

**UPPER BERN TOWNSHIP
BERKS COUNTY
COMMONWEALTH OF PENNSYLVANIA
115-2012
ORDINANCE NO.: 3 of 2012**

**AN ORDINANCE OF UPPER BERN TOWNSHIP, BERKS COUNTY,
PENNSYLVANIA, WHICH IS INTENDED TO REVISE THE UPPER BERN
TOWNSHIP ZONING ORDINANCE OF 2008, BY AMENDING THE PROVISIONS
CONTAINED UNDER SECTION 202 (DEFINITIONS) AND SECTION 502
(FLOODPLAIN OVERLAY DISTRICT).**

BEING ENACTED AND ORDAINED by the Board of Supervisors of Upper Bern Township, Berks County, Pennsylvania (the "Township"), and it is hereby enacted and ordained by authority of the same, as follows:

WHEREAS, the Township has duly adopted and does maintain a zoning ordinance titled the "Upper Bern Township Zoning Ordinance of 2008" (the "Zoning Ordinance").

WHEREAS, Section 609 of Pennsylvania Municipalities Planning Code ("MPC") authorizes municipalities to amend their zoning ordinances.

WHEREAS, the Board of Supervisors believes it is in the best interest of the Township to further regulate floodplain management regulations to comply with the provisions of the Federal Emergency Management Agency and the guidelines established by the Commonwealth of Pennsylvania.

WHEREAS, the Board of Supervisors has considered the comments of the Berks County Planning Commission, the Upper Bern Township Planning Commission and the general public after a public hearing duly conducted in accordance with the provisions of the MPC and the Zoning Ordinance.

NOW THEREFORE, be it ordained that the Upper Bern Township Board of Supervisors does hereby approve and adopt the following amendments to the Zoning Ordinance, as follows:

Section 1: The following principal definition of the "Floodplain Overlay District," as contained under Section 202 (Definitions) of the Upper Bern Township Zoning Ordinance of 2008, shall be revised, replaced and/or amended as follows:

Floodplain Overlay District: A conservation overlay of land and water, which have been defined within the Flood Insurance Study, as prepared by the Federal Emergency Management Agency, which principally include areas located along the major creeks and waterways of Upper Bern Township. The Floodplain Overlay District is further defined and regulated under Section 502 of this Zoning Ordinance and the Upper Bern Township Floodplain Ordinance, as may be revised or amended.

Section 2: The following subordinate definitions of the "Floodplain Overlay District", as contained under Section 202 (Specific Terms) of the Upper Bern Township Zoning Ordinance of 2008, shall be revised, replaced and/or amended as follows:

Base Flood: A flood which has a one percent chance of being equaled or exceeded in any given year (also called the “100-year flood” or one-percent (1%) annual chance flood).

Flood Insurance Rate Map (FIRM): The official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood Insurance Study (FIS): The official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

Flood of Record: The flood which has reached the highest flood elevation above mean sea level at a particular location.

Floodplain: A relatively flat or low land area which is subject to partial or complete inundation from an adjoining or nearby stream, river or watercourse; and/or any area subject to the unusual and rapid accumulation of surface waters from any source. The definition of “floodplain” shall also apply to “floodplain area”.

Floodplain Ordinance: The Upper Bern Township Floodplain Ordinance, as may be revised and/or amended.

Floodway: The channel of a stream or other watercourse plus any adjacent floodplain areas that must be kept free of encroachment so that the base flood can be carried without substantial increase in flood height.

100-Year Flood: A flood that, on the average, is likely to occur once every one hundred (100) years (i.e. that has a one (1%) percent chance of occurring each year, although the flood may occur in any given year). This term may also be referred to as “Special Flood Hazard Area”, which is further defined and regulated within the Upper Bern Township Floodplain Ordinance.

100-Year Flood Boundary: The outer boundary of an area of land that is likely to be flooded once every 100 years (i.e. that has a one percent chance of being flooded each year). A study by the Federal Insurance Administration, the United States Army Corps of Engineers, the United States Department of Agriculture's Soil Conservation Service, the United States Geological Survey, the Susquehanna River Basin Commission, or a licensed professional engineer registered by the Commonwealth of Pennsylvania is necessary to define this boundary.

100-Year Flood Elevation: The water surface elevations of the 100-year flood.

Section 3: The following provisions specified for the “Floodplain Overlay District,” as contained under Section 502 (Floodplain Overlay District) of the Upper Bern Township Zoning Ordinance of 2008, shall be revised, replaced and/or amended as follows:

Section 502: Floodplain Overlay District

- (A) Purpose: The Floodplain Overlay District shall be a conservation overlay to the underlying zoning districts of Upper Bern Township. The purpose and objective of the Floodplain Overlay District is outlined as follows:
- (1) To promote the general health, welfare and/or safety of the community.
 - (2) To encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
 - (3) To minimize danger to public health by protecting water supply and natural drainage.
 - (4) To reduce the financial burdens imposed on the community, governmental or municipal units, and its resident, by preventing excessive development in areas subject to flooding.
 - (5) To require all those uses, activities and development that do occur in flood-prone areas to be protected and or flood-proofed against flooding and flood damage.
 - (6) To comply with federal and state floodplain management requirements.
 - (7) To implement the recommendations concerning natural features, conservation management and land use, as outlined within the Comprehensive Plan and the Floodplain Ordinance.
- (B) Terminology: The Floodplain Overlay District shall include the land or water areas of Upper Bern Township, which are inundated or contained within such flood-prone features including the floodway, the floodway fringe, the 100-year floodplain, special flood hazard area, and other flood-prone features defined by the Federal Emergency Management Agency (FEMA). These flood hazard areas are subject to periodic inundation of flood waters, which could result, or has resulted, in loss of property, damage to structures, loss of soils and other detrimental effects of erosion and may result in loss of life, injury to people, disruption of public and private activities and services, burdensome public expenditures for flood protection and impairment of the tax base, all of which do or may adversely affect the public health, safety and general welfare. The flood losses are or will be caused by the cumulative effect of obstructions in flood hazard areas causing increases in flood heights and velocities and the occupancy of flood hazard areas by uses vulnerable to floods. Additional terms relating to the Floodplain Overlay District are defined within the Upper Bern Township Floodplain Ordinance.
- (C) Defined Districts: The limits of the Floodplain Overlay District are identified in the most recent Flood Insurance Rate Study and on Flood Insurance Rate Maps (FIRM), as prepared and issued by the Federal Emergency Management Agency and adopted by Upper Bern Township.

- (D) **Regulatory Officer:** The Upper Bern Township Zoning Officer shall be designated as the Floodplain Administrator for Upper Bern Township. The duties and responsibilities of the Zoning Officer are further defined by the Upper Bern Township Zoning Ordinance and the Upper Bern Township Floodplain Ordinance. The Upper Bern Township Engineer or Planning Consultant may provide technical assistance with the review of any application and/or site improvements within the Floodplain Overlay District.
- (E) **Permitted Uses:** The uses permitted by right and special exception are further specified within the Upper Bern Township Floodplain Ordinance. Additional land development and use regulations may be required.
- (F) **Prohibited Uses:** The uses that are prohibited within the Floodplain Overlay District are specified within the Upper Bern Township Floodplain Ordinance.
- (G) **Nonconformities:** Existing uses, buildings and structure located within the Floodplain Overlay District shall comply with the provisions of the Upper Bern Township Floodplain Ordinance.
- (H) **Variances:** Zoning and land development variances from the provisions of this Zoning Ordinance and the Floodplain Ordinance should be discouraged. However, if a variance is essential and can not be avoided, the applicable provisions specified by the Floodplain Overlay District shall be considered by the Zoning Officer and the Zoning Hearing Board.
- (I) **Design and Performance Standards:** Unless otherwise specified by the provisions contained within this Zoning Ordinance, the standards and criteria included in the Floodplain Overlay District are to be used, together with the provisions of the Upper Bern Township Floodplain Ordinance.
- (J) **Permits:** Irrespective of the provisions contained within this Zoning Ordinance, a permit shall be required for all proposed uses, site improvements and development activities within the Floodplain Overlay District in accordance with the provisions specified by this Zoning Ordinance and the Floodplain Ordinance.
- (K) **Penalties, Enforcement and Appeals:** Upper Bern Township shall enforce the provisions specified by the Floodplain Overlay District in accordance with the provisions of this Zoning Ordinance and the Floodplain Ordinance. All violations, penalties and appeals shall be considered in accordance with the provisions specified by this Zoning Ordinance and the Floodplain Ordinance.
- (L) **Discrepancy Clause:** If any sentence, clause, section, or part of this Zoning 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 this Zoning Ordinance.

Section 4. Repealer. All Ordinances or Resolutions, or parts of Ordinances or Resolutions, insofar as they are inconsistent herewith, shall be and the same are hereby repealed.

Section 5. Validity. If any section or part of a section of this Ordinance shall be declared invalid, such invalidity shall not affect the remaining parts or sections of this Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been enacted as if such invalid section, or portion thereof, had not been included therein.

Section 6. Effective Date. This Ordinance shall become effective five (5) days after enactment thereof.

ORDAINED AND ENACTED this 8th day of February, 2012, by a vote of 3 Yes
0 No 0 Abstained 0 Absent.

UPPER BERN TOWNSHIP BOARD OF SUPERVISORS

Attest:

Angela Klee
Secretary

By:

David Yoder
David Yoder, Supervisor

Ervin D. Steinly, Jr.
Ervin D. Steinly, Jr., Supervisor

Randy Loeb
Randy Loeb, Supervisor

Randy Loeb