

TOWN OF NEWTON  
ORDINANCE # 5-83

"THE FLOOD DAMAGE PREVENTION ORDINANCE"

WHEREAS, the flood hazard areas of Newton are subject to periodic inundation which has resulted in jeopardizing public safety and extensive property damage, disruption of commerce and governmental services, all of which adversely affect public health, safety and general welfare, and

WHEREAS, these flood losses are caused by the cumulative effect of obstruction in flood plains causing increases in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, floodproofed or otherwise protected from flood damages, and

WHEREAS, it is the purpose of this Ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) protect human life and health;
- (2) minimize expenditure of public money for cost of flood control projects;
- (3) minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) minimize prolonged business interruptions;
- (5) minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in the flood plains;
- (6) help maintain a stable tax base by providing for use for development of flood prone areas in such a manner as to minimize future flood blight areas;
- (7) insure that potential buyers are notified that property is in a flood area; and
- (8) insure that those who occupy the areas of special flood hazard assume responsibility for their actions, and

WHEREAS, in order to accomplish its purposes, this Ordinance uses the following methods:

- (1) Restrict or prohibit uses which are dangerous to health, safety or property due to water or erosion or an increase in flood heights or velocities.
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- (3) Control the alteration of natural flood plains, stream channels, and natural protective barriers, which are involved in the accomodation of flood waters.

- (4) Control filling, grading, dredging and other developments which may increase flood damage.
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters, or which may increase flood hazards to other lands, and

WHEREAS, the legislature of the State of New Jersey has in RS:40;55D-1, et seq, delegated responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry;

NOW THEREFORE BE IT ORDAINED by the Town Council of the Town of Newton as follows:

#### SECTION 1 - DEFINITIONS

Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this Ordinance its most reasonable application.

"Appeal" means a request for a review of the Construction Official's interpretation of any provision of this Ordinance or a request for a variance.

"Area of special flood hazard" is the land in the flood plain within a community subject to a 1% or greater chance of flooding in any given year.

"Base flood" means a flood having a 1% chance of being equalled or exceeded in any given year.

"Development" means any man-made change to improved or unimproved real estate including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

"Flood or flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood insurance rate map" (FIRM) means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Flood insurance study" means the official report provided in which the Federal Insurance Administration has provided flood profiles, as well as the Flood Boundary-Floodway Map and the water surface elevation of the base flood.

"Floodway" means a channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge a base flood without cumulatively increasing the water surface elevation more than 0.2 feet.

"Habitable floor" means any floor usable for living purposes which include working, sleeping, eating, cooking or recreation or a combination thereof. A floor used only for storage purposes is not a habitable floor.

"Lowest floor" means the lowest level (including basement, crawl space, and basement) of the lowest enclosed area.

"Mobile home" means a structure, transportable in one or more sections which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected with the required utilities. It does not include recreational vehicles or travel trailers. The Town of Newton prohibits the placement of mobile homes in the area of special flood hazard.

"New construction" means structures for which the "start of construction" commenced on or after the effective date of this Ordinance.

"New mobile home park or mobile home subdivision" means a parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale for which the construction of facilities for servicing the lot (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed on or after the effective date of this Ordinance.

"Start of construction" means the first placement of permanent construction of a structure (other than a mobile home) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. Permanent construction does not include land preparation, such as clearing, grading, and filling, nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not as part of the main structure. For a structure (other than a mobile home) without a basement or poured footings, the "start of construction" includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For mobile homes not within a mobile home park or mobile home subdivision, "start of construction" means the affixing of the mobile home to its permanent site. For mobile homes within mobile home parks or mobile home subdivisions, "start of construction" is the date on which the construction of facilities for servicing the site on which the mobile home is to be affixed (including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is completed.

"Structure" means a walled and roofed building, a mobile home, or a gas or liquid storage tank, that is principally above ground.

"Substantial improvement" means any repair, or reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either:

- (1) before the improvement or repair is started, or
- (2) if the structure has been damaged and is being restored before the damage occurred. (For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or

other structural part of the building commences, whether or not that alteration effects the external dimensions of the structure. The term does not, however, include either:

- (a) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
- (b) any alteration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places.

"Variance" means a grant of relief from the requirements of this Ordinance which permits construction in a manner that would otherwise be prohibited by this Ordinance.

## SECTION 2 - GENERAL PROVISIONS

### 2.10 - Lands to Which This Ordinance Applies

This Ordinance shall apply to all areas of special flood hazard within the jurisdiction of the Town of Newton.

### 2.20 - Basis for Establishing the Areas of Special Flood Hazard

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled, "The Flood Insurance Study for the Town of Newton, New Jersey, Sussex County", dated October 18, 1982, with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps, is hereby adopted by reference and declared to be a part of this Ordinance. The Flood Insurance Study is on file at the Town of Newton, Building Department, 39 Trinity Street, Newton, New Jersey 07860.

### 2.30 - Compliance (Penalties for Non-Compliance)

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Ordinance and other applicable regulations. Any person violating any provision of this Ordinance shall be subject to the penalties provided under Town of Newton Ordinance Chapter V (Section 5-13) of this revision and in addition shall pay all costs and expenses involved in the case. The imposition of the penalties herein prescribed shall not preclude the Town of Newton instituting an appropriate action or proceeding to prevent or remedy any violation.

### 2.40 - Abrogation and Greater Restrictions

This Ordinance is not intended to repeal, abrogate or impair

any existing easements, covenants, or deed restrictions. However, where this Ordinance and another Ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

#### 2.50 - Interpretation

In the interpretation and application of this Ordinance all provisions shall be:

- (1) considered as minimum requirements
- (2) liberally construed in favor of the governing body
- (3) deemed neither to limit nor repeal any other powers granted under state statute.

#### 2.60 - Warning and Disclaimer of Liability

The degree of flood protection required by this Ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Ordinance does not imply land outside the areas of special flood hazards, or uses permitted within such areas, will be free from flooding or flood damages. This Ordinance shall not create liability on the part of the Town of Newton or by any officer or employee thereof for any flood damages that result from reliance on this Ordinance, or any administrative decision lawfully made thereunder. This disclaimer is applicable to the Federal Insurance Administration as well.

### SECTION 3 - ADMINISTRATION

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 2.2. Permit is required for any development that could possibly increase or alter the flood hazard. Application for a development permit shall be made on forms furnished by the Construction Official and may include, but not be limited to, plans drawn to scale not less than those required for subdivision or site plan review purposes, showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of materials; drainage facilities; and the location of the foregoing. Specifically, the following information is required (Site Plan Review Ordinance of the Town of Newton, Chapter XIX, as may be amended from time to time):

- (1) elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
- (2) elevation in relation to mean sea level to which any structure has been floodproofed/ will be floodproofed;
- (3) certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 4.22, and
- (4) description to the extent to which any watercourse will be altered or relocated as a result of proposed development.

### 3.20 - Designation of Construction Official

The Construction Official is hereby appointed to administer and implement this Ordinance by granting or denying development permit applications in accordance with its provisions.

### 3.30 - Duties and Responsibilities

Duties of the Construction Official shall include, but not be limited to:

#### 3.31 - Permit Review

- (1) Review all development permits to determine that the permit requirements of this Ordinance have been satisfied;
- (2) Review all development permits to require that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required;
- (3) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 4.3(1) are met.

#### 3.32 - Use of Other Base Flood Data

When base flood elevation data has not been provided in accordance with Section 2.20, Basis for Establishing the Areas of Special Flood Hazard, then the Construction Official shall obtain, review, and reasonably utilize any base flood elevation data available from a federal, state or other source in order to administer Section 4.21, Specific Standards - Residential Construction and Section 4.22, Specific Standards - Nonresidential Construction.

#### 3.33 - Information to be Obtained and Maintained

- (1) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- (2) For all new or substantially improved floodproofed structures:
  - (i) verify and record the actual elevation (in relation to mean sea level); and
  - (ii) maintain the floodproofing certifications required in Section 3.1(3).
- (3) Maintain for public inspection all records pertaining to the provisions of this Ordinance.

#### 3.34 - Alteration of Watercourses

- (1) Notify adjacent communities and the State of New Jersey Department of Environmental Protection, Flood Plain Management Bureau prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

- (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

### 3.35 - Interpret FIRM Boundaries

Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 3.40.

### 3.40 - VARIANCE PROCEDURE

#### 3.41 - Appeal Board

(1) The Planning Board as established by the Town of Newton shall hear and decide appeals and requests for variances from the requirements of this Ordinance.

(2) The Planning Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Construction Official in the enforcement or administration of this Ordinance. Any person aggrieved by the Planning Board decision may appeal to the Superior Court of the State of New Jersey.

(3) In passing upon such applications, the Planning Board shall consider all technical evaluations, all relevant factors, and standards specified in other sections of this Ordinance, and:

- (i) the danger that materials may be swept onto other lands to the injury of others;
- (ii) the danger to life and property due to flooding or erosion damage;
- (iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (iv) the importance of the services provided by the proposed facility to the community;
- (v) the necessity to the facility of a waterfront location, where applicable;
- (vi) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (vii) the compatibility of the proposed use with existing and anticipated development;
- (viii) the relationship of the proposed use to the comprehensive plan and flood plain management program of that area;
- (ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;
- (x) the expected heights, velocity, duration, rate of rise, and sediment transport of the flood.

waters and the effects of wave action, if applicable, expected at the site; and

- (xi) the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(4) Upon consideration of the factors of Section 3.41(4) and the purposes of this Ordinance, the Planning Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Ordinance.

(5) The Construction Official shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Insurance Administration upon request.

### 3.42 - Conditions for Variances

(1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xi) in Section 3.41(4) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(2) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.

(3) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(5) Variances shall only be issued upon:

- (i) a showing of good and sufficient cause;
- (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and
- (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in Section 3.41(4), or conflict with existing local laws or Ordinances.

(6) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest-floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

## SECTION 4 - PROVISIONS FOR FLOOD HAZARD REDUCTION

### 4.10 - General Standards

In all areas of special flood hazard, the following provisions are required:

### 4.11 - Anchoring

- (1) All new construction and substantial improvements shall be anchored to prevent floatation, collapse or lateral movement of the structure.
- (2) All mobile homes shall be anchored to resist floatation, collapse or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that:
  - (i) over-the-top ties be provided at each of the four (4) corners of the mobile homes with two additional ties per side at intermediate locations and mobile homes less than fifty (50) feet long requiring one additional tie per side;
  - (ii) frame ties be provided at each corner of the home with five additional ties per side at intermediate points and mobile homes less than fifty (50) feet long requiring four additional ties per side;
  - (iii) all components of the anchoring system be capable of carrying a force of 4,800 pounds;
  - (iv) an addition to a mobile home be similarly anchored.

### 4.12 - Construction Materials and Methods

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

### 4.13 - Utilities

- (1) All new or replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters;
- (3) On-site waste disposal systems shall be located to avoid impairment in them or contamination from them during flooding.

#### 4.14 - Subdivision Proposals

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least fifty (50) lots or five acres, whichever is less.

#### 4.20 - Specific Standards

In all areas of special flood hazards where base flood elevation data have been provided as set forth in Section 2.2, Basis for Establishing the Areas of Special Flood Hazard, or in Section 3.32, Use of Other Base Flood Data, the following standards are required:

#### 4.21 - Residential Construction

New construction or substantial improvement of any residential structure shall have the lowest floor including basement elevated to or above base flood elevation.

#### 4.22 - Nonresidential Construction

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation; or

together with attendant utility and sanitary facilities, shall:

- (1) be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
- (2) have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
- (3) be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the Official as set forth in Section 3.33(2).

#### 4.23 - Mobile Homes

- (1) Mobile homes shall be anchored in accordance with Section 4.11(2).
- (2) For new mobile home parks and mobile home subdivisions; for expansions to existing mobile home parks and mobile home subdivisions; for existing mobile home parks and mobile home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds 50 percent of value of the streets, utilities and pads before the repair, reconstruction, or improvement has commenced; and for mobile homes not placed in a mobile home park or mobile home subdivision, require that:

- (i) stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level;
- (ii) adequate surface drainage and access for a hauler are provided; and
- (iii) in the instance of elevation on pilings, that:
  - lots are large enough to permit steps,
  - piling foundations are placed in stable soil no more than ten feet apart, and
  - reinforcement is provided for pilings more than six feet above the ground level.

(3) No mobile home shall be placed in a floodway, except in an existing mobile home park or an existing mobile home subdivision.

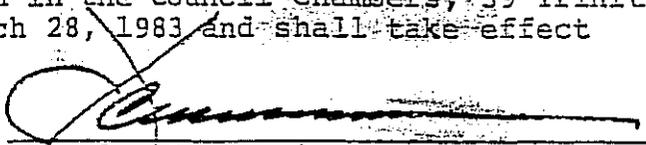
#### 4.30 - Floodways

Located within areas of special flood hazard established in Section 2.2 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- (1) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless a technical evaluation demonstrates that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) If Section 4.3(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 4.0, Provisions For Flood Hazard Reduction.
- (3) Prohibit the placement of any mobile homes, except in an existing mobile home park or existing mobile home subdivision.
- (4) In all areas of special flood hazard in which base flood elevation data has been provided and no floodway has been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than two-tenths of a foot at any point.

#### NOTICE

TAKE NOTICE that the above entitled Ordinance introduced at a regular meeting of the Town Council of the Town of Newton on March 14, 1983, was passed on Final Reading at a regular meeting of the Town Council of the Town of Newton held in the Council Chambers, 39 Trinity Street, Newton, New Jersey on March 28, 1983 and shall take effect according to law.

  
Douglas L. Cummins, Municipal Clerk