Chapter 401-405, as amended, where appropriate and/or applicable to units where the manufacturers' standards for anchoring cannot be provided or were not established for the unit's(s') proposed installation.[Added 6-2-2009 by Ord. No. 335]

Article V. Activities Prohibited

§ 120-27. Prohibited activities.

In accordance with the administration regulations promulgated by the Department of Community and Economic Development to implement the Pennsylvania Floodplain Management Act, Editor's Note: See 32 P.S. § 679.101 et seq. the following activities shall be prohibited within any identified floodplain area:

- 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.
 - (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.

Article VI. Existing Structures in Identified Floodplain Areas

§ 120-28. Existing structures.

The provisions of this chapter do not require any changes or improvements to be made to lawfully existing structures, lawfully constructed or improved before the enactment of any ordinance or, after enactment lawfully constructed or improved in compliance with all ordinances, regulations and requirements then in effect. However, when an improvement is made to any existing structure, the provisions of § 120-29 shall apply.

§ 120-29. 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.

- D. The above activity shall also address the requirements of the 34 Pa. Code, Chapters 401-405, as amended, and the 2003 IBC (Sec. 3402.1 and 1612.4) and the 2003 IRC (Sec. 323.1.4).[Added 6-2-2009 by Ord. No. 335]
- E. The requirements of 34 Pa. Code, Chapter 401-405, as amended, and the 2003 IRC (Secs. R102.7.1, R105.3.1 and Appendixes E and J) or the latest revision thereof and the 2003 IBC (Secs. 101.3, 3403.1 and Appendix G) or the latest revision thereof shall also be utilized in conjunction with the provisions of this section.[Added 6-2-2009 by Ord. No. 335]

Article VII. Variances

§ 120-30. Grant of variance.

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, except as herein limited or prohibited, may, upon request, grant relief from the strict application of the requirements.

§ 120-31. Variance procedures and conditions.

- A. Requests for variances shall be considered by the Borough Council of Newport in accordance with the procedures contained in § 120-16 and the following:
 - (1) 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.
 - (2) 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.
 - (3) No variance shall be granted for any of the requirements pertaining specifically to development regulated by special permit (Article V) or to development which may endanger human life (§ 120-25).
 - (4) If granted, a variance shall involve only the least modification necessary to provide relief.
 - (5) In granting any variance, the Borough shall attach whatever reasonable conditions and safeguards it considers necessary in order to protect the public health, safety and welfare and to achieve the objectives of this chapter.

(6) Whenever a variance is granted, the Borough shall notify the applicant in writing that:

(a) The granting of the variance may result in increased premium rates for flood insurance.

(b) Such variances may increase the risks to life and property.

(7) In reviewing any request for a variance, the Borough shall consider, at a minimum, the following:

(a) That there is good and sufficient cause.

(b) That failure to grant the variance would result in exceptional hardship to the applicant.

(c) That the granting of the variance will:

[1] Neither result in an unacceptable or prohibited increase in flood heights, additional threats to public safety or extraordinary public expense;

[2] Nor create nuisances, cause fraud on, or victimize the public, or conflict with any other applicable state or local ordinances and regulations.

(8) A complete record of all variance requests and related actions shall be maintained by the Borough. In addition, a report of all variances granted during the year shall be included in the annual report to the Federal Insurance Administration.

B. 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 VIII. Terminology

§ 120-32. 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.

§ 120-33. 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.

BASEMENT

Any area of the building having its floor below ground level on all sides.[Added 6-2-2009 by Ord. No. 335]

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.

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.

CONSTRUCTION

The construction, reconstruction, renovation, repair, extension, expansion, alteration or relocation of a building or structure, including the placement of manufactured homes.

DEVELOPMENT

Any man-made change to improved or unimproved real estate including, but not limited to, buildings or other structures, the placement of manufactured homes, streets and other paving, utilities, filling, grading, excavation, mining, dredging or drilling operations 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.

FLOOD

A temporary inundation of normally dry land areas.

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 flood waters 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:[Added 6-2-2009 by Ord. No. 335]

A. Listed individually in the National Register of Historic place (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;

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 stated inventory of historic places in states with historic preservation 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:

(1) By an approved state program as determined by the Secretary of the Interior; or

(2) 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. Included would be areas identified as Floodway (FW), Flood-Fringe (FF) and General Floodplain (FA).

LAND DEVELOPMENT

A. The development 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 buildings;

(2) The division or allocation of land or space between two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, groups or other features;

B. A subdivision of land.

MANUFACTURED HOME

A transportable, single-family dwelling intended for permanent occupancy, office or place of assembly, contained in one or more sections, built on a permanent chassis, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, and constructed so that it may be used with or without a permanent foundation. The term includes park trailers, travel trailers, 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 exitway requirements; nor shall minor repairs include addition to, alteration of,

replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, soil, 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 February 1, 1994, and includes any subsequent improvements thereto.[Added 6-2-2009 by Ord. No. 335]

ONE-HUNDRED-YEAR FLOOD

A flood that, on the average, is likely to occur 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:[Added 6-2-2009 by Ord. No. 335]

- A. Built on a single chassis;
- B. Not more than 400 square feet, measured at the largest horizontal projections;
- C. Designed to be self-propelled or permanently towable by a light-duty truck;
- D. Not designed for use as 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 1/2 feet.[Amended 6-2-2009 by Ord. No. 335]

REPETITIVE LOSS

Flood-related damages sustained by a structure on two separate occasions during a ten-year period for which the costs of repairs at the time of each such flood event, on average, equals or exceeds 25% of the market value of the structure before the damages occurred.[Added 6-2-2009 by Ord. No. 335]

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.[Amended 6-2-2009 by Ord. No. 335]

STRUCTURE

Anything constructed or erected on the ground or attached to the ground including, but not limited to, buildings, sheds, manufactured homes and other similar items.

SUBDIVISION

The division or redivision of a lot, tract or parcel of land by and means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, transfer of ownership or building or lot development; provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than 10 acres not involving any new street or easement of access or residential dwellings shall be exempted.

SUBSTANTIAL ADDITIONS TO MANUFACTURED HOME PARKS

Any repair, reconstruction, or improvement of an existing manufactured home park or manufactured home subdivision, where such repair, reconstruction, or improvement of the streets, utilities, and pads will equal or exceed 50% of the value of the streets, utilities, and pads before the repair, reconstruction, or improvement is started.[Added 6-2-2009 by Ord. No. 335]

SUBSTANTIAL DAMAGE

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% 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 (or repetitive loss, when a repetitive loss provision is used), regardless of the actual repair work performed. The term does not, however include either:[Amended 6-2-2009 by Ord. No. 335]

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 local code enforcement official and which are the minimum necessary to assure safe living conditions;
or

B. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a "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 commonwealth floodplain construction. For coordination purposes, references to the above are made specifically to various sections of the IRC and the IBC.[Added 6-2-2009 by Ord. No. 335]