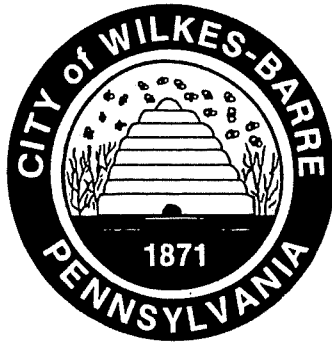


**CITY OF WILKES-BARRE  
PENNSYLVANIA**



# **CITY COUNCIL AGENDA**

---

**CITY COUNCIL**

**MAY 7, 2024**

**6:00 P.M. Mayor George C. Brown (See Attached)**

**WILKES-BARRE CITY COUNCIL  
WORK SESSION – MAY 7, 2024  
MAYOR’S AGENDA**

**RESOLUTIONS:**

**Authorizing the mayor to enter into an agreement with the lowest, most qualified bidder, PennEastern Engineers, LLC., in the amount of \$25,000.00 for the Kirby Park ADA and Other Upgrades Project along with any or all other project documents. The project will be funded through the Pennsylvania Department of Community and Economic Development’s (DCED) Marketing to Attract Tourist grant funding.**

**ORDINANCE:**

**Repealing “Article 11 Flood Plain Management” of Appendix A in the Code of Ordinances of the City of Wilkes-Barre and enacting a new Article 11 Entitled “Flood Plain Management” in Appendix A.**



Resolution No. \_\_\_\_\_

Wilkes-Barre, PA \_\_\_\_\_

*BE IT RESOLVED by the City Council of the City of Wilkes-Barre:*

**WHEREAS**, the City of Wilkes-Barre has publicly advertised for engineering services related to the Kirby Park ADA and Other Upgrades Project;

**WHEREAS**, the project will consist of installation of ADA compliant pathways from the parking lot area to access the main softball field, track area and restrooms. Additionally, new ADA curb cuts and ramps will be installed from the parking lot area to the ADA pathways. Lastly, ADA parking areas will be designated and the parking lot area and main roadway into Kirby Park will be repaved;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Wilkes-Barre that the Mayor is hereby authorized to enter into an agreement with the lowest, most qualified bidder, PennEastern Engineers, LLC., in the amount of \$25,000.00 for the project, along with any or all other project documents, related to Kirby Park ADA and Other Upgrades Project. The project will be funded through the Pennsylvania Department of Community and Economic Development's (DCED) Marketing to Attract Tourist grant funding.

Submitted by \_\_\_\_\_

**ROLL CALL**

FILE OF COUNCIL

No. \_\_\_\_\_ of 2024

AN ORDINANCE

**OF THE CITY OF WILKES-BARRE, PENNSYLVANIA REPEALING  
"ARTICLE 11 FLOOD PLAIN MANAGEMENT" OF APPENDIX A IN THE  
CODE OF ORDINANCES OF THE CITY OF WILKES-BARRE AND  
ENACTING A NEW ARTICLE 11 ENTITLED "FLOOD PLAIN  
MANAGEMENT" IN APPENDIX A**

NOW, THEREFORE, IT IS HEREBY ORDERED AND ENACTED BY THE CITY  
COUNCIL OF THE CITY OF WILKES-BARRE THAT APPENDIX A: ARTICLE  
11 ENTITLED FLOOD PLAIN MANAGEMENT OF THE ZONING  
ORDINANCE IN THE CITY OF WILKES-BARRE CODE OF ORDINANCES IS  
HEREBY ENACTED AS FOLLOWS:

**APPENDIX A. ZONING ORDINANCE**

ORDINANCE.

The new "Article 11: Floodplain Management" section of the City of  
Wilkes-Barre Zoning Ordinance

SEVERABILITY.

The provisions of this ordinance are severable. If any part of this  
ordinance is declared to be unconstitutional, illegal, or invalid, the validity of the  
remaining provisions shall be unaffected thereby. It is the intention of the  
Council of the City of Wilkes-Barre that this ordinance would have been adopted  
had such unconstitutional, illegal, or invalid part not been included.

REPEALER.

All ordinances or parts of ordinances inconsistent herewith be and the  
same are hereby repealed. All ordinances not specifically amended hereby  
remain in full force and effect.

Passed finally by the City Council of the City of Wilkes-Barre on  
\_\_\_\_\_.

This Ordinance shall become effective 10 days after the final adoption by  
the Wilkes-Barre City Council.

ATTEST:

\_\_\_\_\_  
Cathy Payne, City Clerk

ARTICLE 11  
FLOOD PLAIN MANAGEMENT

**Contents**

SECTION 1101	STATUTORY AUTHORIZATION.....	1
SECTION 1102	GENERAL PROVISIONS .....	1
SECTION 1103	APPLICABILITY .....	1
SECTION 1104	ABORGATION and GREATER RESTRICTIONS .....	2
SECTION 1105	SEVERABILITY .....	2
SECTION 1106	WARNING AND DISCLAIMER OF LIABILITY .....	2
SECTION 1107	DEFINITIONS .....	2
SECTION 1108	ADMINISTRATION.....	7
	Designation of the Floodplain Administrator .....	7
SECTION 1109	PERMITS REQUIRED .....	7
SECTION 1110	DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.....	7
SECTION 1111	APPLICATION PROCEDURES AND REQUIREMENTS.....	8
SECTION 1112	REVIEW BY COUNTY CONSERVATION DISTRICT.....	11
SECTION 1113	REVIEW OF APPLICATION BY OTHERS.....	12
SECTION 1114	CHANGES .....	12
SECTION 1115	PLACARDS .....	12
SECTION 1116	START OF CONSTRUCTION .....	12
SECTION 1117	ENFORCEMENT.....	12
SECTION 1118	APPEALS .....	13
SECTION 1119	IDENTIFICATION OF FLOODPLAIN AREAS.....	14
SECTION 1120	DESCRIPTION AND SPECIAL REQUIREMENTS OF IDENTIFIED FLOODPLAIN AREAS .....	14
SECTION 1121	CHANGES IN IDENTIFICATION OF AREA .....	16
SECTION 1122	BOUNDARY DISPUTES.....	16
SECTION 1123	JURISDICTIONAL BOUNDARY CHANGES .....	16
SECTION 1124	TECHNICAL PROVISIONS.....	16
SECTION 1125	ELEVATION AND FLOODPROOFING REQUIREMENTS.....	17
SECTION 1126	DESIGN AND CONSTRUCTION STANDARDS .....	21
SECTION 1127	DEVELOPMENT THAT MAY ENDANGER HUMAN LIFE.....	25
SECTION 1128	SPECIAL REQUIREMENTS FOR SUBDIVISIONS AND DEVELOPMENTS.....	26

SECTION 1129	SPECIAL REQUIREMENTS FOR MANUFACTURED HOMES .....	27
SECTION 1130	SPECIAL REQUIREMENTS FOR RECREATIONAL VEHICLES .....	27
SECTION 1131	PROHIBITED ACTIVITIES .....	28
SECTION 1132	ACTIVITIES REQUIRING SPECIAL PERMITS .....	28
Section 1132.1	General .....	28
Section 1132.2	Application Requirements for Special Permits .....	28
SECTION 1132.3	APPLICATION REVIEW PROCEDURES.....	31
SECTION 1132.4	SPECIAL TECHNICAL REQUIREMENTS .....	31
SECTION 1133	EXISTING STRUCTURES IN IDENTIFIED FLOODPLAIN AREAS ...	32
Section 1133.1	Existing Structures .....	32
Section 1133.2	Improvements .....	32
SECTION 1134	VARIANCES .....	33
Section 1134.1	General .....	33
Section 1134.2	Variance Procedures and Conditions .....	33
SECTION 1135	ENACTMENT .....	35
Section 1135.1	Adoption .....	35

ARTICLE 11  
FLOOD PLAIN MANAGEMENT

WILKES-BARRE CITY  
ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE REQUIRING ALL PERSONS, PARTNERSHIPS, BUSINESSES, AND CORPORATIONS TO OBTAIN A PERMIT FOR ANY CONSTRUCTION OR DEVELOPMENT; PROVIDING FOR THE ISSUANCE OF SUCH PERMITS; SETTING FORTH CERTAIN MINIMUM REQUIREMENTS FOR NEW CONSTRUCTION AND DEVELOPMENT WITHIN AREAS OF WILKES-BARRE CITY WHICH ARE SUBJECT TO FLOODING; AND ESTABLISHING PENALTIES FOR ANY PERSONS WHO FAIL, OR REFUSE TO COMPLY WITH, THE REQUIREMENTS OR PROVISIONS OF THIS ARTICLE.

SECTION 1101 STATUTORY AUTHORIZATION

The Legislature of the Commonwealth of Pennsylvania has, by the passage of the Pennsylvania Flood Plain Management Act of 1978 as amended by Act 65 of 2022, delegated the responsibility to local governmental units to adopt floodplain management regulations to promote public health, safety, and the general welfare of its citizenry. Therefore, the Council of Wilkes-Barre City does hereby order as follows.

SECTION 1102 GENERAL PROVISIONS

The intent of this Article 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 1103 APPLICABILITY

It shall be unlawful for any person, partnership, business, corporation, or government agency (land trusts, local, county, state, or federal entities are not exempt) to undertake, or cause to be

undertaken, any construction or development anywhere within Wilkes-Barre City unless a Permit has been obtained from the Floodplain Administrator.

#### SECTION 1104 ABORGATION and GREATER RESTRICTIONS

This Article 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 Article, the more restrictive shall apply.

#### SECTION 1105 SEVERABILITY

If any section, subsection, paragraph, sentence, clause, or phrase of this Article 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 Article are hereby declared to be severable.

#### SECTION 1106 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection sought by the provisions of this Article is considered reasonable for regulatory purposes and is based on accepted engineering methods of study. Larger floods may occur, or flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Article 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 damage.

This Article shall not create liability on the part of Wilkes-Barre City or any officer or employee thereof for any flood damages that result from reliance on this Article, or any administrative decision lawfully made thereunder.

#### SECTION 1107 DEFINITIONS

##### General

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

##### Specific Definitions

1. Accessory use or structure - a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
2. ASCE 24 means a standard titled "Flood Resistant Design and Construction" that is referenced by the Uniform Construction Code. ASCE 24 is developed and published by the American Society of Civil Engineers, Reston, VA.
3. 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).
4. Base flood discharge - the volume of water resulting from a Base Flood as it passes a given location within a given time, usually expressed in cubic feet per second (cfs).



5. Base flood elevation (BFE) - the elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-30 that indicates 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.
6. Basement - any area of the building having its floor below ground level on all sides.
7. Building - a combination of materials to form a permanent structure having walls and a roof. Included shall be all manufactured homes and trailers to be used for human habitation.
8. Declaration of Land Restriction (Non-Conversion Agreement) - A form signed by the property owner to agree not to convert or modify in any manner that is inconsistent with the terms of the permit and these regulations, certain enclosures below the lowest floor of elevated buildings and certain accessory structures. The form requires the owner to record it on the property deed to inform future owners of the restrictions.
9. Development - any man-made change to improved or unimproved real estate, including but not limited to the construction, reconstruction, renovation, repair, expansion, or alteration of buildings or other structures; the placement of manufactured homes; streets, and other paving; utilities; filling, grading and excavation; mining; dredging; drilling operations; storage of equipment or materials; and the subdivision of land.
10. 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.
11. Expansion to an existing manufactured home park or subdivision – the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
12. Flood - a temporary inundation of normally dry land areas.
13. 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.
14. 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.
15. Floodplain area - a relatively flat or low land area which is subject to partial or complete inundation from an adjoining or nearby stream, river, or watercourse; and/or any area subject to the unusual and rapid accumulation of surface waters from any source.
16. 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.
17. Floodway - the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
18. Highest Adjacent Grade - The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

19. Historic structures – any structure that is:
  - a. 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;
  - b. 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;
  - c. Individually listed on a state inventory of historic places in states which have been approved by the Secretary of the Interior; or
  - d. Individually listed on a local inventory of historic places in communities with historic preservation that have been certified either:
    - i. By an approved state program as determined by the Secretary of the Interior or
    - ii. Directly by the Secretary of the Interior in states without approved programs.
20. Identified Floodplain Area- this term is an umbrella term that includes all the areas within which the community has selected to enforce floodplain regulations. It will always include the area identified as the Special Flood Hazard Area on the Flood Insurance Rate Maps and Flood Insurance Study but may include additional areas identified by the community. See Sections 1119 and 1120 for the specifics on what areas the community has included in the Identified Floodplain Area.
21. Lowest floor - the lowest floor of the lowest fully enclosed area (including basement). An unfinished, flood resistant partially enclosed area, used solely for parking of vehicles, building access, and incidental storage, in an area other than a basement area is not considered the lowest floor of a building, provided that such space is not designed and built so that the structure is in violation of the applicable non-elevation design requirements of this Article.
22. Manufactured home - 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 includes park trailers, travel trailers, recreational and other similar vehicles which are placed on a site for more than 180 consecutive days.
23. Manufactured home park or subdivision – a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
24. Market value (as it pertains to the Floodplain Management Ordinance). The building value, excluding the land, as would be agreed to between a willing buyer and seller, as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of building (actual cash value) or adjusted assessed tax assessment values adjusted to approximate market value by a factor provided by the County Tax Assessment Office.
25. New construction - structures for which the start of construction commenced on or after June 20, 2024, and includes any subsequent improvements to such structures. Any construction started after September 30, 1977, and before June 20, 2024, is subject to the ordinance in effect at the time the permit was issued, provided the start of construction

- was within 180 days of permit issuance.
26. New 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 on or after the effective date of floodplain management regulations adopted by a community.
  27. Person - an individual, partnership, public or private association or corporation, firm, trust, estate, municipality, governmental unit, public utility or any other legal entity whatsoever, which is recognized by law as the subject of rights and duties.
  28. Post-FIRM Structure - is a structure for which construction or substantial improvement occurred after the community's initial Flood Insurance Rate Map (FIRM) dated September 30, 1977, and, as such, would be required to be compliant with the regulations of the National Flood Insurance Program.
  29. Pre-FIRM Structure - is a structure for which construction or substantial improvement occurred on or before the community's initial Flood Insurance Rate Map (FIRM) dated September 30, 1977, and, as such, would not be required to be compliant with the regulations of the National Flood Insurance Program.
  30. Recreational vehicle - a vehicle which is:
    - a. built on a single chassis;
    - b. not more than 400 square feet, measured at the largest horizontal projections;
    - c. designed to be self-propelled or permanently towable by a light-duty truck,
    - d. not designed for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
  31. Regulatory Flood Elevation - the base flood elevation (BFE) or estimated flood height as determined using simplified methods plus a freeboard safety factor of one and one-half (1 ½) feet. The freeboard safety factor also applies to utilities and ductwork.
  32. Repetitively damaged – flood related damages sustained by a structure on two or more separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, cumulatively, equals or exceeds 50 percent of the market value of the structure before the damages occurred.
  33. Special permit - a special approval which is required for hospitals, nursing homes, jails, and new manufactured home parks/ subdivisions and substantial improvements to such existing parks, when such development is located in all, or a designated portion of a floodplain.
  34. Special flood hazard area (SFHA) - means an area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. It is shown on the FIRM as Zone A, AO, A1-A30, AE, A99, or AH.
  35. Start of construction - includes substantial improvement and other proposed new development and means the date the Permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days after the date of the permit and shall be completed within twelve (12) months after the date of issuance of the permit unless a time extension is granted, in writing, by the Floodplain Administrator. 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 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.

36. Structure – a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.
37. Subdivision - the division or re-division of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs, or devisees, transfer of ownership or building or lot development: Provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than ten acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.
38. Substantial damage - damage from any cause sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent or more of the market value of the structure before the damage occurred.
39. Substantial improvement - any reconstruction, rehabilitation, addition, or other improvement of a structure, of which the cost equals or exceeds fifty (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" or "repetitively damaged" regardless of the actual repair work performed. The rolling period of accumulation of improvements for a building or structure ends when the permit for the first improvement is finalized or closed. The term does not, however, include any project for improvement of a structure to correct existing violations of 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.
40. Tanks - including those associated with utility service to a building or that are attached to or located under a building, and tanks that do not serve buildings, such as chemical and fuel tanks.
41. Uniform Construction Code (UCC) – The statewide building code adopted by The Pennsylvania General Assembly in 1999 applicable to new construction in all municipalities whether administered by the municipality, a third party or the Department of Labor and Industry. Applicable to residential and commercial buildings, The Code adopted The International Residential Code (IRC) and the International Building Code (IBC), by reference, as the construction standard applicable with the State floodplain construction. For coordination purposes, references to the above are made specifically to various sections of the IRC and the IBC.
42. Variance- A grant of relief by a community from the terms of a floodplain management regulation.
43. Violation - means the failure of a structure or other development to be fully compliant

with the community's floodplain management regulations. A 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), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

#### SECTION 1108 ADMINISTRATION

##### Designation of the Floodplain Administrator

The Director of Planning & Zoning is hereby appointed to administer and enforce this Article and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may: (A) Fulfill the duties and responsibilities set forth in these regulations, (B) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees, or (C) Enter into a written agreement or written contract with another agency or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

In the absence of a designated Floodplain Administrator, the Floodplain Administrator duties are to be fulfilled by the Building Inspector.

#### SECTION 1109 PERMITS REQUIRED

A Permit shall be required before any construction or development is undertaken within any area of Wilkes-Barre City.

#### SECTION 1110 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

- A. The Floodplain Administrator shall issue a Permit only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of this and all other applicable codes and ordinances.
- B. Prior to the issuance of any permit, the Floodplain Administrator shall review the application for the permit to determine if all other necessary government permits required by state and federal laws have been obtained, such as those required by the Pennsylvania Sewage Facilities Act (Act 1966-537, as amended); the Pennsylvania Dam Safety and Encroachments Act (Act 1978-325, as amended); the Pennsylvania Clean Streams Act (Act 1937-394, as amended); and the U.S. Clean Water Act, Section 404, 33, U.S.C. 1344. No permit shall be issued until this determination has been made.
- C. In the case of existing structures, prior to the issuance of any Development/Permit, the Floodplain Administrator shall review the proposed cost of improvements or repairs and the pre-improvement market value of the structure, so that a substantial improvement/substantial damage determination can be made, in accordance with FEMA's Substantial Improvement/Substantial Damage Desk Reference.

- D. In the case of existing structures, prior to the issuance of any Development/Permit, the Floodplain Administrator shall review the history of repairs to the subject building, so that any repetitively damaged concerns can be addressed before the permit is issued.
- E. Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant design and construction requirements of this Article is required.
- F. During the construction period, the Floodplain Administrator or other authorized official shall inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable municipal laws and ordinances. He/she shall make as many inspections during and upon completion of the work as are necessary.
- G. In the discharge of his/her duties, the Floodplain Administrator shall have the authority to enter any building, structure, premises, or development in the identified floodplain area, upon presentation of proper credentials, at any reasonable hour to enforce the provisions of this Article.
- H. In the event the Floodplain Administrator discovers that the work does not comply with the permit application or any applicable laws and ordinances, or that there has been a false statement or misrepresentation by any applicant, the Floodplain Administrator shall revoke the Permit and report such fact to the Council for whatever action it considers necessary.
- I. The Floodplain Administrator shall maintain in perpetuity, or for the lifetime of the structure, all records associated with the requirements of this Article including, but not limited to, finished construction elevation data, permitting, inspection and enforcement.
- J. The Floodplain Administrator is the official responsible for submitting a biennial report to FEMA concerning community participation in the National Flood Insurance Program as requested.
- K. The responsibility, authority and means to implement the commitments of the Floodplain Administrator can be delegated from the person identified. However, the ultimate responsibility lies with the person identified in the floodplain ordinance as the floodplain administrator/manager.
- L. FEMA technical bulletins and subsequent guidance publications are incorporated by reference and shall be the basis for interpretation of the applicable provisions of the Uniform Construction Code and of this Article.
- M. The Floodplain Administrator shall consider the requirements of the 34 PA Code and the 2018 IBC and the 2018 IRC, or the latest revision thereof as adopted by the Commonwealth of Pennsylvania.

SECTION 1111 APPLICATION PROCEDURES AND REQUIREMENTS

- A. Application for such a Permit shall be made, in writing, to the Floodplain Administrator

on forms supplied by Wilkes-Barre City. Such application shall contain the following:

1. Name and address of applicant.
  2. Name and address of owner of land on which proposed construction is to occur.
  3. Name and address of contractor.
  4. Site location including address.
  5. Listing of other permits required.
  6. Brief description of proposed work and estimated cost, including a breakout of flood-related cost and the market value of the building before the flood damage occurred where appropriate.
  7. A plan of the site showing the exact size and location of the proposed construction as well as any existing buildings or structures.
- B. If any proposed construction or development is located entirely or partially within any identified floodplain area, applicants for Permits shall provide all the necessary information in sufficient detail and clarity to enable the Floodplain Administrator to determine that:
1. all such proposals are consistent with the need to minimize flood damage and conform with the requirements of this and all other applicable codes and ordinances;
  2. all utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage;
  3. adequate drainage is provided to reduce exposure to flood hazards;
  4. structures will be anchored to prevent floatation, collapse, or lateral movement;
  5. building materials are flood-resistant;
  6. appropriate practices that minimize flood damage have been used; and
  7. electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities have been designed and located to prevent water entry or accumulation.
- C. Applicants shall file the following minimum information plus any other pertinent information as may be required by the Floodplain Administrator to make the above determination:
1. A completed Permit Application Form.
  2. A plan of the entire site, clearly and legibly drawn at a scale of one (1) inch being

equal to one hundred (100) feet or less, showing the following:

- a. north arrow, scale, and date;
  - b. topographic contour lines, if available;
  - c. the location of all existing and proposed buildings, structures, and other improvements, including the location of any existing or proposed subdivision and development;
  - d. the location of all existing streets, driveways, and other access ways; and
  - e. the location of any existing bodies of water or watercourses, identified floodplain areas, and, if available, information pertaining to the floodway, and the flow of water including direction and velocities.
3. Plans of all proposed buildings, structures and other improvements, drawn at suitable scale showing the following:
- a. the proposed lowest floor elevation of any proposed building based upon North American Vertical Datum of 1988;
  - b. the elevation of the base flood;
  - c. supplemental information as may be necessary under 34 PA Code, the 2018 IBC or the 2018 IRC, or the latest revision thereof as adopted by the Commonwealth of Pennsylvania.
4. The following data and documentation:
- a. detailed information concerning any proposed floodproofing measures and corresponding elevations.
  - b. if available, information concerning flood depths, pressures, velocities, impact and uplift forces and other factors associated with a base flood.
  - c. documentation, certified by a registered professional engineer or architect, to show that the effect of any proposed development within a Floodway Area (See section 1120 A) will not increase the base flood elevation at any point.
  - d. documentation, certified by a registered professional engineer or architect, to show that the cumulative effect of any proposed development within an AE Area/District without floodway (See Section 1120 B) when combined with all other existing and anticipated development, will not increase the base flood elevation more than one (1) foot at any point within the community.



- e. a document, certified by a registered professional engineer or architect, which states that the proposed construction or development has been adequately designed to withstand the pressures, velocities, impact, and uplift forces associated with the base flood.

Such statement shall include a description of the type and extent of flood proofing measures which have been incorporated into the design of the structure and/or the development.

- f. detailed information needed to determine compliance with Section 1126 F., Storage, and Section 1127, Development Which May Endanger Human Life, including:
  - i. the amount, location and purpose of any materials or substances referred to in Sections 1126 F. and 1127 which are intended to be used, produced, stored, or otherwise maintained on site.
  - ii. a description of the safeguards incorporated into the design of the proposed structure to prevent leaks or spills of the dangerous materials or substances listed in Section 1127 during a base flood.
- g. the appropriate component of the Department of Environmental Protection's "Planning Module for Land Development."
- h. where any excavation or grading is proposed, a plan meeting the requirements of the Department of Environmental Protection, to implement and maintain erosion and sedimentation control.

D. The Floodplain Administrator, or designee, shall not issue any permit for a structure denied flood insurance coverage by FEMA, pursuant to Section 1316 of the National Flood Insurance Act of 1968, unless the permit is for activities to bring the 1316 structure into compliance with this Code, and the 34 PA Code and the 2018 IBC and the 2018 IRC, or the latest revision thereof as adopted by the Commonwealth of Pennsylvania

E. Applications for Permits shall be accompanied by a fee, payable to the municipality based upon the estimated cost of the proposed construction as determined by the Floodplain Administrator.

#### SECTION 1112 REVIEW BY COUNTY CONSERVATION DISTRICT

A copy of all applications and plans for any proposed construction or development in any identified floodplain area to be considered for approval may be submitted by the Floodplain Administrator to the County Conservation District for review and comment prior to the issuance of a Permit. The recommendations of the Conservation District may be considered by the Floodplain Administrator for possible incorporation into the proposed plan.

### SECTION 1113 REVIEW OF APPLICATION BY OTHERS

A copy of all plans and applications for any proposed construction or development in any identified floodplain area to be considered for approval may be submitted by the Floodplain Administrator to any other appropriate agencies and/or individuals (e.g., planning commission, municipal engineer, etc.) for review and comment.

### SECTION 1114 CHANGES

After the issuance of a Permit by the Floodplain Administrator, no changes of any kind shall be made to the application, permit or any of the plans, specifications or other documents submitted with the application without the written consent or approval of the Floodplain Administrator. Requests for any such change shall be in writing and shall be submitted by the applicant to Floodplain Administrator for consideration.

### SECTION 1115 PLACARDS

In addition to the Permit, the Floodplain Administrator shall issue a placard, or similar document, which shall be displayed on the premises during the time construction is in progress. This placard shall show the number of the Permit, the date of its issuance, and be signed by the Floodplain Administrator.

### SECTION 1116 START OF CONSTRUCTION

Work on the proposed construction or development shall begin within 180 days after the date of issuance of the development permit. Work shall also be completed within twelve (12) months after the date of issuance of the permit or the permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator. The issuance of a development permit does not refer to the zoning approval.

The actual start of construction 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 manufactured 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.

Time extensions shall be granted only if a written request is submitted by the applicant, who sets forth sufficient and reasonable cause for the Floodplain Administrator to approve such a request and the original permit is compliant with the ordinance & FIRM/FIS in effect at the time the extension is granted.

### SECTION 1117 ENFORCEMENT

#### A. Notices

Whenever the Floodplain Administrator or other authorized municipal representative determines that there are reasonable grounds to believe that there has been a violation of any provisions of this Article, or of any regulations adopted pursuant thereto, the Floodplain Administrator shall give notice of such alleged violation as hereinafter provided. Such notice shall:

1. be in writing;
2. include a statement of the reasons for its issuance;
3. allow a reasonable time not to exceed a period of thirty (30) days for the performance of any act it requires;
4. be served upon the property owner or his agent as the case may require; provided, however, that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been served with such notice by any other method authorized or required by the laws of this State;
5. contain an outline of remedial actions which, if taken, will affect compliance with the provisions of this Article.

B. Penalties

Any person who fails to comply with any or all of the requirements or provisions of this Article or who fails or refuses to comply with any notice, order of direction of the Floodplain Administrator or any other authorized employee of the municipality shall be guilty of a misdemeanor and upon conviction shall pay a fine to Wilkes-Barre City, of not less than Twenty-five Dollars (\$25.00) nor more than Six Hundred Dollars (\$600.00) plus costs of prosecution. In addition to the above penalties all other actions are hereby reserved including an action in equity for the proper enforcement of this Article. The imposition of a fine or penalty for any violation of, or noncompliance with this Article shall not excuse the violation or noncompliance or permit it to continue. All such persons shall be required to correct or remedy such violations and noncompliance within a reasonable time. Any development initiated or any structure or building constructed, reconstructed, enlarged, altered, or relocated, in noncompliance with this Article may be declared by the Council to be a public nuisance and abatable as such.

SECTION 1118      APPEALS

- A. Any person aggrieved by any action or decision of the Floodplain Administrator concerning the administration of the provisions of this Article, may appeal to the Zoning Hearing Board. Such appeal must be filed, in writing, within thirty (30) days after the decision, determination or action of the Floodplain Administrator.
- B. Upon receipt of such appeal the Zoning Hearing Board shall consider the appeal in accordance with the Municipalities Planning Code and any other local ordinance.

- C. Any person aggrieved by any decision of the Zoning Hearing Board may seek relief therefrom by appeal to court, as provided by the laws of this State including the Pennsylvania Flood Plain Management Act.

SECTION 1119 IDENTIFICATION OF FLOODPLAIN AREAS

The identified floodplain area shall be:

- A. any areas of Wilkes-Barre City, classified as Special Flood Hazard Areas (SFHAs) in the Flood Insurance Study (FIS) and the accompanying Flood Insurance Rate Maps (FIRMs) dated June 20, 2024, and issued by the Federal Emergency Management Agency (FEMA) or the most recent revision thereof, including all digital data developed as part of the Flood Insurance Study and,
- B. any Community Identified Flood Hazard Areas.

The above referenced FIS and FIRMs, and any subsequent revisions and amendments are hereby adopted by Wilkes-Barre City and declared to be a part of this Article.

SECTION 1120 DESCRIPTION AND SPECIAL REQUIREMENTS OF IDENTIFIED FLOODPLAIN AREAS

The identified floodplain area shall consist of the following specific areas:

- A. The Floodway Area shall be those areas identified in the FIS and the FIRM as floodway and which represent the channel of a watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation by more than one (1) foot at any point. This term shall also include floodway areas which have been identified in other available studies or sources of information for those Special Flood Hazard Areas where no floodway has been identified in the FIS and FIRM.
  1. Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
  2. Within any floodway area, no new construction or development shall be allowed, unless the appropriate permit is obtained from the Department of Environmental Protection Regional Office.
- B. The AE Area/District shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which base flood elevations have been provided.
  1. The AE Area adjacent to the floodway shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which base flood

elevations have been provided and a floodway has been delineated.

2. AE Area without floodway shall be those areas identified as an AE zone on the FIRM included in the FIS prepared by FEMA for which base flood elevations have been provided but no floodway has been determined.
  - i. No encroachments, including fill, new construction, substantial improvements, or other development shall be permitted in an AE Zone without floodway, unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed development together with all other existing and anticipated development, would not result in an increase in flood levels of more than one foot within the entire community during the occurrence of the base flood discharge.
  - ii. No new construction or development shall be located within the area measured fifty (50) feet landward from the top-of-bank of any watercourse.
- C. The A Area/District shall be those areas identified as an A Zone on the FIRM included in the FIS prepared by FEMA and for which no base flood elevations have been provided. For these areas, elevation, and floodway information from other Federal, State, or other acceptable sources shall be used when available. Where other acceptable information is not available, the base flood elevation shall be determined by using the elevation of a point on the boundary of the identified floodplain area which is nearest the construction site.

In lieu of the above, the municipality 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 others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the municipality. In the absence of any of the above data or documentation, the community may require elevation of the lowest floor to be at least three feet above the highest adjacent grade.

- D. The AO and AH Area/ District shall be those areas identified as Zones AO and AH on the FIRM and in the FIS. These areas are subject to inundation by 1-percent-annual-chance shallow flooding where average depths are between one and three feet. In Zones AO and AH, drainage paths shall be established to guide floodwaters around and away from structures on slopes.
- E. Community Identified Flood Hazard Areas shall be those areas where Wilkes-Barre City has identified local flood hazard or ponding areas, as delineated and adopted on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high water marks, soils or approximate study methodologies.

SECTION 1121 CHANGES IN IDENTIFICATION OF AREA

The Identified Floodplain Area may be revised or modified by the Council where studies or information provided by a qualified agency or person documents the need for such revision. However, prior to any such change to the Special Flood Hazard Area, approval must be obtained from FEMA. Additionally, as soon as practicable, but not later than six (6) months after the date such information becomes available, a community shall notify FEMA of the changes to the Special Flood Hazard Area by submitting technical or scientific data. See 1124 (B) for situations where FEMA notification is required.

SECTION 1122 BOUNDARY DISPUTES

Should a dispute concerning any identified floodplain boundary arise, an initial determination shall be made by Wilkes-Barre City and any party aggrieved by this decision or determination may appeal to the Council. The burden of proof shall be on the appellant.

SECTION 1123 JURISDICTIONAL BOUNDARY CHANGES

Prior to development occurring in areas where annexation or other corporate boundary changes are proposed or have occurred, the community shall review flood hazard data affecting the lands subject to boundary changes. The community shall adopt and enforce floodplain regulations in areas subject to annexation or corporate boundary changes which meet or exceed those in CFR 44 60.3.

SECTION 1124 TECHNICAL PROVISIONS

General

A. Alteration or Relocation of Watercourse

1. No encroachment, alteration, or improvement of any kind shall be made to any watercourse until all adjacent municipalities which may be affected by such action have been notified by the municipality, and until all required permits or approvals have first been obtained from the Department of Environmental Protection Regional Office.
2. No encroachment, alteration, or improvement of any kind shall be made to any watercourse unless it can be shown that the activity will not reduce or impede the flood carrying capacity of the watercourse in any way.
3. In addition, FEMA and the Pennsylvania Emergency Management Agency shall be notified prior to any alteration or relocation of any watercourse.

B. When Wilkes-Barre City proposes to permit the following encroachments:

- any development that causes a rise in the base flood elevations within the floodway; or
- any development occurring in Zones A1-30 and Zone AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation; or

- alteration or relocation of a stream (including but not limited to installing culverts and bridges)

the applicant shall (as per 44 CFR Part 65.12):

1. apply to FEMA for conditional approval of such action prior to permitting the encroachments to occur.
  2. Upon receipt of the FEMA Administrator's conditional approval of map change and prior to approving the proposed encroachments, a community shall provide evidence to FEMA of the adoption of floodplain management ordinances incorporating the increased base flood elevations and / or revised floodway reflecting the post-project condition.
  3. Upon completion of the proposed encroachments, the applicant shall provide as-built certifications. FEMA will initiate a final map revision upon receipt of such certifications in accordance with 44 CFR Part 67.
- C. Any new construction, development, uses or activities allowed within any identified floodplain area shall be undertaken in strict compliance with the provisions contained in this Article and any other applicable codes, ordinances and regulations.
- D. Within any Identified Floodplain Area, no new privately owned structures shall be located within the area measured fifty (50) feet landward from the top-of-bank of any watercourse.

## SECTION 1125 ELEVATION AND FLOODPROOFING REQUIREMENTS

### A. Residential Structures

1. In AE, A1-30, and AH Zones, any new construction or substantial improvement shall have the lowest floor (including basement) elevated up to, or above, the Regulatory Flood Elevation.
2. In A Zones, where there are no Base Flood Elevations specified on the FIRM, any new construction or substantial improvement shall have the lowest floor (including basement) elevated up to, or above, the Regulatory Flood Elevation determined in accordance with Section 1120.C of this Article.
3. In AO Zones, any new construction or substantial improvement shall have the lowest floor (including basement) at or above the highest adjacent grade at least as high as the depth number specified on the FIRM.
4. The design and construction standards and specifications contained in the 2018 International Building Code (IBC) and in the 2018 International Residential Code (IRC) or the latest edition thereof adopted by the Commonwealth of Pennsylvania, and ASCE 24 and 34 PA Code (Chapters 401-405 as amended) shall be utilized, where they are more restrictive.

## B. Non-residential Structures

1. In AE, A1-30 and AH Zones, any new construction or substantial improvement of a non-residential structure shall have the lowest floor (including basement) elevated up to, or above, the Regulatory Flood Elevation, or be designed and constructed so that the space enclosed below the Regulatory Flood Elevation:
  - a. is floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water and,
  - b. has structural components with the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy:
2. In A Zones, where no Base Flood Elevations are specified on the FIRM, any new construction or substantial improvement shall have the lowest floor (including basement) elevated or completely floodproofed up to, or above, the Regulatory Flood Elevation determined in accordance with Section 1120.C of this Article.
3. In AO Zones, any new construction or substantial improvement shall have their lowest floor elevated or completely floodproofed above the highest adjacent grade to at least as high as the depth number specified on the FIRM.
4. Any non-residential structure, or part thereof, made watertight below the Regulatory Flood Elevation shall be floodproofed in accordance with the W1 or W2 space classification standards contained in the publication entitled "Flood-Proofing Regulations" published by the U.S. Army Corps of Engineers (June 1972, as amended in EP 1165-2-314, December 1995) or the flood load, and flood-resistant construction requirements of ASCE 24. All plans and specifications for such floodproofing shall be accompanied by a statement certified by a registered professional engineer or architect which states that the proposed design and methods of construction are in conformance with the above referenced standards. There should be a statement submitted with the permit application and a statement submitted with the as-built Floodproofing Certificate prior to the issuance of the Certificate of Occupancy.
5. Any non-residential structure that will be floodproofed must submit the following to the Floodplain Administrator along with the non-residential Floodproofing Certificate and prior to the issuance of the Certificate of Occupancy:
  - a. An Inspection and Maintenance Plan detailing the annual maintenance of floodproofed components ensuring that all components will operate properly under flood conditions. Components that must be inspected include at a minimum:
    1. Mechanical equipment such as sump pumps and generators,
    2. Flood shields and closures,



3. Walls and wall penetrations, and

4. Levees and berms (as applicable)

b. Flood Emergency Operation Plan detailing the procedures to be followed during a flooding event and must include information pertaining to how all components will operate properly under all conditions, including power failures. The design professional must produce the plan. An adequate plan must include the following:

1. An established chain of command and responsibility with leadership responsibilities clearly defined for all aspects of the plan.
  2. A procedure for notification of necessary parties when flooding threatens, and flood warnings are issued. Personnel required to be at the building should have a planned and safe means of ingress and should have no other emergency response duties during a flood event. Alternates should be assigned if the primary persons responsible are unable to complete their assigned duties under the plan.
  3. A list of specific duties assigned to ensure that all responsibilities are addressed expeditiously. The locations of materials necessary to properly install all floodproofing components must be included in the list.
  4. An evacuation plan for all personnel or occupants; those without duties for the flood emergency as well as those with duties for implementing the plan. All possible ingress and egress routes must be identified.
  5. A periodic training and exercise program to keep personnel and occupants aware of their duties and responsibilities. Training drills should be held at least once a year and should be coordinated with community officials.
6. The design and construction standards and specifications contained in the 2018 International Building Code (IBC) and in the 2018 International Residential Code (IRC) or the latest revision thereof as adopted by the Commonwealth of Pennsylvania, and ASCE 24 and 34 PA Code (Chapters 401-405 as amended) shall be utilized, where they are more restrictive.

C. Space below the lowest floor

1. Fully enclosed space below the lowest floor (excluding basements) which will be used solely for the parking of a vehicle, building access, or incidental storage in an area other than a basement, shall be designed and constructed to allow for the automatic entry and exit of flood waters for the purpose of equalizing hydrostatic

forces on exterior walls. The term "fully enclosed space" also includes crawl spaces.

2. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:
  - a. a minimum of two openings having a net total area of not less than one (1) square inch for every square foot of enclosed space installed on two (2) separate walls.
  - b. the bottom of all openings shall be no higher than one (1) foot above grade.
  - c. openings may be equipped with screens, louvers, or other coverings or devices if they permit the automatic entry and exit of floodwaters.

#### D. Historic Structures

Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined in this Article, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places, or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

#### E. Accessory structures

Structures accessory to a principal building need not be elevated or floodproofed to remain dry, but shall comply, at a minimum, with the following requirements:

1. the structure shall not be designed or used for human habitation, but shall be limited to the parking of vehicles, or to the storage of tools, material, and equipment related to the principal use or activity.
2. floor area shall not exceed 600 square feet.
3. The structure will have a low damage potential.
4. the structure will be located on the site so as to cause the least obstruction to the flow of flood waters.
5. power lines, wiring, and outlets will be elevated to the Regulatory Flood Elevation.
6. permanently affixed utility equipment and appliances such as furnaces, heaters, washers, dryers, etc. are prohibited.

7. sanitary facilities are prohibited.
8. the structure shall be adequately anchored to prevent flotation, collapse, and lateral movement and shall be designed to automatically provide for the entry and exit of floodwater for the purpose of equalizing hydrostatic forces on the walls. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:
  - a. a minimum of two openings having a net total area of not less than one (1) square inch for every square foot of enclosed space.
  - b. the bottom of all openings shall be no higher than one (1) foot above grade.
  - c. openings may be equipped with screens, louvers, etc. or other coverings or devices provided that they permit the automatic entry and exit of flood waters.
9. For accessory structures that are 200 square feet or larger in area (footprint) and that are below the base flood elevation, a signed Declaration of Land Restriction (Nonconversion Agreement) shall be recorded on the property deed prior to issuance of the Certificate of Occupancy.
10. Prohibit the storage of Hazardous Materials (except for gasoline up to 5 gallons) in accessory structures located in any identified floodplain area.

#### SECTION 1126      DESIGN AND CONSTRUCTION STANDARDS

The following minimum standards shall apply for all construction and development proposed within any identified floodplain area:

##### A. Fill

1. If fill is used, it shall:
  - a. extend laterally at least fifteen (15) feet beyond the building line from all points;
  - b. consist of soil or small rock materials only - Sanitary Landfills shall not be permitted;
  - c. be compacted to provide the necessary permeability and resistance to erosion, scouring, or settling;
  - d. be no steeper than one (1) vertical to two (2) horizontal feet unless substantiated data justifying steeper slopes are submitted to, and approved by the Floodplain Administrator; and
  - e. be used to the extent to which it does not adversely affect adjacent properties.

## B. Drainage Facilities

Storm drainage facilities shall be designed to convey the flow of storm water runoff in a safe and efficient manner. The system shall ensure proper drainage along streets and provide positive drainage away from buildings. The system shall also be designed to prevent the discharge of excess runoff onto adjacent properties.

## C. Water and Sanitary Sewer Facilities and Systems

1. All new or replacement water supply and sanitary sewer facilities and systems shall be located, designed and constructed to minimize or eliminate flood damage and the infiltration of flood waters.
2. Sanitary sewer facilities and systems shall be designed to prevent the discharge of untreated sewage into flood waters.
3. No part of any on-site waste disposal system shall be located within any identified floodplain area except in strict compliance with all State and local regulations for such systems. If any such system is permitted, it shall be located to avoid impairment to it, or contamination from it, during a flood.
4. The design and construction provisions of the UCC and FEMA #348, "Protecting Building Utilities from Flood Damages" and "The International Private Sewage Disposal Code" shall be utilized.

## D. Other Utilities

All other utilities such as gas lines, electrical and telephone systems shall be located, elevated (where possible) and constructed to minimize the chance of impairment during a flood.

## E. Streets

The finished elevation of all new streets shall be no more than one (1) foot below the Regulatory Flood Elevation.

## F. Storage

All materials that are buoyant, flammable, explosive, or in times of flooding, could be injurious to human, animal, or plant life, and not listed in Section 1127, Development Which May Endanger Human Life, shall be stored at or above the Regulatory Flood Elevation or floodproofed to the maximum extent possible.

## G. Placement of Buildings and Structures

All buildings and structures shall be designed, located, and constructed so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum effect upon the flow and height of flood water.

#### H. Anchoring

1. All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, or lateral movement.
2. All air ducts, large pipes, storage tanks, and other similar objects or components located below the Regulatory Flood Elevation shall be securely anchored or affixed to prevent flotation.

#### I. Floors, Walls, and Ceilings

1. Wood flooring used at or below the Regulatory Flood Elevation shall be installed to accommodate a lateral expansion of the flooring, perpendicular to the flooring grain without causing structural damage to the building.
2. Plywood used at or below the Regulatory Flood Elevation shall be of a "marine" or "water-resistant" variety.
3. Walls and ceilings at or below the Regulatory Flood Elevation shall be designed and constructed of materials that are "water-resistant" and will withstand inundation.
4. Windows, doors, and other components at or below the Regulatory Flood Elevation shall be made of metal or other "water-resistant" material.

#### J. Paints and Adhesives

1. Paints and other finishes used at or below the Regulatory Flood Elevation shall be of "marine" or "water-resistant" quality.
2. Adhesives used at or below the Regulatory Flood Elevation shall be of a "marine" or "water-resistant" variety.
3. All wooden components (doors, trim, cabinets, etc.) used at or below the Regulatory Flood Elevation shall be finished with a "marine" or "water-resistant" paint or other finishing material.

#### K. Electrical Components

1. Electrical distribution panels shall be at least three (3) feet above the base flood elevation.
2. Separate electrical circuits shall serve lower levels and shall be dropped from above.

#### L. Equipment

1. Water heaters, furnaces, air conditioning and ventilating units, and other electrical, mechanical or utility equipment or apparatus shall not be located below the

Regulatory Flood Elevation and shall be anchored to resist flotation, collapse, and lateral movement.

2. Ductwork shall be elevated to or above the Regulatory Flood Elevation or floodproofed to remain water resistant.

#### M. Fuel Supply Systems

All gas and oil supply systems shall be designed to prevent the infiltration of flood water into the system and discharges from the system into flood waters. Additional provisions shall be made for the drainage of these systems if flood water infiltration occurs.

#### N. Tanks

1. Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.
2. Above-ground tanks not elevated. Above-ground tanks that do not meet the elevation requirements of {Community Ordinance No.} shall:
  - a. Be permitted in flood hazard areas (Zone A) other than coastal high hazard areas and Coastal A Zones, provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.
  - b. Not be permitted in coastal high hazard areas (Zone V) and Coastal A Zones.
3. Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the regulatory flood elevation and attached to a supporting structure that is designed to prevent flotation, collapse, or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area.
4. Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:
  - a. At or above the regulatory flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
  - b. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

O. Fences in regulated floodways that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Section 1120.A.

P. Pools reference ASCE 24 and FEMA guidance document.

Q. Uniform Construction Code Coordination

The Standards and Specifications contained in 34 PA Code (Chapters 401-405), as amended, and not limited to the following provisions shall apply to the above and other sections and sub-sections of this Article, to the extent that they are more restrictive and supplement the requirements of this Article.

International Building Code (IBC) 2018 or the latest revision thereof as adopted by the Commonwealth of Pennsylvania:

Secs. 801, 1202, 1403, 1603, 1605, 1612, 3402, and Appendix G.

International Residential Building Code (IRC) 2018 or the latest revision thereof as adopted by the Commonwealth of Pennsylvania:

Secs. R104, R105, R109, R322, Appendix E, and Appendix J.

#### SECTION 1127 DEVELOPMENT THAT MAY ENDANGER HUMAN LIFE

A. In accordance with the Pennsylvania Flood Plain Management Act as amended, and the regulations originally adopted by the Department of Community and Economic Development, to be further adopted or amended by the Pennsylvania Emergency Management Agency in consultation with the Department of Environmental Protection as required by the Act, any new or substantially improved structure which:

1. will be used for the production or storage of any of the following dangerous materials or substances; or,
2. 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,
3. 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:

- 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
  - Sulphur and Sulphur products
  - Pesticides (including insecticides, fungicides, and rodenticides)
  - Radioactive substances, insofar as such substances are not otherwise regulated.
- B. Within any Identified Floodplain 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. Within any Floodway Area, any structure of the kind described in Subsection A., above, shall be prohibited. Where permitted within any Identified Floodplain Area, any new or substantially improved residential structure of the kind described in Section 1127 (A), above, shall be elevated to remain completely dry up to at least one and one half (1 ½) feet above base flood elevation and built in accordance with Sections 1124, 1125 and 1126.
- D. Where permitted within any Identified Floodplain Area, any new or substantially improved non-residential structure of the kind described in Section 1127 (A) above, shall be built in accordance with Sections 1124, 1125 and 1126 including:
1. elevated, or designed and constructed to remain completely dry up to at least one and one half (1 ½) feet above base flood elevation, and
  2. designed to prevent pollution from the structure or activity during a base 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 floodproofing 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.

SECTION 1128      SPECIAL REQUIREMENTS FOR SUBDIVISIONS AND DEVELOPMENTS

All subdivision proposals and development proposals containing at least 50 lots or at least 5 acres, whichever is the lesser, in Identified Floodplain Areas where base flood elevation data are not available, shall be supported by hydrologic and hydraulic engineering analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a



licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision (CLOMR) and Letter of Map Revision (LOMR). Submittal requirements and processing fees shall be the responsibility of the applicant.

SECTION 1129 SPECIAL REQUIREMENTS FOR MANUFACTURED HOMES

- A. Within any Floodway Area/District, manufactured homes shall be prohibited.
- B. Within any Identified Floodplain Area manufactured homes 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, all manufactured homes, and any improvements thereto, shall be:
  - 1. placed on a permanent foundation;
  - 2. elevated so that the lowest floor of the manufactured home is at least one and one half (1 ½) feet above base flood elevation;
  - 3. and anchored to resist flotation, collapse, or lateral movement.
- D. Equipment requirement:
  - 1. Water heaters, furnaces, air conditioning and ventilating units, and other electrical, mechanical or utility equipment or apparatus shall not be located below the Regulatory Flood Elevation and shall be anchored to resist flotation, collapse, and lateral movement.
  - 2. Ductwork shall be elevated to or above the Regulatory Flood Elevation or floodproofed to remain water resistant.
- E. Installation of manufactured homes shall be done in accordance with the manufacturers' installation instructions as provided by the manufacturer. Where the applicant cannot provide the above information, the requirements of Appendix E of the 2018 "International Residential Building Code" or the "U.S. Department of Housing and Urban Development's Permanent Foundations for Manufactured Housing," 1984 Edition, draft or latest revision thereto and 34 PA Code Chapter 401-405 shall apply.
- F. Consideration shall be given to the installation requirements of the 2018 IBC, and the 2018 IRC or the latest revision thereto as adopted by the Commonwealth of Pennsylvania, and 34 PA Code, as amended where appropriate and/or applicable to units where the manufacturers' standards for anchoring cannot be provided or were not established for the proposed unit(s) installation.

SECTION 1130 SPECIAL REQUIREMENTS FOR RECREATIONAL VEHICLES

- A. Recreational vehicles in Zones A, A1-30, AH and AE must:

1. be on the site for fewer than 180 consecutive days, and
2. be fully licensed and ready for highway use which means the recreational vehicle or park model is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanent attachments such as additions, rooms, stairs, decks, and porches, and
3. not be occupied for more than 7 consecutive days or 30 days in a calendar year, and
4. be removed from the floodplain when a flood warning is issued.

### SECTION 1131 PROHIBITED ACTIVITIES

The development 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 is prohibited in any Identified Floodplain Area:

1. Nursing homes
2. Jails or prisons
3. 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.

### SECTION 1132 ACTIVITIES REQUIRING SPECIAL PERMITS

#### Section 1132.1 General

In accordance with the administrative regulations originally adopted by the Department of Community and Economic Development to implement the Pennsylvania Flood Plain Management Act as amended, to be further adopted or amended by the Pennsylvania Emergency Management Agency in consultation with the Department of Environmental Protection as required by the Act, the following activities shall be prohibited within any Identified Floodplain Area unless a Special Permit has been issued by Wilkes-Barre City:

- 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

#### Section 1132.2 Application Requirements for Special Permits

Applicants for Special Permits shall provide five copies of the following items:

- A. A written request including a completed Permit Application Form.

- B. A small scale map showing the vicinity in which the proposed site is located.
- C. A plan of the entire site, clearly and legibly drawn at a scale of one (1) inch being equal to one hundred (100) feet or less, showing the following:
1. north arrow, scale and date;
  2. topography based upon the North American Vertical Datum (NAVD) of 1988, showing existing and proposed contours at intervals of two (2) feet;
  3. all property and lot lines including dimensions, and the size of the site expressed in acres or square feet;
  4. the location of all existing streets, driveways, other access ways, and parking areas, with information concerning widths, pavement types and construction, and elevations;
  5. the location of any existing bodies of water or watercourses, buildings, structures and other public or private facilities, including railroad tracks and facilities, and any other natural and man-made features affecting, or affected by, the proposed activity or development;
  6. the location of the floodplain boundary line, information and spot elevations concerning the base flood elevation, and information concerning the flow of water including direction and velocities;
  7. the location of all proposed buildings, structures, utilities, and any other improvements; and
  8. any other information which the municipality considers necessary for adequate review of the application.
- D. Plans of all proposed buildings, structures and other improvements, clearly and legibly drawn at suitable scale showing the following:
1. sufficiently detailed architectural or engineering drawings, including floor plans, sections, and exterior building elevations, as appropriate;
  2. for any proposed building, the elevation of the lowest floor (including basement) and as required, the elevation of any other floor;
  3. complete information concerning flood depths, pressures, velocities, impact and uplift forces, and other factors associated with the base flood;
  4. detailed information concerning any proposed floodproofing measures, including the Flood Emergency Operation Plan and the Inspection and Maintenance Plan;
  5. cross section drawings for all proposed streets, driveways, other accessways, and

parking areas, showing all rights-of-way and pavement widths;

6. profile drawings for all proposed streets, driveways, and vehicular accessways including existing and proposed grades; and
7. plans and profiles of all proposed sanitary and storm sewer systems, water supply systems, and any other utilities and facilities.

E. The following data and documentation:

1. certification from the applicant that the site upon which the activity or development is proposed is an existing separate and single parcel, owned by the applicant or the client he represents;
2. certification from a registered professional engineer, architect, or landscape architect that the proposed construction has been adequately designed to protect against damage from the base flood;
3. a statement, certified by a registered professional engineer, architect, landscape architect, or other qualified person which contains a complete and accurate description of the nature and extent of pollution that might possibly occur from the development during a base flood, including a statement concerning the effects such pollution may have on human life;
4. a statement certified by a registered professional engineer, architect, or landscape architect, which contains a complete and accurate description of the effects the proposed development will have on base flood elevation and flows;
5. a statement, certified by a registered professional engineer, architect, or landscape architect, which contains a complete and accurate description of the kinds and amounts of any loose buoyant materials or debris that may possibly exist or be located on the site below the base flood elevation and the effects such materials and debris may have on base flood elevation and flows;
6. the appropriate component of the Department of Environmental Protection's "Planning Module for Land Development;"
7. where any excavation or grading is proposed, a plan meeting the requirements of the Department of Environmental Protection to implement and maintain erosion and sedimentation control;
8. any other applicable permits such as, but not limited to, a permit for any activity regulated by the Department of Environmental Protection under Section 302 of Act 1978-166; and
9. an evacuation plan which fully explains the manner in which the site will be safely evacuated before or during the course of a base flood.

### SECTION 1132.3 APPLICATION REVIEW PROCEDURES

Upon receipt of an application for a Special Permit by Wilkes-Barre City the following procedures shall apply in addition to those of Sections 1108-1118:

- A. Within three (3) working days following receipt of the application, a complete copy of the application and all accompanying documentation shall be forwarded to the County Planning Commission by registered or certified mail for its review and recommendations. Copies of the application shall also be forwarded to Wilkes-Barre City Planning Commission and Wilkes-Barre City engineer for review and comment.
- B. If an application is received that is incomplete, Wilkes-Barre City shall notify the applicant in writing, stating in what respect the application is deficient.
- C. If Wilkes-Barre City decides to disapprove an application, it shall notify the applicant, in writing, of the reasons for the disapproval.
- D. If Wilkes-Barre City approves an application, it shall file written notification, together with the application and all pertinent information, with the Pennsylvania Emergency Management Agency, by registered or certified mail, within five (5) working days after the date of approval.
- E. Before issuing the Special Permit, Wilkes-Barre City shall allow the Pennsylvania Emergency Management Agency thirty (30) days, after receipt of the notification by the Agency, to review the application and decision made by Wilkes-Barre City.
- F. If Wilkes-Barre City does not receive any communication from the Pennsylvania Emergency Management Agency during the thirty (30) day review period, it may issue a Special Permit to the applicant.
- G. If the Pennsylvania Emergency Management Agency should decide to disapprove an application, it shall notify Wilkes-Barre City and the applicant, in writing, of the reasons for the disapproval, and Wilkes-Barre City shall not issue the Special Permit.

### SECTION 1132.4 SPECIAL TECHNICAL REQUIREMENTS

- A. In addition to the requirements of Sections 1124-1130 of this Article, the following minimum requirements shall also apply to any proposed development requiring a Special Permit. If there is any conflict between any of the following requirements and those in Sections 1124-1130 of this Article or in any other code, ordinance, or regulation, the more restrictive provision shall apply.
- B. No application for a Special Permit shall be approved unless it can be determined that the structure or activity will be located, constructed, and maintained in a manner which will:
  1. Fully protect the health and safety of the general public and any occupants of the structure. At a minimum, all new structures shall be designed, located, and constructed so that:

- a. the structure will survive inundation by waters of the base flood without any lateral movement or damage to either the structure itself, or to any of its equipment or contents below the BFE.
  - b. the lowest floor (including basement) will be elevated to at least one and one half (1 ½) feet above base flood elevation.
  - c. the occupants of the structure can remain inside for an indefinite period of time and be safely evacuated at any time during the base flood.
2. Prevent any significant possibility of pollution, increased flood levels or flows, or debris endangering life and property.

All hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by Wilkes-Barre City and the Pennsylvania Emergency Management Agency.

### SECTION 1133 EXISTING STRUCTURES IN IDENTIFIED FLOODPLAIN AREAS

#### Section 1133.1 Existing Structures

The provisions of this Article do not require any changes or improvements to be made to lawfully existing structures. However, when an improvement is made to any existing structure, the provisions of Section 1133.2 shall apply.

#### Section 1133.2 Improvements

The following provisions shall apply whenever any improvement is made to an existing structure located within any Identified Floodplain Area:

- A. No expansion or enlargement of an existing structure shall be allowed within any Floodway Area/District that would cause any increase in BFE.
- B. No expansion or enlargement of an existing structure shall be allowed within AE Area/District without floodway that would, together with all other existing and anticipated development, increase the BFE more than one (1) foot at any point.
- C. Any modification, alteration, reconstruction, or improvement of any kind to an existing structure to an extent or amount of fifty (50) percent or more of its market value, shall constitute a substantial improvement and shall be undertaken only in full compliance with the provisions of this Article.
- D. The above activity shall also address the requirements of the 34 PA Code, as amended and the 2018 IBC and the 2018 IRC or most recent revision thereof as adopted by the Commonwealth of Pennsylvania.
- E. Within any Floodway Area/District (See Section 1120 A), no new construction or

development shall be allowed, unless the appropriate permit is obtained from the Department of Environmental Protection Regional Office.

F. Within any AE Area/District without Floodway (See Section 1120 B), no new construction or development shall be located within the area measured fifty (50) feet landward from the top-of-bank of any watercourse.

G. Any modification, alteration, reconstruction, or improvement of any kind occurring as a result of being "repetitively damaged," as defined in this Article, shall be undertaken only in full compliance with the provisions of this Article.

## SECTION 1134 VARIANCES

### Section 1134.1 General

If compliance with any of the requirements of this Article would result in an exceptional hardship to a prospective builder, developer, or landowner, Wilkes-Barre City Zoning Hearing Board may, upon request, grant relief from the strict application of the requirements.

### Section 1134.2 Variance Procedures and Conditions

Requests for variances shall be considered by Wilkes-Barre City Zoning Hearing Board in accordance with the procedures contained in Section 1118 and the following:

- A. No variance shall be granted for any construction, development, use, or activity within any Floodway Area/District that would cause any increase in the BFE.
- B. No variance shall be granted for any construction, development, use, or activity within any AE Area/District without floodway that would, together with all other existing and anticipated development, increase the BFE more than one (1) foot at any point.
- C. No variances shall be granted for a proposed accessory structure that exceeds 600 square feet in size. A signed Non-Conversion Agreement is required as a condition of receiving the variance.
- D. Except for a possible modification of the Regulatory Flood Elevation requirement involved, no variance shall be granted for any of the other requirements pertaining specifically to development regulated by Special Permit (Sections 1132) or to Development Which May Endanger Human Life (Section 1127).
- E. No variance shall be granted for Prohibited Activities (Sections 1131).
- F. If granted, a variance shall involve only the least modification necessary to provide relief.
- G. In granting any variance, Wilkes-Barre City Zoning Hearing Board shall attach whatever reasonable conditions and safeguards it considers necessary to protect the public health, safety, and welfare, and to achieve the objectives of this Article.

H. Whenever a variance is granted, Wilkes-Barre City Zoning Hearing Board shall notify the applicant in writing that:

1. The granting of the variance may result in increased premium rates for flood insurance.
2. Such variances may increase the risks to life and property.

I. In reviewing any request for a variance, Wilkes-Barre City Zoning Hearing Board shall consider, at a minimum, the following:

1. That there is good and sufficient cause.
2. That failure to grant the variance would result in exceptional hardship to the applicant.
3. That the granting of the variance will
  - a. neither result in an unacceptable or prohibited increase in flood heights, additional threats to public safety, or extraordinary public expense,
  - b. nor create nuisances, cause fraud on, or victimize the public, or conflict with any other applicable state or local ordinances and regulations.

J. A complete record of all variance requests and related actions shall be maintained by Wilkes-Barre City Zoning Hearing Board. In addition, a report of all variances granted during the year shall be included in the annual report to the FEMA.

Notwithstanding any of the above, however, all structures shall be designed and constructed so as to have the capability of resisting the one percent (1%) annual chance flood.