
PART SEVENTEEN — BUILDING, LAND USE AND SUBDIVISION CODE

ARTICLE 1711 Floodplain Ordinance

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CROSS REFERENCES

Authority to enact—see WV Code 7-1-3v

Authority to eliminate hazards to public health and safety—see WV Code 7-1-3kk

Requirement as part of Land Development ordinances—see WV Code 8A-4-2

Requirement as part of Land Development plan and Plat—see WV Code 8A-5-7

Authority to enact as part of zoning ordinances—see WV Code 8A-7-2

1711.01 General provisions.

(a) Intent.

The intent of this ordinance is to:

- (1) Promote the general health, welfare, and safety of the community.
- (2) Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
- (3) Minimize danger to public health and safety by protecting water supply and sanitary sewage disposal in cooperation with the County Sanitarian, and to protect natural Drainage.
- (4) Assure the County Assessor obtains information concerning Improvement of real property as required by West Virginia State Code 11-3-3A.
- (5) 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.

(b) Abrogation and Greater Restrictions. This ordinance supersedes any ordinance currently in effect for Floodplain areas. Any other ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive.

(c) Applicability. It shall be unlawful for any Project Permit to be issued in the designated Floodplain area unless a Floodplain Certificate of Compliance has been obtained from the Floodplain Administrator or a waiver has been approved in writing by the Planning Commission, the Mayor, or the Mayor's designee based upon a finding of Reasonably Safe From Flooding. A Certificate of Compliance cannot be approved or waived unless a Site Plan has been approved based upon an application containing elevation data for the entire Site (see Article 1305.03(b)(1)). A waiver decision may be appealed to the Town Council within 30 days and a result obtained within 60 days. Provision of all other codes, ordinances, and regulations shall be applicable insofar as they are

HISTORY:

Art. 1711 was enacted by Town Council on 12-14-2009. Amended by Ord. 2015-07 (passed 07-13-2015).

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consistent with the provisions of this ordinance and the community's need to minimize the hazards and damage resulting from flooding..

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

- (d) Matters not provided for specifically. Where conditions are encountered that are not specifically provided for herein, the Planning Commission 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. A Planning Commission decision may be appealed to the Town Council within 30 Days and receive a decision within 60 days.

1711.02 Words, terms and phrases.

For the purpose of this Article, the rules and definitions given in Article 1302 shall apply. The following definitions are added for use in this Article.

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

Base Flood Elevation. The water surface elevation of the Base Flood in relation to the datum specified on the community's Flood Insurance Rate Map; for purposes of this ordinance, the one hundred (100) year flood or 1% annual chance flood.

Certificate of Compliance, Floodplain. A certification that the entire development, including the elevation of fill or the Lowest Floor of a Structure is in compliance with all of the provisions of this ordinance.

Compensatory Storage. An artificially excavated, hydraulically equivalent volume of storage within the Special Flood Hazard Area used to balance the loss of natural flood storage capacity when artificial fill or Structures are placed within the Floodplain.

Flood Insurance Rate Map (FIRM). An official map of a community, on which the Administrator of the NFIP has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study (FIS). The official report in which the Federal Emergency Management Agency (FEMA) has provided flood profiles, Floodway information, and water surface elevations.

Floodplain.

- (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 or Runoff of surface waters from any source.

Floodplain Administrator. The President of the Planning Commission shall be the Floodplain Administrator. The Floodplain Administrator may also be identified as the Floodplain Manager.

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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.

Flood-proofing. 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 wave action, blockage at Stream crossings, and increased Runoff from urbanization of the Watershed.

Lowest Floor. The lowest enclosed area (including basement). An unfinished 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.

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.

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

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.

Special Flood Hazard Area. The land in the Floodplain subject to a one percent or greater chance of flooding in any given year. Special Flood Hazard Areas are designated by the Federal Emergency Management Agency (FEMA) in Flood Insurance Studies and on Flood Insurance Rate Maps as Zones A, AE, AO, A1-30, and A99. The term includes areas shown on other flood hazard maps that are specifically listed or otherwise described in this ordinance.

1711.03 Establishment of the Floodplain area.

(a) Identification.

- (1) The identified Floodplain area shall be those areas of the Corporation of Harpers Ferry 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 the Corporation of Harpers Ferry by the Federal Emergency Management Agency (FEMA) dated 18 December 2009 or the most recent revision thereof.
- (2) The identified Floodplain area shall also be those areas of the Corporation of Harpers Ferry which have been identified as flood hazard areas by the Corporation of Harpers Ferry by use of historic or other technical data and

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shown on the Corporation of Harpers Ferry “Local Flood Hazards Map”. These areas shall be designated as appropriate with the level of technical data described below and shall be managed accordingly.

- (b) Descriptions of Floodplain areas. The identified Floodplain shall consist of the following four specific areas:
- (1) The Floodway area (F1) 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 D below. In Floodplain areas for which no regulatory Floodway has been designated, the regulatory Floodway for small, single Lot Development not incorporating significant amounts of fill can, at the discretion of the Planning Commission, be considered to be the channel of the stream and the adjacent land areas to a distance of one-half the width of the Floodplain as measured from the top of the bank nearest the Site to the upland limit of the 100 year Floodplain boundary.
 - (2) The Floodway Fringe area (F2) 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.
 - (3) The AE Area without Floodway (F3) shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which 100-year flood elevations have been provided but no Floodway has been delineated.
 - (4) The Approximated Floodplain area (F4) 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. Where other acceptable information is not available the Floodplain Administrator shall require the applicant to determine the elevation with hydrologic and hydraulic engineering or other techniques. When hydrologic and hydraulic analyses are required, they shall only be undertaken 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. In addition, studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.
- (c) Changes in designation of area.
- (1) The delineation of the identified Floodplain area may be revised by the 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, a River Basin Commission or other qualified agency or individual document the necessity for such changes. However, prior to any such change, approval must be obtained from the Federal Insurance Administration (FIA).
 - (2) A community's Base Flood Elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the community shall notify the NFIP Administrator of the changes by submitting technical or scientific data.
 - (3) The Planning Commission may identify and regulate new flood hazard or ponding areas. These areas may be delineated using locally derived technical information such as flood of record, historic high water marks and/or topographic data.

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- (d) Elevations prevail.
- (1) 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 1711.04. 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.
 - (2) 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.
- (e) Boundary disputes. Should a dispute concerning any Floodplain area boundary arise, an initial determination shall be made by the Floodplain Administrator and any party aggrieved by this decision may appeal to the Town Council. The burden of proof shall be on the appellant / applicant.

1711.04 Utilization of the Floodplain area.

- (a) Floodway (F1).
- (1) Within any Floodway area (F1), 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.
 - (3) New Development shall not be permitted in the Floodway where reasonable alternatives exist elsewhere. In addition to the requirements below the applicant shall demonstrate that there are no reasonable alternatives other than the floodway encroachment before a permit is issued.
 - (4) When the Floodway is the only reasonable alternative the applicant shall demonstrate that the Floodway encroachment is the minimum necessary to accomplish the project.
 - (5) 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.
- (b) Floodway fringe (F2) and Approximated Floodplain (F4).
- (1) In the Floodway Fringe (F2) and Approximated Floodplain (F4), 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.
 - (2) In the Approximated Floodplain (F4) the Floodplain Manager shall review, or shall cause to be reviewed, all proposed Development not covered by sub-section B below to determine (1) the amount being invested and (2) the specific

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flood risk at the Building Site and assign a “minimal, moderate or significant” risk level. This information shall then be used together with the "Corporation of Harpers Ferry Approximate A zone administrative procedures" to determine the level of technical data required to establish a height above which the Development will be “Reasonably Safe From Flooding”.

- (3) All Subdivision proposals and other proposed new Developments which are proposed to take place either fully or partially within the Approximated Floodplain area (F4) and which are greater than ten (10) Lots or two (2) acres, whichever is the lesser, shall include base flood elevation data.
 - (4) 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 department.
 - (5) 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.
- (c) AE area without Floodway (F3). 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 anticipated Development, will not increase the elevation of the 100-year flood more than one (1) foot at any point. This requirement can be satisfied by utilization of the Floodway area where determined.
- (d) Alteration or relocation of a Stream.
- (1) Whenever a developer intends to alter or relocate a Stream within the Floodplain Area, the developer shall notify in writing, by certified mail, the Corporation of Harpers Ferry Floodplain Administrator, the West Virginia Division of Homeland Security and Emergency Management, any adjacent communities and any adjacent property owners of all such intended activities prior to the alteration or relocation of the Stream. Copies of all required notifications must be submitted to the Federal Insurance Administration. In addition, prior to issuing the Certificate, the Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval. Contact information for State and Federal permitting authorities as well as addresses for required notification of appropriate County, State & Federal government agencies are contained in the Corporation of Harpers Ferry Stream Alteration administrative procedures.
 - (2) The developer shall also assure the Planning Commission in writing that the carrying capacity within the altered or relocated portion of the Stream 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.
 - (3) Alteration of a Stream includes placement of culverts, bridges or other Stream

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crossings. The 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.

- (4) All new and replacement bridges, culverts and other Stream crossings shall adhere to the relevant anchoring requirements contained in this ordinance.
- (5) The developer is required to provide the community a legal agreement detailing all scheduled inspections and maintenance to be performed on altered or relocated watercourses including culverts, bridges and other Stream crossings. It shall be the responsibility of the applicant to transfer this agreement to the new owner when the land associated with the watercourse alteration is transferred. A copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 1711.08 of this ordinance.
- (6) 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.

1711.05 Criteria for Project and Site Plan approval.

- (a) General. Permits are required in order to determine whether all new construction or substantial Improvements are:
 - (1) Located in an identified Floodplain, Floodway or other flood hazard area.
 - (2) 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.
 - (3) Constructed with material and utility equipment resistant to flood damage as outlined in FEMA Technical Bulletin 2-93 (FIA-TB-2) or the most recent revision thereof.
 - (4) Constructed by methods and practices that minimize flood damage.
 - (5) 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.
 - (6) Approved by County Health Department for Well, Septic and other permits.
- (b) Basic format. The basic format of the permit shall include the following:
 - (1) Name and address of applicant.
 - (2) Name and address of owner of land on which proposed development is to occur.
 - (3) Names, addresses, and valid West Virginia 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) A description of Site location sufficient to locate the project including tax map and parcel number and most recent deed book and page number.

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- (5) A standard site plan showing size and location of the proposed development 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.
 - (6) An acknowledgment that the applicant agrees to pay any and all fees associated with the permitting process as set forth in Section 7.9 hereof.
 - (7) An acknowledgment that the applicant agrees to allow authorized representatives of floodplain management programs access to the development to inspect for compliance.
 - (8) The contract required by West Virginia Code of State Regulations, Title 28, Series 4, and all addenda to the contract(s) shall be presented to the Floodplain Administrator for review within five (5) business days of contract signing. The community does not require and will not keep copies of the contracts or addenda. Failure to present contract or addenda for review shall void the permit. If a licensed contractor is not involved, or the work is of an aggregate value of less than ten thousand dollars including materials and labor, a brief written description of proposed work and the estimated value will suffice.
- (c) Elevation and Flood Proofing 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 application for work within the Floodplain Area:

- (1) For Structures to be elevated two feet above the Base Flood Elevation:
 - A. A plan showing the size of the proposed Structure and its relation to the Lot where it is to be constructed.
 - B. A determination of elevations of the Base Flood, existing ground, proposed finished ground and Lowest Floor, certified by a registered professional engineer or licensed professional surveyor.
 - C. 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, a Registered Professional Engineer or Architect shall prepare these plans.
 - D. Plans showing the methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to two feet above the Base Flood Elevation at the Building Site.
 - E. 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.
 - F. A Non-conversion Agreement shall be signed by the applicant whenever the community determines that the area below the first floor could be converted to a non-conforming use (generally applies to enclosed areas below Base Flood Elevation that are 5 feet high or more). This agreement shall state:

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- (i) The area below Base Flood Elevation shall not be converted for use other than for parking, Building access or for allowable storage as detailed in this ordinance.
 - (ii) The applicant agrees to notify prospective buyers of the existence of the non-conversion agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature, a copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.
- (2) For Structures to be Flood-proofed to two feet 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.

 - A. Plans showing details of all flood proofing measures, prepared by a registered professional Engineer, showing the size of the proposed Structure and its relation to the Lot where it is to be constructed.
 - B. A determination of elevations of the Base Flood, existing ground, proposed finished ground, Lowest Floor, and flood-proofing limits; certified by a registered professional Engineer or licensed professional surveyor.
 - C. 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:
 - (i) The Structure is water tight with walls substantially impermeable to the passage of water from the lowest structural element to two feet above the Base Flood Elevation.
 - (ii) 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.
- (3) For Structures constructed of flood resistant materials – used solely for parking of vehicles, or storage (Accessory Structures only):
 - A. 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.
 - B. 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:

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- (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.
- C. In addition, the applicant shall sign a Non-conversion Agreement and notify prospective buyers of the existence of the agreement. It shall be the responsibility of the applicant to transfer the Non-conversion Agreement to any new owner at closing via notarized signature. A signed copy of the transferred Non-conversion Agreement shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.
- (d) Site Plan criteria. The owner or developer of any proposed Development, including Subdivisions Commercial Development and Manufactured Home Parks, shall submit a preliminary Site Plan to the Floodplain Administrator that includes the following information:
 - (1) Name of registered professional Engineer, licensed professional 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 Floodplain areas, proposed Lot sites, and fills. In addition, it is required that all Subdivision proposals and other proposed new Developments which are proposed to take place either fully or partially within the approximated Floodplain (F4) 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 in 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 Floodplain areas, the plan map shall include detailed information giving the

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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 Floodplain areas.

- (4) Where the Subdivision or other Development Site 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, preparation 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.
- (e) Restrictions to Subdivision of land in Floodplain areas. Subdivision of land in the Floodplain area must result in Lots that include a buildable portion outside of the identified flood hazard area and be served by Streets within the proposed subdivision having surfaces not lower than 1 foot below the elevation of the line defining the Floodplain limits. All new Structures must be sited on the portion of the subdivided Lot that is located outside of the identified flood hazard area.

1711.06 Specific requirements.

- (a) Design and construction standards. In order to prevent excessive damage to Buildings, Structures, and related utilities and facilities, the following restrictions apply to all Development, subdivision proposals, manufactured home parks, new construction and to construction of substantial Improvements, and the repair of substantial damage, to existing Structures occurring in the Floodplain Area.
 - (1) Basements and Lowest Floors.
 - A. Residential Structures - All new construction, relocation, substantial Improvements, including repair of substantial damage, of residential Structures must have the Lowest Floor, including basement, ductwork and utilities, elevated to two feet above the Base Flood Elevation.
 - B. Non-residential Structures - All new construction, relocation, substantial Improvements, including repair of substantial damage, of nonresidential Structures must have the Lowest Floor, including basement, ductwork and utilities, elevated to two feet above the Base Flood Elevation; or, together with attendant utility and sanitary facilities, be designed so that the Structure is water tight with walls substantially impermeable to the passage of water from the lowest structural element to two feet above the Base Flood Elevation.
 - C. Openings - For all new construction, relocation, substantial Improvements, and repair of substantial damage, 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 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:
 - (i) 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

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- flooding shall be provided.
 - (ii) The bottom of all openings shall be no higher than one foot above grade.
 - (iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (2) A Non-conversion Agreement shall be signed by the applicant on all flood-proofed Structures and any elevated Structures when the community determines that the area below the first floor could be converted to a non-conforming use (generally applies to enclosed areas below Base Flood Elevation that are 5 ft. high or more). This agreement shall state:
 - A. The area below Base Flood Elevation shall not be converted for use other than for parking, Building access or for allowable storage as detailed in this ordinance.
 - B. The applicant agrees to notify prospective buyers of the existence of the non-conversion agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature, a copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.
- (3) Manufactured home placement. Certain unique characteristics of manufactured homes installed in flood hazard areas pose an elevated risk of substantial damage to property. Thus, manufactured homes shall not be sited within identified flood hazard areas.
- (4) Accessory Structures.
 - A. Except as provided in subsection 2 below, Accessory Structures shall be located out of the Floodplain area or elevated to two feet above the Base Flood Elevation.
 - B. Where Accessory Structures not connected to the principal Structure are to be located on sites below the Base Flood Elevation, the following flood damage reduction provisions apply:
 - (i) Structures shall be no more than 600 square feet in size and valued at less than \$10,000.00.
 - (ii) Floors shall be at or above grade on at least one side.
 - (iii) Structures shall be located, oriented and constructed to minimize flood damage.
 - (iv) 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.
 - (v) 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.
 - (vi) Machinery, electric devices or appliances, and all utilities shall be located at least two feet above the Base Flood Elevation.
 - (vii) The venting requirements contained in Section 6.1 (A) are applicable and shall be strictly adhered to.
- (5) A Non-conversion Agreement shall be signed by the applicant stating that the

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use of the Accessory Structure or detached or attached garage shall not be changed from the use permitted, acknowledging that the Structure may be subject to greater flood risk and that higher flood insurance premiums may be possible, and that a change in use may require full compliance with this ordinance. The applicant agrees to notify prospective buyers of the existence of this agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature, a copy of all new agreements shall be provided to the floodplain administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.

- (6) Recreational vehicle placement. 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.
- (7) Harpers Ferry 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. Placement of fill in the Floodplain is restricted to functional purposes such as elevating a Structure. Placement of fill to dispose of spoil from excavation, elevation of yards, parking lots, or fields will not generally be considered a functional purpose. The Floodplain Administrator may require the developer to provide Compensatory Storage before permitting fill. All fill placed in the Floodplain area shall meet or exceed the following standards:
 - A. Fill shall be used only to the extent to which it does not adversely affect adjacent properties. The Harpers Ferry Floodplain Manager may require the applicant to show through hydrologic and hydraulic engineering techniques that proposed fill would not adversely affect adjacent properties. 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. 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 Harpers Ferry Floodplain Manager.
 - B. 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.
 - C. 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 before the start of sloping required in the following subsection. For nonresidential Structures, fill shall be placed to provide access acceptable for intended use. At grade access, with fill 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 nonresidential Structure.

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- D. Fill shall consist of soil or rock material only. Sanitary landfills shall not be permitted.
 - E. Fill material shall be compacted to provide the necessary stability and resistance to erosion, scouring or settling.
 - F. Fill slopes shall be no steeper than one (1) vertical on two (2) horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Floodplain Administrator.
 - G. 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.
 - H. 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.
 - I. 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.
- (8) Placement of Structures and other Development. All Structures and other Development shall be constructed or 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 floodwater.
- A. Whenever possible, Structures and other Development shall be constructed with the longitudinal axis parallel to the direction of flood flow and,
 - B. So far as practicable, Structures and other Development shall be placed approximately on the same flood-flow lines as those of adjoining Structures or Development.
- (9) Anchoring.
- A. 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.
 - B. 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.
- (10) Flood protection setback.
- A. 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, enhance flood protection and benefit aquatic resources.
 - B. Necessary public works and temporary construction may be exempted from this subsection.

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- C. The Planning Commission 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 Rear Setbacks.
- (11) Storage.
 - A. 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.
 - B. 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.
 - C. 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.
 - (12) Utility and facility requirements.
 - A. All new or replacement water systems whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
 - B. All new or replacement sanitary disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
 - C. All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.
 - D. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
 - (13) Drainage. Adequate Drainage shall be provided to reduce exposure to flood hazard.
 - (14) Backflow preventers. Backflow prevention valves should be used for all enclosed Structures with sewage or Drainage facilities located in the Floodplain.

1711.07 Administration.

- (a) Designation of Floodplain Administrator. The President of the Planning Commission 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. The Town Council may enter into an agreement with Jefferson County for these functions.
- (b) Project Development 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, repair of substantial damage, the placement or relocation of any Structure within the Corporation of Harpers Ferry, unless a complete Project Permit application and Site Plan have been submitted and a Certificate has been obtained from the Floodplain Administrator as determined by this Article.
- (c) Approval of permits and plans.
 - (1) The Floodplain Administrator shall review, or shall cause to be reviewed, all

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- 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 the state and all other applicable codes and ordinances.
 - (3) The Floodplain Administrator shall not issue a Certificate to any applicant who employs a contractor 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 Certificate, shall require the applicant to furnish satisfactory proof that the applicant, or the contractor they employ, is duly licensed as a contractor under the provisions of West Virginia State Code. If the applicant, or employed contractor, 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 shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval.
 - (6) The Floodplain Administrator shall provide a copy of all Certificates to the County Assessor as required by West Virginia State Code 11-3-3A.
 - (7) The Corporation of Harpers Ferry 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.
- (d) Application procedures. Application for a permit and/or site plan approvals shall be made, in writing, on the forms supplied by the Corporation of Harpers Ferry, and shall include all information stipulated under this ordinance.
- (e) Changes. After the issuance of a Certificate by the Floodplain Administrator, no changes of any kind shall be made to the application, permit, or any of the plans, specification or other documents submitted with the application without the written consent or approval of the Floodplain Administrator.
- (f) Permit placards.
- (1) The Floodplain Administrator shall issue a Certificate placard, which shall be prominently displayed on the premises during the time construction is in progress. This placard shall show the number of the Certificate, the date of its issuance and be signed by the Floodplain Administrator.
 - (2) In areas of flood hazard 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 Floodplain Administrator indicating that the Development has applied for a Certificate and agreed to the requirements of this ordinance in the case of Development occurring inside of the identified flood hazard area.
- (g) Stop-work orders, inspections and revocations.
- (1) Stop-work orders.
 - A. The Floodplain Administrator shall issue, or cause to be issued, a "Stop Work Order Notice" for any Development found ongoing in the Floodplain area without having obtained a Certificate. Disregard of a stop work order shall subject the violator to the penalties described in Section 1711.08.
 - B. 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

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this law and / or the conditions of the permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 1711.08.

- (2) Inspections and revocations.
 - A. During the construction period, the Floodplain Administrator 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.
 - B. If the Floodplain Administrator discovers that the work does not comply with the permit application or any applicable laws and ordinances or that there has been false statement or misrepresentation by any applicant, the Floodplain Administrator shall issue a "Stop Work Order Notice" revoke the permit and request a temporary injunction.
 - C. The Floodplain Administrator or other authorized official may inspect any Development covered by this or previous ordinance to determine whether any portion of the Development has been altered to be in non-compliance with the requirements of this ordinance.

(h) Floodplain Certificate of Compliance.

- (1) In areas of flood hazard it shall be unlawful to occupy, or to permit the use or occupancy, of any Building or premises, or both, or part thereof hereafter created, erected, installed, changed, converted or wholly or partly altered or enlarged in its use or Structure until a Floodplain Certificate of Compliance has been issued by the Floodplain Administrator stating that the Building or land conforms to the requirements of this local law. Occupying or using a Building or premises in violation of this section shall subject the violator to the penalties described in Section 1711.08.
- (2) In areas of flood hazard it shall be unlawful to inspect and approve a permanent utility connection to any Building or premises, or both, or part thereof hereafter created, erected, installed or rebuilt until the inspector is in possession of a copy of the Floodplain Certificate of Compliance issued by the Floodplain Administrator stating that the particular Development being inspected conforms to the requirements of this local law. Inspection and approval of utilities in violation of this section shall subject the violator to the penalties described in Section 1711.08.
- (3) In areas of flood hazard it shall be unlawful to install a permanent utility connection to any Building or premises, or both, or part thereof hereafter created, erected, installed or rebuilt until a Floodplain Certificate of Compliance has been issued by the Local Floodplain Administrator stating that the Development conforms to the requirements of this local law. Installation of utilities in violation of this section shall subject the violator to the penalties described in 1711.08.
- (4) A Floodplain Certificate of Compliance shall be issued by the Floodplain Administrator upon satisfactory completion of all Development in areas of special flood hazard.
- (5) Issuance of the Certificate shall be based upon the inspections conducted as prescribed in this ordinance or local administrative procedures, and any finished construction elevation certificate, hydraulic data, flood-proofing certificate, or encroachment analyses which may have been required as a condition of permit approval.

(i) Fees.

- (1) No fee shall be charged for a Floodplain determination.
- (2) A non-refundable fee will be collected at the time the application for a Project

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Permit in the Floodplain is submitted. The fee will provide for the cost of plan review, administration, and management of the permitting process and inspection. A fee schedule shall be established by resolution of the Town Council of Harpers Ferry based upon the complexity of the project and may be amended from time to time.

- (3) In addition, the applicant shall be responsible for reimbursing the Corporation of Harpers Ferry 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.

1711.08 Appeals and penalties.

- (a) Appeals. Whenever any person is aggrieved by a decision of the Floodplain Administrator or the Planning Commission with respect to the provision of this ordinance, it is the right of that person to appeal to the Town Council of the Corporation of Harpers Ferry. Such appeal must be filed with the Town Council, in writing, within 30 days after notification of the decision. Upon receipt of such appeal, the Council shall set a time and place not less than ten nor more than 60 days for the purpose of hearing the appeal. Notice of the time and place of the hearing shall be given to all parties at which time they may appear and be heard. The determination by the Town Council shall be final in all cases.
- (b) Appeal review criteria.
- (1) All appeals contesting only the permit fee, the cumulative substantial damage requirement, the flood protection setback requirement, or the Freeboard requirements, may be handled at the discretion of the Town Council.
 - (2) All decisions on appeals to all other provisions of this ordinance shall adhere to the following criteria:
 - A. Affirmative decisions shall only be issued by the Town Council 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.
 - B. 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.
 - C. 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.
 - D. The Town Council shall notify the applicant in writing over the signature of a community official that:
 - (i) The issuance of a decision to allow construction of a Structure below the Base Flood Elevation will result in increased premium

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- rates for flood insurance,
- (ii) Such construction below the Base Flood Elevation increases risk to life and property.

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

E. The Town Council shall:

- (i) Maintain a record of all decisions including justification for their issuance; and
- (ii) Report such decisions issued in its biannual report to the Federal Insurance Administration.

F. An affirmative decision shall not be granted for any construction, Development, use or activity within any Floodway area that would cause any increase in the Base Flood Elevation.

- (c) Penalties. Any person who fails to comply with any or all of the requirements or provisions of this ordinance or direction of the Floodplain Administrator, or any other authorized employee of the community, shall be unlawful and shall be referred by the Mayor to the municipal attorney who shall expeditiously arrange to prosecute all such violators. A violator shall, upon conviction, pay a fine to the Corporation of Harpers Ferry of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00) plus cost of prosecution. In default of such payment such person shall be imprisoned for a period not to exceed 10 days. Each day during which any violation of this ordinance continues shall constitute a separate offense. In addition to the above penalties, 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 non-compliance with the ordinance 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 non-compliance with this ordinance may be declared by the Corporation of Harpers Ferry to be a public nuisance and abatable as such.

1711.09 Government actions.

(a) Municipal annexation.

- (1) 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.
- (2) 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.
- (3) All Plats or maps of annexation shall show the Floodplain boundaries, Base Flood Elevation and location of the Floodway where determined.
- (4) 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 Floodplain 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

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limits or new area for which the community has assumed or relinquished Floodplain management regulatory authority must be included with the notification.

- (5) NFIP-participating communities must notify the West Virginia Division of Homeland Security and Emergency Management 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 Floodplain 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 Floodplain management regulatory authority must be included with the notification.
- (b) Permits for government entities. 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.

1711.10 Severability and municipal liability.

- (a) 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.
- (b) 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 Corporation of Harpers Ferry, or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the Corporation of Harpers Ferry. All applicants proposing Development in or near a flood hazard area are urged to locate Development as far away from, and as high above, all flooding sources as possible.