

**COUNTY OF MONMOUTH  
TOWNSHIP OF MIDDLETOWN  
ORDINANCE NO. 2018-1**

**ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF  
MIDDLETOWN, MONMOUTH COUNTY AMENDING CHAPTER 540, PLANNING  
AND DEVELOPMENT REGULATIONS**

**WHEREAS**, Middletown Township's Planning and Development regulations include standards that control the location, scale and type of land uses within the Township; and

**WHEREAS**, on October 27, 2004, the Middletown Township Planning Board adopted a Comprehensive Master Plan, and the said Master Plan was reaffirmed and readopted by the Planning Board on October 1, 2008, and thereafter updated on July 15, 2009, September 12, 2011, and August 6, 2014; and

**WHEREAS**, the Middletown Township Committee routinely reviews various zoning regulations and design standards in order to address particular issues discussed in the Master Plan and Master Plan Reexamination Report relative to implementation of various zoning regulations and design standards on a Township-wide basis; and

**WHEREAS**, the Federal Emergency Management Agency (FEMA) issued a Letter of Final Determination (LFD) dated December 20, 2017 whereby the Township of Middletown is required to update our current flood damage ordinance to be in compliance for continued participation in the National Flood Insurance Program (NFIP); and

**WHEREAS**, as a result of the impact of FEMA's advisory maps, many citizens and properties in the Township will be impacted; and

**WHEREAS**, in accordance N.J.S.A. 40:55D-62 of the Municipal Land Use Law, the Middletown 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; and

**WHEREAS**, the Legislature of the State of New Jersey has in N.J.S.A. 40:48-1, et seq., delegated the responsibility to local governmental units to adopt regulations designed to promote public health, safety, and general welfare of its citizenry.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Middletown of Monmouth County, New Jersey as follows:

(Additional regulations or amended text indicated in **bold type**; deleted text is shown in *strikethrough italics*.)

## **SECTION 1.**

### 540-203      DEFINITIONS

#### **ADVISORY BASE FLOOD ELEVATION (ABFE)**

*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% or greater chance of being equaled or exceeded in any given year.*

#### **ADVISORY FLOOD HAZARD AREA (AFHA)**

*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**

*The Official Map on which the Federal Emergency Management Administration has delineated the areas of advisory flood hazards applicable to the community.*

#### **AO ZONE**

**Areas subject to inundation by 1-percent-annual-chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet.**

#### **AH ZONE**

**Areas subject to inundation by 1-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Base Flood Elevations (BFEs) derived from detailed hydraulic analyses are shown in this zone.**

#### **AREA OF SPECIAL FLOOD HAZARD**

**The land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year. It is shown on the FIRM as Zone V, VE, V1-30, A, AO, A1 A30, AE, A99, or AH.**

#### **BASE FLOOD**

*The A flood having a 1% chance of being equaled or exceeded in any given year.*

#### **BASE FLOOD ELEVATION (BFE)**

*The elevation, based on mean sea level, of a flood that has a 1% or greater chance of occurrence in any given year as established by the Federal Insurance Administration of the Department of Housing and Urban Development and as shown on the Digital Flood Insurance Rate Maps (DFIRM) of the Federal Insurance Administration. The flood elevation shown on a published*

**Flood Insurance Study (FIS) including the Flood Insurance Rate Map (FIRM).** For zones AE, AH, AO, and A1-30 the elevation represents the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year. For zones VE and V1-30 the elevation represents the stillwater elevation (SWEL) plus wave effect (BFE = SWEL + wave effect) resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

#### **BEST AVAILABLE FLOOD HAZARD DATA**

The effective Flood Insurance Risk Maps or most recent Preliminary Flood Hazard Maps FEMA has provided.

#### **BEST AVAILABLE FLOOD HAZARD DATA ELEVATION**

Is depicted on the effective FIRM or FIS, or Preliminary Flood Hazard Maps or Preliminary FIS.

#### **COASTAL A ZONE**

The portion of the Special Flood Hazard Area (SFHA) starting from a Velocity (V) Zone and extending up to the landward Limit of the Moderate Wave Action delineation. Where no V Zone is mapped the Coastal A Zone is the portion between the open coast and the landward Limit of the Moderate Wave Action delineation. Coastal A Zones may be subject to wave effects, velocity flows, erosion, scour, or a combination of these forces. Construction and development in Coastal A Zones is to be regulated the same as V Zones/Coastal High Hazard Areas.

#### **ELEVATED BUILDING**

A nonbasement building built in the case of a building in an Area of Special Flood Hazard, to have the top of the elevated floor or, in the case of a building in a coastal high hazard area or Coastal A Zone to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the *ground level base flood elevation plus freeboard* by means of piling, columns (posts and piers), or shear walls parallel to the flow of the water, and adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. In an area of special flood hazard, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters. In areas of coastal high hazard and Coastal A Zones, "elevated buildings" shall also include a building otherwise meeting the definition of "elevated building" even though the lower area is enclosed by means of breakaway walls.

#### **EXISTING MANUFACTURED HOME PARK OR SUBDIVISION**

**A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.**

#### **FLOODPROOFING**

**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.**

#### **FREEBOARD**

**A factor of safety usually expressed in feet above a flood level for purposes of flood plain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.**

#### **HIGHEST ADJACENT GRADE**

**The highest natural elevation of the ground surface prior to construction next to the proposed **or existing walls** of a structure.**

#### **LIMIT OF MODERATE WAVE ACTION (LiMWA)**

**Inland limit of the area affected by waves greater than 1.5 feet during the Base Flood. Base Flood conditions between the V Zone and the LiMWA will be similar to, but less severe than those in the V Zone.**

#### **LOWEST FLOOR**

**The lowest level (including basement, crawl space and garage) of the lowest enclosed area. An unfinished or flood-resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so to render the structure in violation of other applicable non-elevation design requirements **of 44 CFR Section 60.3**.**

#### **NJDEP FLOOD HAZARD AREA CONTROL RULES**

***The standards proposed under N.J.A.C. 7:13 et seq. published in the February 19, 2013, N.J. 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.***

## **PRELIMINARY FLOOD INSURANCE RATE MAP (FIRM)**

**The draft version of the FIRM released for public comment before finalization and adoption.**

### **SAND DUNES**

Naturally **or man-made** occurring accumulations of sand in ridges or mounds landward of the beach.

### **VIOLATION**

**The failure of a structure or other development to be fully compliant with this ordinance. A new or substantially improved structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR §60.3(b)(5), (c)(4), (c)(10), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.**

## **SECTION 2.**

### **540-901            OFFICIAL ZONING MAP**

#### **A. Official Zoning Map.**

(5) Areas of special flood hazard. Pursuant to N.J.S.A. 40:55D-65e and 40:48-1, et seq., the following lands are hereby designated as areas of special flood hazard within the Township of Middletown for the purpose of administering and applying the development regulations and procedures of § 540-943 of this chapter.

(a) Basis for establishing the areas of special flood hazard.

[1] The areas of special flood hazard for the Township of Middletown, Community No. 340313, are identified and defined on the following documents prepared by the Federal Emergency Management Agency:

[a] A scientific and engineering report "Flood Insurance Study, Monmouth County, New Jersey (All Jurisdictions)," whose effective date is ~~September 25, 2009~~ **June 20, 2018**.

[b] Flood Insurance Rate Map for Monmouth County, New Jersey (All Jurisdictions) as shown on index and panel(s) 34025C0034F, 34025C0042F, 34025C0044F, 34025C0055F, **34025C0060F**,

34025C0061F, 34025C0062F, 34025C0063F, 34025C0064F,  
34025C0066F, ~~34025C0067F~~ **34025C0067G**, 34025C0068F,  
34025C0069F, ~~34025C0080F~~ ~~34025C0086F~~ **34025C0086G**,  
~~34025C0088F~~ **34025C0088G**, 34025C0157F, 34025C0159F,  
34025C0176F, 34025C0177F, 34025C0178F, 34025C0179F,  
34025C0181F, whose effective date is ~~September 25, 2009~~ **June 20, 2018**.

- [c] **Best Available Flood Hazard Data.** These documents shall take precedence over effective panels and FIS in construction and development regulations only. Where the effective mapping or Preliminary Base Flood Elevation conflict or overlap with the Best Available Flood Hazard Data, whichever imposes the more stringent requirement shall prevail.
- [2] The above documents are hereby adopted and declared to be a part of this chapter. The Flood Insurance Study and maps are on file at Middletown Municipal Building, 1 Kings Highway, Middletown, New Jersey, 07748.
- (b) The Master Drainage Plan of Middletown Township, Volumes I through VII, by T&M Associates, as amended and supplemented, is hereby adopted by reference and made a part of this Chapter.
- (c) In cases where there are conflicts between the two maps, the more stringent shall apply.
- (d) Interpretation of FIRM boundaries. The Administrative 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 § 540-527MN and A&O.

### SECTION 3.

#### 540-527 FLOODPLAIN MANAGEMENT

Within a flood hazard area designated pursuant to Article IX, § 540-901A(5)(a)[1] or 540-943F(3) and regulated pursuant to § 540-943, the following definitions are established and the

following design standards shall apply to developments requiring a floodplain encroachment permit:

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 § 540-203, Definitions, of this chapter, as follows. Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meanings 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) **AH zone.**

(2) **AO zone.**

(3)(4) Appeal.

(4)(5) Area of shallow flooding.

(5)(6) Area of special flood hazard.

(6)(7) Area of special flood-related erosion hazard.

(7)(8) Base flood.

(8) **Base flood elevation (BFE)**

(9) Basement.

(10) **Best available flood hazard data.**

(11) **Best available flood hazard data elevation.**

(12) (10) Breakaway wall.

**(13) Coastal A zone.**

(14) (11) Coastal high hazard area.

(15) (12) Development.

(16) (13) Digital Flood Insurance Rate Map (DFIRM).

(17) (14) Elevated building.

(18) (15) Erosion.

**(19) Existing manufactured home park or subdivision.**

(20) (16) Flood or flooding.

(21) (17) Flood Insurance Study.

(22) (18) Floodplain management regulations.

**(23) Floodproofing.**

(24) (19) Floodway.

**(25) Freeboard.**

(26) (20) Highest adjacent grade.

(27) (21) Historic structure.

**(28) Limit of moderate wave action (LiMWA).**

(29) (22) Lowest floor.

(30) (23) Manufactured home.

(31) (24) Manufactured home park or manufactured home subdivision.

(32) (25) New construction.

**(33) (26)** New manufactured home park or subdivision.

**(34) Preliminary flood insurance rate map (FIRM).**

**(35) (27)** Primary frontal dune.

**(36) (28)** Recreational vehicle.

**(37) (29)** Sand dunes.

**(38) (30)** Start of construction.

**(39) (31)** Structure.

**(40) (32)** Substantial damage.

**(41) (33)** Substantial improvement.

**(42) (34)** Variance.

**(43) Violation.**

## **B. General Standards**

**In all areas of special flood hazards, compliance with the applicable requirements of the Uniform Construction Code (N.J.A.C. 5:23) and the standards noted within § 540-527C through § 540-527M, whichever is more restrictive, is required.**

### ***B. C. Anchoring.***

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) All manufactured homes **to be placed or substantially improved** shall be anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to the use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

### ***C. D. Construction materials and methods.***

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new construction of substantial improvements shall be constructed by methods and practices that minimize flood damage.

**D. E. Utilities.**

- (1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into system;
- (2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of **flood waters into the systems and discharge from the systems into** flood *damage* waters;
- (3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding; and
- (4) **For all new construction and substantial improvements the** Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

**E. F. Subdivision proposals.**

- (1) All subdivision proposals **and other proposed new development** shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals **and other proposed new development** shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- (3) All subdivision proposals **and other proposed new development** shall have adequate drainage provided to reduce exposure to flood damage.
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed **new** development which is greater than the less of 50 lots or five acres.

(5) In reviewing subdivision applications, § 540-513, Preservation of natural features, and § 540-624, Lot design and critical area requirements, may be applied.

**F. G.** Residential construction.

**(1) For Coastal A Zone construction see § 540-527M Coastal High Hazard Area and Coastal A Zone.**

~~(1)~~ **(2)** New construction or substantial improvement of any residential structure **located in an A or AE zone** shall have the lowest floor, including basement, together with the attendant utilities **(including all electrical, heating, ventilating, air- conditioning and other service equipment)** and sanitary facilities elevated *in conformance with the NJDEP Flood Hazard Area Control Rules* at or above the base flood elevation plus (published FIS/FIRM) one (1) foot, or as required by ASCE/SEI 24-14, Table 2-1, or the best available flood hazard data elevation, whichever is more restrictive.

~~(2)~~ **(3)** Require within any AO or AH zone on the municipality's FIRM that all new construction and substantial improvement of any residential structure shall have the lowest floor, including basement **together with the attendant utilities and sanitary facilities**, elevated above the highest adjacent grade at least as high as the depth number specified in feet **plus one (1) foot** (at least ~~two~~ three (3) feet if no depth number is specified), **or preliminary base flood elevation, whichever is more restrictive. 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.

**G. H.** For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- (1) A minimum of two openings **in at least two (2) exterior walls of each enclosed area** having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- (2) The bottom of all openings shall be no higher than one foot above grade.

(3) Openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

**H. I.** Nonresidential construction. In an area of special flood hazard, all new construction and substantial improvement of any commercial, industrial or other nonresidential structure **located in an A or AE zone (for Coastal A Zone construction, see § 540-527M, Coastal High Hazard Area and Coastal A Zone)** shall:

(1) Either:

- (a) Have the lowest floor, including basement **together with the attendant utilities and sanitary facilities as well as all electrical, heating, ventilating, air-conditioning and other service equipment**, elevated to **or above** the level of the base flood elevation (**published FIS/FIRM**) **plus one (1) foot**, or as required by **ASCE/SEI 24-14, Table 2-1, or the best available flood hazard data elevation; whichever is more restrictive** ~~NJDEP advisory base flood elevation, whichever is more restrictive; or together with the attendant utilities and sanitary facilities~~; and
- (b) Within any **AO or AH** zone on the municipality's DFIRM to have the lowest floor, including basement **together with the attendant utilities and sanitary facilities as well as all electrical, heating, ventilating, air-conditioning and other service equipment**, elevated above the highest adjacent grade at least as high as the depth number specified in feet **plus one (1) foot** (at least ~~two~~ **three (3)** 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;

(2) Or:

- (a) Be floodproofed so that below the base flood level ~~in conformance with the NJDEP Flood Hazard Area Control Rules~~ (**published FIS/FIRM**) **plus one (1) foot, or as required by ASCE/SEI 24-14, Table 6-1, or the best available flood hazard data elevation; whichever is more restrictive**, the structure is watertight with walls substantially impermeable to the passage of water;
- (b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

- (c) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of this subsection. Such certification shall be provided to the official as set forth in § 540-943F(9)(b).

***L. J.*** Manufactured homes.

- (1) Manufactured homes shall be anchored in accordance with § 540-527BC(2).
- (2) All manufactured homes to be placed or substantially improved within an area of special flood hazard shall be **consistent with the need to minimize flood damage, be constructed to minimize flood damage, have adequate drainage provided to reduce exposure to flood damage; and, be elevated on a permanent foundation such that the top of the lowest floor is at or above the base flood elevation (published FIS/FIRM) plus one (1) foot or as required by ASCE/SEI 24-14, Table 2-1, or the best available flood hazard data elevation; whichever is more restrictive elevated in conformance with the NJDEP Flood Hazard Area Control Rules.** The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.

***L. K.*** Additional conditions. In areas of special flood hazard, any or all of the following measures may also be required:

- (1) Floodproofing to include any or all of the following:
  - (a) Installation of watertight doors, bulkheads, and shutters or similar devices;
  - (b) Reinforced walls to resist water pressures;
  - (c) Use of paints, membranes, or mortars to reduce seepage of water through walls;
  - (d) Addition of weights to structures to resist flotation;
  - (e) Installation of pumps to lower water levels in structures;
  - (f) Pumping facilities, or comparable measures, for the subsurface drainage system of buildings to relieve external foundation wall and basement flood pressures;

- (g) Construction that resists rupture or collapse caused by water pressure or floating debris;
- (h) Installation of valves or controls on sanitary and storm drains which will permit the drains to be closed to prevent backup of sewage or stormwaters into the structure. Gravity drainage of basements may be eliminated by mechanical devices;
- (i) Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (j) Adequate emergency electrical power supplies.

(2) Imposition of operational controls, sureties, and deed restrictions.

(3) Requirements for construction of dikes, levees and other protective measures.

(4) Installation of an adequate flood warning system on the project site.

(5) All fill and other earthwork must be established according to Soil Conservation Service (Freehold District).

**K. L.** Floodways. Located within areas of special flood hazard established in § 540-901A(5)(a)[1] are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- (1) Encroachment, including fill, new construction, substantial improvements, and other development, are prohibited unless a technical evaluation demonstrates that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) If § 540-527**K L** is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of § 540-527**BC** through **LM**.
- (3) The placement of any manufactured home in a floodway is prohibited.

(4) In all areas of special flood hazard in which base flood elevation data has been provided and no floodway has been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than 0.2 of a foot at any point.

**L. M. Coastal high hazard area and Coastal A zone.** Coastal high hazard areas (V or VE Zones) **and coastal A Zones** are located within the areas of special flood hazard established in § 540-901A(5)(a)[1]. These areas have special flood hazards associated with high-velocity waters from tidal surges and hurricane wave wash; therefore, the following provisions shall apply:

- (1) Location of structures.
  - (a) All buildings or structures shall be located landward of the reach of the mean high tide.
  - (b) The placement of manufactured homes shall be prohibited, except in an existing manufactured home park or manufactured home subdivision.
- (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 in conformance with the NJDEP Flood Hazard Area Control Rules* is elevated to or above the base flood elevation (published FIS/FIRM) plus one (1) foot, or as required by ASCE/SEI 24-14, Table 4-1, or the best available flood hazard data elevation; whichever is more restrictive, and, all electrical, heating, ventilating, air-conditioning, mechanical equipment and other equipment servicing the building is elevated one (1) foot above the base flood elevation, or the best available flood hazard data elevation, whichever is more restrictive, and, 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 § 540-527L(2)(d).
  - (b) Structural support.
    - [1] All buildings or structures **and substantial improvements** shall be securely anchored on pilings or columns.

[2] The pile or column foundation and structure attached thereto shall be anchored to resist flotation, collapse or lateral movement due to the effects of wind and water loading values each of which shall have a 1% chance of being equaled or exceeded in any given year (one-hundred-year mean recurrence interval).

[3] There shall be no fill used for structural support **of buildings within Zones V1-30, VE, V, and Coastal A on the community's FIRM.**

- (c) Certification. A registered professional engineer or architect shall develop or review the structural design specifications and plans for the construction and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for compliance with the provisions of § 540-527LM(2)(a) and (b).
- (d) Space below the lowest floor.

[1] Any alteration, repair, reconstruction, or improvement to a structure started after the enactment of this chapter shall not enclose the space below the lowest floor unless breakaway walls, open wood latticework or insect screening are used as provided for in this section.

[2] Breakaway walls, open wood latticework or insect screening shall be allowed below the base flood elevation, provided that they are intended to collapse under wind and water loads without causing collapse displacement or other structural damage to the elevated portion of the building or supporting foundation system. Breakaway walls shall be designed for a safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading of 20 pounds per square foot (either by design or when so required by local or state codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

[a] Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and

[b] The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement or other structural damage due to the effects of wind and water load acting simultaneously on all building components (structural and nonstructural). Water loading values used shall be those associated with the base flood. Wind loading

values used shall be those required by applicable state or local building standards.

[3] If breakaway walls are utilized, such enclosed space shall be used solely for parking of vehicles, building access or storage and not for human habitation.

[4] Prior to construction, plans for any breakway wall must be submitted to the **Construction Code Official or Building Sub-Code Official** for approval.

(3) Sand dunes. There shall be no alteration of sand dunes **within Coastal A Zones, VE and V Zones on the community's DFIRM** which would increase potential flood damage.

**M. N.** 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 Administrative Officer (Construction Official) in the enforcement or administration of this section.
- (2) Those aggrieved by the decision of the Board of Adjustment, or any taxpayer, may appeal such decision to the Superior Court of New Jersey, as provided in N.J.S.A. 40:55D-72.
- (3) In reviewing a request for a waiver, the Board of Adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this section and may consider the following:
  - (a) The danger to life and property due to flooding, erosion damage or increased flood heights or velocities caused by encroachments.
  - (b) The danger that materials may be swept onto other lands or downstream to the injury of others.
  - (c) The proposed water supply and sanitation systems and the insulation of these systems from disease, contamination, and unsanitary conditions resulting from flooding.
  - (d) The susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual owner.

- (e) The need for a waterfront location and the availability of alternate locations not subject to flooding or erosion damage within the applicant's property.
- (f) The expected heights, duration, rate of rise, effects of wave action, velocity, and sediment transport of floodwaters expected at the site.
- (g) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (h) The extent to which the water-carrying capacity of the floodway or channel would be disrupted.
- (i) The degree to which the proposed use would serve the general public health, safety, and welfare.
- (j) The degree to which any aspect of the food chain or plant, animal, fish or human life processes would be affected adversely within or beyond the proposed use area.
- (k) Whether the proposed use provides adequate facilities for the proper handling of litter, trash, refuse and sanitary and industrial wastes.
- (l) The degree to which the proposed activity would alter natural water flow or water temperature.
- (m) The degree to which archaeological or historic sites and structures are endangered or rare species of animals or plants, irreplaceable land types would be degraded or destroyed.
- (n) The degree to which the natural, scenic and aesthetic values at the proposed activity site could be retained.
- (o) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets, and bridges.
- (p) The importance of the services provided by the proposed facility to the community.
- (q) The compatibility of the proposed use with the existing and anticipated development.

- (r) The relationship of the proposed use to the comprehensive plan and floodplain management program of that area.
- (4) Upon consideration of the factors of § 540-527MN(3) and the purposes of this section, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this section.
- (5) The Construction Official shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Insurance Administration upon request.

**N. O. Conditions for design waivers.**

- (1) Generally, design waivers may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the items in § 540-527MN(3)(a) through (r) have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the design waiver increases.
- (2) Design waivers may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the design waiver is the minimum necessary to preserve the historic character and design of the structure.
- (3) Design waivers shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (4) Design waivers shall only be issued upon a determination that the design waiver is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Design waivers shall only be issued upon:
  - (a) A showing of good and sufficient cause;
  - (b) A determination that failure to grant the design waiver would result in exceptional hardship to the applicant; and
  - (c) A determination that the granting of a design waiver will not result in increased flood heights, additional threats to public safety, extraordinary public expense,

create nuisances, cause fraud on or victimization of the public as identified in § 540-527MN(3), or conflict with existing local laws or ordinances.

- (6) Any applicant to whom a design waiver is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

**Q. P.** Nonconversion agreement. In consideration for the granting of a development permit for the construction of a building with a height greater than 28 feet measured from one foot above base flood elevation in a special flood hazard area, the following restrictions shall be recorded with the County Recording Officer prior to commencing construction.

- (1) The area below the base flood elevation shall contain no physical enclosures, shall be used solely for parking of vehicles or building access, and will never be used for human habitation.
- (2) Mechanical, electrical, or plumbing devices shall not be installed lower than one foot above the base flood elevation.

## **SECTION 4.**

### 540-943            AREAS OF SPECIAL FLOOD HAZARD

#### A. Purpose.

- (1) The flood hazard areas of Middletown Township are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, causes damage in other areas. Uses that are floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.
- (2) It is the purpose of this section to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- (a) To protect human life and health;
- (b) To minimize expenditure of public money for costly flood control projects;
- (c) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (d) To minimize prolonged business interruptions;
- (e) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- (f) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (g) To ensure that potential buyers are notified that property is in an area of special flood hazard; and
- (h) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

(3) Methods of reducing flood losses. In order to accomplish its purposes, this section and § 540-527 include methods and provisions for:

- (a) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (b) Requiring that uses vulnerable to floods including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (c) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
- (d) Controlling filling, grading, dredging, and other development which may increase flood damage; and

- (e) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.
- B. Applicability. Any and all lands or portions of lands which extend into, traverse, or lie within the area of special flood hazard or floodplain as delineated in the report and maps referenced in § 540-901A(5) shall be subject to the rules and regulations as set forth herein as well as the other development regulations applicable to the zone district in which said lands are placed.
- C. Prohibited uses. No person shall hereafter engage in or cause other persons to engage in any of the following prohibited activities or land uses within any portion of a flood hazard area, except as permitted as a lawful preexisting use pursuant to Article VII of this chapter:
  - (1) The placing, depositing or dumping of any solid waste.
  - (2) The dumping, disposal or discharge of pesticides, domestic or industrial wastes, radioactive materials, petroleum products or other hazardous materials, except as authorized under other provisions of law, including authorized Mosquito Control Commission programs.
  - (3) Any use which is not permitted in the district regulations of Article IX of this chapter for the zone district in which the flood hazard area is located.
- D. Regulated uses. For purposes of this section, regulated uses are activities and land uses within the flood hazard area which:
  - (1) Are not prohibited under § 540-943C;
  - (2) Result in excavation, fill, or grading;
  - (3) Require channel modification or relocation;
  - (4) Require, under the terms of this chapter, approval of a subdivision, site plan, conditional use, or require a variance pursuant to N.J.S.A. 40:55D-70c, 40:55D-70d, and 40:55D-76a;
  - (5) Require the erection of a structure or building (temporary and permanent).
- E. Floodplain encroachment permit required.

- (1) Subject to the provisions of Article VII (§ 540-709) 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 (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 (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 (Construction Official) do not alter or increase the flood hazard do not require a floodplain encroachment permit.
- (4) Practices within a special flood hazard area that are related to a farm such as terracing, construction of diversions, subsurface drainage, construction of grassed waterways and dug ponds shall be designed and constructed under the supervision of the Freehold Soil Conservation District and shall be considered a regulated use for which the issuance of floodplain encroachment permit is required.

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

- (1) Review all such applications to determine that the permit requirements of this chapter have been satisfied.

- (2) Review all such applications to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.
- (3) When base flood elevation and floodway data has not been provided in accordance with § 540-901A(5)(a)[1] and [2], then the Administrative 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 § 540-527**FG** and **HI**.
- (4) Obtain, verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- (5) Review all development permits in the coastal high hazard area *of that area of special flood hazard and Coastal A Zone* to determine if the proposed development alters sand dunes **or other natural coastal protections** so as to increase potential flood damage.
- (6) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of § 540-527**KL** are met.
- (7) Review plans for walls to be used to enclose space below the base flood level in accordance with § 540-527**LM**(2)(d).
- (8) Determine that the development complies with the design standards of § 540-527.
- (9) For all new or substantially improved floodproofed structures:
  - (a) Verify and record the actual lowest floor elevation (in relation to mean sea level); and
  - (b) Maintain the floodproofing certifications required in § 540-943H(2)(d).
- (10) In coastal high hazard **and coastal A zone areas-area**, certifications shall be obtained from a registered professional engineer or architect that the provisions of § 540-527**LM**(2)(b)[1] and [2] are met.
- (11) Maintain for public inspection all records pertaining to the provisions of this section.
- (12) Alteration of watercourses.

- (a) Notify adjacent communities and the New Jersey Department of Environmental Protection, *Dam Safety and Flood Control section, Bureau of Flood Control*, and land use regulation program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
- (b) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

(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 (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 § 540-943J.

(14) **Information to be obtained and maintained**

- (a) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- (b) For all new or substantially improved floodproofed structures:
  - i. verify and record the actual elevation (in relation to mean sea level); and
  - ii. maintain the floodproofing certifications required in § 540-943H(2)(d).
- (c) In coastal high hazard and Coastal A Zone areas, certification shall be obtained from a registered professional engineer or architect that the provisions of § 540-527M(2)(a) and 540-527M(2)(b)[1], 540-527M(2)(b)[2] and 540-527M(2)(b)[3] are met.
- (d) Maintain for public inspection all records pertaining to the provisions of this ordinance.

(15) **Interpretation of FIRM boundaries**

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 § 540-527N.

(16) **Substantial Damage Review**

- (a) After an event resulting in building damages, assess the damage to structures due to flood and non-flood causes.
- (b) Record and maintain the flood and non-flood damage of substantial damage structures and provide a letter of Substantial Damage Determination to the owner and the New Jersey Department of Environmental Protection, Bureau of Flood Control.
- (c) Ensure substantial improvements meet the requirements of § 540-527G Residential Construction, § 540-527I Nonresidential Construction, and § 540-527J Manufactured Homes.

G. Duties and responsibilities of the Board of Adjustment. In those cases where an application for development requires a floodplain encroachment permit for a regulated use as a precondition to the issuance of a development permit as set forth in § 540-943F, and such application for development is under the jurisdiction of the Zoning Board of Adjustment, then the Board of Adjustment shall have the same power to act on the application for a floodplain permit subject to the same restrictions and requirements as the Planning Board.

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 (Construction Official):

- (1) Application fee
- (2) Four copies of the floodplain encroachment application form and plans showing the following information:
  - (a) A plan drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities and the location of the foregoing.
  - (b) Elevation in relation to mean sea level of the lowest floor (including basement) of all structures.
  - (c) Elevation in relation to mean sea level to which any nonresidential structure has been floodproofed.
  - (d) Plans showing how any nonresidential floodproofed structure will meet the floodproofing criteria of § 540-527H and a certification by a registered

professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in § 540-527H1.

(e) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(3) Distribution.

(a) The Administrative Officer (Construction Official) shall distribute the application form and plans as follows:

[1] One copy to Emergency Management Coordinator.

[2] One copy to Zoning Officer.

[3] Two copies to Township Engineer's office.

(b) All information shall be complete, responsive and accurate to the best of the applicant's knowledge and ability, and, if required, be prepared by a licensed professional engineer, architect, and/or land surveyor.

(4) Declaration of completeness of submission of additional information. Within 30 days of its submission, the Administrative 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 20 days of being so notified will result in denial of the application. The Administrative 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.

I. Development applications to be consolidated with floodplain encroachment permit applications. Any person who intends to apply for a floodplain encroachment permit hereunder, and who further intends to apply for conditional use approval for subdivision approval, for site plan approval, or for any variance pursuant to N.J.S.A. 40:55D-70c, 40:55D-70d, or 40:55D-76a, shall consolidate all information required by the floodplain encroachment application to be platted with all tentative and final subdivision plats, site

plans, or other such plans submitted pursuant to this chapter. Additional copies of the floodplain encroachment application form shall be submitted as required by the Board. Where platted information has been consolidated as herein required, the Planning Board or Board of Adjustment shall consider simultaneously the application for a floodplain encroachment permit and the application for subdivision, site plan, conditional use or variance approval. Where platted information has been consolidated as herein required, such consolidation shall not constitute a waiver of the requirements of any other provision of this or any other ordinance, except that the Planning Board may refrain from taking any action on such floodplain encroachment permit application until final subdivision, site plan, conditional use, or variance approval is granted or denied. This subsection is in no way intended to excuse any applicant for subdivision or site plan approval from any other applicable provisions of this chapter of the Township ordinance, or any other provisions of law, but is solely intended to eliminate the necessity for dual submission.

- J. A floodplain encroachment permit may be issued if, after review and consideration of the application, with due regard for the criteria of this chapter, the use or activity as proposed by the applicant, or as conditioned by the approving authority:
  - (1) Has low flood damage potential;
  - (2) Neither obstructs flood flows nor increases flood heights or velocities unduly, whether acting alone or in combination with other existing or expected uses; and does not increase significantly the rate of local runoff, erosion and sedimentation;
  - (3) Does not degrade significantly the water-carrying capacity of any delineated floodway or channel;
  - (4) Does not degrade significantly the quality of surface water or the quality and quantity of ground waters;
  - (5) Does not stress unduly the environment of the floodplain;
  - (6) Does not require channel modification or relocation;
  - (7) Does not involve the storage of hazardous materials;
  - (8) Does not require excessive fill;
  - (9) Complies with the design standards of § 540-527; and

(10) Is elevated in accordance with § 540-527**GH** in the case of residential structures, or is elevated or floodproofed in accordance with § 540-527**HI**, in the case of nonresidential structures.

K. Conditional issuance. The approving authority may impose such conditions on regulated uses as it deems necessary to promote and protect the public safety, health and welfare, to protect public and private property and to preserve, protect and enhance the natural environment of the floodplain.

L. Certification prior to occupancy. Prior to the issuance of a certificate of occupancy for buildings or structures erected within a coastal high hazard area utilizing structural support pursuant to § 540-527**LM**(2)(b), an engineer or architect licensed in the State of New Jersey must certify that such supports have been built to comply with § 540-527**LM**(2)(b).

M. Revocation of floodplain encroachment permits. Floodplain encroachment permits may be revoked by the Municipal Agency or Administrative 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.

N. Penalties. No structure or land shall hereafter be constructed, **re-located to located**, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Any persons engaging in a use or activity prohibited in this section or engaging in an activity without receiving a floodplain encroachment permit where one is required shall be subject to the penalties of §540-309A.

O. Design waivers. An applicant desiring a waiver of the design conditions and standards required for the issuance of a floodplain encroachment permit may appeal to the Township Zoning Board for a waiver in accordance with § 540-527**MN**.

P. Abrogation and greater restrictions. This section is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this section and other ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Q. In the interpretation and application of this section, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and

(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

R. Warning and disclaimer of liability. The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This section does not imply that land outside the area of special flood hazards or uses permitted with such areas will be free from flooding or flood damages. This section shall not create liability on the part of the Township of Middletown, any officer or employee thereof or the Federal Insurance Administration, for any flood damages that result from reliance on this section or chapter or any administrative decision lawfully made thereunder.

## **SECTION 5**

### **Severability**

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such a decision shall not affect the remaining portions of the 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 6**

### **Enactment**

This Ordinance shall be effective on June 20, 2018 and shall remain in force until modified, amended or rescinded by Township of Middletown, Monmouth County, New Jersey.

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

PASSED ON FIRST READING:

PASSED AND APPROVED:

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STEPHANIE MURRAY, MAYOR

ATTEST:

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HEIDI R. BRUNT, TOWNSHIP CLERK

