

## ORDINANCE NO. 2013-3082

TOWNSHIP OF MIDDLETOWN  
COUNTY OF MONMOUTHAN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE  
TOWNSHIP OF MIDDLETOWN, COUNTY OF MONMOUTH  
AMENDING CHAPTER 16, PLANNING AND DEVELOPMENT REGULATIONS

WHEREAS, the Township of Middletown's Planning and Development regulations include standards that control the location, scale and type of land uses within the Township in conformance with State laws and regulations; and

WHEREAS, on October 27, 2004, the Township of Middletown Planning Board adopted a Comprehensive Master Plan, and said Master Plan was reaffirmed and readopted by the Planning Board on October 1, 2008, and thereafter updated on July 15, 2009 and September 22, 2011; and

WHEREAS, the Middletown Township Committee routinely reviews various zoning standards and development regulations in order to properly address emerging land use issues as laws, regulations and standards change, and to further the purpose and intent of the Township's Planning and Development Regulations and Zoning Ordinance; and

WHEREAS, the Federal Emergency Management Agency ("FEMA") has been in the process of revising flood maps and requirements for flood insurance that will impact a large number of residences in the Township of Middletown; and

WHEREAS, as a result of Superstorm Sandy, which struck the East Coast of the United States including the Township of Middletown, FEMA has released advisory maps which impact areas and properties that will be included in flood zones which will be required to obtain flood insurance and the cost of said insurance will likely be increasing; and

WHEREAS, as a result of the impact of FEMA's advisory maps and the NJDEP's newly proposed Flood Hazard Area Control rules, which will soon be adopted, many citizens and properties in the Township will be impacted; and

WHEREAS, in accordance with N.J.S.A. 40:55D-62, the Township Committee is charged with adopting zoning standards ordinances relating to the nature and extent of uses of the land and of buildings and structures thereon in order to protect the general health, safety and welfare of the public.

NOW, THEREFORE, BE IT ORDAINED that Chapter 16 of the Township of Middletown Planning and Development Regulations are hereby amended as follows (additional regulations or amended text is indicated in **bold underline type**; deleted text is shown in ~~strikethrough type~~):

## SECTION 1:

## 16-203 DEFINITIONS

Advisory Base Flood Elevation (ABFE) means the elevation shown on a community's Advisory Flood Hazard Map that indicates the advisory stillwater elevation plus wave effect (ABFE = SWEL + wave effect) resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

Advisory Flood Hazard Area (AFHA) means the land in the floodplain within a community subject to flooding from the 1% annual chance event depicted on the Advisory Flood Hazard Map.

Advisory Flood Hazard Map means the official map on which the Federal Emergency Management Administration has delineated the areas of advisory flood hazards applicable to the community.

NJDEP Flood Hazard Area Control Rules means the standards proposed under N.J.A.C. 7:13 et seq. published in the February 19, 2013 NJ Register, which as they may be amended upon adoption or from time-to-time, shall herein be incorporated by reference, therefore incorporating FEMA's Advisory Flood Hazard Map, Advisory Base Flood Elevations (ABFE) and Advisory Flood Hazard Area (AFHA) as the standards required to be followed within the Township pursuant to law.

## SECTION 2

### 16-527 FLOODPLAIN MANAGEMENT.

A. Definitions. Certain words, phrases and terms in this section are defined by the U.S. Department of Housing and Urban Development, Federal Insurance administration, National Flood Insurance Program, for the purposes of this section and are contained in Section 16-203, Definitions, of this Chapter as follows. Unless specifically defined below, words or phrases used in this chapter be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

1. Advisory Base Flood Elevation (ABFE)
2. Advisory Flood Hazard Area (AFHA)
3. Advisory Flood Hazard Map
1. ~~4.~~ Appeal
2. ~~5.~~ Area of Shallow Flooding
3. ~~6.~~ Area of Special Flood Hazard
4. ~~7.~~ Area of Special Flood Related Erosion Hazard
5. ~~8.~~ Base Flood
6. ~~9.~~ Basement
7. ~~10.~~ Breakaway Wall
8. ~~11.~~ Coastal High Hazard Area
9. ~~12.~~ Development
10. ~~13.~~ Digital Flood Insurance Rate Map (DFIRM)
11. ~~14.~~ Elevated Building
12. ~~15.~~ Erosion
13. ~~16.~~ Flood or Flooding
14. ~~17.~~ Flood Insurance Study
15. ~~18.~~ Flood Plain Management Regulations
16. ~~19.~~ Floodway
17. ~~20.~~ Highest Adjacent Grade
18. ~~21.~~ Historic Structure
19. ~~22.~~ Lowest Floor
20. ~~23.~~ Manufactured Home
21. ~~24.~~ Manufactured Home Park or Manufactured Home Subdivision
22. ~~25.~~ New Construction
23. ~~26.~~ New Manufactured Home Park or Subdivision
24. ~~27.~~ Primary Frontal Dune
25. ~~28.~~ Recreational Vehicle
26. ~~29.~~ Sand Dunes
27. ~~30.~~ Start of Construction
28. ~~31.~~ Structure
29. ~~32.~~ Substantial Damage
30. ~~33.~~ Substantial Improvement
31. ~~34.~~ Variance

F. Residential Construction.

1. New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, together with the attendant utilities and sanitary facilities elevated no lower than 1 foot above the base flood elevation in conformance with the NJDEP Flood Hazard Area Control Rules.

2. Within any AO zone on the municipalities' FIRM that all new construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet (at least two (2') feet if no depth number is specified), or in conformance with NJDEP Flood Hazard Area Control Rules, whichever is more restrictive. And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

H. Nonresidential Construction.

1. In an area of Special Flood Hazard, all new construction and substantial improvement of any commercial, industrial or other nonresidential structure shall:

a. Either have the lowest floor, including basement, elevated to the level of the base flood elevation or NJDEP advisory base flood elevation, whichever is more restrictive; or together with the attendant utilities and sanitary facilities, and

b. Within any AO zone on the municipality's DFIRM to have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet (at least two (2') feet if no depth number is specified), or NJDEP advisory base flood elevation, whichever is more restrictive, and require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures;

or

a. Be flood proofed so that below the base flood level in conformance with the NJDEP Flood Hazard Area Control Rules.

the structure is watertight with walls substantially impermeable to the passage of water;

I. Manufactured Homes.

2. All manufactured homes to be placed or substantially improved within an area of special flood hazard shall be elevated on a permanent foundation such that the top of the lowest floor is elevated ~~no lower than 1 foot above the base flood elevation~~ in conformance with the NJDEP Flood Hazard Area Control Rules.

L. Coastal High Hazard Area.

2. Construction Methods.

a. Elevation.

All buildings or structures shall be elevated on piling or columns so that the bottom of the lowest portion of the horizontal structural members of the lowest floor (excluding the piling or columns) ~~elevated no lower than 1 foot above the base flood level~~ in conformance with the NJDEP Flood Hazard Area Control Rules, with all space below the lowest floor's supporting member open so as not to impede the flow of water, except for breakaway walls as provided for in this Section 16-527.L.2.d.

M. Design Waivers.

1. The Board of Adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the ~~Zoning Officer~~ Administrative Officer (Construction Official) in the enforcement or administration of this Ordinance.

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

## SECTION 3

### 16-901.A.5.a.1 AREAS OF SPECIAL FLOOD HAZARD MAP

(c) As provided under the NJDEP Flood Hazard Area Control Rules, Advisory Base Flood Elevations and Advisory Flood Hazard Maps dated December 12, 2012 shall be utilized. These documents shall take precedence over previous panels and FIS in construction and development regulations only. Where the Special Flood Hazard Area (SFHA) and the Advisory Flood Hazard Area (AFHA) maps conflict or overlap, whichever imposes the more stringent requirement shall prevail.

### 16-901.A.5.a' AREAS OF SPECIAL FLOOD HAZARD MAP

(4) Interpretation of FIRM Boundaries. The Administrative Officer (~~Zoning Officer~~) **Construction Official** shall 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 16-527.M and N.

## SECTION 4

### 16-940 AREAS OF SPECIAL FLOOD HAZARD.

#### E. Floodplain Encroachment Permit Required.

1. Subject to the provisions of Article 7 (Section 16-709) of this Chapter, no person shall hereafter engage or cause other persons to engage in any development or regulated use in an area of special flood hazard as defined herein unless and until such person shall have applied for and received from the Administrative Officer (~~Zoning Officer~~) **Construction Official** a floodplain encroachment permit.

2. Where a lot, tract, or parcel is proposed for development and a portion of said lot, tract, or parcel lies within a special flood hazard area, a development permit may be issued without the prior approval and issuance of a floodplain encroachment permit provided said development does not in any way during or as a result of construction or development disturb the natural condition of or encroach upon the special flood hazard area and/or result in any man-made change to the special flood hazard area including the placement therein of buildings or structures or mining, dredging, filling, grading, paving, excavation, or drilling; and provided moreover that said development does not require site plan, subdivision, or conditional use approval nor require the issuance of any variance. The Administrative Officer (~~Zoning Officer~~) **Construction Official** may require such information prior to the issuance of the development permit and impose such conditions to assure that the development does not disturb or encroach upon the special flood hazard area.

3. Minor uses or activities within a special flood hazard area, such as but not limited to gardens, flower beds, open fences, temporary plan equipment, lawn furniture or the removal of dead or diseased trees, which are accessory to and normally associated with the enjoyment of a single- or two- family dwelling and which in the opinion of the Administrative Officer (~~Zoning Officer~~) **Construction Official** do not alter or increase the flood hazard do not require a floodplain encroachment permit.

F. It shall be the duty and responsibility of the Administrative Officer (~~Zoning Officer~~) **Construction Official** to issue or deny an application for a floodplain encroachment permit after consultation with the Township Engineer and the ~~Construction Official~~ **Zoning Officer** in accordance with the following:

3. When base flood elevation and floodway data has not been provided in accordance with Section 16-901.A5.a.1 and 16-901.A5. a.2, then the Administrative Officer (~~Zoning Officer~~) **Construction Official** shall obtain review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer Sections 16-527.F and 16-527.H.

13. For any development application involving a regulated use and for which approval of a subdivision, site plan, conditional use, or a variance is required, the Administrative Officer (~~Zoning Officer~~ **Construction Official**) shall refer said application to the Planning Board or Zoning Board for review and approval, approval with conditions, or denial for the floodplain encroachment permit in accordance with Section 16-940J.

H. Application Procedures. Where an application for development is classified as a regulated use within a flood hazard area, the applicant shall submit for a floodplain encroachment permit the following to the Administrative Officer (~~Zoning Officer~~ **Construction Official**):

3. Distribution. The Administrative Officer (~~Zoning Officer~~ **Construction Official**) shall distribute the application form and plans as follows:

a. One (1) copy ~~Construction Official~~ **Emergency Management Coordinator**

4. Declaration of Completeness of Submission of Additional Information. Within thirty (30) days of its submission, the Administrative Officer (~~Zoning Officer~~ **Construction Official**) shall take action on an application for a floodplain encroachment application. Such action may approve, deny, or declare incomplete said application or notify the applicant that the development requires approval by the Planning Board or Zoning Board. The applicant shall be notified in writing of the action taken. If the application is incomplete the applicant shall be notified of the additional items or information required to complete the application. Failure of the applicant to furnish such information within twenty (20) days of being so notified will result in denial of the application. The Administrative Officer (~~Zoning Officer~~ **Construction Official**) shall not issue a floodplain encroachment permit unless a favorable report has been issued by the Township Engineer's office and any required prior approval of the Planning Board or Board of Adjustment has been granted.

M. Revocation of Floodplain Encroachment Permits. Floodplain encroachment permits may be revoked by the Municipal Agency or Administrative Officer (~~Zoning Officer~~ **Construction Official**) for any violation of these regulations or for violations of any permit conditions. Continuation of the use or activity subsequent to revocation shall be deemed a violation of this Chapter.

#### SECTION 5.

Should any section or provision within this ordinance be found to be illegal or unconstitutional by any court of competent jurisdiction, such finding shall have no effect on any of the remaining sections or provisions.


**BE IT FURTHER ORDAINED**, that this ordinance was adopted by the following vote:

PASSED ON FIRST READING: March 18, 2013

PASSED AND APPROVED: April 15, 2013

  
Gerard P. Scharfenberger, Ph.D., Mayor

ATTEST:

  
Heidi R. Brunt, Township Clerk