

156. FLOOD DAMAGE PREVENTION

156.01. STATUTORY AUTHORIZATION

The Indiana Legislature has granted the power to local units of government (IC 36-1-3-1 et seq.) to control land use within their jurisdictions in order to accomplish the purposes described in Section 156.02, Statement of Purpose

156.02. STATEMENT OF PURPOSE

The purpose of this Section 156 is to guide development in established flood hazard areas to reduce potential for loss of life and property, reduce potential for health and safety hazards, and to reduce potential for extraordinary public expenditures for flood protection and relief. Under the authority granted to local units of government to control land use within their jurisdiction, which includes taking into account the effects of flooding, the Town Council of the Town of Pendleton hereby adopts the following floodplain management regulations in order to accomplish the following:

- A. To prevent unwise development from increasing flood or drainage hazards to others.
- B. To protect new buildings and major improvements to buildings from flood damage.
- C. To protect human life and health from the hazards of flooding.
- D. To lessen the burden on the taxpayer for flood control projects, repairs to flood damage public facilities and utilities, and flood rescue and relief operations.
- E. To maintain property values and a stable tax base by minimizing the potential for creating flood-blighted areas.
- F. To make federally subsidized flood insurance available for property in the town by fulfilling the requirements of the National Flood Insurance Program.

156.03. ADMINISTRATIVE DUTIES

The Planning Director is appointed to review all development and subdivision proposals to insure compliance with this Section, including but not limited to the following duties:

- A. Ensure that all development activities within the Special Flood Hazard Areas (SFHAs) of the jurisdiction of the town meet the requirements of this Section.
- B. Provide information and assistance to citizens upon request about permit procedures and floodplain construction techniques.
- C. Ensure that construction authorization has been granted by the Indiana Department of Natural Resources (DNR) for all development projects subject to Section 156.07, and maintain a record of such authorization (either copy of actual permit or letter of recommendation).
- D. Maintain a record of the “as built” elevation of the lowest floor (including basement) of all new and/or substantially improved buildings constructed in the SFHAs.
- E. Maintain a record of certified engineers and the “as built” flood-proofed elevation of all buildings subject to Section 156.08.
- F. Cooperate with state and federal floodplain management agencies to improve base flood and floodway data and to improve the administration of this Section. Submit reports as required for the National Flood Insurance Program.

- G. Maintain for public inspection and furnish upon request regulatory flood data, SFHA maps, copies of DNR permits and letters of recommendation, federal permit documents, and “as built” elevation and flood-proofing data for all buildings constructed subject to this Section.

156.04. DETERMINATION OF REGULATORY FLOOD ELEVATION AND BEST AVAILABLE DATA

156.04.01 Protection Standard

This Section’s protection standard is the Regulatory Flood Elevation. The Regulatory Flood Elevation for the SFHAs and for Fall Creek shall be as delineated on the 100-year flood profiles in the *Flood Insurance Study of the Town of Pendleton and Unincorporated Areas of Madison County*, prepared by the Federal Emergency Management Agency (FEMA) and dated November 3, 1981; along with corresponding FBFM dated May 3, 1982.

- A. The Regulatory Flood Elevation for each SFHA delineated as an “AH Zone” or “AO Zone” (Floodway or Floodway Fringe) shall be that elevation delineated on the *Flood Insurance Rate Map of the Town of Pendleton and Unincorporated Areas of Madison County*.
- B. The Regulatory Flood Elevation for each of the remaining SFHAs delineated as an “A Zone” (Floodplain - no 100-year Regulatory Flood Elevation and or Floodway/Floodway Fringe delineation has been provided), also shall be that elevation delineated on the *Flood Insurance Rate Map of the Town of Pendleton and Unincorporated Areas of Madison County*.

156.04.02 Best Available Data

The best available regulatory flood data is listed below. Whenever a party disagrees with the best available data, the party submitting the detailed engineering study needs to replace existing data with better data and submit it to the DNR for review and approval.

- A. If the SFHA is delineated as “AH Zone” or “AO Zone” (Floodway or Floodway Fringe) on the *Flood Insurance Rate Map of the Town of Pendleton and Unincorporated Areas of Madison County*, then the elevation will be delineated as an “A Zone” on the *County Flood Insurance Rate Map*. If the SFHA is delineated as “A Zone” on the *County Flood Insurance Rate Map*, then the Regulatory Flood Elevation shall be according to the best data available as provided by the DNR.
- B. For those parts of unincorporated Madison County that may be annexed into the Town, the Regulatory Flood Elevation for the SFHAs also shall be according to the best data available as provided by the DNR.

156.05. IMPROVEMENT LOCATION PERMIT FOR DEVELOPMENT IN SFHAS

No person, firm, corporation, or governmental body not exempted by state law shall commence any development in the SFHA without first obtaining an Improvement Location Permit. The Planning Director shall not issue an Improvement Location Permit if the proposed development does not meet the requirements of this Section 156.

156.05.01 Requirements for Application

Applications for an Improvement Location Permit for development in an SFHA shall be accompanied by the following:

- A. A written description of the proposed development.
- B. Location of the proposed development sufficient to accurately locate property and structure in relation to existing roads and streams.

- C. A legal description of the property site.
- D. A site development plan showing existing and proposed structure locations and existing and proposed land grades.
- E. Elevation of lowest floor (including basement) of all proposed structure. Elevation should be in National Geodetic Vertical Datum of 1929 (NGVD).

156.05.02 Receipt of Application

Upon receipt of an application for an Improvement Location Permit, the Planning Director shall determine if the site is located within an identified Floodway or Floodway Fringe (AH or AO Zone), or within the Floodplain where the limits of the Floodway or Floodway Fringe have not yet been determined (A Zone).

- A. If the site is in an identified Floodway, the Planning Director shall require the applicant to forward the application, along with all pertinent plans and specifications, to the DNR and apply for a permit for construction in a Floodway.
 1. Under the provisions of IC 13-2-22 a permit from the DNR is required prior to the issuance of a local building permit for any excavation, deposit, construction or obstruction activity such as filling, grading, clearing, paving, and the like undertaken before the actual start of construction of the building.
 2. No action shall be taken by the Planning Director until a permit has been issued by the DNR granting approval for construction in the Floodway. Once a permit has been issued by the DNR, the Planning Director may issue the Improvement Location Permit, provided the provisions contained in Section 156.07 and 156.08 have been met. The Improvement Location Permit cannot be less restrictive than the permit issued by the DNR.
- B. If the site is located in an identified Floodway Fringe, then the Planning Director may issue the Improvement Location Permit provided the provisions contained in Section 156.07 and 156.08 have been met. The key provision is that the lowest floor of any new or substantially improved structure shall be at or above the Flood Protection Grade.
- C. If the site is in an identified Floodplain, where the boundaries of the Floodway and Floodway Fringe have not been delineated, and the drainage area upstream of the site is greater than one (1) square mile, the Planning Director shall require the applicant to forward the application, along with all pertinent plans and specifications, to the DNR for review and comment.
 1. No action shall be taken by the Planning Director until the DNR issues either: (1) a permit for construction in the floodway, or (2) a letter of recommendation stating that the site is above the Flood Protection Grade.
 2. Once the Planning Director has received the proper permit or letter, an Improvement Location Permit may be issued provided the conditions of the ILP are not less restrictive than the conditions received from the DNR and provided that the provisions contained in Section 156.07 and 156.08 have been met.

156.06. PREVENTING INCREASED DAMAGE

No development in the SFHA shall create a damaging or potentially damaging increase in flood heights or velocity or threat to public health and safety.

- A. Within the Floodway the following standards shall apply:
 1. No development shall be allowed which, either acting alone or in combination with existing or future development, will cause any increase in the Regulatory Flood Elevation; and

2. For all projects involving channel modifications or fill (including levees), the Town shall submit a request to the FEMA to revise the regulatory flood data.
- B.** Within the Floodplain, where the boundaries of the Floodway and Floodway Fringe have not been delineated, the following standard shall apply. The total cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the Regulatory Flood Elevation more than one-tenth (0.1) of one foot and will not increase flood damages or potential flood damages.
- C.** Public Health standards in all SFHAs:
1. No development in the SFHA shall include locating or storing chemicals, explosives, buoyant materials, flammable liquids, pollutants, or other hazardous or toxic materials below the Flood Protection Grade, unless such materials are stored in a storage tank or flood-proofed building constructed according to the requirements of Section 156.08.
 2. New and replacement sanitary sewer lines and on-site waste disposal systems may be permitted providing all manholes or other above ground openings located below the Flood Protection Grade are watertight.

156.07. PROTECTING BUILDINGS

156.07.01 Applicability

In addition to the damage prevention requirements of Section 156.06, buildings to be located in the SFHA shall be protected from flood damage below the Flood Protection Grade in the following situations:

- A.** Construction or placement of any permanent building, or any temporary building valued at more than \$1,000;
- B.** Structural alterations made to an existing building that increase the market value of the building by more than 50 percent (excluding the value of the land), or any structural alteration made previously (one time only alteration);
- C.** Reconstruction or repairs made to a damaged building that are valued at or more than 50 percent of the market value of the building (excluding the value of the land) before damage occurred;
- D.** Installing a manufactured home on a new site or a new manufactured home on an existing site. This Section does not apply to returning the existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage; and
- E.** Installing a travel trailer on a site for more than 180 days.

156.07.02 Methods of Protection

This building protection requirement may be met by one of the following methods. The Planning Director shall maintain a record of compliance with these building protection standards as required in Section 156.04.

A. Cut-and-fill

A building may be constructed on permanent land filled in accordance with the following:

1. The fill shall be placed in layers no greater than one (1) foot deep before compacting, to 95 percent of the maximum density obtainable with the Standard Proctor Test method.
2. The fill should extend at least ten (10) feet beyond the foundation of the building before sloping below the Flood Protection Grade.

3. The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than 3:1 (horizontal to vertical).
4. The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.
5. The lowest floor shall be at or above the Flood Protection Grade.

B. Elevation

A residential or nonresidential building may be elevated in accordance with the following:

1. The building or improvements shall be elevated on posts, piers, columns, extended walls, or other types of similar foundation provided:
 - a. Walls of any enclosure below the elevated floor shall be designed to automatically equalize hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters, through providing a minimum of two (2) openings (in addition to doorways and windows) having a total area of one (1) square foot for every two (2) square feet of enclosed floor area subject to flooding. The bottom of all such openings shall be no higher than one (1) foot above the enclosed area's floor.
 - b. Any enclosure below the elevated floor shall be used for non-residential purpose and building access.
2. The foundation and support members shall be anchored and aligned in relation to flood flows and adjoining structures so as to minimize exposure to known hydrodynamic forces such as current, waves, ice, and floating debris.
3. All areas below the Flood Protection Grade shall be constructed of materials resistant to flood damage.
4. The lowest floor shall be located at or above the Flood Protection Grade.
5. Electrical, heating, ventilating, plumbing, and air conditioning equipment and utility meters shall be located at or above the Flood Protection Grade. (Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the Flood Protection Grade.)

C. Anchoring

Manufactured homes and travel trailers to be installed or substantially improved on a site for more than 180 days must meet one of the following anchoring requirements:

1. The manufactured home shall be elevated on a permanent foundation so that the lowest floor shall be at or above the Flood Protection Grade and securely anchored to an adequately-anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all manufactured homes to be placed on a site that is:
 - a. Outside a manufactured home park or subdivision;
 - b. In a new manufactured home park or subdivision;
 - c. In an expansion to an existing manufactured home park or subdivision; or
 - d. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood.
2. The manufactured home shall: (1) be elevated so that the lowest floor of the manufactured home chassis is supported by reinforced piers or other foundation elements that are no less than thirty-six (36) inches in height above grade, and (2) be

securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement, approved by the Planning Director. This requirement applies to all manufactured homes to be placed on a site in an existing manufactured home park or subdivision damaged by a flood.

D. Requirements for Recreational Vehicles

Recreation vehicles placed on a site shall either:

1. Be on the site for less than 180 consecutive days;
2. Be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
3. Meet the requirements for “manufactured homes” in subsection (C) above.

E. Flood-Proofing

A non-residential building may be flood-proofed to the Flood Protection Grade if done in accordance with the following:

1. A registered professional engineer shall certify that the building has been designed so that below the Flood Protection Grade, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The building design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice.
2. Flood-proofing measures shall be operable without human intervention and without an outside source of electricity.

156.08. OTHER DEVELOPMENT REQUIREMENTS

156.08.01 Review

The Plan Commission shall review all proposed subdivisions to determine whether the subdivision lies in the SFHA. If the Plan Commission finds the subdivision to be so located, the Plan Commission shall forward plans and materials to the DNR for review and comment. The Plan Commission shall require appropriate changes and modifications to the site plan in order to assure that:

- A. It is consistent with the need to minimize flood damages;
- B. All public utilities and facilities, such as sewer, gas, electrical, and water systems; are located and constructed to minimize or eliminate flood damage;
- C. Adequate drainage is provided so as to reduce exposure to flood hazards;
- D. On-site waste disposal systems, if provided, will be so located and designed to avoid impairment or contamination during the occurrence of the regulatory flood.

156.08.02 Recording of Flood Elevation

Developers shall record the 100-year Regulatory Flood Elevation on all subdivision plats containing lands identified as within a SFHA, prior to submitting the plats for approval by the Plan Commission.

156.08.03 Filing of Evacuation Plan

All owners of manufactured home parks or subdivisions located within the SFHA identified as Zone A on the community’s FHMB or FIRM shall develop an evacuation plan for those lots located in Zone A and file it with the local Plan Commission and have it filed and approved by the appropriate community emergency management authorities.

156.09. VARIANCES IN SFHAS**156.09.01 Requirements for Variance**

The Board of Zoning Appeals may consider issuing a variance to the terms and provisions of this Section provided the applicant demonstrates that:

- A. There exists a good and sufficient cause for the requested variance;
- B. The strict application of the terms of this Section will constitute an exceptional hardship to the applicant, and
- C. The granting of the request variance will not increase flood heights, create additional threats to public safety, cause additional public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.

156.09.02 Conditions for Variance

The Board of Zoning Appeals may issue a variance to the terms and provisions of this Section subject to the following standards and conditions:

- A. No variance or exception for a residential use within a floodway subject to Section 156.09.01 (A), (B) or (C) may be granted.
- B. Any variance or exceptions granted in a floodway subject to Section 156.09.01 (A), (B) or (C) will require a permit from the DNR.
- C. Variances or exceptions to the Building Protection Standards of Section 156.09.01 may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the Flood Protection Grade.
- D. Variance or exception may be granted for the reconstruction or restoration of any structure individually listed on the Register of Historic Places or the Indiana State Survey of Historic Architectural, Archaeological and Cultural Sites, Structures, Districts, and Objects; or by other local criteria as established by code.
- E. All variances shall give the minimum relief necessary and be such that the maximum practical flood protection will be given to the proposed construction; and
- F. The Board of Zoning Appeals shall issue a written notice to the recipient of a variance or exception that the proposed construction will be subject to increased risks to life and property and could require payment of excessive flood insurance premiums.

156.10. DISCLAIMER OF LIABILITY

The degree of flood protection required by this Section is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this Section does not create any liability on the part of the Town, the DNR, or the State of Indiana, for any flood damage that results from reliance on this Section or any administrative decision made lawfully thereunder.

156.11. VIOLATIONS OF FLOOD REGULATIONS

Failure to obtain an Improvement Location Permit in the SFHA or failure to comply with the requirements of a permit or conditions of a variance shall be deemed to be a violation of this Section. All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of Section 154.13, Enforcement.

- A. A separate offense shall be deemed to occur for each day the violation continues to exist.

1. All fees shall be determined by code;
 2. Additional expenses, including Engineering Review, Attorneys Fees, Research, and Validation, shall be recoverable prior to the issuance of any permit, and shall be in addition to other penalties or fines.
- B.** The Town of Pendleton Planning Commission shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Floor Insurance Policy to be suspended.
- C.** Nothing herein shall prevent the town from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.
- D.** Penalties shall be assessed in accordance with Section 154.13.

156.12. ABROGATION AND GREATER RESTRICTIONS

This Section repeals and replaces other ordinances adopted by the Town Council to fulfill the requirements of the National Flood Insurance Program. However, this Section does not repeal the original resolution or ordinance adopted to achieve eligibility in the program. Nor does this Section repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. Where this Section and other ordinance easements, covenants, or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions shall take precedence. In addition, the Town Council shall ensure that all National Flood Insurance Regulations (contained in 44 CFR 60.3) and State Floodplain Management Regulations and Laws (310 IAC 6-1-1 and IC 14-28-1) are met.