

**EAST MARLBOROUGH TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA**

ORDINANCE NO. 06-05

AN ORDINANCE OF EAST MARLBOROUGH TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA, AMENDING THE TOWNSHIP'S ZONING ORDINANCE OF 1992, AS HERETOFORE AMENDED, TO COMPLY WITH THE NATIONAL FLOOD INSURANCE PROGRAM AND THE PENNSYLVANIA FLOOD PLAIN MANAGEMENT ACT (ACT 166 AND 178), 32 P.S. SECTION 679.101, ET SEQ.

Background.

WHEREAS, the Pennsylvania Flood Plain Management Act, Act 166 of 1978, which is codified in 32 P.S. Section 679.101 et seq., (the "Act") requires each municipality which has an area or areas which are subject to flooding to participate in the national Flood Insurance Program ("NFIP"), which is coifed in 42 U.S.C.A. Section 4011 et seq.; and

WHEREAS, the Act requires the Township to enact and enforce floodplain management regulations which comply with the requirements of the NFIP and the federal regulations promulgated thereunder; and

WHEREAS, the East Marlborough Township Zoning Ordinance of 1978, as amended (the "Ordinance") includes in Article XIII, titled "Flood Hazard District (FHD)" regulations and restrictions for development and improvement of property which is located within the floodplain; and

WHEREAS, the property in the Township which is located within the floodplain is identified based on a Flood Insurance Rate Map ("FIRM") prepared by the Federal Emergency Management Agency ("FEMA"); and

WHEREAS, FEMA has updated the FIRM and the Flood Insurance Study ("FIS") for Chester County and the updated FIRM and FIS for Chester County will go into effect on September 29, 2006; and

WHEREAS, in accordance with the Act, the Township is required to update its floodplain management regulations and restrictions to be consistent with the updated FIRM, FIS and federal regulations.

NOW, THEREFORE, under and by virtue of the authority of the Pennsylvania Flood Plain Management Act, 32 P.S. Section 679.101, et seq., and the Pennsylvania Municipalities Planning Code, 53 P.S. Section 10101, et seq., the Board of Supervisors of East Marlborough Township hereby enacts and ordains that the East Marlborough Township Zoning Ordinance of 1992, as heretofore amended, shall be, and the same is hereby amended as follows:

SECTION 1.

Article XIII (Flood Hazard District-FH) is hereby repealed and the following new Article XIII (Flood Hazard District-FH) is hereby enacted in its place.

**ARTICLE XIII
FLOOD HAZARD DISTRICT (FH)**

SECTION 1301. FLOOD HAZARD DISTRICT (FH)

- A. In addition to the general goals listed in the Purposes (§102) and Community Development Objectives (§103) of this Ordinance, the purpose of this Section is to minimize the threats to Flood Hazard Areas within the Township from periodic inundation which results in loss of property, loss of life, damage to Structures, injury to people, disruption of public and private activities and services, burdensome public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

- B. The foregoing flood losses are caused by the cumulative effects of obstructions in Flood Hazard Areas causing increases in flood heights and velocities, and the occupancy of Flood Hazard Areas by uses vulnerable to floods. It is the further purpose of this Article to minimize those losses described above by provisions designed to:
 - 1. Regulate or prevent the erection of buildings and other Structures in areas unfit for development by reason of periodic flooding;
 - 2. Protect public health by preventing pollution of surface and subsurface water supplies and providing surface area to absorb and retain runoff for maintenance of the subsurface water supply;
 - 3. Protect public safety by preserving natural Floodplains and valley flats which are subject to periodic flooding in order to:
 - a. prevent the increase in flood volume and rate of flow which results from covering the Floodplains with impervious surfaces and from constricting natural drainage channels, and
 - b. provide areas for the deposition of sediment;
 - 4. Prevent added downstream damage from increased Flood volume and rate of flow and to permit uses of the Floodplain compatible with the preservation of natural conditions and the maintenance of the stream flow throughout the year; and
 - 5. Minimize the financial burden imposed on the community, its governmental bodies, and individuals by Floods.

SECTION 1301.1. DEFINITIONS APPLICABLE TO THE FLOOD HAZARD DISTRICT REGULATIONS.

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 – means any area of the building having its floor below ground level on all sides.

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.

Development – any man-made change to improved or unimproved real estate, including but not limited to the construction, reconstruction, renovation, repair, expansion, or alteration of buildings or other structures; the placement of manufactured homes; streets, and other paving; utilities; filling, grading and excavation; mining; dredging; drilling operations; storage of equipment or materials; and the subdivision of land.

Essentially dry space – a space which will remain dry during flooding except for the passage of some water vapor or minor seepage; the structure is substantially impermeable to the passage of water.

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 – means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway – the designated area of a floodplain required to carry and discharge flood waters of a given magnitude. For the purposes of this Ordinance, the floodway shall be capable of accommodating a flood of the one hundred (100) year magnitude.

Historic Structure – 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 communities with historic preservation programs that have been certified either:

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

(ii) Directly by the Secretary of the Interior in states without approved programs.

Identified floodplain area – the floodplain area specifically identified in this Ordinance as being inundated by the one hundred (100) year flood.

Land development – Any of the following activities:

(1) The improvement of one lot or two or more contiguous lots, tracts, or parcels of land for any purpose involving:

(i) a group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single non-residential building on a lot or lots regardless of the number of occupants or tenure;

or

(ii) the division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups or other features.

(2) A subdivision of land.

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.

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.

Manufactured home park – a parcel of land under single ownership, which has been planned and improved for the placement of two or more manufactured homes for non-transient use.

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, oil, waste, vent, or similar piping, electric wiring or mechanical or other work affecting public health or general safety.

New construction – structures for which the start of construction commenced on or after December 19, 1979 and includes any subsequent improvements thereto.

One hundred year flood – a flood that, on the average, is likely to occur once every one hundred (100) years (i.e. that has one (1) percent chance of occurring each year, although the flood may occur in any year).

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 (i) built on a single chassis; (ii) not more than 400 square feet, measure at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light-duty truck; (iv) not designed for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Regulatory flood elevation – the one hundred (100) year flood elevation plus a freeboard safety factor of one and one-half (1 ½) feet.

Repetitive loss – 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 damage occurred.

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. This term includes any man-made object having an ascertainable stationary location on or in land or water whether or not affixed to land.

Subdivision – the division or redivision of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs, or devise, 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.

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.

Substantial improvement – Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage” (or “repetitive loss” when repetitive loss language is used) regardless of the actual repair work performed. The term does not, however include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or;
- (2) Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

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 IBC.

SECTION 1302. GENERAL PROVISIONS

A. Definition of Flood Hazard District

The Flood Hazard District is defined and established to be the low areas adjoining and including a water course or other body of water (such as a pond, marsh, or lake) within East Marlborough Township, which are subject to inundation by a flood having a frequency of recurrence of once in one hundred (100) years. The basis for delineation of the Flood Hazard District shall be the following:

1. The identified floodplain area shall be those areas of East Marlborough Township, Chester County, which are subject to the one hundred (100) year flood, as identified in the Flood Insurance Study (FIS) dated September 29, 2006 and the accompanying maps as prepared 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.
2. For areas, elevation and floodway information from other Federal, State or other acceptable source shall be used when available. Where other acceptable information is not available, the elevation shall be determined by using the elevation of a point on the boundary of the identified floodplain area which is nearest the construction site. The Township may require the applicant to determine the elevation with hydrologic and

hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Township of East Marlborough. **[Added 11-11-96 by Ord. No. 96-8]**

In all cases, the Flood Hazard District shall be prima facie the more extensive area as between the two (2) sources, subject to the provisions of §1302(C).

B. Zoning Overlay Map

The Flood Hazard District Map of East Marlborough Township, based on the delineations cited in §1302(A) above, shall be deemed an overlay on the otherwise applicable zoning districts as delineated on the Township Zoning Map. Should the Flood Hazard District be declared inapplicable to any tract by reason of amendment by the Board of Supervisors, or interpretation of the Zoning Hearing Board or court of competent jurisdiction, the zoning applicable to such tract shall be deemed to be the district in which it is located without consideration of this Article. No reductions in the Flood Hazard District shall be made without prior consultation with and approval of the Federal Insurance Administrator.

C. Rules of Interpretation of District Boundaries

1. The boundaries of the Flood Hazard District, where based on the Flood Insurance Rate Map ("FIRM") shall be determined by scaling distances of the FIRM **[Added 11-11-96 by Ord. No. 96-8]**. Where interpretation is needed as to the exact location of the boundaries of the district as shown thereon, as, for example, where there appears to be a conflict between a mapped boundary and actual field conditions, an initial determination of the exact boundary of the area subject to inundation by a Flood of once in one hundred (100) years frequency of recurrence shall be made by the Township Engineer and a written report made to the Board of Supervisors.
2. Any party aggrieved by any such determination of the Township Engineer or other decision or determination under this Article, may appeal to the Zoning Hearing Board. The person contesting the location of the district boundary shall have the burden of proof in case of any such appeal.
3. Such interpretation by the Township Engineer or Zoning Hearing Board shall not constitute a reduction of the Flood Hazard District for purposes of requiring prior approval of the Federal Insurance Administrator.

D. Compliance

No Structure, land, or water shall hereafter be used or developed, and no Structure shall be located, extended, converted, or structurally altered without full compliance with the terms of this Ordinance and other applicable regulations.

E. Abrogation and Greater Restrictions

It is not intended by this Article to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Article imposes greater restrictions, the provisions of this Article shall prevail.

F. Warning and Disclaimer of Liability

1. The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific study. Larger floods may occur on real occasions or the flood height may be increased by man-made or natural causes such as ice jams or bridge openings constricted by debris. In such instances, areas outside the Flood Hazard District or land uses permitted within the district may be subject to flooding or flood damages.
2. This Article shall not create liability on the part of East Marlborough 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 1303. USES IN THE FLOOD HAZARD DISTRICT

The following uses and no others (unless by Special Exception or Variance granted by the Zoning Hearing Board) are permitted in the Flood Hazard District.

A. Permitted Uses

The following open space uses shall be permitted within the Flood Hazard District to the extent that they are not prohibited by any other ordinance and provided that they do not require Structure, fill, or storage of materials or equipment.

1. Agricultural uses such as general farming, pasture, orchard, grazing, outdoor plant nurseries, truck farming, forestry, and wild crop harvesting.
2. Recreational uses such as parks, camps, picnic grounds, golf courses, golf driving ranges, archery and shooting ranges, hiking and riding trails, hunting and fishing areas, game farms, fish hatcheries, wildlife sanctuaries, nature preserves, and swimming areas.
3. An area comprising, for purposes of determining Lot Area, one-quarter (¼) of the required minimum Lot Area for any Lot contiguous to the Flood Hazard District, and provided that no building or Structure and no sanitary drainage field shall be placed within fifty (50) feet of the Flood Hazard District boundary line where the setback requirement of any other zoning district is less than fifty (50) feet.
4. Up to one-quarter (¼) of the open space designated in any Cluster Development under Article XVI, provided the Flood Hazard District is contiguous to the development and provided that no Structure shall be placed less than twenty-five (25) feet from any Flood Hazard District boundary.
5. Permeable parking areas and roads to serve other permitted uses in the Flood hazard district, or where required by the regulations for any contiguous district.

Any of the uses listed above shall not be permitted within the designated Floodway unless the effect of the proposed development or use in flood heights is fully offset by accompanying stream improvements.

B. Uses by Special Exception

The following uses are permitted only upon the granting of a Special Exception by the Zoning Hearing Board, in accordance with §912.1 of the Pennsylvania Municipalities Planning Code, as amended.

1. Accessory Uses customarily incidental to any of the foregoing permitted uses.

2. Circuses, festivals, and similar transient amusement enterprises.
3. Roadside stands and Signs.
4. Railroads, roads, bridges, and utility transmission lines.
5. Sealed water supply wells, water pipelines, and sanitary sewer line systems, provided that they are designed and constructed to eliminate infiltration of flood water into the systems and discharges from the systems into the waters of the Commonwealth.
6. Storm and sanitary sewer outlets, sewage treatment plants and pumping stations, water pumping stations and water treatment plants, and storm sewer systems, subject to the approval of the Department of Environmental Protection, Regional Office, of the Commonwealth and the Township Engineer; provided that such facilities shall be designed and constructed to eliminate infiltration of flood waters into the systems and discharges from the systems into the waters of the Commonwealth.
7. Grading or fill, provided that the effect is not to alter substantially the cross-sectional profile of the stream basin at the point of the proposed use. A prerequisite to the granting of a Special Exception for fill or grading shall be the issuance of necessary permits from the Pennsylvania Department of Environmental Protection, Regional Office. All requests for a change of grade shall be accompanied by a detailed engineering report, including maps, showing all existing contours and with the reasons for requesting the change. In no case shall fill be used which in any way will contaminate or pollute the streams if the requested change is allowed.
8. Dams, culverts, and bridges when approved by the Department of Environmental Protection, Regional Office, of the Commonwealth and the Township Engineer.

C. Existing Structures and Uses in the Flood Hazard District

Existing Structures and uses of land within the Flood hazard district which do not conform to the requirements of this Article shall comply with the following regulations.

1. Existing Structures located in the Floodway shall not be expanded or enlarged.
2. The modification, Alteration, repair, reconstruction, or improvement of any kind to an existing Structure in a Floodway must be authorized as a Special Exception by the Zoning Hearing Board, which shall give particular consideration to the factors cited in §1305 of this Article. In addition, any repair, reconstruction, or improvement meeting the definition of "Substantial Improvement" under Article II shall further comply with the requirements of §1306(A).
3. Existing uses located in the Floodway may be expanded when authorized as a Special Exception by the Zoning Hearing Board, provided there will be no increase in the base flood level within the Floodway. The Board shall give particular consideration to §1306(A)1.
4. The modification, expansion, enlargement, Alteration, repair, reconstruction, or improvement of any kind to an existing Structure or use located in a Flood fringe or approximated Floodplain must be authorized as a Special Exception by the Zoning Hearing Board. The Zoning Hearing Board shall give particular consideration to the factors cited in §1305. In addition, any activity meeting the definition of "Substantial Improvement" under Article II shall further comply with the requirements of §1306.

5. Any modification, alteration, reconstruction or improvement of any kind that meets the definition of "repetitive loss" shall be undertaken only in full compliance with the provisions of this Ordinance.

D. Uses Which May Endanger Human Life are Prohibited

1. The provisions of this subsection shall be applicable in addition to all other applicable provisions of this Ordinance or any other ordinance, code, or regulation.
2. In accordance with the Pennsylvania Flood Plain Management Act, and the regulations adopted by the Department of Community and Economic Development as required by the Act, any new or substantially improved Structures involving any one or more of the following uses shall be subject to the provisions of this Section, in addition to all other applicable provisions.
 - a. The production, storage, or use of any amount of radioactive substances.
 - b. The production or storage of any of the following dangerous materials or substances, or any activity requiring the maintenance of a supply of more than five hundred fifty (550) gallons, or other comparable volume, of any of said dangerous materials or substances the premises:
 - i. acetone
 - ii. ammonia
 - iii. benzene
 - iv. calcium carbide
 - v. carbon disulfide
 - vi. celluloid
 - vii. chlorine
 - viii. hydrochloric acid
 - ix. hydrocyanic acid
 - x. magnesium
 - xi. nitric acid and oxides of nitrogen
 - xii. petroleum products, including gasoline and fuel oil
 - xiii. phosphorus
 - xiv. potassium
 - xv. sodium
 - xvi. sulphur and sulphur products
 - xvii. pesticides, including insecticides, fungicides, and rodenticides
 - xviii. radioactive substances, insofar as such substances are not otherwise regulated
3. In addition, 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 shall be subject to the provisions of §1303(D) and shall be strictly prohibited.

- a. Hospitals
 - b. Nursing Homes
 - c. Jails and prisons
 - d. Manufactured Home Park or Manufactured subdivision **[Added 11-11-96 by Ord. No. 96-8]**
4. Within any Flood hazard district, any Structure or substance of the kind described in §1303(D)2 and §1303(D)3 above shall be prohibited.
 5. Except for a possible modification of the freeboard requirements involved, no Variance shall be granted from any of the other requirements of this §1303(D) with respect to uses or activities within the Floodway portion of the Flood hazard district, in that the uses regulated by such section are hazardous to the public health, safety, and general welfare.
 6. Where permitted within any Flood hazard district in spite of §1303(D)4 hereof, any Structure of the kind described in §1303(D)2 shall be:
 1. elevated or designed and constructed to remain completely dry up to at least one and one-half (1½) feet above the one hundred (100) year Flood, and
 2. designed to prevent pollution from the Structure or activity during the course of a one hundred (100) year Flood.

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

SECTION 1304. USES BY VARIANCE

In any instance where the Zoning Hearing Board is required to consider a request for a Variance from the provisions of this Article, the Board shall first determine that the standards and criteria enumerated in §910.2 of the Pennsylvania Municipalities Planning Code are met before granting the request. In considering whether the proposed use would be injurious to the public health, welfare, or safety, the Board shall give special and particular consideration to the factors enumerated in §1305, hereinbelow.

SECTION 1305. FACTORS TO BE CONSIDERED BY THE ZONING HEARING BOARD

- A. Factors to be considered by the Zoning Hearing Board in passing upon each application for a Special Exception or a Variance are as follows.
 1. The danger to life and property due to increased flood heights or velocities caused by encroachments. No Special Exception or Variance shall be granted for any development, use or activity within the Floodway portion of the Flood hazard district unless the effect of the proposed development on Flood heights is fully offset by accompanying stream improvements.

2. The danger that materials may be swept onto other lands or downstream to the injury of others.
 3. The proposed water supply and sanitation systems and the ability of those systems to avoid causing disease, contamination, and unsanitary conditions.
 4. The susceptibility of the proposed use to Flood damage and the effect of such damage on the owner.
 5. The importance of the proposed use to the community.
 6. The requirements of the use 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 and foreseeable nearby uses.
 9. The relationship of the proposed use to the Comprehensive Plan and the Floodplain management program for the area.
 10. The safety of access to the property in times of Flood for ordinary and emergency vehicles.
 11. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood water expected at the site.
 12. Such other factors which are relevant to the purposes of this Ordinance.
- B. Affirmative decisions shall only be issued by the Zoning Hearing Board upon:
1. A showing of good and sufficient cause;
 2. A determination that failure to grant the appeal would result in unnecessary hardship to the Applicant; and
 3. A determination that the granting of an appeal will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nuisance, fraud upon or victimization of the public, or conflict with existing local laws and ordinances.
- C. Affirmative decisions shall only be issued upon determination that it is the minimum necessary, considering the flood hazard, to provide relief.
- D. The Zoning Hearing Board shall notify the Applicant in writing over the Signature of the chairman that the issuance of a decision to allow construction of a Structure below the one hundred (100) year flood elevation will result in increased premium rates for flood insurance, and that such construction below the one hundred (100) year flood elevation increases risk to life and property. Such notification shall be maintained with a record of all decisions as required below.
- E. The Zoning Hearing Board shall maintain a record of all decisions including jurisdiction for their issuance and shall report such decisions issued in its annual report submitted to the Federal Insurance Administration.

SECTION 1306. CONDITIONS FOR SPECIAL EXCEPTION AND VARIANCE

A. Construction Techniques for Flood Protection

Upon consideration of the purposes of this Article, the Board shall attach such conditions to the granting of a Special Exception or Variance as it deems necessary to further the purposes of this Article, including, without limitation because of specific enumeration, the following.

1. Any new construction or Substantial Improvement to an existing Structure shall have the lowest floor (including Basement) elevated to one and one-half (1½) feet above the regulatory flood elevation of the flood hazard district at the place of construction. Fully enclosed spaces below the lowest floor shall be prohibited. **[Added 11-11-96 by Ord. No. 96-8]** Partially enclosed space below the lowest floor (including basement) which will be used solely for the parking of a vehicle, building access or incidental storage in an area other than a basement, shall be designed and constructed to allow for the automatic entry and exit of flood waters for the purpose of equalizing hydrostatic forces on exterior walls. The term "partially enclosed space" also includes crawl spaces. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:
 - a. a minimum of two openings having a net total area of not less than one (1) square inch for every square foot of enclosed space;
 - b. the bottom of all openings shall be no higher than one (1) foot above grade;
 - c. openings may be equipped with screens, louvers, etc. or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

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.)

2. All such Structures shall be securely anchored to prevent flotation, collapse, and lateral movement. All such Structures shall employ construction materials and techniques to minimize flood damage. Adequate drainage shall be provided. The elevation of the proposed lowest floor shall be indicated on the application for a building permit. The provisions of other state and federal rules and regulations, including 44 CFR, 60.3, are applicable to such construction. Other flood-proofing measures may include, without limitation because of specific enumeration, the following.
 - a. Installation of watertight doors, bulkheads, and shutters.
 - b. Reinforcement of walls to resist water pressure.
 - c. Use of paints, membranes, or mortars to reduce seepage of water through walls.
 - d. Addition of mass or weight to Structures to resist flotation.
 - e. Installation of pumps to lower water levels in Structures.
 - f. Construction of water supply and waste treatment systems so as to prevent the entrance of flood waters.
 - g. Pumping facilities for subsurface external foundation wall and Basement floor pressures.

B. Declaration of Flood Hazard Status

In any case where a Zoning Hearing Board shall grant a Special Exception or a Variance to permit the erection of a Structure in the Flood Hazard Area, or a Special Exception or a Variance to permit a change in Non-Conforming Use of a Structure already existing in the Flood Hazard Area, the Board shall, for the protection of prospective purchasers and lessees, impose the following conditions.

1. The Applicant shall be required to advise prospective purchasers or lessees that the Lot is located either entirely or partially, as the case may be, in the Flood hazard district.
2. Before settlement or change in use, as the case may be, may take place, the purchaser or lessee shall be required to Signify in writing that he has been advised that the premises lie partially or entirely in the Flood hazard district, and a Signed copy of such Signification shall be delivered to the Township by the Applicant.
3. A deed restriction shall be created and placed on record to run as a covenant with the land, which restriction shall contain the following provision: "This Lot is entirely [or "partially"] within a Flood Hazard Area as defined by §1302(A) of the East Marlborough Township Zoning Ordinance."

SECTION 1307. ADMINISTRATION

A. Procedure

1. In a Flood Hazard Area, as defined in §1302 herein, a Zoning Permit shall be required for 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, mining, dredging, filling, grading, excavating, or drilling operations. Application for a Zoning Permit shall be filed with the Zoning Officer who shall make an initial determination on the application. For a use other than those permitted in §1303(A), an application seeking approval of a Special Exception or Variance shall be forwarded to the Zoning Hearing Board, along with required studies or information and the findings of the Zoning Officer.
2. Upon receiving an application for a Special Exception or Variance, the Zoning Hearing Board shall, prior to rendering a decision thereon, require the Applicant to furnish such of the following material as is deemed necessary by the Board:
 - a. Plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the Lot and existing and proposed uses. Soil types and other pertinent information shall also be shown.
 - b. Photographs showing existing uses and vegetation.
 - c. A series of cross-sections at twenty-five (25) foot intervals along the Lot shoreline, showing the stream channel or lake or pond bottom, elevation of adjoining land areas to be occupied by the proposed uses, and high-water information. Cross-sections shall be field run topography based on a known USGS benchmark.
 - d. Profile showing the Slope of the bottom of the channel, lake, or pond.
 - e. Specifications for building materials and construction, flood proofing, filling, dredging, grading, storage, water supply, and sanitary facilities.

- f. Computation of the increase, if any, in the height of flood stages which would be attributable to any of the proposed uses.
 - g. The elevation of the one hundred (100) year flood.
 - h. 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 (100) year flood.
 - i. Such statement shall include a description of the type and extent of the flood proofing measures which have been incorporated into the design of the structure and/or the development.
- B. Consultation by the Zoning Hearing Board

In considering any application for a Special Exception or Variance, the Zoning Hearing Board may request at the hearing the testimony of the Board of Supervisors, the Planning Commission, the Township Engineer, and/or other technical experts, concerning the extent to which the proposed use would:

- 1. diminish the capacity of the Flood hazard district to store and absorb flood waters, moderate flood velocities, and accommodate sediment;
- 2. be subject to flood damage;
- 3. cause erosion and impair the amenity of the Flood hazard district; and
- 4. adversely affect the area contiguous to the Flood hazard district as well as areas downstream.

SECTION 1308. SPECIFIC PROHIBITIONS

In addition to and without limitation of the uses specifically permitted in the Flood hazard district by the provisions of this Article, the following activities are specifically prohibited in the Flood hazard district.

- A. The clearing of vegetation, except for brush, weeds, and diseased shrubs or trees or portions thereof which might cause hazard to life or property, and except where such clearing is necessary for construction permitted as a result of action by the Zoning Hearing Board.
- B. Sod farming.
- C. Storage of any material which, if inundated, would float.
- D. Storage of flammable or toxic material or any other material which, if inundated, would degrade or pollute the stream, or cause damage if swept downstream.
- E. Installation or maintenance of on-site sewage disposal systems and wells.
- F. Placement or Substantial Improvement of a Manufactured home.
- G. Alteration or relocation of any water course, unless and until the Applicant has notified the governing bodies of the adjacent municipalities and the Pennsylvania Department of

Community and Economic Development, with copies of such notices being sent to the Federal Flood Insurance Administrator, and demonstrated to the satisfaction of the Township Engineer that the flood-carrying capacity of the water course, as altered or relocated, is maintained at a level equal to or better than the existing flood-carrying capacity. This requirement shall be in addition to the requirements of the Pennsylvania Department of Environmental Protection pertaining to such Alteration or relocation.

SECTION 1309. BURDEN OF PROOF

In all proceedings before the Zoning Hearing Board, including applications for Special Exception from the provisions of this Article, the burden of proof shall be on the Applicant to show that the use required will be in general conformity with the objectives of this Article, that proper safeguards will be observed, and that the use will not be injurious to the public health, safety, and general welfare.

SECTION 1310. UNIFORM CONSTRUCTION CODE COORDINATION

The Standards and Specifications contained in 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 ordinance, to the extent that they are more restrictive and/or supplement the requirements of this ordinance.

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

International Residential Building Code (IRC) 2003 or the latest edition thereof:
Secs. R104, R105, R109, R323, Appendix AE101, Appendix E and Appendix J.

SECTION 2.


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

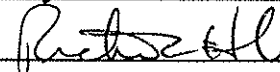
SECTION 3.

Effective Date. This Ordinance shall be effective five (5) days after its enactment.

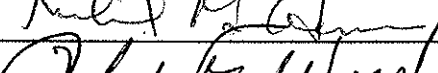
ENACTED AND ORDAINED by the Board of Supervisors of East Marlborough Township, Chester County, Pennsylvania this _____ day of _____, 2006.

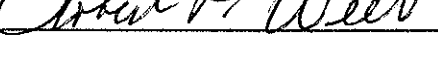
**BOARD OF SUPERVISORS
EAST MARLBOROUGH TOWNSHIP**











Attest:

