

BUILDINGS

CHAPTER 8.

BUILDINGS.¹

Article I. In General.

- § 8-1. State uniform construction code enforcing agency.
- § 8-2. Construction board of appeals.
- § 8-3. Uniform construction code municipal enforcing agency fees, subcode fees.
- § 8-4. Fire limits.

Article IA. Demolition.

- § 8-5. Permit required.
- § 8-6. Procedure to obtain permit.
- § 8-7. Requirements to obtain permit.
- § 8-8. Notice.
- § 8-9. Issuance of permit.
- § 8-10. Action required by persons demolishing a building or structure.
- § 8-11. Exceptions for emergencies and demolitions by the Town of Westfield.
- § 8-11.1. Violations and penalties.
- § 8-11.2. Repealed.

Article II. Buildings Unfit for Human Habitation, Occupancy or Use.

- § 8-12. Definitions.
- § 8-13. Housing code committee designated “public officer.”
- § 8-14. Investigation of complaints that buildings are unfit for human habitation, etc.; issuance of complaint; hearing.
- § 8-15. Issuance and service of order by public officer; authority of public officer to do work when owner fails to do so.
- § 8-16. Costs of proceedings, repairs, abatement, etc., constitute lien on real estate; credits to owners for materials sold by town.
- § 8-17. State law remedies of persons affected by orders or public officer.
- § 8-18. Method of service of orders by public officer.
- § 8-19. Additional powers of public officer.

¹ As to appointment, etc., of building official, see § 2-11 of this Code. As to signs generally, see §§ 3-3 to 3-18. As to throwing stones at buildings, see § 14-14. As to tents, stands and other structures in parks, see § 16-12. As to specifications for house sewer connections, see § 20-5. As to smoke control, see Ch. 21. As to soil removal, see Ch. 22. As to requirement that sidewalks be constructed where buildings are being erected, see §§ 24-29, 24-30. As to numbering of houses and parcels of land, see §§ 24-34 to 24-36. As to swimming pools, see Ch. 26. As to house trailers, see Ch. 289. As to buildings or other structures on used car lots, see § 30-10.

- § 8-20. Appointment of officers, agents, etc., to assist public officer.
- § 8-21. Defects which render buildings unfit for human habitation, etc.
- § 8-22. Applicability of article.
- § 8-23. Penalties.

Article III. Building Code.

Article IV. Storm Water Control and Flood Plain Ordinance.

- § 8-24. Short title.
- § 8-25. Purpose and policy.
- § 8-26. Definitions.
- § 8-27. General requirements.
- § 8-28. Development and use of land located in the flood hazard area.
- § 8-29. Flood insurance.
- § 8-30. Action by planning board.
- § 8-31. Fees.
- § 8-32. Issuance of permits.
- § 8-33. Appeal.

Article V. Payment of Fire Insurance Proceeds under Certain Circumstances.

- § 8-34. Payment of fire insurance proceeds in excess of two thousand five hundred dollars.
- § 8-35. Payment by insurance company.
- § 8-36. Funds held in the event of appeal.
- § 8-37. Installment payments.
- § 8-38. Payments to mortgagee.
- § 8-39. Amendment or modification of official certificate of search.

Article VI. Maintenance of Sites Under Construction.

- § 8-40. Definitions.
- § 8-41. Securing the construction site.
- § 8-42. Penalties.

Article I. In General.

Sec. 8-1. State Uniform Construction Code Enforcing Agency.

(a) There is hereby established in the town a State Uniform Construction Code enforcing agency, which shall be the division of building inspection within the department of public works. Such division shall consist of a construction official, building subcode official, plumbing subcode official, fire protection subcode official, and such other subcode officials for such additional subcodes as the commissioner of the State Department of Community Affairs shall hereafter adopt as part of the State Uniform

Construction Code. The construction official shall be the chief administrator of the enforcing agency in the discharge of the functions and duties established by the Statutes of the State of New Jersey and regulations promulgated thereunder. The town council may, by subsequent amendment hereof, provide for the reorganization of positions or for the redistribution of authority under this section among the several appointed officials; provided, that it shall in all cases conform to the applicable provisions of statute and administrative regulations pertaining thereto.

(b) Each official position created in subsection (a) hereof shall be filled by a person qualified for such position pursuant to the Public Laws of 1975, Chapter 217, as amended and New Jersey Administrative Code, section 5:23, provided, that, in lieu of any particular subcode official, an onsite inspection agency may be retained by contract pursuant to New Jersey Administrative Code, section 5:23. More than one such official position may be held by the same person; provided, that such person is qualified pursuant to Public Laws, 1975, Chapter 217, and New Jersey Administrative Code, section 5:23 to hold such position.

(c) The public shall have the right to do business with the enforcing agency at one office location, except for emergencies and unforeseen or unavoidable circumstances. (G.O. No. 1228, § 1; G.O. No. 1184, § 1.)

Sec. 8-2. Construction board of appeals.

(a) There is hereby established a construction board of appeals to hear appeals from decisions by the enforcing agency. Such board shall consist of five members and such alternates as the town council may approve and appoint. At least one board member shall be either a registered architect or licensed professional engineer with building construction experience, and at least one board member shall be as qualified as a plumbing subcode official, and one as qualified as an electrical subcode official and one as qualified as a fire protection subcode official. No more than two board members shall be selected from the same business or profession. Each member shall be qualified by experience or trained to perform his duties as a member of the board, which shall be no less than that which is required of a construction or subcode official, as provided by statute. Members of the board need not be certified. No member shall receive an appointment unless he shall meet at least three minimum requirements. Members need not be a resident of the Town of Westfield.

(b) The town council shall appoint the board members and any alternate members. For the members first appointed, the town council shall designate the appointees' terms so that one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, and two for a term of four years. At the expiration of such terms and thereafter, appointments shall be made for terms of four years. Vacancies on the board shall be filled for the unexpired term.

The town council shall appoint such number of qualified alternates, as may be appropriate to serve during the absence or disqualification of any member, for terms not to exceed four years; or may, in the alternative appoint alternates on a case by case basis. Alternates need not be residents of the Town of Westfield.

No regular or alternate board member may be a member of the enforcing agency, the decisions of which are subject to the review of the board. No regular or alternate member

of the board shall pass on any question in which he is engaged as contractor or material dealer, or in which he has been involved in the preparation of plans or specifications, or in which he has a personal or professional interest. Regular and alternate members may be removed by the town council for cause after a hearing. A person may serve on more than one construction board of appeals. Employees of the Town of Westfield, the State or any County may serve on such board as members or alternates so long as they meet all other qualifications, provided they be disqualified from consideration of appeals affecting state, town or county owned or leased structures. The town council shall designate one of the regular members of the board to serve as chairman.

(c) No compensation shall be paid to regular or alternate members of the board of appeals for services rendered, but they shall in any event, be reimbursed for all necessary expenses incurred by them in the performance of their duties. (G.O. No. 1184, § 2; G.O. No. 1498, § I.)

Sec. 8-3. Uniform construction code municipal enforcing agency fees, subcode fees.

(a) *General.*

(1) The fee for plan review, computed as a percentage of the fees for a construction permit, shall be due at the time of application for a permit. Plan review fees are not refundable.

(2) The fee to be charged for a construction permit will be the sum of the basic construction fee plus all applicable special fees, such as elevator or sign fees. All fees shall be rounded to the nearest dollar amount. This fee shall be paid before a permit is issued.

(3) A fee to be charged for a certificate of occupancy shall be paid before a certificate is issued. This fee shall be in addition to the construction permit fee.

(b) *U.C.C. Municipal Enforcing Agency fees shall be as follows:*

(1) Plan review fee: The fee for plan review shall be 20 percent of the amount to be charged for a new construction permit, except that elevator device plan review shall be as in subsection (b)(5) and (6) below.

(2) The basic construction fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and pieces of equipment, the number of electrical fixtures and devices and the number of sprinklers, standpipes, and detectors (smoke and heat) at the unit rates provided herein plus any special fees. The minimum fee for a basic construction permit shall be \$42.00. The minimum fee per subcode shall be \$42.00.

a. Building volume or cost: The fees for new construction or alternation are as follows:

1. Fees for new construction shall be based upon the volume of the structure. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28. The new construction fee shall be in the amount of \$0.027 per cubic foot of volume for buildings and structures of all use groups and types of construction as classified and defined in chapters 3 and 4 of the building subcode. The minimum fee for new or added volume shall be \$150.00.

2. Fees for renovations, alterations and repairs shall be based upon the estimated cost of the work. The fee shall be in the amount of \$24.00 per \$1,000 of the estimated cost of the work up to and including \$50,000. From \$50,001 up to and including \$100,000, the additional fee shall be in the amount of \$18.00 per \$1,000 of estimated cost above \$50,000. Above \$100,000, the additional fee shall be in the amount of \$15.00 per \$1,000 of estimated cost above \$100,000. For the purpose of determining estimated cost, the applicant shall submit to the Agency such cost data as may be available or produced by the architect or engineer of record, or by a recognized estimating firm, or by the contractor. A bona fide contractor's bid, if available, shall be submitted. The Agency shall make the final decision regarding estimated cost.

3. Fees for additions shall be computed on the same basis as for new construction for the added portion.

4. Fees for combination renovations and additions shall be computed as the sum of the fees computed separately in accordance with items 2. and 3. above.

5. Flat fees:

[a] The fee for a temporary structure shall be \$90.00.

[b] The fee for a private swimming pool with a security enclosure shall be \$250.00.

[c] The fee for a public swimming pool with a security enclosure shall be \$550.00.

[d] The fee for a security enclosure for a private swimming pool shall be \$75.00.

[e] The fee for a security enclosure for a public swimming pool shall be \$130.00.

[f] The fee for a wood deck up to and including 100 square feet shall be \$65.00.

[g] The fee for a wood deck over 100 square feet and up to and including 200 square feet shall be \$90.00.

[h] The fee for a wood deck over 200 square feet shall be \$120.00

[i] The fee for an open structural tower up to and including 30 feet in height shall be \$110.00

[j] The fee for an open structural tower over 30 feet in height shall be \$275.00.

[k] The fee for a fireplace shall be \$110.00.

[l] The fee for a chimney or chimney liner shall be \$90.00.

[m] The fee for lead hazard abatement shall be \$140.00.

[n] The fee for a freestanding storage shed more than 100 square feet in area or more than 10 feet in height and accessory to buildings of Use Groups R-2, R-3, or R-4 shall be \$65.00. Storage sheds for all other Use Groups shall be based on volume in the amount of \$0.027 per cubic foot with a minimum cost of \$100.00.

[o] The fee for residential roofing and siding permits for buildings of Use Groups R-3 and R-4 shall be \$65.00, but shall be priced individually if combined under the same permit.

[p] The fee for all asbestos abatement work shall be \$84.00. (\$70.00 for the permit and \$14.00 for the certificate of occupancy.)

[q] The fees for the installation of each liquid storage tank used for the storage of gasoline, diesel fuel, fuel oil, motor oil, waste oil, chemical or other miscellaneous storage tanks whether above or underground tanks shall be as follows:

[1] For tanks up to and including 550 US gallons shall be \$75.00.

[2] For tanks over 550 US gallons up to and including 2000 US gallons shall be \$125.00.

[3] For tanks over 2000 US gallons shall be \$125.00 plus \$10.00 for every 1000 gallons or each part thereafter in excess of 2000 gallons.

b. Plumbing fixtures and equipment: The fees shall be as follows:

1. The fee shall be in the amount of \$10.00 per fixture connected to the plumbing system for all fixtures and appliances except as listed in (b)(2), b, 2 and 3 below.

2. The fee shall be \$65.00 per special device for the following: grease traps, oil separators; water-cooled air conditioning units, refrigeration units, utility service connections, back flow preventers, except that all back flow preventers for residential use groups R-3 and R-4 for boilers and lawn sprinkler systems shall be \$10.00; steam boilers, hot water boilers (excluding those for domestic water heating), active solar systems, sewer pumps, interceptors and fuel oil piping. There shall be no inspection fee charged for gas service entrances.

3. The fee for gas piping shall be in the amount of \$26.00 per appliance connected thereto.

c. Electrical fixtures and devices: The fee shall be as follows:

1. For from 1 to 50 receptacles or fixtures, the fee shall be in the amount of \$36.00. For each 25 receptacles or fixtures in addition to this, the fee shall be in the amount of \$6.00. For the purpose of computing this fee, receptacles or fixtures shall include lighting outlets, wall switches, fluorescent fixtures, convenience receptacles or similar fixtures, and motors or devices of less than one horsepower or one kilowatt or less.

2. For each motor or electrical device equal to one horsepower and less than or equal to ten horsepower, and for transformers and generators equal to one kilowatt and less than or equal to 10 kilowatts, the fee shall be \$10.00.

3. For each motor or electrical device greater than 10 horsepower and less than or equal to 50 horsepower, for each service panel, service entrance or sub panel less than or equal to 100 amperes; and for all transformers and generators greater than ten kilowatts and less than or equal to 45 kilowatts, the fee shall be \$46.00.

4. For each service panel, service entrance or sub panel greater than 100 amperes and less than or equal to 200 amperes, the fee shall be \$65.00.

5. For each motor or electrical device greater than 50 horsepower and less than or equal to 100 horsepower; for each service panel, service entrance or sub panel greater than 200 amperes and less than or equal to 800 amperes; and for transformers and generators greater than 45 kilowatts and less than or equal to 112.5 kilowatts, the fee shall be \$92.00.

6. For each motor or electrical device greater than 100 horsepower; for each service panel, service entrance or sub panel greater than 800 amperes; and for each transformer or generator greater than 112.5 kilowatts, the fee shall be \$457.00.

7. For the purpose of computing these fees, all motors except those in plug-in appliances shall be counted, including control equipment, generators, transformers and all heating, cooking or other devices consuming or generating electric current.

8. The fee for annual inspections of all wiring in relation to swimming pools, spas and hot tubs shall be \$100.00 for the first pool, spa or hot tub and \$25.00 each for each additional.

d. Fire protection and other hazardous equipment: sprinklers, standpipes, detectors (smoke and heat), pre-engineered suppression systems, gas- and oil-fired appliances not connected to the plumbing system, kitchen exhaust systems, incinerators and crematoriums:

1. The fee for 20 or fewer heads or detectors shall be \$65.00, except for one- and two-family residences (use group R-3 or R-4 of the building code); the fee for 5 or fewer smoke detectors shall be \$46.00.

For 21 to and including 100 heads or detectors, the fee shall be \$120.00.

For 101 to and including 200 heads or detectors, the fee shall be \$229.00.

For 201 to and including 400 heads or detectors, the fee shall be \$594.00.

For 401 to and including 1,000 heads or detectors, the fee shall be \$882.00.

For over 1,000 heads or detectors, the fee shall be \$1,050. In computing fees for heads and detectors, the number shall be counted separately and two fees, one for heads and one for detectors, shall be charged.

2. The fee for each standpipe shall be \$229.00.

3. The fee for each independent pre-engineered system shall be \$92.00.

4. The fee for each gas- or oil-fired appliance that is not connected to the plumbing system shall be \$46.00.

5. The fee for each kitchen exhaust system shall be \$65.00.

7. The fee for each crematorium shall be \$365.00.

8. The fee for each sprinkler system water main shall be \$150.00.

9. The fee for each fire pump shall be \$200.00.

10. The fee for each jockey pump shall be \$50.00.

(3) Certificates and other permits: The fees are as follows:

a. The fee for a demolition or removal permit shall be \$92.00 for a structure of less than 5,000 square feet in area and less than 30 feet in height, for one- and two-family residences (use group R-3 or R-4 of the building code), and \$150.00 for all other use groups.

b. The fee for a permit to construct a sign shall be in the amount of \$1.20 per square foot surface area of the sign, computed on one side only for double-faced signs. The minimum fee shall be \$65.00.

c. The fee for a certificate of occupancy shall be in the amount of 10 percent of the new construction permit fee that would be charged by the Agency pursuant to these regulations. The minimum fee shall be \$120.00, except for one- or two-family

residences (use group R-3 or R-4 of the building subcode) of less than 5,000 square feet in area and less than 30 feet in height, for which the minimum fee shall be \$65.00.

d. The fee for a certificate of occupancy granted pursuant to a change of use group shall be \$174.00.

e. The fee for a certificate of continued occupancy shall be \$174.00.

f. There shall be no fee for a certificate of approval issued pursuant to N.J.A.C. 5:23-2.23(j).

g. There shall be no fee for a temporary certificate of occupancy.

h. The fee for plan review of building for compliance under the alternate systems and non-depletable energy source provisions of the energy subcode shall be \$274.00 for one- and two-family residences (use group R-3 and R-4 of the building subcode), and for light commercial structures having an indoor temperature controlled from a single point, and \$1,369.00 for all other structures.

i. The fee for an application for a variation in accordance with N.J.A.C. 5:23-2.10 shall be \$594.00 for class 1 structures and \$120.00 for class 2 and class 3 structures. The fee for resubmission of an application for a variation shall be \$229.00 for class 1 structures and \$65.00 for class 2 and class 3 structures.

j. The fee for a lead abatement clearance certificate shall be \$28.00.

(4) For cross connections and backflow preventers that are subject to testing or inspection every twelve months, the fee shall be \$46.00 for each device when tested. When they are broken down and tested, the fee shall be \$120.00 for each device.

(5) The fee for plan review for elevator devices in structures in use group R-3 or R-4 and for elevator devices wholly within dwelling units in R-2 structures shall be \$50.00 for each device.

(6) The fee for plan review for elevator devices in structures in use groups other than R-3 or R-4 devices in R-2s exempted by (b)5 above shall be \$260.00 for each device.

(7) The fee for elevator device inspections and tests shall be as set forth in N.J.A.C. 5:23-12.

(c) *Administrative surcharge.*

(1) The administrative surcharge to be added to subcode fees for private onsite inspections and plan review services, furnished under contract, shall be 15 percent.

(d) A State of New Jersey training fee surcharge shall be charged per N.J.A.C. 5:23-4.19.

(e) (1) No person shall be charged a construction permit surcharge fee or enforcing agency fee for any construction, reconstruction, alteration or improvement designed and undertaken solely to promote accessibility by disabled persons to an existing one-family or two-family private residential structure or any of the facilities contained therein.

(2) A disabled person or a parent or sibling of a disabled person shall not be required to pay any municipal fee or charge in order to secure a construction permit for any construction, reconstruction, alteration or improvement which promotes accessibility to his or her own living unit provided the living unit is a one-family or two-family private residential structure.

(3) For purposes of this section, "disabled person" means a person who has the total and permanent inability to engage in any substantial gainful activity by reason of

any medically determinable physical or mental impairment, including blindness, and shall include, but not limited to, any resident of this State who is disabled pursuant to the Federal Social Security Act (42 U.S.C. Section 416), or the Federal Railroad Retirement Act of 1974 (45 U.S.C. Section 231 et seq.), or is rated as having a sixty percent disability or higher pursuant to any Federal law administered by the United States Veterans' Act. For purposes of this definition, "blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees shall be considered as having a central visual acuity of 20/200 or less. (G.O. No. 1199, § I; G.O. No. 1184, § 4; G.O. No. 1212, § I; G.O. No. 1240, § I; G.O. No. 1277, § I; G.O. No. 1391, § I; G.O. No. 1465, § I; G.O. No. 1521, § I; G.O. No. 1557, § I; G.O. No. 1578, §§ I, II; G.O. No. 1646; G.O. No. 1665; G.O. No. 1735; G.O. No. 1747; G.O. No. 1749; G.O. No. 1776.)

Sec. 8-4. Fire limits.

The following fire limits are established pursuant to the New Jersey Administrative Code, section 5:23:

All that part or portion of the town laid out and established as the B-1 (central business), B-2 (retail and wholesale business), C (commercial), and I (industrial park and office), zone districts under an ordinance commonly known as the Land Use Ordinance of the town heretofore adopted, amended and supplemented, or as may hereafter be amended and supplemented. (G.O. No. 1184, § 4; G.O. No. 1340, § 1.)

Article IA. Demolitions.

Sec. 8-5. Permit required.

The demolition of any structure or building within the Town of Westfield shall require a permit from the town council of the Town of Westfield. For purposes of this Article IA, the term demolition shall be defined as the removal, destruction or demolition of more than seventy-five percent of the applicable structure or building. In the event of doubt as to whether the proposed action to the building or structure is a demolition within the meaning of this article, the decision of the construction official shall be final. (G.O. No. 1386, § I; G.O. No. 1894, § I.)

Sec. 8-6. Procedure to obtain permit.

A person seeking a permit to demolish a building or structure within the Town of Westfield shall first apply for such permit at the office of the construction official of the town and said application shall be on forms provided by the construction official. Such application shall require the following information:

- (a) Name and address of the owner of the building or structure;
- (b) The name and address of the contractor who will demolish the building or structure;

(c) A statement as to the liability insurance coverage of said contractor for said work which shall be in a minimum amount of three hundred thousand dollars, which shall set forth amount of coverage, insurance company and insurance agent;

(d) The written consent of the owner of the property and any mortgagees who may hold a mortgage on the property to demolish the building or structure;

(e) Proof that the taxes on the property are current.

The construction official shall determine compliance with requirements of this article for obtaining a demolition permit. If he is satisfied that the applicant has complied with all requirements of this article, he shall so certify such compliance to the town council of the Town of Westfield and shall transmit to the council along with his certification of compliance, the application form and all attachments thereto relating to insurance, inspections and certifications of utility companies. A copy of the certificate of the construction official shall also be sent to the chairman of the planning board, board of adjustment and historic commission. (G.O. No. 1386, § I.)

Sec. 8-7. Requirements to obtain permit.

The following requirements must be met before a permit shall be approved by the town council:

(a) A complete application filed with the construction official;

(b) All fees required by this chapter are paid;

(c) Consent of owner and mortgagees obtained;

(d) Receipt of a certificate of insurance showing liability coverage for the contractor and/or owner in the minimum amount of three hundred thousand dollars;

(e) Statements from the utilities supplying telephone, cable television, electricity, water and gas that these utilities have been disconnected from the structure or building at the street line;

(f) Inspection by the fire prevention officer of the Town of Westfield to determine that all flammable, explosive, toxic, or otherwise hazardous materials have been removed from the building or structure and certification by him that the building or structure is free of such flammable, explosive, toxic or otherwise hazardous materials and safe to demolish. By requesting a permit, the applicant authorizes inspection of the interior and exterior of the premises;

(g) Proof satisfactory to the construction official that provisions have been made to remove all debris, and fill any excavation below grade level which remains as a result of the demolition with clean fill;

(h) Proof that taxes on the property are current;

(i) Proof of compliance with all applicable provisions of town ordinances;

(j) Proof that rodent baiting has been done at the property for at least seven days;

(k) (1) Submission of an appropriate certification from a licensed asbestos contractor following an inspection of the building or structure certifying that no asbestos is located at, on or in any building or structure located on the property; or

(2) Submission of an appropriate certification from a licensed asbestos contractor, that any asbestos located at, on, or in any building or structure located on the property has been removed and disposed of in accordance with all applicable Federal, State and local laws and regulations.

A copy of any such demolition permit approval issued by the town council shall be sent to the chairman of the planning board, board of adjustment and historic commission. (G.O. No. 1386, § I; G.O. No. 1894, § I.)

Sec. 8-8. Notice.

(a) Following approval by the town council of a person's application to demolish a building or structure within the Town of Westfield, the owner of the property or an authorized agent of the owner shall provide notice in the manner set forth herein.

(b) The owner of the property for which a demolition permit has been approved by the town council shall provide to each owner of lots adjoining the subject property and to the owners of wired or other facilities, the temporary removal of which may be necessitated by the proposed work, notice that a demolition has been approved by the town council.

(c) The notice shall contain the following information:

(1) The date of the approval by the town council of the demolition.

(2) Contact information for the owner of the property and the contractor to perform the demolition including name, address and telephone number and cellular telephone information, if any.

(3) The estimated date of the demolition of the building or structure on the property.

(d) Notice to adjoining property owners shall be given by (1) serving a copy thereof on the adjoining property owner as reflected in the current records of the tax assessor of the town, or (2) mailing a copy thereof by certified mail to the adjoining property owner at his address as reflected in the current records of the tax assessor of the town.

(e) The owner or his authorized agent shall file an Affidavit of Proof of Service of the Notice required by this section with the construction official. (G.O. No. 1894, § I.)

Sec. 8-9. Issuance of permit.

The construction official shall issue a permit for demolition sought pursuant to this article only after all of the following requirements have been met:

(a) Filing of a complete application as required by section 8-6.

(b) Compliance with the requirements of section 8-7.

(c) Approval of the demolition permit by the town council.

(d) Receipt of proof of service of the notice required by section 8-8.

(e) The passage of three additional business days following filing with the construction official of proof of service of the notice required by section 8-8.

(G.O. No. 1894, § I.)

Sec. 8-10. Action required by persons demolishing a building or structure.

Within five working days after demolition is complete, all debris shall be removed from the site and any excavation resulting shall be filled with clean fill unless an

extension of such time is obtained from the construction official for good cause shown. (G.O. No. 1386, § I; G.O. No. 1894, § I.)

Sec. 8-11. Exceptions for emergencies and demolitions by the Town of Westfield.

In the case of emergencies where there is a present danger to persons or property because the condition of a structure or building as a result of fire, explosion or other cause, the construction official or the town engineer shall have the power to issue a demolition permit at his own discretion without town council approval so long as he is satisfied that a bona fide emergency exists and that the structure to be demolished has been disconnected from all utility services as required by this article and that no hazards exist within the building which would render it dangerous to demolish. The Town of Westfield shall be exempt from the requirements of obtaining a permit under this article for the demolition of any building or structure by the Town of Westfield, but the town shall comply with all safety requirements of this article. (G.O. No. 1386, § I; G.O. No. 1894, § I.)

Sec. 8-11.1. Violations and penalties.

Any person demolishing any building or structure or who causes or suffers the demolition of any building or structure within the Town of Westfield without first having obtained a permit therefor; or having demolished a building or structure, fails to remove the debris or fill any excavations as provided herein, shall be deemed in violation of this article. In the event of such violation, the construction official shall cause a summons and complaint to be issued returnable in the municipal court charging violation of this article. Penalty for violation shall be a fine not more than one thousand dollars, no more than thirty days in jail, or both. Each day that such offense continues shall be considered a separate offense. (G.O. No. 1386, § I; G.O. No. 1894, § I.)

Sec. 8-11.2. Repealed by Ordinance No. 990.

Article II. Buildings Unfit for Human Habitation, Occupancy or Use.

Sec. 8-12. Definitions.

The following terms, whenever used or referred to in this article, shall have the meanings respectively ascribed to them in this section:

Building. Any building or structure or part thereof, whether used for human habitation or otherwise, including any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

Owner. The holder or holders of the title in fee simple.

Parties in interest. All individuals, associations and corporations who have interests or record in a building and any who are in actual possession thereof.

Public authority. Any housing authority or any officer who is in charge of any department or branch of the town government relating to health, fire or building regulations, or to other activities concerning buildings in the town.

Public officer. The officers who are authorized by this article to exercise the powers prescribed by this article.
(G.O. No. 1018, § 1.)

Sec. 8-13. Housing code committee designated “public officer.”

The housing code committee, created pursuant to section 12A-2, consisting of the health officer, who shall be chairman of such committee, the fire inspector of the fire department and the building official, is hereby designated and appointed as the public officer to exercise the powers prescribed by this article. A majority vote shall be necessary for all actions taken by such committee. (G.O. No. 1018, § 2.)

Sec. 8-14. Investigations of complaints that buildings are unfit for human habitation, etc.; issuance of complaint; hearing.

Whenever a petition is filed with the public officer by a public authority or by at least five residents of the town charging that a building is unfit for human habitation or occupancy or use or whenever it appears to the public officer on its own motion that any building is unfit for human habitation or occupancy or use, the public officer shall, if its preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such building a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or its designated agent), at a place therein fixed, not less than ten days nor more than thirty days after the serving of such complaint. The owner and parties in interest shall have the right to file an answer to such complaint and to appear in person or otherwise, and give testimony at the place and time fixed in the complaint. Such answer must be filed at or before the time fixed for such hearing. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer. (G.O. No. 1018, § 3.)

Sec. 8-15. Issuance and service of order by public officer; authority of public officer to do work when owner fails to do so.

If, after such notice and hearing, the public officer determines that the dwelling under construction is unfit for human habitation, as herein defined, he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof and parties in interest an order requiring:

(a) The repair, alteration or improvement of such building to be made by the owner, within a reasonable time, which time shall be set forth in the order, or, at the opinion of the owner, to vacate or to have such building vacated and closed within the time set forth in the order; and

(b) If the building is in such a condition as to make it dangerous to the health and safety of persons on or near the premises and the owner fails to repair, alter or improve such building within the time specified in the order, that the owner remove or demolish such building within a reasonable time as specified in such order or removal.

(c) That, if the owner fails to comply with an order to repair, alter or improve or, at the option of the owner, to vacate and close the building, the public officer may cause such building to be repaired, altered or improved, or to be vacated and closed. The public officer may cause to be posted on the main entrance of any building so closed, a placard with the following words: "This building is unfit for human habitation or occupancy or use; the use or occupation of this building is prohibited and unlawful."

(d) That, if the owner fails to comply with an order to remove or demolish the building, the public officer may cause such building to be removed or demolished or may contract for the removal or demolition thereof after advertisement for, and receipt of, bids therefore.

(G.O. No. 1018, § 4.)

Sec. 8-16. Costs of proceedings, repairs, abatement, etc., constitute lien on real estate; credits to owner for materials sold by town.

The amount of the cost of the filing of legal papers, expert witnesses' fees, search fees and advertising charges incurred in the course of any proceeding taken under this article determined in favor of the town, and such cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition, if any, or the amount of the balance thereof remaining after deduction of the sum, if any, realized from the sale of materials derived from such building or from any contract for removal or demolition thereof, shall be a municipal lien against the real property upon which such cost was incurred. If the building is removed or demolished by the public officer, he shall sell the materials of such building. There shall be credited against the cost of the removal or demolition thereof, the proceeds of any sale of such materials or any sum derived from any contract for the removal or demolition of the building. If there are no such credits or if the sum of such costs exceeds the total of such credits, a detailed statement of the aforesaid costs and the amount so due shall be filed with the municipal tax assessor or other custodian of the records of tax liens and a copy thereof shall be forthwith forwarded to the owner by registered mail. If the total of the credits exceed such costs, the balance remaining shall be deposited in the superior court by the public officer, shall be secured in such manner as may be directed by such court and shall be disbursed according to the order or judgment of the court to the persons found to be entitled thereto by final order or judgment or such court; provided, that nothing in this section shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise. (G.O. No. 1018, § 5.)

Sec. 8-17. State law remedies of persons affected by orders of public officer.

Any person affected by an order issued by the public officer shall be entitled to the remedies and procedure prescribed by the act entitled "An act authorizing municipalities to adopt ordinances relating to the repair, closing and demolition of dwellings unfit for human habitation; and providing for the remedies and procedure in connection with action taken under such ordinances," being chapter 112 of the Laws of 1942, codified as section 40:48-2.3 et seq. of the Revised Statutes of New Jersey. (G.O. No. 1018, § 6.)

Sec. 8-18. Method of service of orders by public officer.

Complaints or orders issued by the public officer pursuant to this article shall be served upon persons either personally or by registered mail, but if the whereabouts of such persons is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence and the public officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once each week for two successive weeks in a newspaper printed and published in the town or, in the absence of such newspaper, in one printed and published in the county and circulating in the town. A copy of such complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of such complaint or order shall be recorded in the country register's office. (G.O. No. 1018, § 7.)

Sec. 8-19. Additional powers of public officer.

The public officer shall, in addition to the powers granted by this article, have the power to investigate the dwelling conditions in the town in order to determine which dwellings are unfit for human habitation and which are a hazard of fire, accident or other calamity; to administer oaths or affirmations, examine witnesses and receive evidence and to enter upon premises for the purpose of making examinations; provided, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession thereof. (G.O. No. 1018, § 8.)

Sec. 8-20. Appointment of officers, agents, etc., to assist public officer.

The town council shall appoint and fix the duties of such officers, agents and employees as it deems necessary to assist the public officer to carry out the purposes of this article, and with the consent of the public officer, delegate any of its functions and powers under this article to such officers, agents and employees as may be designated. (G.O. No. 1018, § 9.)

Sec. 8-21. Defects which render buildings unfit for human habitation, etc.

The public officer may determine that a building is unfit for human habitation or occupancy or use if he finds that conditions exist in such building which are dangerous or injurious to the health or safety of the occupants of such building, the occupants of neighboring buildings, or other residents of the town. Such conditions may include the following (without limiting the generality of the foregoing): Defects therein increasing the hazards of fire, accident or other calamities; lack of adequate ventilation, light or sanitary facilities; dilapidation; disrepair or structural defects; uncleanness. (G.O. No. 1018, § 10.)

Sec. 8-22. Applicability of article.

Nothing in this article shall be construed to abrogate or impair the powers of any department of the town to enforce any provisions of its Charter or its ordinances or regulations or to prevent or punish violations thereof. (G.O. No. 1018, § 11.)

Sec. 8-23. Penalties.

Any person who shall violate an order of the public officer, after duly made and promulgated pursuant to this article, or who shall interfere with the public officer or any other person authorized to exercise the powers of the public officer, shall, upon conviction in the municipal court, be punished as provided in section 1-5. Such action in and penalties imposed by the municipal court may be in addition to any other action or proceedings provided in this article. Each day that a violation is permitted to exist shall constitute a separate offense. (G.O. No. 1018, § 12.)

Article III. Building Code.²

Pursuant to Public Laws of 1975, Chapter 217, as amended, and regulations promulgated thereunder, commonly known as the State Uniform Construction Code Act, all municipalities of the State are required to use the Construction Code and subcodes as adopted from time to time by the Commissioner of the Department of Community Affairs of the State of New Jersey.

Article IV. Storm Water Control and Flood Plain Ordinance.³

Sec. 8-24. Short title.

This article shall be known and may be cited as the Storm Water Control and Flood Plain Ordinance of the Town of Westfield. (G.O. No. 1267, § 1.)

Sec. 8-25. Purpose and policy.

It is hereby found that the rivers and streams within the town are subject to recurrent flooding, that such flooding endangers life and damages public and private property and facilities, that this condition is aggravated by development and encroachments in the flood plain; that such development can contribute to the condition by increasing local storm runoff and erosion, and that the most appropriate method of alleviating such condition is through regulation of such development and encroachment. It is, therefore, determined that the special paramount public interest in the control of storm drainage justifies the regulation of land use located in the flood plain and regulation or storm drainage for the entire municipal area, as provided in this article which is in the exercise of the police power of the municipality, for the protection of the persons and property of its inhabitants, and for the preservation of the health, safety, and general welfare.

² For state law authorizing town to adopt Building Code by reference, see N.J.S.A., § 40:49-5.1.

³ Editor's note – This was previously “Storm Water Damage Control.” (G.O. No. 1150.)

Among the purposes of this article are:

- (a) To prevent loss of life;
 - (b) To protect the public health and promote public safety and welfare;
 - (c) To minimize losses and damages to public and private property due to inundation and silting caused by floodwaters and storm runoff;
 - (d) To prevent installation of structures and restrict land uses which cause increases in flood heights and/or velocities, erosion and silting;
 - (e) To reduce public expenditures for emergency operations, evacuations and restorations;
 - (f) To prevent increase in volume and rate of surface runoff due to development;
 - (g) To prevent further unwise development in flood plains, thus reducing future expenditures for protective measures;
 - (h) To preserve, protect and enhance the natural environment of the flood plains;
- and
- (i) To prevent damage to transportation and utility systems.

(G.O. No. 1267, § 2.)

Sec. 8-26. Definitions.

For the purposes of this article, unless the context clearly indicates otherwise, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(a) *Channel*. A watercourse with a definite bed and banks which confine and conduct continuously or intermittently flowing water.

(b) *Department*. The State Department of Environmental Protection Division of Water Resources.

(c) *Encroachment*. An obstruction within a delineated floodway.

(d) *Fill*. Sand, gravel, earth or other materials of any composition whatsoever, placed or deposited by any person or persons which alter the natural contour of the land.

(e) *Flood damage potential*. The susceptibility of a specific land use at a particular site to damage by potential floods at that site, as well as increased offsite flooding or flood-related damages caused by such land use.

(f) *Flood fringe area*. That portion of the flood hazard area outside the floodway.

(g) *Flood hazard area*. The flood plain based on the total area inundated during the flood of record unless delineated by the Department, in which case the Department delineation shall govern.

(h) *Flood of record*. The greatest flood in a given area for which accurate records are available and as determined by the Department.

(i) *Flood plain*. For the purpose of this article, the flood plain shall be the same as the flood hazard area.

(j) *Floodway*. The channel of a natural stream and portions of the flood plain adjoining the channel which are reasonably required to carry and discharge the flood water or flood flow of any natural stream. The floodway shall be delineated by the Department. If the floodway has not been officially delineated, it shall be based on encroachment lines established by the Department, and additional width for access and maintenance.

(k) *Hazardous materials.* Including, but not limited to, inorganic mineral acids of sulfur, fluorine, chlorine, nitrogen, chromium, phosphorous, selenium, and arsenic, and their common salts; lead, nickel, and mercury and their inorganic salts or metholo-organic derivatives and coal tar acids, such as phenols and cresols, and their salts.

(l) *Obstruction.* Any material which may obstruct the flow of water, including, but not limited to, any structure, fill, excavation, channel modification, rock, gravel, refuse or material in, along, across, or projecting into any channel, watercourse, or flood hazard area which may impede, retard, or change the direction of the flow of water either by itself or by catching or collecting debris carried by such water, or which is so placed that the flow of water might carry the same downstream to the damage of life or property.

(m) *Percolation test.* A test designed to determine the ability of ground to absorb water, performed by a licensed professional engineer with proven competency in the field of soils engineering, and carried out in accordance with acceptable engineering standards and practices. A detailed report of the test, when required, shall be submitted to the planning board and town engineer for review.

(n) *Permitted Use.* Any use which shall be allowed subject to the provisions of the article, and shall require a “permitted use” permit.

(o) *Person.* Corporations, companies, associations, societies, firms, partnerships, and joint stock companies, as well as individuals, the state, and all political subdivisions of the state and any agencies or instrumentalities thereof.

(p) *Pesticide.* Any substance or mixture of substances labeled, designed, intended for or capable of use in preventing, destroying, repelling, sterilizing or mitigating any insects, rodents, nematodes, predatory animal, fungi, weeds and other forms of plant or animal life or viruses, except viruses on or living in man or other animals. The term “pesticide” shall also include any substance or mixture of substances labeled, designed or intended for use as a defoliant, desiccant, or plant regulator.

(q) *Prohibited use.* Any use which shall not be allowed under any circumstances.

(r) *Rainfall excess.* The portion of rainfall which becomes direct surface runoff.

(s) *Restricted use.* Any use which requires a “restricted use” permit.

(t) *Stream encroachment permit.* A permit issued by the Department under the provision of N.J.S.A. 58:1-26.

(u) *Storm water detention.* Any storm drainage technique which retards or detains runoff, such as detention basin, parking lot storage, rooftop storage, or any combination thereof.

(v) *Structure.* Any assembly of materials above or below the surface of land or water, including, but not limited to, buildings, fences, dams, berms, levees, bulkheads, dikes, jetties, embankments, wharves, piers, docks, landings, obstructions, pipelines, causeways, culverts, roads, railroads, bridges, and the facilities of any utility or municipality. (G.O. No. 1276, § 3.)

Sec. 8-27. General requirements.

(a) *Site plans generally.* No construction or development shall take place within the municipal boundaries unless a site plan and any other required information shall have been submitted to the planning board for its review and approval.

Such site plan shall be drawn to a scale which is not smaller than one inch equals fifty feet, and shall show, in addition to the information required under other ordinances, the following information:

- (1) Existing and proposed principal building or structure and all accessory buildings or structures, if any;
- (2) The proposed finished grade elevations at the corners of any structure or structures;
- (3) Existing topography and proposed grading at contour intervals of two feet or less;
- (4) The lowest elevation within any proposed structure after its completion;
- (5) The location, type and size of all existing and proposed storm drainage facilities, and other utilities servicing and to service the premises in question;
- (6) The location, size and nature of all existing and proposed drainage right-of-way or easements and the location, size, and description of any lands to be dedicated to the municipality or county;
- (7) The layout and size of existing and proposed public streets;
- (8) The elevation of any existing or proposed pumping facilities;
- (9) The nature and extent of any existing or proposed construction, alterations or repairs;
- (10) The location of the proposed and existing buildings on the site;
- (11) The ownership, location, size and nature of the entire lot or lots in question and any contiguous lots owned by the applicant or owner or in which the applicant or owner has a direct or indirect interest;
- (12) Stream encroachment lines, if any, established by the State Department Environmental Protection, Division of Water Resources and the flood hazard area, if any;
- (13) The extent of the filling of the land, if any;
- (14) The location, size and type of all existing and proposed erosion and silting control measures, such as slope protection, soil stabilization, sedimentation basins, sediment traps, headwalls, aprons, and the like to be used during the construction phase and as permanent installations;
- (15) Where required by the planning board, the applicant or owner shall furnish information relating to subsurface conditions, based on percolation tests, solid borings or probes;
- (16) Any and all other information and data necessary to meet any of the requirements of this article.

(b) *Review by the planning board.* In reviewing any proposed construction or development, the planning board shall be reasonably assured that any structure, when built or altered, can be occupied or used without peril to the health or safety of the occupant and that the proposed land use:

- (1) Has an inherent low-flood damage potential;
- (2) Either acting alone or in combination with existing or future uses, does not obstruct flood flows or increase flood heights and/or velocities;
- (3) Does not affect adversely the water-carrying capacity of any delineated floodway and/or channel;
- (4) Does not increase local runoff and erosion;

(5) Does not unduly stress the natural environment of the flood plain or degrade the quality of surface water or the quality and quantity of ground waters;

(6) Does not require channel modification or relocation;

(7) Provides adequate safeguards prior to and during construction by the use of dikes, berms, pumps, drains or other means to assure that surrounding land is protected from erosion, silting or excessive water runoff.

(c) *Prohibited acts.* No land area shall be developed by any person so that:

(1) The volume and/or rate of storm water runoff occurring at the area is increased over what occurs there under conditions existing prior to such development;

(2) The drainage of adjacent areas is adversely affected;

(3) The soil erosion during and after development is increased over that which occurs there under conditions existing prior to such development;

(4) Soil absorption and ground water recharge capacity of the area is decreased below that which occurs there under conditions existing prior to such development;

(5) The natural drainage pattern of the area is significantly altered.

(d) *Regulation and control methods.* In order to duplicate as nearly as possible natural drainage conditions, regulation and control of storm water runoff and erosion for any land area to be developed shall be through onsite storm water detention systems which shall be limited to the following:

(1) Detention areas, which may be depressions in parking areas, excavated basins, basins created through use of curbs, stabilized earth berms or dikes, or any other form of grading which serves to temporarily impound and store water;

(2) Rooftop storage, through temporary impoundment and storage of storm water on flat or slightly pitched building rooftops by use of drain outlets which restrict the storm water runoff from the roof surface;

(3) Any combination of the above-mentioned techniques which serves to limit storm water runoff from a given site to that which presently occurs there.

(e) *Design, installation and maintenance of detention facilities.*

(1) Storm water detention facilities shall be designed to contain an amount of storm water equal to the increase in volume of rainfall excess which would result from the proposed development of a site. The volume of rainfall excess will be calculated by use of the "Urban Hydrology for Small Watersheds" Technical Release No. 55 by the U.S. Department of Agriculture, dated January 1975 or as may be amended. The rainfall excess for each situation will be as calculated for the time lag factors by utilizing the 100-year rainfall intensity chart for the Westfield area. This chart, available from Westfield Engineering Division, is a composite of the New York, New York and Sandy Hook, New Jersey rainfall intensity charts. Soil drainage characteristics are as identified by the Robert Catlin, Plan of Westfield entitled "Soil Drainage", available at the Westfield Engineering Division.

(2) All engineering data and computations upon which the design of proposed storm water detention facilities is based, or upon which the applicant has determined that no storm water detention facility is required, shall be submitted to the town engineer for review.

(3) Detention facilities shall provide sufficient volume to fully contain the total volume of rainfall excess. The outlets of such facilities shall be designed to limit the

maximum discharge rate of storm to that which occurs at the site under exist-conditions, and shall discharge in such a way as not to affect any other property. If rooftop storage is proposed, proper support of the weight of the impounded water on the roof shall be provided for in the structural design of the building, and the roof shall be designed to provide maximum protection against leakage. If earth berms or dikes are used to create the impounding area, they shall be adequately stabilized and the slopes shall be protected with vegetative cover, paving or riprap to protect against failure or breaching.

(4) Storm water detention facilities shall be maintained regularly by the owner to ensure continued functioning of the systems at design capacity and to prevent the health hazard associated with debris build-up and stagnant water. In no case shall water be allowed to remain in any storage facility long enough to constitute a mosquito breeding, disease, or any other type of health problem.

(5) Permitted detention and sediment and erosion control facilities shall be designed to conform with the “Standards for Soil Erosion and Sediment Control in New Jersey”, published by the State Soil Conservation Committee and administered by the Somerset-Union Soil Conservation District, except where the town engineer has determined that conditions peculiar to a certain site require imposition of standards which are more restrictive than those therein contained.

(6) In accordance with the New Jersey Soil Erosion and Sediment Control Act of 1975, sediment and erosion control measure shall be installed prior to any other site development, shall apply to all aspects of the proposed development, and shall be in operation during all stages of development. Increased runoff and sediment resulting from modified soil and surface conditions caused by the proposed development shall be minimized and, where possible, retained onsite.

(f) *Situations where the provisions of this article do not apply.*

The provisions of this article insofar as they relate to storm water detention facilities only shall not apply to the following:

(1) All applications for building permits for construction of or addition to one- or two-family residences, or buildings or uses accessory thereto; except that such exclusion shall not apply where the building lot to which such application relates, constitutes part of a development of more than two such lots, owned by the same applicant or owner or in which the same applicant or owner has a direct or indirect interest.

(2) All applications for residential subdivision which will result in the creation of not more than two, one- or two-family building lots. In all cases where the development is excluded from the requirements of this article as provided herein, the construction official shall require the developer to install adequate facilities, such as dikes, berms, pumps, piping, etc., prior to the commencement of construction to ensure that areas surrounding the development are protected from erosion, silting or excessive water runoff and shall further require that these facilities be properly maintained during development. No development shall be excluded from the provisions of this article as they apply to the flood hazard area and this section shall not operate to exclude any type of development or use from the restrictions imposed by this article for development in or use in the flood hazard area. (G.O. No. 1267 § 4.)

Sec. 8-28. Development and use of land located in the flood hazard area.

(a) *Preservation of natural land.*

(1) It is hereby found that natural flood plains display complex intimate relationships among streams, periodic flooding, soils, vegetation, fish and wildlife and that periodic flooding of lowland areas, marshes and swamps adjacent to stream channels produces a rich physical-chemical environment for many living organisms. It is further found that flood plains contain biological communities where are among the most productive of natural systems and perform the following functions essential to the natural environment:

- a. Passage and storage of storm floodwaters;
- b. Removal of sediment loads from streams through deposition;
- c. Replenishment of ground water supplies through soil infiltration;
- d. Dissipation of energy of flood flows, thereby reducing downstream destruction; and
- e. Provision of areas of recreational and aesthetic pleasure.

(2) Because of the importance of the natural flood plain as cited above, all natural land within any delineated floodway, except for land to be developed as a permitted use or restricted use in accordance with this article, shall be preserved in its natural state and, where possible, developed land within the floodway shall be restored to its natural state.

(b) *Permitted land uses.*

(1) For purposes of this article, permitted uses are land uses which have an inherent low flood damage potential and which do not:

- a. Require fill or the erection of structures;
- b. Require channel modification or relocation;
- c. Obstruct flood flows;
- d. Increase local runoff and/or erosion;
- e. Reduce ground absorption of storm water;
- f. Require equipment or material storage;
- g. Adversely affect the water carrying or storage capacity of any channel, floodway, or flood plain; and
- h. Cause degradation of water quality and/or the natural environment.

(2) Permitted uses include, but are not limited to, the following:

- a. Agriculture: general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- b. Private and public recreation: golf courses, tennis courts, basketball courts, baseball fields, other playing fields, driving ranges, archery ranges, picnic grounds, boat launching ramps, parks, wildlife and nature preserves.
- c. Residential: lawns, gardens, parking areas, and play areas.

(3) No person shall engage in a permitted use within a delineated flood hazard area until he has received approval by the planning board, a "permitted use" permit from the construction official, and a stream encroachment permit issued by the Department. The planning board shall notify the general public by advertisement in the official newspaper of the Town of Westfield and shall notify the governing bodies and

environmental commissions, if any, of other municipalities which may be affected by the proposed use by letter that an application for a permitted use is pending. Such notification shall include the name and address of the applicant, the location of the proposed use, and abbreviated description of the proposed use, an announcement as to where and at what times the complete application may be reviewed, and to whom and by what date interested parties may communicate their positions concerning the application and any data that they may have developed in reference to the effects of the proposed use, and the date of a scheduled public hearing on the application. The planning board shall hold a public hearing on such application. The notification and publication shall be at least ten days prior to such hearing. The planning board shall review the permitted use permit application and all information received from interested parties and any testimony or evidence adduced at the public hearing. The planning board shall approve a permitted use permit only if it finds that the proposed use:

- a. Has low flood damage potential;
- b. Either acting alone or in combination with existing or future uses does not obstruct flood flows or increase flood heights and/or velocities;
- c. Does not affect adversely the water carrying capacity of any delineated floodway and/or channel;
- d. Does not increase local runoff and/or erosion; and
- e. Does not unduly stress the natural environment of the flood plain or degrade the quality of surface water or the quality and quantity of ground waters.

(4) Conditions: The planning board may impose such conditions on permitted uses as it deems appropriate to promote the public safety, health, and welfare, to protect public and private property, wildlife and fisheries, and to preserve, protect and enhance the natural environment of the flood plain.

(c) *Restricted uses.*

(1) For purposes of this article, restricted uses are land uses within the flood hazard area which involve:

- a. Structures (temporary and permanent);
- b. Fill;
- c. Storage of materials or equipment;
- d. Channel modification and/or relocation; and
- e. Extraction of sand, gravel, and other materials.

(2) Restricted uses, in addition, shall include but are not limited to, the following, to the extent that they are not prohibited by any other local ordinance or State Statute, rule, or regulation:

- a. All uses listed under subsection (b) "Permitted Uses" which involve also the factors in subsection (c) (1) above;
- b. Railroads, streets, bridges, utility transmission lines and associated facilities, and pipelines; and
- c. Storage yards.

(3) No person shall engage in a restricted use within a delineated flood hazard area until he has received approval by the planning board, a "restricted use" permit from the construction official and a stream encroachment permit issued by the Department. The planning board shall notify the general public, by advertisement in the official newspaper of the Town of Westfield and shall notify the governing bodies and

environmental commissions, if any, of other municipalities which may be affected by the proposed use by letter that an application for a restricted use is pending. Such notification shall include the name and address of the applicant, the location of the proposed use, an abbreviated description of the proposed use, an announcement as to where and at what times the complete application may be reviewed, and to whom and by what date interested parties may communicate their positions concerning the application and any data that they may have developed in reference to the effects of the proposed use, and the date of a scheduled public hearing on said application. The planning board shall hold a public hearing on such application. Said notification and publication shall be at least ten days prior to such hearing. The planning board shall review the restricted use permit application and all information received from interested parties and any testimony or evidence adduced at the public hearing. The planning board shall approve a restricted use permit only if it finds that the proposed use:

- a. Has low flood damage potential;
- b. Either acting alone or in combination with existing or future uses does not obstruct flood flows or increase flood heights and/or velocities;
- c. Does not affect adversely the water carrying capacity of any delineated floodway and/or channel;
- d. Does not increase local runoff and/or erosion; and
- e. Does not unduly stress the natural environment of the flood plan or degrade the quality of surface water or the quality and quantity of ground waters.

(4) In reviewing the permit application and arriving at findings, the planning board shall consult with the town engineer and consider the following criteria:

- a. The danger to life and property due to increased flood heights or velocities caused by encroachments;
- b. The danger that materials may be swept onto other lands or downstream to the injury of others;
- c. The proposed water supply and sanitation systems and the insulation of these systems from disease, contamination, and unsatisfactory conditions resulting from flooding;
- d. The susceptibility of the proposed use to flood damage and the effects of such damage;
- e. The need for a waterfront location;
- f. The availability of alternate locations not subject to flooding;
- g. The duration, rate of rise and sediment transport of flood waters expected at the site;
- h. The safety of access to the property in times of flood for ordinary and emergency vehicles;
- i. The extent to which the hydraulic capacity of the floodway will be disrupted;
- j. The degree to which the proposed use serves the general public's health, safety, and welfare;
- k. The degree to which any aspect of food chain or plant, animal, fish or human life processes are affected adversely within or beyond the proposed use area;
- l. The degree to which the proposed activity alters natural water flow or water temperature;

- m. The degree to which the proposed use provides facilities for the proper handling of litter, trash, refuse, and sanitary and industrial waste;
- n. The degree to which irreplaceable land types will be destroyed;
- o. The degree to which the natural, scenic, and aesthetic values at the proposed activity site can be retained; and
- p. The degree to which materials not subject to major damage by floods are firmly anchored to prevent flotation and/or are readily removable from the area within the time available after flood warning.

(5) If the planning board finds that the proposed use would violate or tend to violate the purposes and intent of this article, it shall deny the application, or may approve the application and impose such permit conditions as are necessary to meet the purposes and intent of this article, and thereby promote the public and private property, wildlife and fisheries, and preserve, protect, and enhance the natural environment of the flood plain. These conditions may include, but are not limited to, the following:

- a. Modification of waste disposal and water supply facilities;
- b. Imposition of operational controls, sureties, and deed restrictions;
- c. Requirements for construction of storm water detention facilities, channel modifications, dikes, levees, and other protective measures;
- d. Installation of an adequate flood warning system; and
- e. Postponement of development until such time as protective measures are installed, or until the floodway and flood hazard area have been delineated by the Department.

(6) Where applicable, the planning board shall condition restricted use permits as follows:

- a. Fill shall be no lower than one foot above the flood hazard design elevation and shall extend at such height for a distance of at least fifteen feet beyond the limits of any structure erected thereon;
- b. Structure on fill shall be built so that the first floor and/or basements are at a minimum of one foot above the flood hazard design elevation;
- c. Structures not placed on fill shall be otherwise elevated so that the first floor is at a minimum of one foot above the flood hazard design elevation or shall be flood-proofed as set forth in paragraph d. below. Flood proofing alone shall not be adequate for residences, nursing homes, schools, day care centers, and similar uses; and
- d. Flood proofing measure shall be consistent with the flood protection elevation for the particular area, flood velocities, durations, rates of rise, hydrostatic and hydrodynamic forces, and other similar factors. The planning board shall require the applicant to submit a plan or document certified by a registered professional engineer that the flood proofing measures are consistent with the flood hazard design elevation and associated flood factors. Any or all of the following flood proofing measures may be required:

- 1. Anchorage to resist flotation and lateral movement;
- 2. Installation of watertight doors, bulkheads, and shutters, or similar devices;
- 3. Reinforced walls to resist water pressures;
- 4. Use of paints, membranes, or mortars to reduce seepage of water through walls;

5. Addition of weight to structures to resist flotation;
6. Installation of pumps to lower water levels in structures;
7. Construction of water supply and waste treatment systems in a manner which prevents the entrance of flood waters;
8. Pumping facilities, or comparable measures, for the subsurface drainage systems of buildings to relieve external foundation wall and basement flood pressures;
9. Construction that resists rupture or collapse caused by water pressure or floating debris;
10. Installation of valves or controls on sanitary and storm drains which will permit the drains to be closed to prevent backup of sewage or storm waters into the structure. Gravity drainage of basements may be eliminated by mechanical devices;
11. Location of all electrical equipment, circuits and installed electrical appliances in a manner which will assure they are not subject to inundation and flooding;
12. Storage facilities for chemicals, explosives, buoyant materials, flammable liquids, or other toxic or hazardous materials shall be situated above the flood hazard design elevation and shall not be flood-proofed to prevent flotation of storage containers or damage to storage containers which could result in the escape of toxic materials into the flood waters; and
13. Use of construction materials which are resistant to water damage.

(d) *Pre-existing structures and uses (non-confirming uses).*

(1) Structures or land uses which existed on or before the effective date of this article may be permitted to continue subject to the following conditions:

a. If any pre-existing structure is destroyed by any means, including floods, to an extent of fifty percent or more of its replacement cost at time of destruction, it shall not be reconstructed, except in conformity with the provisions of this article, and

b. No pre-existing structure shall be moved, altered, expanded, changed, or enlarged unless a restricted-use permit has been applied for and received. This provision does not apply to routine maintenance and repair, provided that such maintenance and repair does not increase the flood damage potential of the structure.

c. No pre-existing use of land or structures shall be modified so as to increase its flood damage potential, unless a restricted use permit has been applied for and received.

(2) If actual construction of a structure is underway on or before the effective date of this article, then such construction may be completed without a restricted use permit. Actual construction is hereby defined to include the placing of construction material in permanent position and fastened in a permanent manner. The provisions of paragraph (1) above shall apply to such structures upon completion of construction.

(3) Structures in the floodway abandoned for twelve consecutive months or longer and structure abandoned for twelve consecutive months or longer in the flood fringe area after the effective date of this article shall not qualify as pre-existing uses.

(e) *Prohibited uses.*

(1) Floodway: No person shall hereafter engage in, cause, or permit other persons to engage in, prohibited uses within a delineated floodway. The following uses shall be prohibited:

- a. Placing, depositing, or dumping any solid waste, garbage, refuse, trash, rubbish, or debris;
- b. Dumping or discharging untreated domestic sewage or industrial wastes, either solid or liquid;
- c. The storage or disposal of pesticides;
- d. The storage or processing of materials that are in time of flooding buoyant, flammable, or explosive;
- e. The storage or processing of hazardous materials that could be injurious in time of flooding to human, animal, or plant life; and
- f. The erection of structures for human occupancy.

(2) Flood fringe area: No person shall engage in, cause, or permit other persons to engage in prohibited uses within a delineated flood fringe area. The following uses shall be prohibited:

- a. Placing, depositing, or dumping any solid waste, garbage, refuse, trash, rubbish, or debris;
- b. Dumping or discharging untreated domestic sewage or industrial wastes, either solid or liquid; and
- c. The disposal of pesticides.

(G.O. No. 1267, § 5.)

Sec. 8-29. Flood insurance.

Flood insurance, in accordance with the National Flood Insurance Program of the United States Department of Housing and Urban Development, shall be required for all development in flood hazard areas. (G.O. No. 1267, § 6.)

Sec. 8-30. Action by planning board.

The planning board shall act upon any site plan required by this article or any application for a “permitted use” or “restricted use” permit within forty-five days of the date of filing thereof or applying therefor or of the date of approval by the Department, if such approval is required; whichever is later, or within any other extension of time agreed to by the applicant. Failure of the planning board to act within such time limit shall be deemed an approval of any site plan submitted under this article, or application for a “permitted use” permit or “restricted use” permit. Planning board disapproval shall include written findings upon any site plan element, or “permitted use” application or “restricted use” application, found to be contrary to the provisions of intent of this article. (G.O. No. 1267, § 7.)

Sec. 8-31. Fees.

In addition to any fees required for filing a site plan as set forth in other ordinances of the Town of Westfield, an applicant for a “permitted use” permit shall pay an additional fee of twenty-five dollars and an applicant for a “restricted use” permit shall pay an additional fee of fifty dollars. (G.O. No. 1267, § 8.)

Sec. 8-32. Issuance of permits.

No building permit shall be issued for any proposed construction unless the planning board shall have approved a site plan and any other data submitted in accordance with section 8-27 and/or a “permitted use” or “restricted use” permit, as the case may be, and such proposed construction complies fully with all the provisions of this article. No certificate of occupancy shall be issued by the construction official unless proof has been submitted to him that all conditions of site plan approval and all other provisions of this article have been fully complied with. (G.O. No. 1267, § 9.)

Sec. 8-33. Appeal.

If any person shall be aggrieved by the action of the planning board, appeal in writing to the town council may be taken within ten days after the date of such action. The town council shall fix and notify appellant of a time and place for a public hearing on said appeal, and the appellant shall cause notice of such hearing to be published in the official newspaper of the municipality at least ten days prior to the hearing. All parties in interest shall be afforded an opportunity to be heard thereat. After such hearing, the town council shall affirm or reverse the action of the planning board, stating its findings and reasons for its action and a written copy of such action shall be given to the appellant. (G.O. No. 1267, § 10.)

Article V. Payment of Fire Insurance Proceeds Under Certain Circumstances

Sec. 8-34. Payment of fire insurance proceeds in excess of two thousand five hundred dollars.

No insurance company authorized to issue fire insurance policies in the State of New Jersey shall pay to a claimant any claim in excess of two thousand five hundred dollars for fire damages on any real property within the Town of Westfield pursuant to any fire insurance policy issued or renewed after the adoption of this article and the filing of this article with State Commissioner of Insurance, until such time as:

(a) Anticipated demolition costs and all taxes and assessments, and all other municipal liens or charges due and payable, appearing on the official certificate of search shall have been paid, either by the owner of such real property or by the insurance company; or

(b) The town has submitted to the insurance company a copy of a resolution adopted pursuant to section 8-37.

(G.O. No. 1588, § I.)

Sec. 8-35. Payment by insurance company.

Unless a resolution as provided in section 8-37 hereof is received by an insurance company or companies proposing to pay a claim for fire damage in excess of two thousand five hundred dollars, such insurance company shall prior to the payment of any claim for such damage in excess of two thousand five hundred dollars pay the amount of

the anticipated demolition costs to the Town of Westfield and to pay to the Town of Westfield the amount of liens appearing on the official certificate and such other recorded liens or related charges as may be certified to the insurance company. (G.O. No. 1588, § I.)

Sec. 8-36. Funds held in the event of appeal.

In the event an appeal is taken on the amount of any lien or charge, other than an appeal on the assessed valuation of real property pursuant to R.S. 54-3-21, the insurance company shall deal with the proceeds as provided in N.J.S.A. 17:36-10. (G.O. No. 1588, § I.)

Sec. 8-37. Installment payments.

The town council may, by resolution, enter into an agreement with the owner of any fire-damaged property situated in the Town of Westfield, to pay in full any demolition costs, delinquent taxes, assessments, or other municipal liens by installments pursuant to N.J.S.A. 54:5-19, or for the redemption of a tax sale lien by installment payments pursuant to Article VII of Chapter 5 of Title 54 of the Revised Statutes, if the town council is satisfied that the claim for fire damages is to be used to restore or improve the fire-damaged property. In the event of such resolution, a certified copy of said resolution shall be sent to the insurance company, authorizing the insurance company to make full payment of the claim to the insured. (G.O. No. 1588, § I.)

Sec. 8-38. Payments to mortgagee.

Notwithstanding the provisions of section 8-34, an insurance company may pay proceeds of a fire insurance policy to a mortgagee of fire-damaged real property, where the fire insurance policy, at the time of the loss, listed the mortgagee as a named insured; provided said payment may not be in an amount which exceeds that due and payable to the mortgagee under the mortgage obligation.

Any claim on behalf of the Town of Westfield made in accordance with the provisions of this article shall be paramount to any other claims on the proceeds of the fire insurance policy, except for the claim of a holder of a mortgage on the fire-damaged property, where the fire insurance policy at the time of the loss, listed the mortgagee as a named insured, in which event the claim of the mortgagee to the proceeds shall be paramount to the municipal lien only to the extent of the amount due and payable to the mortgagee under the mortgage obligation. (G.O. No. 1588, § I.)

Sec. 8-39. Amendment or modification of official certificate of search.

The official certificate of search may from time to time be altered by the bonded official responsible for preparing such certificate, in order to cancel any errors or omissions or to add any municipal liens or related charges due and payable subsequent to the preparation of the official certificate. (G.O. No. 1588, § I.)

Article VI. Maintenance of Sites Under Construction.

Sec. 8-40. Definitions.

The following terms shall be defined in this article as follows:

(a) *Contractor*. The person or entity identified on the building permit issued by the Town of Westfield Construction Official as the contractor.

(b) *Construction site*. The real property identified in a building permit issued by the Town of Westfield Construction Official or the real property identified in a demolition permit issued by the town council or, in the even no such permits have been issued, the property identified on the tax map of the Town of Westfield where demolition, excavation or construction is occurring.

(c) *Commencement of work*. Any activity by the contractor, owner, or agent of either, that begins the process of construction, demolition or excavation, which includes but is not limited to, the use and storage of machinery and supplies.

(d) *Excavation*. The digging and/or removal of soil or other material forming the surface grade of a construction site so as to leave a hole and/or cavity in the surface grade.

(e) *Owner*. The person or entity vested with legal title to the construction site as recorded with the Town of Westfield Tax Assessor.
(G.O. No. 1877, § I.)

Sec. 8-41. Securing the construction site.

It shall be the responsibility of the contractor working at any construction site or the owner of a construction site to secure the construction site with a six foot chain link fence, which posts anchored in the ground, around the entire perimeter of the construction site, or in another manner as the construction official in the reasonable exercise of his discretion may determine is necessary so as to protect the health and safety of the public. The perimeter fence shall be installed prior to the commencement of work and remain on the construction site until a certificate of occupancy is issued or until the construction official determines the construction site no longer requires fencing. In addition, the construction official shall have the authority to require that fencing of the type described herein be installed by the contractor or owner of such lesser portion of a given construction site, than the entire perimeter, as he shall determine based upon the extent of the demolition, excavation and/or construction. (G.O. No. 1877, § I.)

Sec. 8-42. Penalties.

Any violation of the provisions of this article shall result in a fine of up to two hundred dollars per day. The owner of any construction site and any contractor operating, engaged to operate or otherwise working at a construction site shall be jointly and severally liable for any violation of the provision of this article. (G.O. No. 1877, § I.)