

LUZERNE COUNTY ZONING ORDINANCE

TEXT AMENDMENTS

FLOOD PLAIN MANAGEMENT

Eliminate in Article 11 – DEFINITIONS The definitions of Flood, Flood-Fringe, Floodway, One Hundred Year Flood and One Hundred (100) Year Floodplain District or Area.

Eliminate current Article 13 – FLOOD PLAIN DISTRICT(S) (See the current Article 13 in the Luzerne County Zoning Ordinance on line at the county’s website, www.luzernecounty.org).

Insert new Article 13 – FLOOD PLAIN MANAGEMENT to read:

13.1 **STATUTORY AUTHORIZATION.**

The legislature of the Commonwealth of Pennsylvania has, by the passage of the Pennsylvania Flood Plain Management Act of 1978, delegated the responsibility to local government units to adopt flood plain management regulations to promote health, safety, and the general welfare of its citizenry.

13.2 **GENERAL PROVISIONS:**

A. **Intent**

The intent of this Article is to: promote the general health, welfare, and safety of the community, encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage, minimize danger to public health by protecting water supply and natural drainage, reduce financial burdens imposed on the community, governmental units, and residents, by regulating development in areas subject to flooding, and comply with federal and state flood plain management requirements. This article will only pertain to zoning regulations and have no affect upon any building code regulations which are the jurisdiction of the local municipalities.

B. **Applicability**

It shall be unlawful for any person, partnership, business or corporation to undertake, or cause to be undertaken, any construction, use or development within the municipalities governed by the Luzerne County Zoning Ordinance unless a permit has been obtained from the Luzerne County Zoning Officer (ZO).

C. Abrogation and Greater Restrictions

This Article supersedes any other conflicting provisions which may be in effect for the Special Flood Hazard Area (SFHA). 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 Article, the more restrictive shall apply.

D. Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this Article shall be declared invalid for any reason whatsoever, such a decision shall not affect the remaining portions of the Article, which shall remain in full force and effect, and for this purpose the provisions of this Article are hereby declared to be severable.

E. Warning and Disclaimer of Liability

The degree of flood protection sought by the provisions of this Article is considered reasonable for regulatory purposes and is based on accepted engineering methods of study. Larger floods may occur or flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Article does not imply that areas outside the SFHA, or that land uses permitted within such areas will be free from flooding or flood damages. This Article shall not create liability on the part of Luzerne County or any officer or employee thereof for any flood damages that result from reliance on this Article or any administrative decision lawfully made thereunder.

F. ADMINISTRATION

1. Permits Required

A Permit shall be required before construction, use or development is undertaken within any of the municipalities governed by the Luzerne County Zoning Ordinance. The ZO shall issue a Zoning Permit only after it has been determined that the proposed work/use to be undertaken will be in conformance with the requirements of this Article. The applicant shall provide information regarding the applicability of the following laws to their application and any required approvals/permits: Pennsylvania Sewage Facilities Act (Act 1966-537, as amended); the Pennsylvania Dam Safety and Encroachments Act (Act 1978-325, as amended); the Pennsylvania Clean Streams Act (Act 1937-394, as amended); and the U.S. Clean Water Act, Section 404, 33, U.S.C. 1344. No permit shall be issued until this determination has been made. Following the issuance of the zoning permit under this Article, the applicant will be directed to the local municipality's Flood Plain Administrator for additional flood plain management and building code (Uniform Construction Code – UCC) requirements.

2. Application Procedures and Requirements

Application for a Zoning Permit under this Article shall be made in writing, to the ZO using the zoning permit forms and providing the usual information, except if the application is for a property located in any A Zone – the Special Flood Hazard Area (Zones A, AE, AH and AO) as shown on the FEMA Flood Insurance Rate Map (FIRM). (The 1% annual chance flood event). The applicant must provide all necessary documentation to verify that they are meeting

the rules and regulations of this Article, including the base flood elevation (BFE) and an elevation certificate which shall be sealed by a registered professional surveyor in the Commonwealth of Pennsylvania. Also, any approvals required by federal and state agencies, as well as the Luzerne Conservation District, must be provided. A copy of the application may be submitted by the ZO to any other agencies and/or individuals for review and comment.

3. Appeals

The Luzerne County Zoning Hearing Board has jurisdiction over any appeal of the ZO's decisions, Special Exceptions and Variances under this Article, through their usual application process administered by the Luzerne County Planning Commission.

13.3 IDENTIFICATION OF FLOOD PLAIN AREAS

A. Identification

The Identified Flood Plain area governed by this Article shall be: any areas with the municipalities under the jurisdiction of the Luzerne County Zoning Ordinance classified as Special Flood Hazard Areas (All A Zones) in the Flood Insurance Study (FIS) and on the current Flood Insurance Rate Maps (FIRMs) issued by the Federal Emergency Management Agency (FEMA), or the most recent revision thereof, including all digital data developed as part of the FIS. The aforementioned FIS and FIRMs are hereby adopted by Luzerne County and made part of this Article.

B. Description and Special Requirements of Identified Flood Plain Areas (SFHA)

Within the Floodway, no encroachments, including fill, new construction, use, substantial improvements, substantial excavation or grading modification, or other development shall be permitted.

The AE Zone without floodway shall consist of those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA and for which base flood elevations have been provided in the FIS. No permit shall be granted for any construction, development, use, or activity within any AE Area/District without floodway unless it is demonstrated that the cumulative effect of the proposed development would not, together with all other existing and anticipated development, increase the BFE more than one (1) foot at any point. No new construction or development shall be located within the area measured fifty (50) feet landward from the top-of-bank of any watercourse.

The A Zone shall consist of those areas identified as an A Zone on the FIRM included in the FIS prepared by FEMA and for which no one-percent (1%) annual chance flood event elevations have been provided. For these areas, elevation and floodway information from other Federal, State, or other acceptable sources shall be used when available. Where other acceptable information is not available, the base flood elevation shall be determined by using the elevation of a point on the boundary of the SFHA which is nearest the site. The County may require the applicant to determine the elevation with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by a registered professional engineer in the Commonwealth of Pennsylvania, 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 Luzerne County Engineer's Office. In no case shall any development or modification alter existing drainage paths within these areas. All development within these areas must also comply with current federal, state, and/or County freeboard requirements.

The Shallow Flooding Zone shall consist of those areas identified as Zones AO and AH on the FIRM and in the FIS. These areas are subject to inundation by 1-percent-annual-chance shallow flooding where average depths are between one and three feet. In Zones AO and AH, drainage paths shall be established to guide floodwaters around and away from structures on slopes. In no case shall any development or modification alter existing drainage paths within these areas. All development within these areas must also comply with current federal, state, and/or County freeboard requirements.

C. Changes in Identification of Area

The local municipalities under the jurisdiction of the Luzerne County Zoning Ordinance have the responsibility to request that FEMA make changes in the Identified Flood Plain areas, based upon studies or information provided by a qualified agency or person that document the need for such revision.

D. Boundary Disputes

Should a dispute concerning any SFHA boundary arise, an initial determination shall be made by the ZO in consultation with the County Engineer, and any party aggrieved by this determination may appeal to the Luzerne County Zoning Hearing Board. The burden of proof shall be on the appellant.

13.4 TECHNICAL PROVISIONS

A. General

Any new construction, development, uses or activities allowed within any SFHA shall be undertaken in strict compliance with the provisions of this Article and any other applicable codes, ordinances and regulations. Within any SFHA, no new construction or development shall be located within the area measured fifty (50) feet landward from the top-of-bank of any watercourse.

B. Elevation, Flood Proofing and Other Requirements

Any new construction, or substantial improvement of Residential and Non-residential Structures, including Accessory Structures, in the Special Flood Hazard Area (any A Zone) shall have the lowest floor level of enclosed living space, including finished usable basements, be elevated to the regulatory flood elevation (Base Flood Elevation plus 1 and ½ feet) and flood proofed as to the utilities for the structure. An unfinished flood resistant, partially enclosed area, used solely for parking of vehicles, building access, or incidental storage is not considered the lowest floor of the structure.

A fully enclosed space below the lowest floor of a structure which will be used solely for parking of vehicles, building access, or incidental storage must be referred to the local municipal

building code officer for the rules, requirements and design standards.

Substantial improvement to a historic structure, as listed in the National Register, or State Inventory, of Historic Places, shall comply only with the requirements of this Article that do not hinder its continued listing on these documents. The exemptions shall be the minimum necessary to maintain said historic listing.

The placement of fill for any project or use shall be the jurisdiction of the County Engineer, the local municipal Flood Plain Administrator, the local municipal Flood Plain Management Ordinance and Building Code (UCC) regulations. The Luzerne Conservation District shall also be notified of the proposed project for compliance with their regulations.

Any new or substantially improved structure, or use, which will produce or store radioactive substances, medical waste, or other hazardous materials (as defined by PA Department of Environmental Protection), or any of the following dangerous materials or substances (including a structure or use that will be used for an activity requiring a supply of more than 550 gallons, or comparable volume of those listed), within any SFHA shall be prohibited:

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|-------------------|------------------------------------|
| Acetone | Magnesium |
| Ammonia | Nitric acid and oxides of nitrogen |
| Benzene | Petroleum products |
| Calcium carbide | Phosphorus |
| Carbon disulfide | Potassium |
| Celluloid | Sodium |
| Chlorine | Sulfur and sulfur products |
| Hydrochloric acid | Pesticides |
| Hydrocyanic acid | |

All materials that are buoyant, flammable, explosive, or in times of flooding, could be injurious to human, animal, or plant life, and not noted, or listed, above shall be stored at or above the Regulatory Flood Elevation or flood proofed to the maximum extent possible to the satisfaction of the Luzerne County Emergency Management Agency.

All subdivision proposals and development proposals in SFHA where base flood elevation data is not available, shall be supported by hydrologic and hydraulic engineering analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a licensed professional engineer in the Commonwealth of Pennsylvania in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant.

Within any SFHA, landfills, junk yards, manufactured homes (mobile homes/trailers), new or expanded manufactured home park or subdivisions, recreational vehicles (RV) and RV campgrounds shall be prohibited. Modular homes shall be allowed, provided they are placed on a permanent foundation, elevated to the Regulatory Flood Elevation (1 and ½ feet above the Base Flood Elevation) and flood proofed in respect to utilities.

13.5 ACTIVITIES REQUIRING SPECIAL EXCEPTION APPROVAL

The following uses proposed to be located within the SFHA shall be considered Special Exception Uses and shall be under the jurisdiction of the Luzerne County Zoning Hearing Board. The application shall include all requirements of this Article, other zoning provisions (specifically Section 6.30) and all applicable federal and state agency requirements:

- Hospitals
- Nursing Homes
- Correctional Facilities

A detailed sketch plan and documentation must be provided including but not limited to: location map, 2 foot contours, parcels outline and size, access ways, bodies of water, flood plain boundary, proposed buildings and utilities, building elevations, base flood hydrology information developed by a registered professional engineer in the Commonwealth of Pennsylvania, ownership, professional certifications regarding pollution, effect on base flood elevation, potential debris damage, a grading plan, an evacuation plan, information concerning application to federal or state agencies, proof of application to the Luzerne Conservation District, and any other information as required by the Luzerne County Planning Commission. The project must be designed so that it will survive the base flood without lateral movement or damage to structures or its equipment/contents below the Base Flood Elevation, be elevated to the Regulatory Flood Elevation, assure that the occupants can be housed for an indefinite period and be safely evacuated at any time during the base flood and prevent significant pollution, increased flood levels, or debris endangering life and property. The project must provide continual unimpeded access to the facility at all times during the one percent (1%) annual chance flood event.

If the Luzerne County Zoning Hearing Board approves said application, the Pennsylvania Department of Community and Economic Development shall have a thirty-five (35) day period to review and either approve, or disapprove the application. If they disapprove, no zoning permit shall be issued.

13.6 EXISTING STRUCTURES IN IDENTIFIED FLOOD PLAIN AREAS

The provisions of this Article do not require changes or improvements to any existing structures. An expansion to (addition), or replacement of, an existing structure in the SFHA must be elevated to the Regulatory Flood Elevation and flood proofed as to any utilities. No expansion of existing structures in a Floodway is allowed.

13.7 VARIANCES

Variance to any requirement of this Article may be requested by application to the Luzerne County Zoning Hearing Board, except for the requirements in Section 13.5, the regulations pertaining to the Floodway, landfill and junk yard uses, and any request that would increase the Base Flood Elevation by more than one (1) foot in the SFHA, without Floodway.

In considering the variance(s), the Zoning Hearing Board shall require the applicant to prove with verifiable evidence that adhering to the requirements of this Article would result in an exceptional hardship. Also the Board shall limit the variance to the least modification necessary to provide relief, obtain County Engineer verification of the applicant's hydrologic and hydraulic analysis as prepared by a professional engineers registered in the Commonwealth of Pennsylvania regarding any potential increase in Base Flood Elevation, determine that the applicant has good and sufficient cause, that granting the variance will not result in prohibited increase in flood heights, additional threats to public safety, increase in public expense, nor create nuisances, or conflict with other applicable state or local regulations or ordinances.

The Board may attach reasonable conditions and safeguards to its decision to protect public health, safety and welfare.

13.8 DEFINITIONS

Unless specifically defined below, words and phrases used in this Article shall be interpreted so as to give this Article its most reasonable application. The definitions below are applicable to the article only and not meant to replace the definitions given in Article 11.

1. 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.
2. Base Flood - a flood which has a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood" or one-percent (1%) annual chance flood event).
3. Base Flood Elevation (BFE) - the elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, that indicates the water surface elevation resulting from a flood that has a 1-percent of being equaled or exceeded in any given year.
4. Basement - any area of the building having its floor below ground level on all sides.
5. 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.
6. Development - any man-made change to improved or unimproved real estate, including but not limited to the construction, reconstruction, expansion 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.
7. Existing Manufactured Home Park – a manufactured home park for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed is completed before the adoption date of this floodplain management article.

8. Expansion of Existing Manufactured Home Park – the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed.
9. Flood - a temporary inundation of normally dry land areas.
10. Flood Insurance Rate Map (FIRM) - the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones.
11. Flood Insurance Study (FIS) - the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.
12. Flood Plain 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.
13. Flood Proofing - 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.
14. Floodway - the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
15. Highest Adjacent Grade – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
16. Historic Structures – any structure that is listed (or preliminarily determined as meeting requirements) in the National Register of Historic Places, or the State’s Inventory of Historic Places, or having historical significance to a registered historic district.
17. 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.
18. Manufactured Home - a structure, transportable in one or more sections, which is built on a permanent chassis with wheels, and is designed for use, with or without a permanent foundation, when attached to the required utilities. The term includes mobile homes, trailers, park trailers, travel trailers, recreational and other similar vehicles, but not including modular homes.

19. Manufactured Home Park – a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
20. New Construction – new or replacement structures or additions, for which the start of construction commenced on or after the adoption date of this Article.
21. New Manufactured Home Park – a manufactured home park for which the construction of facilities for servicing the lots is completed on or after the adoption date of this Article.
22. 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.
23. Recreational Vehicle - a vehicle which is built on a single chassis, not more than 400 Sq. Ft., measured at the largest horizontal projections, designed to be self-propelled or permanently towable by a light-duty truck, and not designed for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.
24. Regulatory Flood Elevation - the base flood elevation (BFE) or estimated flood height as determined using simplified methods plus a freeboard safety factor of one and one-half (1 ½) feet.
25. Special Exception - an approval from the Luzerne County Zoning Hearing Board which is required for hospitals, nursing homes, and correctional facilities, when such development is located in a Special Flood Hazard Area.
26. Special Flood Hazard Area (SFHA) - means an area in the flood plain subject to a 1 percent or greater chance of flooding in any given year. It is shown on the FIRM as Zone A, AO, AE, A99, or, AH.
27. Structure – a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.
28. 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 (reverse subdivision) for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs, or devisees, transfer of ownership or building or lot development: 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.
29. Substantial Improvement - any replacement of, or addition to, a structure.
30. Uniform Construction Code (UCC) – The statewide building code adopted by The Pennsylvania General Assembly in 1999 applicable to new construction in all municipalities whether administered by the municipality, a third party or the Department of Labor and Industry. Applicable to residential and commercial buildings, The Code

adopted The International Residential Code (IRC) and the International Building Code (IBC), by reference, as the construction standard applicable with the State flood plain construction.

31. Violation - means the failure of a structure, use, or other development to be fully compliant with the Luzerne County Zoning Ordinance Flood Plain Management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required is presumed to be in violation until such time as that documentation is provided.

13.8 EFFECTIVE DATE

This text amendment to the Luzerne County Zoning Ordinance shall be effective on the adoption date of September 25, 2012 and shall remain in force until modified, amended or rescinded by the Governing Body of Luzerne County, Pennsylvania.