

NEW MILFORD BOROUGH

ORDINANCE NO. 142

AN ORDINANCE REQUIRING ALL PERSONS, PARTNERSHIPS, BUSINESSES AND CORPORATIONS TO OBTAIN A BUILDING PERMIT FOR THE CONSTRUCTION, RECONSTRUCTION, ENLARGEMENT, ALTERATION, RELOCATION OF ANY BUILDING OR STRUCTURE OR DEVELOPMENT IN NEW MILFORD BOROUGH: PROVIDING FOR THE ISSUANCE OF SUCH BUILDING PERMITS: AND PROVIDING FOR PENALTIES FOR ANY PERSONS WHO FAIL OR REFUSE TO COMPLY WITH THE REQUIREMENTS OR PROVISION OF THIS ORDINANCE.

BE IT ENACTED AND ORDAINED by the Borough of New Milford, Susquehanna County, Pennsylvania, and it is hereby enacted and ordained by the authority of the same as follows:

ARTICLE I      General Provisions

Section 1.00 - Statement of Intent

The intent of this Ordinance is to:

- A. promote the general health, welfare, and safety of the community;
- B. minimize flood damage in the future;
- C. minimize danger to public health by protecting water supply and natural drainage.
- D. reduce financial burdens imposed on the community, its governmental units, and its residents by preventing development in areas subject to flooding.

#### Section 1.01 - Applicability

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

#### Section 1.02 - Abrogation and Greater Restrictions

This Ordinance supersedes any provisions currently in effect in flood-prone areas. However, any underlying ordinance shall remain in full force and effect to the extent that those provisions are more restrictive.

#### Section 1.03 - Severability

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

#### Section 1.04 - Municipal Liability

The degree of flood protection sought by the provisions of this ordinance is considered reasonable for regulatory purposes in the identified flood-prone areas. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside any identified flood-prone area, or that land uses permitted within such areas will be free from flooding or flood damages.

This ordinance shall not create liability on the part of the Borough or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

ARTICLE II            Administration

Section 2.00   -   Flood-Prone Area Provisions

A. No construction or development shall take place within the flood-prone area as identified on the Flood Hazard Boundary Map for New Milford Borough, Susquehanna County Pennsylvania, dated June 14, 1974 and prepared by the Federal Insurance Administration.

B. Determinations of the One Hundred (100) Year Floodplain and Elevations

For purposes of this ordinance, the one hundred (100) year floodplain and elevations shall be used. These areas are shown as special flood hazard areas on the above reference map. In helping to make the necessary elevation determinations, other sources of data where available shall be used such as:

A. Corps of Engineers - Floodplain Information Reports

B. U. S. Geological Survey - Flood-Prone Quadrangles

C. U.S.D.A., Soil Conservation Service - County Soil Surveys (Alluvial Soils)

D. Known Highwater Marks from Past Floods

E. Other sources

In lieu of the above, the municipality may require the applicant to determine the one hundred (100) year floodplain boundaries and elevation with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Borough

C. Changes in Designation of Areas

The delineation of any of the identified flood-prone areas may be revised by the Borough Council where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers, River Basin Commission or other qualified agency or individual documents the notification for such changes. However, prior to any such change, approval must be obtained from the Federal Insurance Administration (FIA).

#### D. Boundary Disputes

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

#### Section 2.01 - Issuance of Building Permit

- A. The Building Official shall issue a building permit only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of this and all other applicable codes and ordinances.
- B. No building permit shall be issued until all other required permits have been obtained from any other office or agency.

#### Section 2.02 - Application Procedures

- A. Application for such a building permit shall be made, in writing, to the Building Official on forms supplied by the Borough. Such application shall contain at least the following:
  - 1. Name and address of applicant.
  - 2. Name and address or owner of land on which proposed construction is to occur.
  - 3. Name and address of contractor.
  - 4. Site location.
  - 5. Brief description of proposed work and estimated cost.
  - 6. A plan of the site showing the exact size and location of the proposed construction as well as any existing building or structures.

#### Section 2.03 - Other Permit Issuance Requirements

- A. Prior to any proposed alteration or relocation of any stream or any watercourse, etc. within the municipality a permit shall be obtained from the Department of Environmental Resources, Dams and Encroachment Division, as specified in the Water Obstruction Act of 1913 as amended. Further, notification of the

proposal shall be given to all affected adjacent municipalities. Copies of such notifications shall be forwarded to both the Federal Insurance Administration and the Department of Community Affairs.

Under no circumstances shall any use, activity and/or development adversely affect the flood-carrying capacity of the channels or floodways of any altered or relocated watercourse, identified as part of the flood-prone area on the official flood hazard boundary map.

- B. Prior to the issuance of any building permit the Building Official shall review the application for permit to determine if all other necessary governmental permits such as those required by State and Federal laws have been obtained including those required by Act 537, The Pennsylvania Sewage Facilities Act, and the Federal Water Pollution Control Act Amendments of 1972, Section 404, 33, U.S.C. 1334. No permit shall be issued until this determination has been made.

#### Section 2.04 - Changes

After the issuance of a building permit by the Building Official, no changes of any kind shall be made to the application, permit, or any of the plans, specifications or other documents submitted with the application without the written consent or approval of the Building Official.

#### Section 2.05 - Start of Construction

Work on the proposed construction shall begin within six (6) months after the date of issuance of the building permit or the permit shall expire unless a time extension is granted, in writing, by the Building Official. Construction shall be considered to have started with the first placement of permanent construction on the site, such as the pouring of slabs or footing or any work beyond the state of excavation. For a structure 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 pilings or foundation, or the affixing of any prefabricated structure or mobile home to its permanent site. Permanent construction does not include land preparation, land clearing, grading, filling, erection of temporary forms, the installation of piling under proposed subsurface footings, of the installation of sewer, gas and water pipes, or electrical or other service lines from the street.

#### Section 2.06 - Placards

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

## Section 2.07 - Inspection and Revocation

During the construction period, the Building Official or other authorized official may inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable Borough laws and ordinances, or that there has not been a false statement or misrepresentation by any applicant. If the inspection determines that there has been a violation, then the Building Official shall revoke the building permit and report such fact to the Councilmen for whatever action it considers necessary.

## Section 2.08 - Fees

Applications for a building permit shall be accompanied by a fee, payable to the borough based upon the estimated cost of the proposed construction as determined by the Building Official at the following rates:

<u>Estimated Cost</u>	<u>Fee</u>
\$ 0.00 to \$500.00	\$ 1.00
401.00 and up	5.00

## Section 2.09 - Enforcement

### A. Notices

Whenever the Building Official or other authorized municipal representative determines that there are reasonable grounds to believe that there has been a violation of any provision of this Ordinance, or of any regulations adopted pursuant thereto, such authority shall give notice of such alleged violation as herein-after provided. Such notice shall (a) be in writing; (b) include a statement of the reasons for its issuance; (c) allow a reasonable time for the performance of any act it requires; (d) be served upon the property owner or his agent as the case may require; provided, however, that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been served with such notice by any other method authorized or required by the laws of this State; (e) contain an outline or remedial action which, if taken, will effect compliance with the provisions of this Ordinance, or any part thereof, and with the regulations adopted pursuant thereto.

### B. Hearings

Any person affected by any notice which has been issued in connection with the enforcement of any provision of this Ordinance, or of any regulation adopted

pursuant thereto, may request and shall be granted a hearing on the matter before the Councilmen provided that such person shall file with the Borough Secretary, a written petition requesting such hearing and setting forth a brief statement of the grounds therefore within ten (10) days after the notice was served. The filing of the request for a hearing shall operate as a stay of the notice and the permit suspension. Upon receipt of such petition, the Borough Secretary shall set a time and place for such hearing and shall give the petitioner written notice thereof. At such hearing the petitioner shall be given an opportunity to be heard and to show why such notice shall be modified or withdrawn. The hearing shall be commenced not later than ten (10) days after the day on which the petition was filed; provided that upon application of the petitioner, the Borough Secretary may postpone the date of the hearing for a reasonable time beyond such ten (10) day period when, in his judgment, the petitioner has submitted good and sufficient reasons for such postponement.

C. Findings and Order

After such hearing the Council shall make findings as to compliance with the provisions of this Ordinance and regulations issued thereunder and shall issue an order, in writing, sustaining, modifying, or withdrawing the notice which shall be served as provided in subsection A of this Section.

D. Record of Hearing

The proceedings at such a hearing, including the findings and decision of the Council and together with a copy of every notice and order related thereto shall be entered as a matter of public record in the borough, but the transcript of the proceedings need not be transcribed unless judicial review of the decision is sought as provided by this Section.

E. Penalties

Any person who fails to comply with any or all of the requirements or provisions of this Ordinance or who fails or refuses to comply with any notice, order or direction of the Building Official or any other authorized employee of the municipality shall be guilty of an offense and, upon conviction, shall pay a fine to the borough of not less than Twenty-five Dollars (\$25.00) nor more than Three hundred Dollars (\$300.00) plus costs of prosecution. In default of such payment, such person shall be imprisoned in county prison for a period not to exceed ten (10) days. Each day during which any violation of this Ordinance continues shall constitute a separate offense. In addition to the above penalties all other actions are hereby reserved including an action in equity for the proper enforcement of this Ordinance.

The imposition of a fine or penalty for any violation of, or non-compliance with, this Ordinance shall not excuse the violation or non-compliance or permit it to continue; and all such persons shall be required to correct or remedy such violations and non-compliances within a reasonable time. Any structure or building constructed, reconstructed, enlarged, altered, or relocated, in non-compliance with this Ordinance may be declared by the Supervisors to be a public nuisance and abatable as such.

#### Section 2.10 - Appeals

- A. Any person aggrieved by an action or decision of the Building Official, or by any of the requirements of this Ordinance, may appeal to the Councilmen. Such appeal must be filed, in writing, within thirty (30) days after the decision or action of the Building Official. Upon receipt of such appeal the Councilmen shall set a time and place within not less than ten (10) nor more than thirty (30) days, for the purpose of hearing the appeal. Notice of the time and place of the hearing of the appeal shall be given to all parties, at which time they may appear and be heard.
- B. If compliance with the requirements of this Ordinance would result in an exceptional hardship for a prospective builder, developer, or landowner, the Borough may, upon request, grant relief from the strict application of the requirement.

Request for variances shall be considered by the Borough in accordance with the procedures contained in Section 2.10A and the following procedures:

1. If granted, a variance shall involve only the least modification necessary to provide relief.
2. In granting any variance, the borough shall attach whatever reasonable conditions and safeguards it considers necessary in order to protect the public health, safety, and welfare, and to achieve the objectives of this Ordinance.
3. Whenever a variance is granted, the borough shall notify the applicant in writing that:
  - a. the granting of the variance may result in increased premium rate for flood insurance,
  - b. such variances may increase the risks to life and property.
4. In reviewing any request for a variance, the borough shall consider, but not be limited to, the following:



- a. that there is good and sufficient cause.
  - b. that failure to grant the variance would result in exceptional hardship to the applicant.
  - c. that the granting of the variance will not result in an increase in flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on, or victimization of the public, or conflict with any other applicable local or state ordinance and regulations.
5. A complete record of all variance requests and related actions shall be maintained by the borough. In addition a report of all variances granted during the year shall be included in the annual report to the Federal Insurance Administration.

Notwithstanding any of the above, however, all structures shall be designed and constructed so as to have the capability of resisting the one hundred (100) year flood in accordance with the provisions of the Corps of Engineers publication entitled Flood-Proofing Regulations, EP-11652314 June 1972. Also, the Federal National Flood Insurance Program Regulations (Section 60.3b) must be satisfied at the minimum.

- C. Any person aggrieved by any decision of the council, may seek relief therefrom in any court of competent jurisdiction as provided by the laws of this Commonwealth.
- D. There will be no variance granted which will allow the following activities and development from locating within the flood prone area as they present a special hazard to the health and safety of the public.
  1. Hospitals (public or private)
  2. Nursing homes (public or private)
  3. Jails or prisons
  4. Individual mobile homes, new mobile home parks, mobile home subdivisions and substantial improvements thereto, as well as individual mobile homes.
  5. Any new or substantially improved structure which will be used for the production or storage of any of the following dangerous materials or substances or which will be used for any activity requiring the maintenance of a supply (more than 550 gallons or other comparable volume or any amount of radio-active substances) of any of the following dangerous materials or substances on the premises:

- a. Acetone
- b. Ammonia
- c. Benzene
- d. Calcium carbide
- e. Carbon disulfide
- f. Celluloid
- g. Chlorine
- h. Hydrochloric acid
- i. Hydrocyanic acid
- j. Magnesium
- k. Nitric acid and oxides of nitrogen
- l. Petroleum products (gasoline, fuel oil, etc.)
- m. Phosphorus
- n. Potassium
- o. Sodium
- p. Sulphur and sulphur products
- q. Pesticides (including insecticides, fungicides, and rodenticides)
- r. Radioactive substances, insofar as such substances are not otherwise regulated.

### ARTICLE III Existing Structures in Identified Flood-Prone Areas

Structures existing in any identified flood-prone area prior to the enactment of this Ordinance, but which are not in compliance with these provisions, may continue to remain subject to the following:

- 1. Any modification, alteration, reconstruction, or improvement of any kind to an existing structure, to an extent or amount of fifty (50) percent or more of its market value, shall be prohibited.

### ARTICLE IV Definitions

#### Section 4.00 - General

Unless specifically defined below, words and phrases used in this Ordinance shall be interpreted so as to give this Ordinance its most reasonable application.

#### Section 4.01 - Specific Definitions

- 1. Mobile home park - a parcel of land under single ownership which has been planned and improved for the placement of two or more mobile homes for nontransient use.
- 2. Subdivision - the division or redivision of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcel or other division of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, transfer of ownership or building or lot development. The division of land for agricultural purposes into parcels of more than ten (10) acres, not involving any new street or easement of access, shall be exempted.

- A. Building - a combination of materials to form a permanent structure having walls and a roof. Included shall be all mobile homes and trailers to be used for human habitation.
- B. Construction - the construction, reconstruction, renovation, repair, extension, expansion, alteration, or relocation of a building or structure, including the placement of mobile homes.
- C. Development - any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, the subdivision of land, the placement of mobile homes, streets, and other paving, utilities, filling, grading, excavation, mining, dredging, or drilling operations.
- D. Flood - a temporary inundation of normally dry land areas.
- E. Flood-prone 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.
- F. Mobilehome - means a transportable, single family dwelling intended for permanent occupancy, office or place of assembly, contained in one or more sections, built on a permanent chassis, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, and constructed so that it may be used with or without a permanent foundation. The term does not include recreational vehicles or travel trailers.
- G. One hundred year flood - a flood that, on the average, is likely to occur once every one hundred (100) years ( i.e. that has a one (1) percent chance of occurring each year, although the flood may occur in any year.)
- H. Person - any person, persons, partnership, business or corporation.
- I. Structure - anything constructed or erected on the ground or attached to the ground including, but not limited to buildings, sheds, mobilehomes, and other similar items.
- J. Councilmen - Governing body of New Milford Borough
- K. Borough of New Milford located in Susquehanna County, Pa.

This Ordinance shall become effective on May 6, 1982 and shall remain in force until modified, amended or rescinded by the Borough Council of New Milford Borough, Susquehanna County, Pennsylvania.

ENACTED AND ORDAINED THIS 6<sup>th</sup> DAY OF MAY 1982

James L. Carpenetti  
PRESIDENT  
James Carpenetti

ATTEST

Agnes M. Jones  
Agnes M. Jones, Secretary

APPROVED THIS 6<sup>th</sup> DAY OF MAY 1982

Russell D. Richardson  
Russell D. Richardson, Mayor

COMMONWEALTH OF PENNSYLVANIA

SS

COUNTY OF SUSQUEHANNA

*Anthony Aliano*

being duly sworn deposes and  
says:

That The Free Press, a newspaper,  
published weekly, a division of The Susquehanna  
Transcript, Inc., a newspaper, published twice-weekly,  
at Susquehanna, Penna., and was established in said  
County in 1981, since which date said newspaper has  
been regularly issued in said County, and that a copy  
of the printed notice or publication attached hereto is  
exactly the same as was published in the regular edi-  
tions and issues of the said newspaper on the follow-  
ing dates, viz:

*April 21, 1982*

Affiant further deposes and says

that he is the *Co-Publisher*  
of said newspaper and is authorized to verify the fore-  
going statement and that he is not interested in the  
subject matter of the aforesaid notice or publication,  
and that all allegations in the foregoing statement as  
to time, place and character of publication are true.

Sworn to and subscribed before me

This *10th* day of *May*, 19*82*

*Edward J. Gordon*  
*Susquehanna Pa.*

My Commission expires *Jan. 16, 1985*

