

**BOROUGH OF EAST PROSPECT  
YORK COUNTY, PENNSYLVANIA**

**ORDINANCE NO.:** 2009-2

AN ORDINANCE REQUIRING ALL PERSONS, PARTNERSHIPS, BUSINESSES, AND CORPORATIONS TO OBTAIN A BUILDING PERMIT FOR ANY CONSTRUCTION OR DEVELOPMENT WITHIN AN AREA PRONE TO FLOODING WITHIN THE BOROUGH; PROVIDING FOR THE ISSUANCE OF PERMITS FOR THE SAME; SETTING FORTH CERTAIN MINIMUM REQUIREMENTS FOR NEW CONSTRUCTION AND DEVELOPMENT WITHIN AREAS OF THE BOROUGH WHICH ARE SUBJECT TO FLOODING; AND ESTABLISHING PENALTIES FOR ANY PERSONS WHO FAIL, OR REFUSES TO COMPLY WITH, THE REQUIREMENTS OF THIS ORDINANCE.

WHEREAS, the Pennsylvania Flood Plain Management Act (Act 166-1978), as amended, sets forth certain minimum requirements for the regulation of construction and development within and management of floodplains throughout the Commonwealth of Pennsylvania; and

WHEREAS, the FEMA (FEMA) has completed a re-evaluation of flood hazards within York County, Pennsylvania; and

WHEREAS, such re-evaluation of flood hazards within York County has resulted in revisions to the Flood Insurance Rate Map (FIRM) for East Prospect Borough and surrounding communities; and

WHEREAS, a Letter of Final Determination finalizing the FIRM for East Prospect Borough and for York County was issued on March 25, 2009, and the FIRM will become effective on September 25, 2009; and

WHEREAS, in order to be eligible for the National Flood Insurance Program (NFIP), East Prospect Borough must adopt Floodplain management regulations that meet the standards of Paragraph 60.3(b) of the NFIP regulations as set forth in Title 44, Chapter I, Part 60 of the Code of Federal Regulations; and

WHEREAS, the Borough Council of East Prospect Borough, York County, Pennsylvania has determined it to be in the best interests of the health, safety and welfare for the residents of East Prospect Borough for the community to be eligible for NFIP and to otherwise be in compliance with the above-named statutes and regulations.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED and it is hereby enacted and ordained by the authority of the Borough Council of East Prospect Borough, York County, Pennsylvania, as follows:

Section 1. The Code of Ordinances of the Borough of East Prospect is hereby amended by the addition of the following new ordinance:

“FLOODPLAIN MANAGEMENT

ARTICLE I GENERAL PROVISIONS

Section 100 – Short Title

This Ordinance shall be known and cited to as the “East Prospect Borough Floodplain Management Ordinance”.

Section 101 - Intent

The intent of this Ordinance is to:

- A. Promote the general health, welfare, and safety of the community.
- B. Encourage the utilization of appropriate construction practices in order to prevent or 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 excessive development in areas subject to flooding.
- E. Comply with federal and state floodplain management requirements.

Section 102 - 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 a Building Permit has been obtained from the BCO.
- B. A Building Permit shall not be required for minor repairs to existing buildings or structures within defined floodplain areas unless otherwise required by Borough ordinances.

Section 103 - Abrogation and Greater Restrictions

This ordinance supersedes any other conflicting provisions which may be in effect in identified floodplain areas. 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 Ordinance, the more restrictive shall apply.

Section 104 - Warning and Disclaimer of Liability

The degree of flood protection sought by the provisions of this Ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur and 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 floodplain areas, 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 200 - Establishment of Development Permit.

A development permit shall be obtained for all proposed construction or other development in the community, including the placement of manufactured homes, so that it may be determined whether such construction or other development is within flood-prone areas.

Section 201 - Designation of Floodplain Administrator.

The BCO and Zoning Officer are hereby appointed to administer, implement, and enforce this ordinance by granting or denying development permits in accord with its provisions.

Section 202 - Duties and Responsibilities of Floodplain Administrator

The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to the following:

A. Permit Review. Review all development permit applications to determine:

1. Permit requirements of this ordinance have been satisfied;
2. All other required state and federal permits have been obtained; and
3. The site is reasonably safe from flooding.

B. Review and Use of Any Other Base Flood Data. The Floodplain Administrator shall obtain, review, and reasonably utilize any base flood data available from other Federal or state agency or other source.

## ARTICLE III - PROVISIONS FOR FLOOD HAZARD REDUCTION

### Section 300 - Standards for Construction.

If a proposed building site is in a flood-prone area, all new construction and substantial improvements, including manufactured homes, shall:

- A. Be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- B. Be constructed:
  1. With materials and utility equipment resistant to flood damage;
  2. Using methods and practices that minimize flood damage;
  3. With electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

### Section 301 - Standards for Subdivision or Other Proposed New Development

If a subdivision proposal or other proposed new development, including manufactured home parks or subdivisions, is in a flood-prone area, any such proposals shall be reviewed to assure that:

- A. All such proposals are consistent with the need to minimize flood damage within the flood-prone area;
- B. All public utilities and facilities such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and
- C. Adequate drainage is provided to reduce exposure to flood hazards.

### Section 302 - Standards for Utilities.

- A. All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate:
  1. Infiltration of flood waters into the systems, and
  2. Discharge from the systems into flood waters.

- B. On-site waste disposal systems shall be located to avoid impairment to them, or contamination from them during flooding.

Section 303 - Development Which May Endanger Human Life

A. In accordance with the Pennsylvania Flood Plain Management Act, and the regulations adopted by the DCED as required by the Act, any new or substantially improved structure the primary use of which:

- will be used for the production or storage of any of the following dangerous materials or substances (with the exception of reasonable amounts stored for household use); or,
- will be used for any activity requiring the maintenance of a supply of more than 550 gallons, or other comparable volume, of any of the following dangerous materials or substances on the premises; or,
- will involve the production, storage, or use of any amount of radioactive substances;
- shall be subject to the provisions of this section, in addition to all other applicable provisions. The following list of materials and substances are considered dangerous to human life:

1. Acetone
2. Ammonia
3. Benzene
4. Calcium carbide
5. Carbon disulfide
6. Celluloid
7. Chlorine
8. Hydrochloric acid
9. Hydrocyanic acid
10. Magnesium
11. Nitric acid and oxides of nitrogen
12. Pesticides (including insecticides, fungicides, and rodenticides)
13. Petroleum products (gasoline, fuel oil, etc.)
14. Phosphorus
15. Potassium
16. Radioactive substances, insofar as such substances are not otherwise regulated.
17. Sodium
18. Sulphur and sulphur products

B. Within any identified flood prone area, any new or substantially improved structure of the kind described in Subsection A., above, shall be prohibited within the area

measured fifty (50) feet landward from the top-of-bank of any watercourse.

- C. Where permitted within any identified floodplain area, any new or substantially improved structure of the kind described in Subsection A., above, shall be designed to prevent pollution from the structure or activity during the course of a one hundred (100) year flood.

Any such structure, or part thereof, that will be built below the Regulatory Flood Elevation shall be designed and constructed in accordance with the standards for completely dry flood-proofing contained in the publication "Flood-Proofing Regulations" (U.S. Army Corps of Engineers, June 1972 as amended March 1992), or with some other equivalent watertight standard.

#### ARTICLE IV - HIGH RISK LAND USES

##### Section 400 - General

The following activities shall be prohibited within any identified flood prone area:

- A. The commencement of any of the following activities; or the construction, enlargement, or expansion of any structure used, or intended to be used, for any of the following activities:
1. hospitals
  2. nursing homes
  3. jails or prisons
- B. The commencement of, or any construction of, a new manufactured home park or manufactured home subdivision, or substantial improvement to an existing manufactured home park or manufactured home subdivision.

#### ARTICLE V - DEFINITIONS

##### Section 500 - General

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.

##### Section 501 - Specific Definitions

"Area of special flood hazard" - means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

"Base flood" means a flood which has a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood"). Base flood is the term used throughout this ordinance.

"BCO" means a Building Code Official of East Prospect Borough.

"Borough" means the Borough of East Prospect.

"Building" - see "Structure".

"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 or storage of equipment or materials.

"Flood or flooding" means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from: the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source.

"Floodplain or flood-prone area" means any land area susceptible to being inundated by water from any source - see "Flooding".

"Floodplain Administrator" is the individual appointed to administer and enforce the floodplain management regulations.

"Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

"Floodplain management regulations" means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control) and other application of police power which control development in flood-prone areas. This term describes federal, state or local regulations in any combination thereof which provide standards for preventing and reducing flood loss and damage.

"Governing body" is the local governing unit, i.e. county or municipality, that is empowered to adopt and implement regulations to provide for the public health, safety and general welfare of its citizenry.

"Historic structure" means any structure that is

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the Secretary of the Interior or directly by the Secretary of the Interior in states with approved programs.

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"New construction", for floodplain management purposes, means structures for which the "start of construction" commenced on or after the effective date of floodplain management regulations adopted by this community, and includes any subsequent improvements to such structures.

"One-hundred-year flood" or "100-year flood" - see "Base flood."

"Recreational vehicle" means a vehicle which is

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light-duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.



"Start of construction" includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufacture home on a foundation. 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 part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building that is principally above ground; this includes a gas or liquid storage tank or a manufactured home.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial improvement" means any reconstruction, rehabilitation, addition, or other proposed new development of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

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

Section 2. Severability. If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the Ordinance. It is hereby declared as the intent of East Prospect Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

Section 3. Effective Date. This Ordinance shall become effective on September 25, 2009.

ENACTED AND ORDAINED by the Borough Council of East Prospect Borough this 4 day of August, 2009.

ATTEST

BOROUGH COUNCIL OF  
EAST PROSPECT

Donald E. Beninger  
(SEAL)  
Secretary

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President/Vice President

APPROVED this 4 day of August, 2009.

Maxine Benitz  
Mayor