

Morgan County
**FLOOD PLAIN AREA AND
IMPROVEMENT LOCATION PERMIT
ORDINANCE**

AN ORDINANCE ESTABLISHING A FLOOD PLAIN AREA AND REQUIRING ALL CONTRACTORS, PERSONS, PARTNERSHIPS, BUSINESSES AND CORPORATIONS TO OBTAIN A PERMIT FOR DEVELOPMENT AND THE CONSTRUCTION, SUBSTANTIAL IMPROVEMENT OR RELOCATION OF ANY BUILDING OR STRUCTURE; PROVIDING FOR THE ISSUANCE OF SUCH PERMITS; PROVIDING FOR CERTAIN MINIMUM STANDARDS FOR CONSTRUCTION WITHIN THE FLOOD PLAIN AREA AND SETTING FORTH SPECIAL PROCEDURES FOR SUBMISSION AND APPROVAL OF PLANS; AND ESTABLISHING PENALTIES FOR ANY PERSON WHO FAILS TO COMPLY WITH THE REQUIREMENTS OR PROVISIONS OF THIS ORDINANCE.

BE IT ENACTED AND ORDAINED by the Morgan County Commission, Morgan County, West Virginia as follows:

ARTICLE I GENERAL PROVISIONS

Section 1.1 Authority

This Ordinance contains all the provisions necessary to comply with the requirements of 44 CFR Section 60.3(D) of the National Flood Insurance Program and is adopted by the authority of West Virginia Code 7-1-3v and 8A-1-2.

Section 1.2 Intent

The intent of this Ordinance 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 and safety by protecting water supply, sanitary sewage disposal in cooperation with the County Sanitarian, and to protect natural drainage.
- D. Assure the County Assessor obtains information concerning improvement of real property as required by WV State Code 11-3-3A.
- E. Assure County E-911 addresses are obtained to maintain the currency of established emergency response dispatch systems.
- F. Reduce financial burdens imposed on the community, its governmental units and its residents, by preventing the unwise design and construction of development in areas subject to flooding.

Section 1.3 Abrogation and Greater Restrictions

This Ordinance supersedes any ordinances currently in effect in flood prone areas. However, any ordinance shall remain in full force and effect to the extent that its provisions are more restrictive.

Section 1.4 Applicability

It shall be unlawful for any contractor, person, partnership, business or corporation to undertake or cause to be undertaken, any development or the new construction, substantial improvement, the placement or relocation of any structure (including manufactured homes) within the unincorporated areas of Morgan County, unless an improvement location permit application has been completed and a permit has been obtained from the Floodplain Administrator. In addition, where land partially or fully in the floodplain is to be developed, subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a site plan with elevation data must be submitted to, and approved by, the permit officer prior to any development.

Provisions of all other codes, ordinances and regulations shall be applicable insofar as they are consistent with the provisions of this Ordinance and the County's need to minimize the hazards and damage resulting from flooding.

Section 1.5 Matters not Provided for Specifically

Where conditions are encountered that are not specifically provided for herein, the Floodplain Administrator shall determine the applicability of the provisions of this ordinance in accordance with its intent, and shall require the applicant to take appropriate measures pursuant to such determination.

ARTICLE II INTERPRETATIONS AND DEFINITIONS

Section 2.1 Interpretations

A. For the purpose of this ordinance, the following interpretations shall apply:

1. Words used in the present tense include the future tense;
2. The singular includes the plural;
3. The plural includes the singular;
4. The term "shall" and "will" is always mandatory;
5. The word "building" or "structure" shall be construed as if followed by the phrase "or part thereof";
6. The word "Ordinance" shall refer to the Floodplain Ordinance.

Section 2.2 Definitions

General

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

Appurtenant Structure A structure on the same parcel of property as the principal structure and the use of which is incidental to the use of the principle structure.

Base Flood: The flood which has been selected to serve as the basis upon which the flood plain management provisions of this and other ordinances have been prepared; for purposes of the Ordinance, the one-hundred (100) year flood.

Basement: Any area of the building having its floor subgrade (below ground level) on all sides.

Contractor – WV State Code 21-11-3(c)

A person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, structure or excavation associated with a project, development, or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is one thousand dollars or more. Contractor includes a construction manager who performs management and counseling services on a construction project for a professional fee.

Contractor does not include:

1. One who merely furnishes materials or supplies without fabricating or consuming them in the construction project;
2. A person who personally performs construction work on the site of real property which a person owns or leases whether for commercial or residential purposes;
3. A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal development, management and maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work;
4. A pest control operator licensed under the provisions of section Seven, Article Sixteen-A, Chapter Nineteen of this Code to engage in the application of pesticides for hire, unless the operator also performs structural repairs exceeding one thousand dollars on property treated for insect pests; or
5. A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in this section and who employs full time a registered architect licensed to practice in this state or a registered professional engineer licensed to practice in this state. Contractor also does not include employees of such corporation, partnership or sole proprietorship.

Development: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Flood: A general and temporary inundation of normally dry land areas.

Flood Plain: (1) A relatively flat or low land area, adjoining a river, stream, or watercourse which is subject to partial or complete inundation; (2) An area subject to the unusual and rapid accumulation of runoff of surface waters from any source.

Flood Plain Administrator: The County Planning Office Permit Officer shall be the Floodplain Administrator. The Floodplain Administrator may also be identified as the Floodplain Manager.

Floodway: The channel of a river or other watercourse and the adjacent land area that must be reserved to discharge the base flood without increasing the water surface elevation of that flood more than one foot at any point.

Floodproofing: Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Freeboard: A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for unknown factors that may contribute uncertainty to flood heights of any given flood and floodway condition, such as a wave action, blockage at stream crossings, and increased runoff from urbanization of the watershed.

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

Improvement Location Permit: A permit that is required for any improvement, addition or alteration of a structure in excess of \$1,000.00. Swimming pools are included in this definition.

Licensed Manufacturer Home Dealer: A business licensed to sell Manufactured Homes in the state of West Virginia as set forth in the WV State Code.

Licensed Manufacturing Home Installer: A contractor licensed to install Manufactured Homes in WV as set forth in the West Virginia Code.

Licensed Professional Surveyor: Any person licensed by the West Virginia State Board of Examiners of Land Surveyors to engage in the practice of land surveying as defined in West Virginia State Code.

Lowest Floor: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure constructed with flood resistant materials as defined in FEMA Technical Bulletin 2-93 (FIA-TB-2) **and** usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest

floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Ordinance.

Manufactured Home: A prefabricated structure, transportable in one or more sections, which is built on a permanent chassis, and is designed for use with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

New Construction: Structures for which the Start of Construction as herein defined commenced on or after the effective date of this Ordinance and includes any subsequent improvements to such structures.

One-Hundred (100) Year Flood: A flood that has one chance in one-hundred or a one percent chance of being equaled or exceeded in any given year.

Person: Any individual or group of individuals, corporation, partnership, association, or other entity, including State and local governments and agencies.

Practice of Engineering: Any service or creative work, as described in West Virginia State Code Article 13, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems; planning the use of land and water; teaching of advanced engineering subjects, engineering surveys and studies; and the review of construction for the purpose of assuring compliance with drawings and specifications any of which embraces such services or work, either public or private in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health and property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Engineering surveys include all survey activities required to support the sound conception, planning, design, construction, maintenance and operation of engineered projects. Any person who practices any branch of the profession of engineering or who, by verbal claim, sign advertisement, letterhead, card or in any other way represents himself or herself to be a registered professional engineer, or by using another title implies that he or she is a registered professional engineer or that he or she is registered under West Virginia State Code Article 13, or who holds himself or herself out as able to perform, or who performs any engineering service or work or any other service designated by the practitioner which is recognized as engineering, is considered to practice or offer to practice engineering within the meaning and intent of West Virginia State Code Article 13.

Principally Above Ground: where at least 51 percent of the actual cash value of a structure, less land value, is above ground.

Recreational Vehicle: A vehicle which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light truck; and

- (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Registered Professional Engineer: A person who has been duly registered or licensed as a registered professional engineer by the West Virginia State Board of Registration for Professional Engineers as required under West Virginia State Code Article 13, et seq.

Remedy a Violation: To bring a structure or other development into compliance with the requirements of this ordinance, or, if full compliance is not possible, to reduce the adverse impacts of the non-compliance to the greatest extent feasible.

Reasonably Safe from Flooding: Means that during the base flood, water will not damage structures and any subsurface waters related to the base flood will not damage existing or proposed structures.

Start of Construction: The first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Although a permit must be obtained prior to beginning, permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

For other than new construction or substantial improvements under the Coastal Barrier Resources Act, Pub Law 97-348, includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of tiles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building whether or not that alteration affects the external dimensions of the building.

State Coordinating Office: The West Virginia Division of Homeland Security and Emergency Management.

Stream: As defined in West Virginia State Code 7-1-3u, any watercourse, whether natural or manmade, distinguishable by banks and a bed, regardless of their size, through which water flows continually or intermittently, regardless of its volume.

Structure: A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home, garage, shed, barn, etc.

Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the

market value of the structure before the damage occurred. Substantial damage also means cumulative flood-related damages sustained by a structure on two separate occasions during a 10 year period for which the cost of repairs at the time of each flood event equals or exceeds 25 percent of the market value of the structure before the damage occurred. See “Substantial Improvement.”

Substantial Improvement:

Any repair, reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the Start of Construction of the improvement. This term includes structures which have incurred “substantial damage”, as defined herein, regardless of the actual repair work performed. The term does not, however, include either:

- 1.) Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or
- 2.) Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

For the purpose of this definition, improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences whether or not that alteration affects the external dimensions of the structure.

Top of Bank: The lines depicted on the FIRM maps delineating each side of the stream indicate the top of the bank. In the field a professional familiar with fluvial geomorphology should document the top of the bank. When a professional is not employed the top of the bank will be considered to be the top of the first significant slope landward of the waters edge when it is followed by at least 50 feet of relatively flat land.

Violation: The failure of any structure or development to be fully compliant with all requirements of this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this ordinance is presumed to be in violation until such time as that documentation is provided.

ARTICLE III ESTABLISHMENT OF THE FLOOD PLAIN AREA

Section 3.1 Identification

The identified floodplain area shall be those areas of Morgan County, which are subject to the one-hundred (100) year flood, as shown on the Flood Insurance Rate Map (FIRM) and described in the Flood Insurance Study (FIS) prepared for Morgan County by the Federal Emergency Management Agency (FEMA) dated May 20, 1977, or the most recent revision thereof.

Section 3.2 Description of Floodplain Areas

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

- a) The Floodway area shall be those areas identified as such in the FIS and as shown on the FIRM. The term shall also include floodway areas identified in other studies for the approximated area discussed in Section C below.
- b) The Floodway Fringe area shall be those areas for which specific one-hundred (100) year flood elevations have been provided in the FIS but which lie beyond the Floodway area. These areas are shown on the FIRM.
- c) The Approximated area shall be those areas identified as an A Zone on the FIRM included in the FIS prepared by FEMA and for which no one-hundred (100) year flood elevations have been provided. For these areas, elevation and floodway information from other Federal, State or other acceptable source shall be used when available. The Morgan County Floodplain Administrator shall require the applicant to determine the elevation with hydrologic and hydraulic engineering or other techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Morgan County Planning Commission Floodplain Administrator.
- d) The AE Area without Floodway shall be those areas identified in the FIS and as shown on the FIRM where one-hundred (100) year flood elevations have been provided but no floodway has been delineated.

Section 3.3 Changes in Designation of Area(s)

The delineation of any of the identified floodplain area(s) may be revised by the Morgan County Planning Commission where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers, the Potomac River Basin Commission or other qualified agency or individual documents the necessity for such changes. However, prior to any such change, approval must be obtained from the Federal Insurance Administration (FIA).

Section 3.4 Elevations Prevail

- A. If the lowest natural grade adjacent to proposed development within an identified flood hazard area is at or above the Base Flood Elevation specified in the Flood Insurance Study, the structure shall not be required to conform to the flood prevention design and construction standards or flood-related development codes in Article VI. Topographic data certified by a registered professional engineer or licensed professional surveyor shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator. The applicant is advised to apply for a Letter of Map Amendment (LOMA) from FEMA to have the Special Flood Hazard Area designation removed from the parcel or structure.
- B. If the lowest natural grade adjacent to proposed development is below the Base Flood Elevation specified in the Flood Insurance Study, the site shall be considered to be within the floodplain area and the proposed structure shall be required to conform to all appropriate provisions of this ordinance.

Section 3.5 Boundary Disputes

Should a dispute concerning any district boundary arise, an initial determination shall be made by the Floodplain Administrator/Permit officer and any party aggrieved by this decision may appeal to the Morgan County Planning Commission. The burden of proof shall be on the appellant.

ARTICLE IV UTILIZATION OF THE FLOOD PLAIN AREA

Section 4.1 Floodway

1. Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in the Base Flood Elevation.
2. Because floodways present increased risk to human life and property due to their relatively faster and deeper flowing waters the Floodway shall be preserved to the greatest extent possible.
 - a) New development shall not be permitted in the floodway where reasonable alternatives exist elsewhere. In addition to the requirements within this ordinance the applicant shall demonstrate that there are no reasonable alternatives other than the floodway encroachment before a permit is issued.
 - b) When the floodway has been adequately demonstrated as the only reasonable alternative, the applicant shall further demonstrate that the floodway encroachment is the minimum necessary to accomplish the project.
3. All permitted uses, activities, and development shall be undertaken in strict compliance with the flood proofing and related provisions contained herein and in all other applicable codes, ordinances and regulations.

Section 4.2 Floodway Fringe and Approximated Floodplain

- A. In the Floodway Fringe and Approximated Floodplain, any development and/or use of land shall be permitted provided that all such uses, activities and/or development shall be undertaken in strict compliance with the flood-proofing and related provisions contained herein and in all other applicable codes, ordinances and regulations.
 1. In the Approximated Floodplain (F4) the Floodplain Manager shall review, or shall cause to be reviewed, all proposed development not covered by subsection B below to determine the amount being invested.
 - (i) Appurtenant structures such as garages, storage facilities or non-inhabited structures, valued at less than \$10,000.00, shall be required to provide "Point on Boundary" elevation data and, when available, historic flood heights. The Floodplain Manager shall

attempt to determine a height that will be reasonably safe from flooding using this elevation data. Any appurtenant structures permitted using this method shall be required to have the lowest floor elevated and/or use flood resistant materials to the height determined. This height will never be less than three (3) feet above the highest adjacent grade even if the “point on boundary” or historic flood height data would indicate a lower flood elevation. If this method is not adequate to allow the Floodplain Manager to confidently determine the flood height or if the applicant is not satisfied with the height determined by the Floodplain Manager the applicant shall be required to utilize one of the alternate methods set forth below.

- (ii) All structures valued at more than \$10,000.00 but less than \$75,000 shall be required to determine the “Community Flood Elevation” to be entered in Section “G” of the Elevation Certificate based on one of the following: 1. the results of a Quick-2 engineering analysis, 2. by obtaining a Base Flood Elevation through a Letter Of Map Amendment request to FEMA or 3. by obtaining flood height data using the USGS methodology set forth in the USGS water resources investigations report 87-4111. These semi-detailed methods will be reviewed by the Floodplain Manager. If method 2 is pursued, the Floodplain Manager will review the data, and if satisfactory, will fill in Section “G” of the Elevation Certificate.
- (iii) Development determined to represent a risk to residential or commercial structures valued at more than \$75,000.00 shall develop a Base Flood Elevation using a detailed engineering study method such as HEC-ras. This data shall be prepared and certified by a registered professional engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms and a completed Elevation Certificate with the Base Flood Elevation completed in Section B. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Manager.

- B. All subdivision proposals and other proposed new developments which are proposed to take place either fully or partially within the Approximated Floodplain Area and which are greater than ten (10) lots or two (2) acres, whichever is the lesser, shall include base flood elevation and floodway data in addition to meeting the requirements specified in the Morgan County Subdivision Regulations.
 - 1. This data may be available from an authoritative source such as the U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resource Conservation Service or state and local water resource departments.
 - 2. If the required data is not available from other sources the applicant shall develop the technical data using detailed methodologies comparable to

those contained in a Flood Insurance Study. This data shall be prepared and certified by a registered professional engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts.

Section 4.3 Zone AE Area without Floodway Designation

Within any AE Area without Floodway no new construction or development shall be allowed unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and proposed development, will not increase the elevation of the one-hundred (100) year flood more than one (1) foot at any point.

Section 4.4 Alteration or relocation of a stream

- A. Whenever a developer intends to alter or relocate a watercourse within the Floodplain Area, the developer shall notify in writing by certified mail all adjacent communities, the Morgan County Planning Commission Floodplain Administrator and the State Coordinating Office of all such intended activities prior to any alteration or relocation of the stream/watercourse, and shall submit copies of such notification to the Federal Insurance Administrator. In addition prior to issuing the local permit the Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State law requires approval.
- B. The developer shall also assure the Morgan County Planning Commission/Floodplain Administrator in writing, that the flood carrying capacity within the altered or relocated portion of the watercourse in question will be maintained. The Floodplain Administrator may require the applicant to demonstrate that the altered or relocated portion of stream will provide equal or greater conveyance than the original stream segment. If hydrologic and hydraulic analyses are required, they shall only be undertaken by professional engineers, who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.
- C. Alteration of a stream includes placement of culverts, bridges, or other stream crossings. The Morgan County Planning Commission/Floodplain Administrator may require the use of certain “best practice” techniques in the construction of bridges, culverts or stream crossings to prevent damage, loss of stream crossings and localized flooding caused by blockage. These techniques may include, but are not limited to, wing walls, trash grates or requiring openings to be of sufficient size to pass debris and/or anticipated future increases in flood heights.
- D. All new and replacement bridges, culverts and other stream crossings shall adhere to the relevant anchoring requirements contained in this ordinance.
- E. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the Floodplain Administrator, and must pay any fees or other costs assessed by FEMA for this purpose.

ARTICLE V CRITERIA FOR BUILDING AND SITE PLAN APPROVAL

Section 5.1 General

Improvement Location Permits are required in order to determine whether all new construction or substantial improvements are:

- A. Approved by the Morgan County Health Department for well and septic permits.
- B. Located in an identified Floodplain, Floodway or other flood hazard area.
- C. If in the flood plain area is the development:
 - 1) Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 - 2) Constructed with materials and utility equipment resistant to flood damage as outlined in FEMA Technical Bulletin 2-93 (FIA-TB-2) or the most recent revision thereof.
 - 3) Constructed by methods and practices that minimize flood damage.
 - 4) Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Section 5.2 Basic Format

The basic format of the Improvement Location Permit shall include the following:

- 1. Name and address of applicant.
- 2. Name and address of owner of land on which proposed construction is to occur.
- 3. Names, addresses and valid WV license numbers of all contractors working at the building site, or affidavits stating that work is being performed by individuals exempt from contractor licensing as set forth in Title 28, Series 2 Section 3.9(b) of the West Virginia Code of state regulations or the most recent revision thereof.
- 4. Specific site location including district, tax map and parcel information.
- 5. Brief description of proposed work and estimated cost.
- 6. A plan of the site showing the exact size and location of the proposed construction as well as any existing buildings or structures. The site plan shall also show all adjacent roads and watercourses with direction of flow, the lowest adjacent grade to the proposed foundation and/or toe of fill, the Base Flood Elevation and the location of the floodway boundary when applicable.
- 7. Type of construction (residential, recreation, commercial, garage, swimming pool, etc.)
- 8. An acknowledgement that the applicant agrees to pay any and all fees associated with the permitting process as set forth in Section 7.9 thereof.
- 9. An acknowledgement that the applicant agrees to allow authorized representatives of floodplain management programs access to the development to inspect for compliance.

Section 5.3 Elevation and Floodproofing Information

All applicants are encouraged to exceed the minimum elevation requirements contained herein. Flood insurance rates can be lowered significantly by increasing the elevation of the lowest floor above the freeboard height required by this ordinance.

Depending on the type of structure involved, the following information shall also be included in the improvement location permit application for work within the Flood Plain Area.

- A. For structures to be elevated 18 inches above the Base Flood Elevation:
 - 1) A plan showing the size of the proposed structure and its relation to the lot where it is to be constructed.
 - 2) A determination of elevations of the existing ground, proposed finished ground and lowest floor, certified by a Registered Professional Engineer, Surveyor or Architect.
 - 3) Plans showing the method of elevating the proposed structure, including details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, etc. When required by the Floodplain Administrator/ Permit Officer, these plans shall be prepared by a Registered Professional Engineer or Architect.
 - 4) Plans showing the methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to the Base Flood Elevation at the building site.
 - 5) During the course of construction, as soon as the basic elements of the lowest floor are in place and before further vertical construction, it is highly recommended that the applicant check for error by obtaining elevation data completed by a registered professional engineer or licensed professional surveyor certifying the height of the lowest floor. If a mistake in elevation has been made this is the best time to correct the error.

- B. For structures to be floodproofed to 18 inches above the Base Flood Elevation (nonresidential structures only):

All applicants are encouraged to exceed the minimum flood proofing requirements contained herein. Flood insurance rates can be lowered significantly by increasing the level of flood proofing above the height required by this ordinance. In order to obtain an “elevation credited” flood insurance rate on dry flood proofed buildings, flood proofing must extend at least one foot above the Base Flood Elevation.

- 1) Plans showing details of all floodproofing measures, prepared by a Registered Professional Engineer, and showing the size of the proposed structure and its relation to the lot where it is to be constructed.
- 2) A determination of elevations of existing ground, proposed finished ground, lowest floor, and floodproofing limits, certified by a Registered Professional Engineer, Surveyor, or Architect.
- 3) A Flood Proofing Certificate, FEMA 81-65, as revised by FEMA, shall be prepared by the Registered Professional engineer who prepared the plans in (1) above, stating the structure in question, together with attendant utility and sanitary facilities is designed so that:

- a) Below the Base Flood Elevation the structure is watertight with walls substantially impermeable to the passage of water.
 - b) The structure will withstand the hydrostatic, hydrodynamic, buoyant, impact, and other forces resulting from the flood depths, velocities, pressures and other factors associated with the Base Flood.
- C. For structures constructed of flood resistant materials – used solely for parking of vehicles or storage. (Appurtenant Structures only)
- 1. A site plan prepared by a licensed professional surveyor or others of demonstrated qualifications showing elevation of existing ground, proposed finished ground and lowest floor. The plan shall also show details of proposed flood resistant materials usage and the size of the proposed structure and its relation to the lot where it is to be constructed. The location of the floodway boundary shall be represented on the plan when a floodway is present on the site.
 - 2. An elevation report or certificate, based on finished construction, must be prepared by a licensed professional surveyor or others of demonstrated qualifications. This certificate or report must confirm that the structure in question, together with attendant utilities is designed so that:
 - i). Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2) are used in the construction of the structure from the lowest structural element to two feet above the Base Flood Elevation and that all utilities are located at least two feet above the Base Flood Elevation.
 - ii). Hydrostatic flood forces on exterior walls are equalized by allowing for automatic entry and exit of floodwaters. 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 total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b). The bottom of all openings shall be no higher than one foot above grade.
 - c). Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

Section 5.4 Site Plan Criteria

The owner or developer of any proposed subdivision, manufactured home park or subdivision, or other development shall submit a site plan to the Floodplain Administrator/Permit Officer which includes the following information:

- 1. Name of engineer, surveyor, or other qualified person responsible for providing the information required in this section.
- 2. A map showing the location of the proposed subdivision and/or development with respect to the County's flood plain areas, proposed lots and sites, fills, flood or

erosion protective facilities and areas subject to special deed restriction. In addition, it is required that all subdivision proposals and other proposed new developments which are proposed to take place either partially or fully within the approximated floodplain and which are greater than ten (10) lots or two (2) acres, whichever is the lesser, shall include base flood elevation data and shall delineate a floodway. If FEMA has completed a Flood Insurance Study (FIS), that data must be used to substantiate the base flood. Otherwise, the developer may submit data provided by an authoritative source, such as U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, state and local water resource departments, or technical data developed using detailed methodologies comparable to those contained a Flood Insurance Study. This data shall be prepared and certified by a registered professional engineer, who shall certify that the technical methods used correctly reflect currently accepted technical concepts.

3. Where the subdivision and/or development lie partially or completely in the flood plain area, the plan map shall include detailed information giving the location and elevation of proposed roads, public utilities and building sites. All such maps shall also show contours at intervals of two (2) or five (5) feet depending upon the slope of the land and identify accurately the boundaries of the flood plain areas.
4. Where the subdivision and/or development lies partially in the floodplain area and all proposed development including fill will take place on natural grade a significant vertical distance above the floodplain boundary depicted on the map, development of detailed Base Flood Elevation data may not be necessary. In these cases the site plan for the proposed development must show contours at intervals of two (2) or five (5) feet and clearly delineate the area to be developed and the location of the floodplain areas as depicted on the FEMA map. A registered professional engineer, licensed professional surveyor or others of demonstrated qualifications must certify the site plan.

Section 5.5 Certification Forms

Upon completion of construction, the permit holder shall submit to the Floodplain Administrator/Permit Officer a completed Elevation Certificate or Floodproofing Certificate (for floodproofed nonresidential construction). These forms shall be kept on file by the Morgan County Planning Commission.

ARTICLE VI SPECIFIC REQUIREMENTS

Section 6.1 Design and Construction Standards

In order to prevent excessive damage to buildings, structures and related utilities and facilities, the following restrictions shall apply to all development, subdivision proposals, manufactured home parks, new construction and to construction of substantial improvements to existing structures occurring in the Flood Plain Areas.

- A. Basement and Lowest Floors

- 1) All new construction, relocation and substantial improvements of residential structures must have the lowest floor (including basement), ductwork and utilities, elevated 18 inches above the Base Flood Elevation.
- 2) All new construction and substantial improvements of nonresidential structures must have the lowest floor (including basement), ductwork and utilities elevated one foot above the Base Flood Elevation; or, together with attendant utility and sanitary facilities, be designed so that the structure is floodproofed in accordance with Section 5.3B.
- 3) For all new construction, relocation and substantial improvements, those fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer architect or meet or exceed the following minimum criteria.
 - a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b) The bottom of all openings shall be no higher than one foot above grade.
 - c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

B. Manufactured Home Placement

Certain unique characteristics of manufactured homes installed in flood hazard areas pose an elevated risk of substantial damage to property. Thus –

1. All manufactured homes to be sited within the identified flood hazard areas of Morgan County shall be installed by a contractor possessing a valid WV Manufactured Home Installer's license. The installer shall use an installation design engineered to withstand flood hazards specific to the particular home site. Manufactured homes to be placed or substantially improved within the flood hazard areas shall be installed in accordance with the following standards:
 - A. The lowest floor, ductwork and utilities including HVAC/heat pump of the manufactured home must be elevated 18 inches above the Base Flood Elevation, ;
 - B. Elevation shall be by supporting the chassis on reinforced piers on a permanent foundation or by use of other foundation elements of at least equivalent strength engineered for use in a flood hazard area. Piers or other foundation supports shall never be less than 36 inches in height above grade. Installation designs incorporating dry stacked block piers shall not be used in flood hazard areas.
 - C. The manufactured home shall be securely anchored to an adequately anchored foundation system in compliance with the requirements of 42 West Virginia Code of State Regulations, Series 19, Section 10.1, 10.2, and 10b as authorized by West Virginia Code 21-9-4 to resist flotation, collapse and lateral movement. This requirement is in addition to applicable State and Local anchoring requirements for resisting wind forces.

- D. Permanently attached rigid skirts and perimeter wall skirts of brick or block must have openings, this type of skirting can collapse during floods and compromise supporting piers. The openings must be designed to automatically equalize hydrostatic flood forces by allowing for entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a Registered Professional Engineer or meet or exceed the following minimum criteria:
 - 1. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - 2. The bottom of all openings shall be no higher than one foot above grade.
 - 3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- E. Any additions to a manufactured home shall be similarly anchored and vented.

- 2. The licensed WV Manufactured Home Installer placing the unit shall perform a site inspection and certify in writing that the manufactured home has been installed to the standards set forth in this ordinance.

C. Appurtenant Structures

- 1. Except as provided in Subsection 2 below, appurtenant structures shall be located out of the floodplain area or elevated to one foot above the Base Flood Elevation.
- 2. Where appurtenant structures not connected to the principle structure are to be located on sites below the Base Flood Elevation, the following flood damage reduction provisions apply:
 - a. Structures shall be no more than 600 square feet in size and valued at less than \$10,000.00.
 - b. Floors shall be at or above grade on at least one side.
 - c. Structures shall be located, oriented and constructed to minimize flood damage.
 - d. Structures shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 - e. Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2) shall be used in the construction of the structure from the lowest structural element to two feet above the Base Flood Elevation.
 - f. Machinery, electric devices or appliances, and all utilities shall be located at least two feet above the Base Flood Elevation.
 - g. The venting requirements contained in Section 6.1 (A) are applicable and shall be strictly adhered to.

D) Recreational Vehicle Placement

- 1) Recreational vehicles to be placed within any floodplain area shall either:

- a. Be on site for fewer than 180 consecutive days. Or,
- b. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect utilities and security devices, and has no permanently attached additions. Or,
- c. Be installed in accordance with the Manufactured Home Placement requirements and all other flood reduction requirements contained in this ordinance.

E) Fill

Morgan County officially recognizes the beneficial functions the floodplain serves in storage and transportation of water during floods. Placement of fill in the floodplain area is discouraged and should be minimized. No fill shall be permitted in the floodway.

Placement of fill in other areas of the floodplain shall be restricted to functional purposes such as elevating a structure. Placement of fill to dispose of soil from excavation or to elevate yards, parking lots, or fields will not generally be considered a functional purpose. The floodplain administrator may require the developer to provide compensatory storage immediately adjacent to the site. All fill placed in the floodplain area shall meet or exceed the following standards:

- 1) Fill shall be used only to the extent to which it does not adversely affect adjacent properties. Morgan County Planning Commission may require the applicant to demonstrate through engineering reports that proposed fill would not adversely affect adjacent properties. When required, hydrologic and hydraulic analyses shall be undertaken only by professional engineers who shall certify that the technical methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed and sealed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Morgan County Planning Commission. During permit review the Morgan County Planning Commission Floodplain Administrator shall consider the following issues that have the potential to cause adverse impact to adjacent properties:
 - a. Unacceptable increases in flood heights.
 - b. Blocking drainage from adjacent property.
 - c. Deflection of floodwaters onto adjacent existing structures.
 - d. Increases to stream velocity initiating or exacerbating erosion problems.
 - e. Other unique site conditions may be considered when determining whether fill will cause adverse impact to adjacent property including, but not limited to, subsidence areas, karst topography, stream blockages, and steep topography adjacent to the channel.
- 2) Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally fifteen (15) feet beyond the building line from all points. For non-residential structures, fill shall be placed to provide access acceptable for intended use. At-grade access, with full extending laterally fifteen (15) feet beyond the building line, shall be provided to a minimum of twenty-five (25) percent of the perimeter of a non-residential structure.

- 3) Fill shall consist of soil or rock materials only. Sanitary land fills shall not be permitted, no trash or woody debris shall be buried on site.
- 4) Fill material shall be compacted to provide the necessary stability and resistance to erosion, scouring, or settling. Fill compaction standards must be appropriate to proposed post fill use, particular attention is necessary when fill is being used to elevate a structure.
- 5) Fill slopes shall be not steeper than one (1) vertical on two (2) horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Floodplain Administrator/Permit officer.
- 6.) Fill shall be used only to the extent to which it does not adversely affect the capacity of channels or floodways of any tributary to the main stream, drainage ditch, or any other drainage facility or system.
- 7.) Filled site must be contoured to drain properly to avoid ponding.
- 8.) Fill site and fill must be protected from erosion.
 - a. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of five feet per second or less must be protected from erosion by covering them with grass, vines, weeds, or similar vegetative undergrowth.
 - b. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of greater than five feet per second must be protected from erosion by armoring them with stone or rock slope protection.
- 9.) In areas where detailed studies exist, all applicants placing fill must obtain a Letter of Map Revision based on fill (LOMR-F) from FEMA upon completion.
- 10.) The applicant must submit any maps, computations or material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the Floodplain Administrator, and must pay any fees or other costs assessed by FEMA for this purpose.

F) Placement of Structures and other development

- 1) All structures and other development shall be constructed and placed on the lot so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum obstruction effect upon the flow and height of flood water.
 - i. Whenever possible, structures and other development shall be constructed with the longitudinal axis parallel to the direction of the flood flow and;
 - ii. So far as practicable, structures and other development shall be placed approximately on the same flood-flow lines as those of adjoining structures.

G) Anchoring

- 1) All structures and other development including stream crossings shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, and lateral movement, thus reducing the threat to life and property and

decreasing the possibility of the blockage of bridge openings and other restricted sections of the watercourse.

- 2) All air ducts, large pipes, swimming pools and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation.

H) Flood Protection Setback

1. A Flood Protection Setback equal to twice the width of the watercourse channel measuring from the top of one bank to the top of the opposite bank or 50 feet, whichever is less, shall be maintained from the top of the banks of all watercourses. To reduce erosion, natural vegetation shall be maintained in this area. Where natural vegetation does not exist along the watercourse and conditions for replanting are suitable, high priority shall be given to planting vegetation in the setback area to stabilize banks and enhance aquatic resources.
2. Necessary public works and temporary construction may be exempted from this subsection.
3. The Floodplain Administrator may consider an appeal to the Flood Protection Setback requirement if the applicant demonstrates that it is impossible to allow any development without encroachment into the Flood Protection Setback area. The appeal conditions shall be the minimum necessary and shall be made only after due consideration is given to varying other siting standards, such as side, front and back lot line setbacks.

I) Storage

1. No materials that are buoyant, flammable, explosive, or in times of flooding could be injurious to human, animal or plant life, shall be stored below Base Flood Elevation.
2. Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or readily removable from the area within the time available after flood warning.
3. Due to the potential of masking the natural elevation and making it more difficult to enforce this ordinance, material that resembles "fill" material shall not be considered "storage" material for purposes of this subsection.

J) Utility and Facility Requirements

- 1) All new or replacement water systems, whether public or private, shall be designed to minimize or eliminate infiltration of flood waters into the system.
- 2) All new or replacement sanitary disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
- 3) All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.
- 4) Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

K) Drainage

Adequate drainage shall be provided to reduce exposure to flood hazards.

L) Backflow Preventers

Back flow prevention valves should be used for all enclosed structures with sewage or drainage facilities located in the floodplain.

ARTICLE VII ADMINISTRATION

The Permit Officer is hereby appointed as Floodplain Administrator to administer and implement this local law by granting or denying floodplain development permits in accordance with its provisions.

Section 7.1 Improvement Location Permits and Site Plan Approvals Required

It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any development or the new construction, substantial improvement or relocation of any structure (including manufactured homes), unless a permit has been obtained from the Floodplain Administrator/Permit Officer. In addition, where land partially or fully in the floodplain is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a site plan must be submitted to, and approved by, the Morgan County Planning Commission prior to any development. Any development within the Flood Plain Area is not eligible for an exemption under the Morgan County Subdivision Regulations.

Section 7.2 Approval of Permits and Plans

1. The Floodplain Administrator shall review, or shall cause to be reviewed, all permit applications and plans in order to determine whether proposed building sites are reasonably safe from flooding.
2. All permits and plans shall be approved 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.
3. The Floodplain Administrator shall not issue a permit to any person who does not possess a valid contractor's license when a contractor's license is required by West Virginia State Code 21-11-10.
4. The Floodplain Administrator, before issuance of the permit, shall require the applicant to furnish satisfactory proof that such person is duly licensed as a contractor under the provisions of West Virginia State Code. If the applicant is not licensed, a written affidavit that such person is not subject to licensure as a contractor or subcontractor as defined in 21-11-3 shall be provided to the Floodplain Administrator and placed in the permit file.
5. The Floodplain Administrator /permit officer shall require copies of all necessary permits from those governmental agencies from which approval is required by Federal or State law.
6. The Floodplain Administrator shall provide a copy of all permits to the County Assessor as required by West Virginia State Code 11-3-3A.
7. The Floodplain Administrator shall provide a copy of all permits for new structures to the County E-911 addressing coordinator.
8. The County E-911 addressing coordinator shall provide a copy of all requests for addresses for new structures to the County Floodplain Administrator.

9. The Morgan County Planning Commission shall provide sufficient space to allow the Floodplain Administrator to keep on file in perpetuity in a location safe from natural hazards, all information collected during the course of the administration of this ordinance.
10. A record of all information supplied to the permit officer shall be kept on file by the Morgan County Planning Commission.

Section 7.3 Application Procedure

Application for an improvement location permit and site plan approvals shall be made, in writing, to the Floodplain Administrator/Permit Officer, and shall include all information stipulated under Article V of this Ordinance.

Section 7.4 Changes

After the issuance of an improvement location permit or site plan approval by the Floodplain Administrator/Permit 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 Floodplain Administrator/Permit Officer.

Section 7.5 Permit Placards

- A) In addition to the improvement location permit, the Floodplain Administrator/Permit 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 improvement location permit, the date of its issuance, and be signed by the Floodplain Administrator/Permit Officer.
- B) In floodplain areas it shall be unlawful to inspect and approve or install a temporary electrical utility connection to any building or premises, or both, or part thereof hereafter created, erected or rebuilt until a placard has been issued by the Local Floodplain Administrator indicating that the development has applied for a permit and agreed to the requirement of this ordinance.

Section 7.6 Start of Construction

Work on the proposed construction shall begin within six (6) months after the date of issuance of the improvement location permit or the permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator/Permit Officer. All work on the proposed development must be completed within 18 months of permit issuance, at which time the permit shall expire unless a time extension is granted in writing by the Floodplain Administrator. The request for a time extension shall be in writing and shall state the reasons for the extension.

Section 7.7 Stop Work Orders, Inspection and Revocation

- A. Stop-Work Orders
 1. The Floodplain Administrator shall issue, or cause to be issued, a “Stop Work Order Notice” for any development found ongoing without having obtained an improvement location permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 8.3 of this local law.

2. The Floodplain Administrator shall issue, or cause to be issued, a “Stop Work Order Notice” for any development found non-compliant with the provisions of this law and/or the conditions of the improvement location permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 8.3 of this local law.

B. During the construction period, the Floodplain Administrator/permit officer or other authorized official may inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable laws and ordinances. In the event the Floodplain Administrator/Permit 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 Floodplain Administrator/Permit Officer shall issue a “Stop Work Order Notice” revoking the improvement location permit and report such fact to the Morgan County Planning Commission for whatever action it considers necessary.

Section 7.8 Fees

Applications for an improvement location permit shall be accompanied by a fee, payable to the Morgan County Planning Commission, based upon a set schedule approved by the Morgan County Planning Commission and the Morgan County Commission. In addition, the applicant shall be responsible for reimbursing the Morgan County Planning Commission for any additional costs for services necessary for review and/or inspection of proposed development. Services include, but are not limited to, professional engineering and surveying. The Floodplain Administrator may require a deposit towards these additional costs. Additional costs may include reimbursement for contracted services.

ARTICLE VIII APPEALS AND PENALTIES

Section 8.1 Appeals

If the Floodplain Administrator denies an application, the Floodplain Administrator shall notify the applicant in writing of the reasons for denial. The applicant may request, one time, a reconsideration of the decision of the Floodplain Administrator by the Planning Commission, which request for reconsideration must be in writing and received by the Floodplain Administrator no later than ten days after the decision of the Floodplain Administrator is received by the applicant. Said decisions shall be served upon the applicant via certified mail, restricted delivery, return receipt requested.

Any decision made by the Floodplain Administrator or Morgan County Planning Commission pursuant to this Ordinance may be appealed to the Morgan County Circuit Court as stated in West Virginia Code 8A-9-1 through 8A-9-7 (Article 9, Appeal Process).

Section 8.2 Appeal Review Criteria

All appeals contesting only the permit fee established by the permit officer, the cumulative substantial damage requirement, the flood protection setback requirement, or the freeboard

requirements, may be handled at the discretion of the Morgan County Planning Commission. All decisions on appeals to all other provisions of the Ordinance shall adhere to the following criteria:

- 1) Affirmative decisions shall only be issued by the Morgan County Planning Commission and the Morgan County Commission upon:
 - (i) a showing of good and sufficient cause,
 - (ii) a determination that failure to grant the appeal would result in exceptional hardship to the applicant, and
 - (iii) a determination that the granting of an appeal will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinance.
- 2) An affirmative decision shall be issued only upon determination that it is the minimum necessary, considering the flood hazard, to afford relief. Financial hardship, as a sole criterion, shall not be considered sufficient justification to grant an appeal.
- 3) An affirmative decision shall be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- 4) The Morgan County Planning Commission or Morgan County Commission shall notify the applicant in writing over the signature of a community official that:
 - i. the issuance of decision to allow construction of a structure below the Base Flood elevation may result in increased premium rates or flood insurance,
 - ii. such construction below the Base Flood Elevation increases risk to life and property.

Such notification shall be maintained with a record of all decisions as required in paragraph (4) of this section; and;

- 5) The Morgan County Planning Commission and Morgan County Commission shall:
 - i. maintain a record of all decisions including justification for their issuance, and
 - ii. report such decisions issued in its biennial report submitted to the Federal Insurance Administration.
- 6) No variance shall be granted for any construction, development, use or activity within any floodway area that would cause any increase in the Base Flood Elevation, one-hundred year flood elevation.

- 7) No variance shall be granted for any construction, development, use, or activity within any Special Flood Plan Area that would, together with all other existing and anticipated development, increase the one-hundred year flood elevation more than one (1) foot at any point.

Section 8.3 Penalties

In accordance with West Virginia Code 8A-10-2; any person who has violated any provision of this Ordinance is guilty of a misdemeanor, and upon conviction, shall be fined not less than Fifty Dollars (\$50.00) nor more than Five hundred Dollars (\$500.00).

In addition to the penalties above, the Morgan County Planning Commission, through its President or other officer, or any designated enforcement official, is authorized to seek an injunction in the Circuit Court of Morgan County as stated in West Virginia Code 8A-10-3, to enjoin a person or legal entity from violating the provisions of the Ordinance. All other actions are hereby reserved including an action in equity for the proper enforcement of this Ordinance. The imposition of a fine or penalty for any violation of, or non-compliance with, this Ordinance shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or non-compliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered, or relocated, in noncompliance with this Ordinance may be declared by the Morgan County Planning Commission to be a public nuisance and abatable as such.

ARTICLE IX GOVERNMENT ACTIONS

Section 9.1 Municipal Annexation

- A. The county floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements for participation in the National Flood Insurance Program.
- B. Municipalities with existing floodplain ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards.
- C. All plats or maps of annexation shall show the floodplain boundaries, Base Flood Elevation and location of the floodway where determined.
- D. In accordance with the Code of Federal Regulations, Title 44, Subpart (B) Section 59.22 (a)(9)(v) all NFIP participating communities must notify the Federal Insurance Administration in writing whenever the boundaries of the community, have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. In order that all Flood Insurance Rate Maps accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority must be included with the notification.

- E. NFIP participating communities must notify the State Coordinating Office in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. A copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority must be included in the notification.

Section 9.2 Permits for Government Entities

- A. Unless specifically exempted by law, all public utilities and Municipal, County, State and Federal entities are required to comply with this ordinance and obtain all necessary permits. Any entity claiming to be exempt from the requirements of this ordinance must provide a written statement setting forth the rationale for exemption. In addition the entity claiming exemption shall provide copies of all relevant legal documentation demonstrating the exemption.

ARTICLE X SEVERABILITY AND COUNTY LIABILITY

Section 10.1 Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this Ordinance which shall remain in full force and effect, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

Section 10.2 County Liability

The granting of a permit or approval of a subdivision or development plan in an identified flood-prone area, shall not constitute a representation, guarantee, or warranty of any kind by the Morgan County Commission or Morgan County Planning Commission or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the Morgan County Commission or the Morgan County Planning Commission, it's officials or employees. All applicants proposing development in or near a flood plain area are urged to locate development as far away from, and as high above, all flooding sources as possible.

ARTICLE XI ENACTMENT

Enacted and ordained this 1st day of January, 1986, effective immediately, and;

As amended in 1992, February 15, 1996 and March 12, 2009.

MORGAN COUNTY COMMISSION
BY:

Brenda J. Hutchinson, President

Thomas R. Swaim

Stacy A. Dugan

Attest:

Debra A. Kesecker, County Clerk