

**FELTON BOROUGH
YORK COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2009-02

**AN ORDINANCE OF THE BOROUGH COUNCIL OF FELTON
BOROUGH, YORK COUNTY, PENNSYLVANIA, TO AMEND THE
FELTON BOROUGH ZONING ORDINANCE (Adopted June 7, 2004), TO
MODIFY THE MINIMUM REQUIREMENTS FOR NEW
CONSTRUCTION AND DEVELOPMENT WITHIN AREAS OF THE
BOROUGH WHICH ARE SUBJECT TO FLOODING.**

BE IT ORDAINED AND ENACTED, by the Council of Felton Borough, York County, Pennsylvania as follows:

SECTION 1. Section 802 entitled "Flood Plain Protection Overlay District", of Article VIII entitled "Environmental Protection Overlay Districts" of the Felton Borough Zoning Ordinance (adopted June 7, 2004) is hereby amended and restated in its entirety as follows:

Section 802 Flood Plain Protection Overlay District ("FPPOD")

- A. Purpose: The purpose of this zone is to prevent the loss of property and life, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:
1. Regulating uses, activities, and development which, acting alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities and frequencies.
 2. Restricting or prohibiting certain uses, activities, and development from locating within areas subject to flooding.
 3. Requiring all those uses, activities, and developments that do occur in flood-prone areas to be protected and/or floodproofed against flooding and flood damage.
 4. Protecting individuals from buying lands and structures that are unsuited for intended purposes because of flood hazards.
- B. 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 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 nor shall it be construed that areas outside the flood plain zone, or land uses permitted within this zone will be free from flooding or flood damages.

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

C. Establishment of the Flood Plain Zone:

1. Description of Zone: The identified Flood Plain Zone shall be any area of Felton Borough subject to the one hundred (100) year flood, which is identified as a Special Flood Hazard Area (Zone A and AE) on the Flood Insurance Study (FIS) as issued by the Federal Emergency Management Agency dated September 25, 2009 including all digital data developed as a part of the FIS.
2. Determination of the One Hundred (100) Year Flood Elevation: For the purposes of this Ordinance, the one hundred (100) year flood elevation shall be used as the basis for regulation. To determine the one hundred year flood elevation, the elevation at a given point on the boundary of the identified floodplain area which is nearest the construction site in question will be used. In helping to make this necessary elevation determination, other sources of data, where available, shall be used such as:
 - Flood Insurance Study for York County, Pennsylvania
 - Felton Borough Flood Insurance Rate Maps
 - Corps of Engineers - Flood Plain Information Reports.
 - U.S. Geological Survey - Flood Prone Quadrangles.
 - USDA, Soil Conservation Service - County Soil Surveys (Alluvial Soils) or P.L. 566 Flood Information.
 - Pennsylvania Department of Environmental Protection - Flood Control Investigations.
 - Known Highwater Marks from Past Floods.
 - Other sources acceptable by the Borough Engineer.

In lieu of the above, the Borough may require the applicant to determine the elevation with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or other 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.

3. Overlay Concept: The aforementioned Flood Plain Zone shall be an overlay to the existing underlying zones as shown on the Official Zoning Map, and as such, the provisions for the Flood Plain Zone shall serve as a supplement to the underlying zone provisions.

Where there happens to be any conflict between the provisions or requirements of the Flood Plain Zone A and AE and those of any underlying zone, the more restrictive provisions and/or those pertaining to the Flood Plain Zone shall apply.

In the event any provision concerning the Flood Plain Zone is declared inapplicable as a result of any legislative or administrative actions of judicial discretion, the basic underlying zone provisions shall remain applicable.

4. Inclusion in Zoning Map: The boundaries of the Flood Plain Zone A and AE are established as shown on the FIS, dated September 25, 2009, prepared by the Federal Emergency Management Agency collectively (the "Maps"). The Maps are hereby incorporated into and made a part of the Official Zoning Map of Felton Borough. A copy of the Maps; shall be kept on file at the Borough office and be available for inspection during regular office hours.
 5. Zone Boundary Changes: The delineation of the Flood Plain Zone may be revised by 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, or other qualified agency or individual documents the advisability for such change. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency or its successor agency.
 6. Interpretation of Zone Boundaries: Initial interpretations of the boundaries of the Flood Plain Zone shall be made by the Zoning Officer. Should a dispute arise concerning the boundaries of the zone, the person questioning or contesting the location of the zone boundary shall be given a reasonable opportunity to present his case to the Borough Zoning Hearing Board and to submit his own technical evidence if he so desires. Should the person choose to seek a variance to the zoning regulations to accommodate his development, he must follow the procedures to present his case to the Zoning Hearing Board. Should the person choose to have the zone boundary changed to reflect more accurate flooding data, he must follow the procedures to present his case to Borough Council for a zoning amendment.
- D. Zone Provisions: All uses, activities, land filling and development occurring within the flood plain zone shall be undertaken only in strict compliance with the provisions of this Ordinance and with all other applicable Borough codes and ordinances.

Under no circumstances shall any use, activity, land filling and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system. Prior to any proposed alteration or relocation of any stream, watercourse, etc. within the Borough, a permit shall be obtained from the Pennsylvania Department of Environmental Protection, Dams and Encroachment Division. Further, notification of the proposal shall be given to all affected adjacent municipalities. Copies of such notifications shall be forwarded to both the Emergency Management Agency or its successor agency and the Pennsylvania Department of Community and Economic Development.

Special Flood Hazard Zone: In the Special Flood Hazard Area Zone, no development, use or activity (including fill, grading and/or substantial improvements to structures, etc.) otherwise permitted in the underlying zone shall be permitted unless the applicant of the proposed development, use or activity has demonstrated that the proposed undertaking, when combined with all other existing and anticipated development, uses and activities, will not increase the water surface elevation of the one hundred (100) year flood more than one (1) foot at any point. Increases in flood heights shall be calculated by means of current, generally accepted engineering methods.

E. Development Which May Endanger Human Life:

1. In accordance with the Pennsylvania Flood Plain Management Act, and the regulations adopted by the Department of Community and Economic Development as required by the Act, 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 volumes or any amount of radioactive substances) of any of the following dangerous materials or substances on the premises, shall be subject to the provisions of this section, in addition to all other application provisions:

- Acetone
- Ammonia
- Benzene
- Calcium carbide
- Carbon disulfide
- Celluloid
- Chlorine
- Hydrochloric acid
- Hydrocyanic acid
- Magnesium
- Nitric acid and oxides of nitrogen
- Petroleum products (gasoline, fuel, oil, etc.)
- Phosphorus
- Potassium
- Sodium
- Sulfur and sulfur products
- Pesticides (including insecticides, fungicides, and rodenticides)
- Radioactive substances, insofar as such substances are not otherwise regulated

2. Within any FW (Floodway Area), any structure of the kind described in Subsection 1) above, shall be prohibited.

3. Where permitted within any Special Flood Hazard Area (Zone A and AE) any new or substantially improved structure of the kind described in Subsection 1) above shall be:

- a) elevated or designed and constructed to remain completely dry up to at least one and one-half (1 1/2) feet above the one hundred (100) year flood and,
- b) 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.

- 4. Prohibited within the area measured fifty (50) feet landward from the top-of-bank of any watercourse, unless a permit is obtained from the Department of Environmental Protection Regional Office.

F. Special Requirements for Manufactured Homes:

- 1. Where permitted within any Special Flood Hazard Area (Zone A and AE), all mobile homes and any additions thereto shall be:
 - a. Manufactured homes are prohibited within any floodway area.
 - b. Where permitted within any flood plain area, manufactured homes shall be installed in accordance with Section 4.05 of the Felton Borough Building Permit and Flood Plain Management Ordinance.

G. Prohibited Uses and Activities:

The following uses and activities are prohibited if located completely or partially within any of the areas identified as being subject to the one hundred (100) year flood

- 1. 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:
 - a. Hospitals
 - b. Nursing homes
 - c. Jails or prisons
- 2. The commencement of, or any construction of, a new mobile home park or mobile home subdivision, or substantial improvement to an existing mobile home park or mobile home subdivision.

H. Special Exceptions and Variances: Factors to be Considered: When deliberating upon applications for Special Exceptions and Variances, the Zoning Hearing Board shall consider all relevant factors and procedures specified in other sections of the Zoning Ordinance and:

- 1. The danger of life and property due to increase flood heights or velocities caused by encroachments. No special exception or variance shall be granted for any

proposed use, development, or activity that will cause any increase in flood levels during the one hundred (100) year flood.

2. The danger that materials may be swept onto other lands or downstream to the injury of others.
3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
5. The importance or the service provided by the proposed facility to the community.
6. The requirements of the facility for a waterfront location.
7. The availability of alternative locations not subject to flooding for the proposed use.
8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
9. The relationship of the proposed use to the county comprehensive plan and flood plain management program for the area.
10. The safety of access of the property in times of flood of ordinary and emergency vehicles.
11. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwater expected at the site.
12. Such other factors which are relevant to the purposes of this ordinance.

The Zoning Hearing Board, with approval of Borough Council, may refer any application and accompanying documentation pertaining to any request for a special exception or variance to any engineer or other qualified person or agency for technical assistance in evaluating the project in relation to flood heights and velocities, and the adequacy of the plans for protection and other related matters. However this shall not relieve the applicant of the burdens required to obtain the requested zoning relief.

In addition to the other criteria in the Zoning Ordinance, special exceptions and/or variances shall only be issued after the Zoning Hearing Board has determined that the granting of such shall not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extra-ordinary public expense, (d) the creation of nuisance, (e) any fraud or victimization of the public, or (f) any conflict with local laws or ordinances.

- I. Existing Structures in the Flood Plain Zone: A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions may be continued subject to the requirements in Section 6.00 Existing Structures in Identified Flood Plain Areas in the Felton Borough Building Permit and Flood Plan Management Ordinance.

SECTION 2. All other sections, parts and provisions the Felton Borough Zoning Ordinance shall remain in full force and effect, as previously enacted and amended.

SECTION 3. All other ordinances or parts of ordinances of this Borough which are inconsistent herewith are hereby repealed.

SECTION 4. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such invalidity, illegality or unconstitutionality shall not affect or impair the remaining provisions, sections, sentences, clauses or parts of this Ordinance, it being the intent of the Borough Council that the remainder of the Ordinance shall be and shall remain in full force and effect.

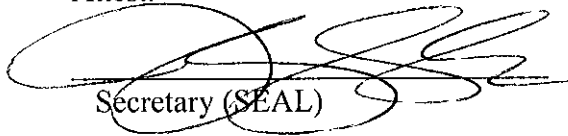
SECTION 5. For purposes of interpreting this Ordinance, the masculine shall be deemed to include feminine and neuter. The singular shall include the plural. All provisions shall be interpreted to further the purposes set forth above.

SECTION 6. This Ordinance shall take effect and be in force September 25, 2009.

DULY ORDAINED AND ENACTED this 14th day of September, 2009, by the Borough Council of Felton Borough, York County, Pennsylvania, in lawful session duly assembled.

BOROUGH COUNCIL
FELTON BOROUGH
York County, Pennsylvania

Attest:


Secretary (SEAL)

By: Anna O'Berry
President of Council

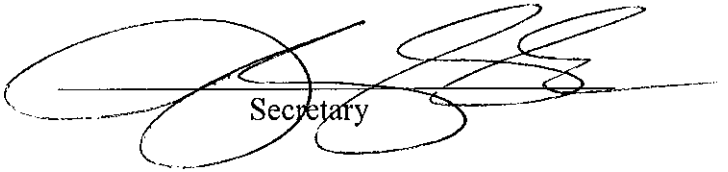
Approved this 14 day of Sept., 2009.

Jamie J. Jackson
Mayor

MUNICIPAL CERTIFICATION

I, Jay Flinchbaugh, Secretary of FELTON BOROUGH, YORK COUNTY, PENNSYLVANIA, do hereby certify that the foregoing Ordinance No. 2009-02 was advertised in the York Newspaper, a daily newspaper of general circulation in Felton Borough, on 8/31/09 and 9/7/09, and was duly enacted and approved as set forth at a Regular Meeting of the Borough Council held on September 14, 2009.

(SEAL)


Secretary

Date: September 14, 2009