

Chapter 107

FLOODPLAIN MANAGEMENT

ARTICLE I General Provisions

- § 107-1. Intent.**
- § 107-2. Applicability.**
- § 107-3. Abrogation and greater restrictions.**
- § 107-4. Warning and disclaimer of liability.**

ARTICLE II Administration

- § 107-5. Building permits required.**
- § 107-6. Issuance of building permit.**
- § 107-7. Application procedures and requirements.**
- § 107-8. Review by County Conservation District.**
- § 107-9. Review of application by others.**
- § 107-10. Changes.**
- § 107-11. Placards.**
- § 107-12. Start of construction.**
- § 107-13. Inspection and revocation.**
- § 107-14. Fees.**
- § 107-15. Enforcement.**
- § 107-16. Appeals.**

ARTICLE III Identification of Floodplain Areas

- § 107-17. Study and maps.**
- § 107-18. Description of floodplain areas.**
- § 107-19. Changes in identification of area.**

- § 107-20. Boundary disputes.**

ARTICLE IV Technical Provisions

- § 107-21. Notification of adjacent municipalities; permits and approvals required.**
- § 107-22. Special requirements for FW (Floodway) Areas.**
- § 107-23. Elevation and floodproofing requirements.**
- § 107-24. Design and construction standards.**
- § 107-25. Development which may endanger human life.**
- § 107-26. Special requirements for manufactured homes.**

ARTICLE V Prohibited Activities

- § 107-27. Enumeration of prohibited activities.**

ARTICLE VI Existing Structures in Identified Floodplain Areas

- § 107-28. Changes and improvements to existing structures.**
- § 107-29. Improvements.**

ARTICLE VII Variances

- § 107-30. Relief granted by Council.**

§ 107-31. Variance procedures and conditions.

**ARTICLE IX
Federal Emergency Management
Determinations**

**ARTICLE VIII
Definitions**

§ 107-34. Flood elevations.

§ 107-35. Inspection of study and maps.

§ 107-32. Interpretation.

§ 107-33. Terms defined.

[HISTORY: Adopted by the Borough Council of the Borough of McSherrystown 4-22-1998 by Ord. No. 1998-3. Amendments noted where applicable.]

GENERAL REFERENCES

Subdivision and land development — See Ch. 190.

Zoning — See Ch. 215.

**ARTICLE I
General Provisions**

§ 107-1. Intent.

The intent of this chapter 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.

§ 107-2. Applicability.

It shall be unlawful for any person, partnership, business or corporation to undertake, or cause to be undertaken, any construction or development anywhere within the Borough, unless a building permit has been obtained from the Zoning Officer.

§ 107-3. Abrogation and greater restrictions.

This chapter 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 chapter, the more restrictive provisions shall apply.

§ 107-4. Warning and disclaimer of liability.

- A. The degree of flood protection sought by the provisions of this chapter is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This chapter 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 damages.
- B. This chapter shall not create liability on the part of the Borough of McSherrystown or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

ARTICLE II
Administration

§ 107-5. Building permits required.

Building permits shall be required before any construction or development is undertaken within any area of the Borough.

§ 107-6. Issuance of building permit.

- A. The Borough Zoning Officer shall issue a building 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 building permit, the Zoning Officer 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 Clean Streams Act (Act 1937-394, as amended);¹ 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. 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 Borough, and until all required permits or approvals have been first obtained from the Department of Environmental Protection, Bureau of Waterways Engineering.
- D. In addition, the Federal Insurance Administrator and Pennsylvania Department of Community and Economic Development shall be notified by the Borough prior to any alteration or relocation of any watercourse.

1. Editor's Note: See 35 P.S. § 750.1 et seq. and 35 P.S. § 691.1 et seq. respectively.

§ 107-7. Application procedures and requirements.

- A. Application for such a building permit shall be made, in writing, to the Zoning Officer on forms supplied by the Borough. Such application shall contain but not necessarily limited to 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.
 - (5) Listing of other permits required.
 - (6) Brief description of proposed work and estimated cost.
 - (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 building permits shall provide all the necessary information in sufficient detail and clarity to enable the Zoning Officer to determine that:
- (1) All such proposals are consistent with the need to minimize flood damage and conform with the requirements of this chapter 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; and
 - (3) Adequate drainage is provided so as to reduce exposure to flood hazards.
- C. Applicants shall file the following minimum information plus any other pertinent information as may be required by the Zoning Officer to make the above determination:
- (1) A completed building permit application form.
 - (2) A plan of the entire site, clearly and legibly drawn at a scale of one inch being equal to 100 feet or less, showing the following:
 - (a) North arrow, scale, and date;
 - (b) Topographic contour lines;
 - (c) All property and lot lines including dimensions, and the size of the site expressed in acres or square feet;
 - (d) The location of all existing and proposed buildings, structures, and other improvements, including the location of any existing or proposed subdivision and land development;
 - (e) The location of all existing streets, drives, and any other accessways; and

- (f) 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 National Geodetic Vertical Datum of 1929;
 - (b) The elevation of the one-hundred-year flood;
 - (c) If available, information concerning flood depths, pressures, velocities, impact and uplift forces and other factors associated with a one-hundred-year flood; and
 - (d) Detailed information concerning any proposed floodproofing measures.
- (4) The following data and documentation:
 - (a) 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 one-hundred-year flood. Such statement shall include a description of the type and extent of floodproofing measures which have been incorporated into the design of the structure and/or the development.
 - (b) Detailed information needed to determine compliance with § 107-24F, Storage, and § 107-25, Development which may endanger human life, including:
 - [1] The amount, location and purpose of any materials or substances referred to in §§ 107-24F and 107-25 which are intended to be used, produced, stored or otherwise maintained on site.
 - [2] 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 § 107-25 during a one-hundred-year flood.
 - (c) The appropriate component of the Department of Environmental Protection's Planning Module for Land Development.
 - (d) 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.

§ 107-8. 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 shall be submitted by the Zoning

Officer to the County Conservation District for review and comment prior to the issuance of a building permit. The recommendations of the Conservation District shall be considered by the Zoning Officer for possible incorporation into the proposed plan.

§ 107-9. 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 Zoning Officer to any other appropriate agencies and/or individuals for review and comment.

§ 107-10. Changes.

After the issuance of a building permit by the Zoning Officer, 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 Zoning Officer.

§ 107-11. Placards.

In addition to the building permit, the Zoning Officer shall issue a placard which shall be displayed on the premises during the time construction is in progress. This placard shall show the number of the building permit, the date of its issuance and be signed by the Zoning Officer.

§ 107-12. Start of construction.

- A. Work on the proposed construction and/or development shall begin within six months and shall be completed within 12 months after the date of issuance of the building permit or the permit shall expire unless a time extension is granted, in writing, by the Zoning Officer. Construction and/or development shall be considered to have started with the preparation of land, land clearing, grading, filling, excavation of basement, footings, piers, or foundations, erection of temporary forms, the installation of piling under proposed subsurface footings, or the installation of sewer, gas, and water pipes, or electrical or other service lines from the street.
- B. Time extensions shall be granted only if a written request is submitted by the applicant, which sets forth sufficient and reasonable cause for the Zoning Officer to approve such a request.

§ 107-13. Inspection and revocation.

- A. During the construction period, the Zoning Officer 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 shall make as many inspections during and upon completion of the work as are necessary.

- B. In the discharge of his duties, the Zoning Officer 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 chapter.
- C. In the event the Zoning Officer 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 Zoning Officer shall revoke the building permit and report such fact to the McSherrystown Borough Council for whatever action it considers necessary.
- D. A record of all such inspections and violations of this chapter shall be maintained.

§ 107-14. Fees.

Applications for a building permit shall be accompanied by a fee, payable to the Borough based upon the estimated cost of the proposed construction as determined by the Zoning Officer. The rates under which the permit fee is established shall be set annually by Borough Council.

§ 107-15. Enforcement.

- A. Notices. Whenever the Zoning Officer or other authorized municipal representative determines that there are reasonable grounds to believe that there has been a violation of any provisions of this chapter, or of any regulations adopted pursuant thereto, the Zoning Officer 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 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 action which, if taken, will effect compliance with the provisions of this chapter.
- B. Violations and penalties. Any person who fails to comply with any or all of the requirements or provisions of this chapter or who fails or refuses to comply with any notice, order of direction of the Zoning Officer or any other authorized employee of the Borough shall be guilty of an offense and, upon conviction, shall pay a fine to the Borough of McSherrystown of not less than \$50 nor more than \$1,000 plus costs of prosecution. In default of such payment, such person shall be imprisoned in county

prison for a period not to exceed 30 days. Each day during which any violation of this chapter continues shall constitute a separate offense.²

- C. In addition to the above penalties all other actions are hereby reserved including an action in equity for the proper enforcement of this chapter. The imposition of an ordinance shall not excuse the violation or noncompliance or permit it to continue and 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, initiated or any structure or building constructed, reconstructed, enlarged, altered, or relocated, in noncompliance with this chapter may be declared by the McSherrystown Borough Council to be a public nuisance and abatable as such.

§ 107-16. Appeals.

- A. Any person aggrieved by any action or decision of the Zoning Officer concerning the administration of the provisions of this chapter may appeal to the McSherrystown Borough Council. Such appeal must be filed, in writing, within 30 days after the decision or action of the Zoning Officer.
- B. Upon receipt of such appeal, the McSherrystown Borough Council shall set a time and place, within not less than 10 nor more than 30 days, for the purpose of considering the appeal. Notice of the time and place at which the appeal will be considered shall be given to all parties.
- C. Any person aggrieved by any decision of the McSherrystown Borough Council may seek relief therefrom by appeal to court, as provided by the laws of this Commonwealth including the Pennsylvania Flood Plain Management Act.³

ARTICLE III Identification of Floodplain Areas

§ 107-17. Study and maps.

The identified floodplain area shall be those areas of the Borough of McSherrystown which are subject to the one-hundred-year flood, as identified in the Flood Insurance Study (FIS) dated June 8, 1998, and the accompanying maps prepared for the Borough by the Federal Emergency Management Agency (FEMA), or the most recent revisions thereof.

§ 107-18. Description of floodplain areas.

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

2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

3. Editor's Note: See 32 P.S. § 679.101 et seq.

- A. FW (Floodway Area): the areas identified as "Floodway" in the AE Zone in the Flood Insurance Study prepared by the FEMA.
- B. FF (Flood-Fringe Area): the remaining portions of the one-hundred-year floodplain in those areas identified as an AE Zone in the Flood Insurance Study, where a floodway has been delineated. The basis for the outermost boundary of this area shall be the one-hundred-year-flood elevations as shown in the flood profiles contained in the Flood Insurance Study.

§ 107-19. Changes in identification of area.

The identified floodplain area may be revised or modified by the McSherrystown Borough Council where studies or information provided by a qualified agency or person documents the need for such revision. However, prior to any such change, approval must be obtained from the Federal Insurance Administration (FIA).

§ 107-20. Boundary disputes.

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

ARTICLE IV Technical Provisions

§ 107-21. Notification of adjacent municipalities; permission

- A. No encroachment, alteration, or improvement of watercourse until all adjacent municipalities which may be affected have been notified by the Borough, and until all required permits have been obtained from the Department of Environmental Engineering. In addition, the Federal Emergency Management Agency, the Department of Community and Economic Development, and the Office of Planning shall be notified prior to any alteration or relocation.
- B. Any new construction, development, uses or activities in the floodplain area shall be undertaken in strict compliance with the provisions of this chapter and any other applicable codes, ordinances, and regulations.

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CHARTER 107

§ 107-22. Special requirements for FW (Floodway) Areas.

Within any FW (Floodway Area), the following provisions apply:

- A. Any new construction, development, use, activity, or encroachment that would cause any increase in the one-hundred-year flood heights shall be prohibited.

- B. No new construction or development shall be allowed, unless a permit is obtained from the Department of Environmental Protection, Bureau of Waterway Engineering.

§ 107-23. Elevation and floodproofing requirements.

- A. Residential structures. Within any identified floodplain area, any new construction or substantial improvement of a residential structure shall have the lowest floor, including basement, elevated up to or above the regulatory flood elevation.
- B. Nonresidential structure.
- (1) Within any identified floodplain area, any new construction or substantial improvement of a nonresidential 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 by such structure shall remain either completely or essentially dry during any flood up to that height.
 - (2) Any nonresidential structure, or part thereof, having a lowest floor which is not elevated to at least 1 1/2 feet above the one-hundred-year-flood elevation, shall be floodproofed in a completely or essentially dry manner 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 March 1992) or with some other equivalent standard. All plans and specifications for such floodproofing shall be accomplished by a statement certified by a registered professional engineer or architect which states that the proposed design and method of construction are in conformance with the above referenced standards.
- C. Space below the lowest floor. Partially or fully enclosed space below the lowest floor, including basement, is prohibited.
- D. 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 floodwaters.
 - (5) Power lines, wiring, and outlets will be at least 1 1/2 feet above the one-hundred-year-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 or movement and shall be designed to automatically provide for the entry and exit of floodwaters 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 square inch for every square foot of enclosed space.
 - (b) The bottom of all openings shall be no higher than one foot above grade.
 - (c) Opening may be equipped with screens, louvers, etc., or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

§ 107-24. Design and construction standards.

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

A. Fill. If fill is used it shall:

- (1) Extend laterally at least 15 feet beyond the building line from all points;
- (2) Consist of soil or small rock materials only; sanitary landfills shall not be permitted;
- (3) Be compacted to provide the necessary permeability and resistance to erosion, scouring, or settling;
- (4) Be no steeper than one vertical to two horizontal feet unless substantiated data justifying steeper slopes are submitted to and approved by the Zoning Officer; and
- (5) 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 stormwater runoff in a safe and efficient manner. The system shall insure 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 and sanitary sewer facilities and systems shall be located, designed and constructed to minimize or eliminate flood damages and the infiltration of floodwaters.
- (2) Sanitary sewer facilities and systems shall be designed to prevent the discharge of untreated sewage into floodwaters.

- (3) No part of any on-site sewage 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 so as to avoid impairment to it, or contamination from it, during a flood.
- D. Other utilities. All other utilities such as gaslines, electrical and telephone systems shall be located 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 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 § 107-25, Development which may endanger human life, shall be stored at or above the regulatory flood elevation and/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 floodwater.
- 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 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 feet above the one-hundred-year-flood elevation.
 - (2) Separate electrical circuits shall serve lower levels and shall be dropped from above.
- L. Equipment. 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.
- M. Fuel supply systems. All gas and oil supply systems shall be designed to prevent the infiltration of floodwaters into the system and discharge from the system into floodwaters. Additional provisions shall be made for the drainage of these systems in the event that floodwater infiltration occurs.

§ 107-25. Development which may endanger human life.

- A. In accordance with the Pennsylvania Flood Plain Management Act,⁴ and the regulations adopted by the Pennsylvania Department of Community and Economic Development 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;
 - (4) 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:
 - (a) Acetone.
 - (b) Ammonia.
 - (c) Benzene.
 - (d) Calcium carbide.
 - (e) Carbon disulfide.

4. Editor's Note: See 32 P.S. § 679.101 et seq.

- (f) Celluloid.
 - (g) Chlorine.
 - (h) Hydrochloric acid.
 - (i) Hydrocyanic acid.
 - (j) Nitric acid and oxide of nitrogen.
 - (k) Petroleum products (gasoline, fuel oil, etc.).
 - (l) Phosphorus.
 - (m) Potassium.
 - (n) Sodium.
 - (o) Sulfur and sulfur products.
 - (p) Pesticides (including insecticides, fungicides, and rodenticides).
 - (q) Radioactive substances, insofar as such substances are not otherwise regulated.
- B. Within any FW (Floodway Area), any structure of the kind described in Subsection A above shall be prohibited.
- C. Where permitted within any floodplain area, any new or substantially improved structure of the kind described in Subsection A above shall be:
- (1) Elevated or designed and constructed to remain completely dry up to at least 1 1/2 feet above the one-hundred-year flood; and
 - (2) Designed to prevent pollution from the structure or activity during the course of a one-hundred-year flood. Any such structure or part thereof that will be built below the regulatory flood elevation shall be designed and constructed in accordance with the standards for complete 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.

§ 107-26. Special requirements for manufactured homes.

- A. Within any FW (Floodway Area), manufactured homes shall be prohibited.
- B. Where permitted within any 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 1 1/2 feet or more above the elevation of the one-hundred-year flood.
- (3) Anchored to resist flotation, collapse, or lateral movement.
- (4) Set back 50 feet from the top of the bank of any watercourse.

ARTICLE V Prohibited Activities

§ 107-27. Enumeration of prohibited activities.

In accordance with the administrative regulations promulgated by the Department of Community and Economic Development, Strategic Planning and Operation Office to implement the Pennsylvania Flood Plain Management Act, the following activities shall be prohibited within any identified floodplain area:

- 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.
 - (2) Nursing homes.
 - (3) Jails or prisons.
- B. 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.

ARTICLE VI Existing Structures in Identified Floodplain Areas

§ 107-28. Changes and improvements to existing structures.

The provisions of this chapter 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 § 107-29 shall apply.

§ 107-29. Improvements.

- A. No expansion or enlargement of an existing structure shall be allowed within any floodway area that would cause any increase in the elevation of the one-hundred-year flood.
- B. Any modification, alteration, reconstruction, or improvement of any kind to an existing structure, to an extent or amount of 50% or more of its market value, shall constitute a

substantial improvement and shall be undertaken only in full compliance with the provisions of this chapter.

- C. Any modification, alteration, reconstruction, or improvement of any kind to an existing structure, to an extent or amount of less than 50% of its market value, shall be elevated and/or floodproofed to the greatest extent possible.

ARTICLE VII Variances

§ 107-30. Relief granted by Council.

If compliance with any of the requirements of this chapter would result in an exceptional hardship to a prospective builder, developer or landowners, the McSherrystown Borough Council may, upon written request, grant relief from the strict application of the requirements.

§ 107-31. Variance procedures and conditions.

Requests for variances shall be considered by the Borough in accordance with the procedures contained in § 107-16 and the following:

- A. No variance shall be granted for any construction, development, use or activities within any floodway area that would cause any increase in the one-hundred-year-flood elevation.
- B. Except for a possible modification of the one-and-one-half-foot freeboard requirement involved, no variance shall be granted for any of the other requirements pertaining specifically to development which may endanger human life.
- C. If granted, a variance shall involve only the least modification necessary to provide relief.
- D. In granting any variance, the Borough shall attach whatever reasonable conditions and safeguards it considers necessary in order to protect the public health, safety, and welfare, and to achieve the objectives of this chapter.
- E. Whenever a variance is granted, the Borough shall notify the applicant in writing that:
 - (1) The granting of the variance may result in increased premium rates for flood insurance.
 - (2) Such variance may increase the risks to life and property.
- F. In reviewing any request for a variance, the Borough 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 neither result in an unacceptable or prohibited increase in flood heights, additional threats to public safety, or extraordinary public expense nor create nuisances, cause fraud on, or victimize the public, or conflict with any other applicable state or local ordinances or regulations.
- G. A complete record of all variance requests and related actions shall be maintained by the Borough. In addition, a report of all variances granted during the year shall be included in the annual report to the Federal Insurance Administration. Notwithstanding any of the above, however, all structures shall be designed and constructed so as to have the capability of resisting the one-hundred-year flood.

ARTICLE VIII

Definitions

§ 107-32. Interpretation.

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

§ 107-33. Terms defined.

As used in this chapter, the following terms shall have the meanings indicated:

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.

BASEMENT — Any area of the building having its floor below ground level on all sides.

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.

COMPLETELY DRY SPACE — A space which will remain totally dry during flooding; the structure is designed and constructed to prevent the passage of water and water vapor.

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.

ESSENTIALLY DRY SPACE — A space which will remain dry during flooding, except for the passage of some water vapor or minor seepage; the structure is substantially impermeable to the passage of water.

FLOOD — A temporary inundation of normally dry land areas.

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.

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.

FLOODWAY — The designated area of a floodplain required to carry and discharge floodwaters of a given magnitude. For the purposes of this chapter, the floodway shall be capable of accommodating a flood of the one-hundred-year magnitude.

HISTORIC STRUCTURE — 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 with historic preservation programs which have been approved by the Secretary of Interior; or
- D. Individually listed on a local inventory of historic places in states with historic preservation programs which have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior; or
 - (2) Directly by the Secretary of the Interior in states without approved programs.

IDENTIFIED FLOODPLAIN AREA — The floodplain area specifically identified in this chapter as being inundated by the one-hundred-year flood.

LAND DEVELOPMENT — Any of the following activities:

- A. The improvement of one lot or two or more contiguous lots, tracts, or parcels of land for any purpose involving:
 - (1) A group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure; or
 - (2) The division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups or other features.
- B. A subdivision of land.

LOWEST FLOOR — The lowest floor of the lowest fully enclosed area including basements.

MANUFACTURED HOMES — A transportable, single-family dwelling intended for permanent occupancy, office, or place of assembly, contained in one or more sections, built on a permanent chassis, which arrives at a site completed and ready for occupancy except for

minor and incidental unpacking and assembly operations, and constructed so that it may be used with or without a permanent foundation. The term includes park trailers, travel trailers, recreational and other similar vehicles which are placed on a site for more than 180 consecutive days.

MANUFACTURED HOME PARK — A parcel of land under single ownership, which has been planned and improved for the placement of two or more manufactured homes for nontransient use.

MINOR REPAIR — The replacement of existing work with equivalent materials for the purpose of its routine maintenance and upkeep, but not including the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the exitway requirements; nor shall minor repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, oil, waste, vent, or similar piping, electric wiring or mechanical or other work affecting public health or general safety.

NEW CONSTRUCTION — Structures for which the start of construction commenced on or after September 12, 1983, and includes any subsequent improvements thereto.

ONE-HUNDRED-YEAR FLOOD — A flood that, on the average, is likely to occur once every 100 years (i.e. that has one-percent chance of occurring each year, although the flood may occur in any year).

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.

RECREATIONAL VEHICLE — A vehicle which is built on a single chassis; is not more than 400 square feet, measured at the largest horizontal projections; is designed to be self-propelled or permanently towable by a light-duty truck; is not designed for use as a permanent dwelling but as temporary living quarters for recreational, camping travel, or seasonal use.

REGULATORY FLOOD ELEVATION — The one-hundred-year-flood elevation plus a freeboard safety factor of 1 1/2 feet.

STRUCTURE — Anything constructed or erected on the ground or attached to the ground including, but not limited to, buildings, sheds, manufactured homes, and other similar items.

SUBDIVISION — The 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 10 acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.

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 50% or more of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Any addition, reconstruction rehabilitation, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- A. 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 officials and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

ARTICLE IX

Federal Emergency Management Determinations

§ 107-34. Flood elevations.

The base flood elevation established by the Federal Emergency Management Agency for the Borough of McSherrystown may be found in the flood profiles contained in the Flood Insurance Study.

§ 107-35. Inspection of study and maps.

The Federal Flood Insurance Study and the Federal Flood Insurance Rate Maps are available for inspection by all interested parties at the McSherrystown Borough Office during normal hours when said office is open.