

§ 370-71. General provisions.

A. Establishment of Flood Hazard and Wetlands District. The Flood Hazard and Wetlands District, as a minimum, shall include that land adjoining any perennial stream, as shown on the most recent United States Geological Survey quadrangle, or adjoining any ponds or lakes with an area of one acre or more, which is within 50 feet of the banks thereof. The Flood Hazard and Wetlands District shall extend for such additional distance from said banks as is or may be subject to inundation by waters of the 100-year frequency flood. The identified floodplain area shall be those areas of Schuylkill Township, Chester County, which are subject to the 100-year flood, as identified in the Chester County Flood Insurance Study (FIS) dated September 29, 2006, and the accompanying maps (digital and paper) as prepared for by the Federal Emergency Management Agency (FEMA), or the most recent revision thereof. The Flood Hazard and Wetlands Districts shall include the following subdistricts: **[Amended 10-11-2006 by Ord. No. 2006-08]**

- (1) FW (Floodway District Area). The areas identified as "floodway" in the AE Zone in the Flood Insurance Study prepared by FEMA and as shown on the accompanying Flood Insurance Rate Maps (FIRM) dated November 20, 1996, or the most recent revisions thereof. The term shall also include floodway areas which have been identified in other available studies or sources of information for those floodplain areas where no floodway has been identified in the Flood Insurance Study.
- (2) FF (Flood Fringe District Area). The remaining portions of the 100-year floodplain in those areas identified as an AE Zone in the Flood Insurance Study, where a floodway has been delineated. The basis for the outermost boundary of this area shall be the 100-year flood elevations as shown in the flood profiles contained in the Flood Insurance Study and as shown on the FIRM maps dated November 20, 1996, or the most recent revisions thereto.
- (3) FA (General Floodplain District Area). The areas identified as Zone A in the Flood Insurance Study and as shown on the FIRM maps dated November 20, 1996, or the most recent revisions thereto, for which no 100-year flood elevations have been provided. When available, information from other federal, state, and other acceptable sources shall be used to determine the 100-year elevation, as well as floodway area, if possible. When no other information is available, the 100-year elevations shall be determined by using a point on the boundary of the identified floodplain area which is nearest the construction or development site in question. In determining the necessary elevations for the purposes of this chapter, the following methods shall be used:
 - (a) An elevation may be established using other sources of data such as:
 - [1] Corps of Engineers Floodplain information reports.
 - [2] U.S. Geological Survey floodprone quadrangles.
 - [3] USDA Natural Resources Conservation Service county soil surveys (alluvial soils).
 - [4] Known high water marks from past floods.

[5] Other sources.

- (b) In lieu of the above, a flood elevation shall be approximated by determining the actual ground elevation at the point on the approximated floodplain district boundary nearest to the development.
- (4) In the absence of an identified Flood Hazard and Wetlands District delineated by the Federal Emergency Management Agency (FEMA), the Flood Hazard and Wetlands District, as a minimum, shall include that land adjoining any watercourse, as defined by the Pennsylvania Department of Environmental Protection's Chapter 105 regulations¹ and/or as shown on the most recent United States Geological Survey quadrangle, or that land adjoining any ponds or lakes with an area of one acre or more where said land is within 50 feet of the banks thereof. **[Amended 11-6-2013 by Ord. No. 2013-09]**
- B. Establishment of wetland boundaries. The boundaries of wetlands shall be delineated through an on-site assessment which shall be conducted by a wetlands biologist or other Township-approved, similarly qualified professional. Such a person shall certify that the methods used to delineate the wetlands correctly reflect currently accepted technical concepts and the three-parameter methodology (vegetation, soils, and hydrology) prescribed by the U.S. Army Corps of Engineers and the Pennsylvania Department of Environmental Protection. The applicant shall also identify wetland margins. **[Added 2-3-1999 by Ord. No. 99-01]**
- C. Alterations to Flood Hazard and Wetlands District boundaries.
- (1) The delineation of the Flood Hazard and Wetlands District may be revised, amended, and modified by the Township Supervisors in compliance with the National Flood Insurance Program when:
- (a) There are changes through natural or other causes;
- (b) Changes are indicated by future detailed hydrologic and hydraulic studies.
- (2) All such changes shall be subject to the review and approval of the Federal Insurance and Mitigation Administration.
- D. Zoning Map.
- (1) The Flood Hazard and Wetlands District may be shown on the Township Zoning Map, as amended from time to time; the Flood Hazard and Wetlands District may be shown on maps separate from the Township Zoning Map, in which case it shall be deemed to be an overlay upon the Zoning Map.
- (2) The Township Supervisors, upon consultation with the Township's Planning Commission and following a public hearing, may designate additional areas in the Township as within the Flood Hazard and Wetlands District for the purposes stated herein.
- E. Rules for interpretation of district boundaries. The boundaries of the Flood Hazard and Wetlands District shall be determined in accordance with § 370-71A. Where interpretation is

1. Editor's Note: See 25 Pa. Code § 105.1 et seq.

needed as to the exact example where there appears to be a conflict between a mapped boundary and actual field conditions, the Zoning Hearing Board shall, on appeal to it, make the necessary interpretation. The person contesting the location of the district boundary shall have the burden of establishing that land does not lie within the Flood Hazard and Wetlands District as defined by § 370-71A. The Zoning Hearing Board may call upon the for assistance in interpreting the data presented.

- F. Compliance. No structure, land, or water shall hereafter be used and no structure shall be located, extended, converted, or structurally altered in the Flood Hazard and Wetlands District without full compliance with the terms of this article and other applicable regulations.
- G. Preservation of other restrictions. It is not intended by this article to repeal, abrogate, or impair any existing zoning or subdivision regulation, easements, covenants, or deed restrictions, except that where this article imposes greater restrictions, the provisions of this article shall prevail. This article supersedes any other conflicting provisions which may be in effect in floodplain areas. However, any other provisions shall remain in full force and effect to the extent that those provisions are more restrictive. If there is any conflict between any of the provisions of this article and any other ordinance, the more restrictive shall apply.
- H. Warning and disclaimer of liability. While the degree of flood protection required by this article is considered reasonable for regulatory purposes, larger floods may occur or the flood height may be increased by man-made or natural causes. In such instances, areas outside the Flood Hazard and Wetlands District or land uses permitted within the district may be subject to flooding or flood damage. This article shall not create liability on the part of the Township or any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.
- I. Severability.
 - (1) The provisions of this article shall be severable, and if any of the provisions hereof shall be held to be unconstitutional, invalid, or illegal by a court of competent jurisdiction, such decision shall not affect the validity of any of the remaining provisions of this chapter.
 - (2) To the extent that any holding that provisions of this article are invalid or illegal, and makes this article no longer applicable to any or all land within the Flood Hazard and Wetlands District, the zoning classification of that land shall revert to that of the district as designated in the Zoning Map.

§ 370-73. Uses and procedures.

Within the Flood Hazard and Wetlands District, all uses not allowed as permitted uses or authorized by grant of variance or by special exception shall be prohibited. No encroachment or development shall be permitted within the Floodway District (FW) which will cause any increase in the 100-year flood elevation.

- A. Permitted uses. Except as otherwise provided in § 370-58 of this chapter, the following uses and no others shall be permitted within the Flood Hazard and Wetlands District and then only

to the extent that they are not prohibited by any other article or ordinance: **[Amended 7-12-2006 by Ord. No. 2006-04 ; 10-11-2006 by Ord. No. 2006-08 ; 8-4-2010 by Ord. No. 2010-04 ; 12-7-2011 by Ord. No. 2011-11]**

- (1) Agricultural uses that do not require permanent structures, as follows: general farming, pasture, orchard, grazing, outdoor plant nurseries, truck farming, forestry, and wild crop harvesting;
 - (2) Recreation uses that do not require structures, use of motor vehicles, and which do not include amplified sound systems, such as the following: park, picnic grounds, fairs, boating, golf course, archery, hiking, riding, hunting, fishing, game farm, fish hatchery, wildlife sanctuary, nature preserve, and swimming areas; any nonprohibited recreation use may be allowed only by special exception (see Subsection B herein);
 - (3) Three-quarters of the front, side, or rear yard setbacks required for development of any lot or tract in any district contiguous to the Flood Hazard and Wetlands District; **[Amended 6-7-2017 by Ord. No. 2017-04]**
 - (4) With the exception of stormwater management facilities, no structure shall be placed less than 50 feet from the boundary of any Flood Hazard and Wetlands District; **[Added 6-7-2017 by Ord. No. 2017-04 ²]**
 - (5) Water lines and sealed wells;
 - (6) Boundary fences;
 - (7) Storm sewers and storm sewer outlets, subject to the approval of the Township Engineer; and
 - (8) Accessory uses customarily incidental to any of the foregoing pursuant to the provisions of § 370-132.
- B. Uses by special exception. The following uses may be permitted by special exception subject to review and approval under provisions of this chapter applicable to the grant of special exceptions, provided the applicant establishes to the reasonable satisfaction of the Zoning Hearing Board that the grant thereof will not result in increasing the elevation of a 100-year flood:
- (1) Any use under permitted uses requiring a temporary structure, pursuant to any applicable provisions of Article XX.
 - (2) Permeable improved parking areas and roads to serve other permitted uses in the Flood Hazard and Wetlands District or where required by the regulations for any contiguous district, but only to the extent that such parking areas or roads cannot feasibly be located outside of the Flood Hazard and Wetlands District, pursuant to any applicable provisions of Article XX.
 - (3) Railroads, roads, bridges, and utility transmission lines, pursuant to the provisions of § 370-167.

2. Editor's Note: This ordinance also redesignated former Subsection A(4) through (7) as Subsection A(5) through (8), respectively.

- (4) Docks and piers for boating, pursuant to any applicable provisions of Article XX.
 - (5) Recreation uses not prohibited under Subsection A(2) above, pursuant to the provisions of § 370-147.
 - (6) Sanitary sewers and sewage pumping stations, provided the construction is floodproof. **[Added 10-11-2006 by Ord. No. 2006-08]**
 - (7) Dams, impoundment basins, culverts and bridges approved by the commonwealth or by the Township Engineer. **[Added 10-11-2006 by Ord. No. 2006-08]**
- C. Conditional use. Notwithstanding any setback regulations otherwise applicable with regard to the subject lot, an internal, curbed or uncurbed, on-site drive aisle providing access to off-street parking spaces, provided the applicant establishes that the same are proposed in conjunction with the redevelopment of an existing use at the subject lot and are necessary to permit the reasonable legal use of that lot following such redevelopment, may be permitted by conditional use within 50 feet of a Flood Hazard and Wetlands District, subject to review and approval under the provisions of this chapter applicable to the grant of conditional uses, provided that the applicant establishes that the grant thereof will not result in an increase in the elevation of the 100-year flood elevation as determined pursuant to § 370-71 and that such construction methods as are reasonable to prevent dislodging of the same during the 100-year flood event will be utilized and, provided, further, that the total aggregate area of the proposed improvements does not exceed 5% of the total Flood Hazard and Wetlands District setback area on the subject lot. **[Added 7-12-2006 by Ord. No. 2006-04 ; amended 6-7-2017 by Ord. No. 2017-04]**
- D. Prohibited uses and activities. The following uses and activities are specifically prohibited in any Flood Hazard and Wetlands District:
- (1) Sod farming.
 - (2) Removal of topsoil, unless required in the construction or installation of another use or activity otherwise permitted herein or for which relief is sought to permit. **[Amended 6-7-2017 by Ord. No. 2017-04]**
 - (3) Cutting or removal of trees or other flora except where the area is devoted to forestry or nursery use, in which case cutting or removal shall be on a selective basis with reforestation measures practiced, and further, except as required in the construction or installation of another use or activity otherwise permitted herein or for which relief is sought to permit. **[Amended 6-7-2017 by Ord. No. 2017-04]**
 - (4) Any new or substantially improved structure which will be used for the production or storage of any of the following materials or substances or which will be used for any activity requiring the maintenance of a supply (more than 550 gallons or other comparable volume or any amount of radioactive substances) of any of the following materials shall be prohibited:
 - (a) Acetone.
 - (b) Ammonia.

- (c) Benzene.
 - (d) Calcium carbide.
 - (e) Carbon disulfide.
 - (f) Celluloid.
 - (g) Chlorine.
 - (h) Hydrochloric acid.
 - (i) Hydrocyanic acid.
 - (j) Magnesium.
 - (k) Nitric acid and oxides of nitrogen.
 - (l) Petroleum products (gasoline, fuel, oil, etc.).
 - (m) Phosphorus.
 - (n) Potassium.
 - (o) Sodium.
 - (p) Sulphur and sulphur products.
 - (q) Pesticides (including insecticides, fungicides, and rodenticides).
 - (r) Radioactive substances insofar as such substances are not otherwise regulated.
- (5) Any proposed hospital, jail, or prison, or any nursing home or similar facilities.
- (6) Any mobile home on an individual lot or in a mobile home park.
- (7) Accessory structures.
- E. Grading, filling, and storage of material.
- (1) A change in grade by either cut or fill, or a combination of both, may be permitted as a special exception, pursuant to any applicable provisions of Article XX and upon the following conditions:
- (a) The effect is not to decrease the cross-sectional area or the profile of the floodplain;
 - (b) The effect is not to increase the runoff characteristics of the area disturbed; and
 - (c) The effect is not to increase the elevation of the 100-year flood.
- (2) No storage of any material that may be hazardous to the health and welfare of the surrounding population or which is in violation of the Clean Streams Act³ or regulation of the Department of Environmental Protection shall be permitted within the Flood

3. Editor's Note: See 35 P.S. § 691.1 et seq.

Hazard and Wetlands District.

F. Variances.

- (1) Standards and criteria. In any instance where the Zoning Hearing Board is required to consider a request for variance from the provisions of this article, the Board shall determine that the standards and criteria enumerated in Section 910.2 of the Pennsylvania Municipalities Planning Code⁴ are met before granting the request. In considering whether the variance, if granted, would be injurious to the public health, welfare, or safety, the Board shall consider the following factors:
 - (a) The danger to life and property due to increased flood heights or velocities caused by encroachments.
 - (b) The danger that materials may be swept on to other lands or downstream to the injury of others.
 - (c) The proposed water supply and sanitation system and ability of these systems to avoid causing disease, contamination and unsanitary conditions.
 - (d) The susceptibility of the proposed use to flood damage and the effect of such damage on the owners.
 - (e) The importance of the proposed use to the community.
 - (f) The availability of alternative locations not subject to flooding for the proposed use.
 - (g) The compatibility of the proposed use with existing and foreseeable nearby uses.
 - (h) The relationship of the proposed use to the Schuylkill Township Comprehensive Plan.
 - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwater expected at the site.
 - (k) Such other factors as are relevant to the purposes of this article.
- (2) Procedures.
 - (a) In case of any dispute concerning the boundaries of a Flood Hazard and Wetlands District, the initial determination shall be made by the Township Zoning Administration Officer; a party aggrieved by a decision of the Zoning Administration Officer as to the location of boundaries of the Flood Hazard and Wetlands District may appeal to the Zoning Hearing Board.
 - (b) Upon receiving an application for a variance hereunder, the Zoning Hearing Board

4. Editor's Note: See 53 P.S. § 10910.2.

shall, prior to hearing, require the applicant to furnish such of the following material as the Township Engineer shall deem necessary for a complete consideration of the matter by the Board:

- [1] Plans in triplicate, drawn to scale, showing the nature, location, dimensions, and elevation of the lot and existing and proposed uses; and photographs or drawings showing existing uses and vegetation, statement of soil types and other pertinent information.
 - [2] A series of cross sections at such intervals as the Township Engineer may deem necessary along the lot or a shoreline, showing the stream channel or the lake or pond bottom, elevation of adjoining land areas to be occupied by the proposed uses, and the 100-year flood elevation.
 - [3] Profile showing the slope of the bottom of the channel, lake, or pond.
 - [4] Specifications for building materials and construction, filling, dredging, grading, landscaping, storage, water supply, sanitary facilities, floodproofing, and/or elevation methods; and the proposed elevation of the lowest floor, including basement, and other related anchoring and floodproofing documentation, certified by a registered professional engineer or architect.
 - [5] Computation of the increase, if any, in the height of flood stages which would be attributable to any proposed uses.
- (c) In considering any application for a variance, the Zoning Hearing Board may, before hearing, request reports from the Planning Commission and the Township Engineer concerning the extent to which the proposed use would diminish the capacity of the floodplain to store and absorb floodwaters, to moderate flood velocities, and to accommodate sediment; be subject to flood damage; and cause erosion and impair the amenity of the Flood Hazard and Wetlands District. All written reports submitted to the Zoning Hearing Board in advance of or at the hearing shall be made available for inspection at the hearing by any party thereto.
- (3) Conditions.
- (a) Requests for variances and/or special exceptions in the Flood Hazard and Wetlands District shall be considered by the Zoning Hearing Board in accordance with the following procedures:
 - [1] No variances shall be granted for any construction, development, use or activity within any designated Floodway (FW) District that would cause any increase in the 100-year elevation.
 - [2] If granted, a variance shall involve only the least modification necessary to provide relief.
 - [3] In granting any variance, the Zoning Hearing Board may attach whatever reasonable conditions and safeguards it considers necessary in order to protect the public health, safety, and welfare, and to achieve the objectives of this

chapter.

- [4] Whenever a variance is granted, the Zoning Hearing Board shall notify the applicant in writing that:
- [a] The granting of the variance may result in increased premium rates for flood insurance.
 - [b] Such variance may increase the risks to life and property.
- [5] In reviewing any request for a variance, the Zoning Hearing Board shall consider, but not be limited to, the following:
- [a] That there is good and sufficient cause.
 - [b] That failure to grant the variance would result in exceptional hardship to the applicant.
 - [c] That the granting of the variance will not result in any unacceptable or prohibited increased flood heights, additional threats to public safety, extraordinary public expense, or create nuisance, cause fraud on, or victimize the public, or conflict with any other applicable local or state ordinances and regulations.
- [6] A complete record of all variance requests and related actions shall be maintained by Schuylkill Township. In addition, a report of all variances granted during the year shall be included in the annual report to the Federal Emergency Management Agency. **[Amended 10-11-2006 by Ord. No. 2006-08]**
- [7] In reviewing any request for a variance involving any space located below the lowest floor of a structure or building, the Zoning Hearing Board shall give consideration to the following:
- [a] A fully enclosed space below the lowest floor (including basement) is prohibited.
 - [b] A partially enclosed space below the lowest floor (including basement), which will be used solely for the parking of a vehicle, building access, or incidental storage in an area other than a basement, shall be designed and constructed to allow for the automatic entry and exit of floodwaters for the purposes of equalizing hydrostatic forces on exterior walls. The term "partially enclosed space" also includes crawl spaces.
- (b) Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
- [1] Provisions must be made for a minimum of two openings having a net total area of not less than one square inch for every square foot of enclosed space;

- [2] The bottom of all openings shall be no higher than one foot above grade; and
 - [3] Openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
- (4) Prospective sale. In any case where the Zoning Hearing Board grants a variance to permit the erection of a structure or permit a change in a nonconforming use in the Flood Hazard and Wetlands District and, if it appears that the premises are to be offered for sale or lease, the following conditions shall apply:
- (a) Require the applicant to advise prospective purchasers and/or lessees, in writing no less than 15 days in advance of the effective settlement or lease date for the premises, that the lot is located either entirely or partially, as the case may be, in the Flood Hazard and Wetlands District.
 - (b) Require that, before settlement or change in nonconforming use, as the case may be, may take place, the purchaser or lessee shall signify in writing that he has been advised that the premises lies partially or entirely in the Flood Hazard and Wetlands District and a signed copy of such signification shall be delivered to the Township.
 - (c) Where the premises are to be conveyed, the deed shall contain the following provision: "This lot is entirely (partially) within the Flood Hazard and Wetlands District as defined by Chapter 370, Zoning, of the Code of the Township of Schuylkill, Chester County, Pennsylvania."
- G. Floodproofing measures. Any new structure or improvement is prohibited in any floodway and in the FW Floodway District. Any structure or improvement permitted in the FF Flood Fringe District as a special exception or by variance granted by the Zoning Hearing Board shall include floodproofing measures in accordance with the following criteria:
- (1) All structures shall be:
 - (a) Firmly anchored to prevent flotation, collapse or lateral movement;
 - (b) Constructed so as to prevent entrance of floodwaters into water supply and waste treatment systems as well as other utility and facility systems; and
 - (c) Waste treatment systems shall be designed to minimize or eliminate discharges from the systems into floodwaters.
 - (2) Any new construction which is permitted as a special exception or variance shall have the lowest floor, including basement, elevated to the regulatory flood elevation, or 1 1/2 feet above the base flood elevation.
 - (3) Any improvement to an existing structure which may be allowed as a special exception or as a variance shall be constructed so that:
 - (a) Improvements to any part of a residential structure shall be elevated to the regulatory flood elevation; and

- (b) Any improvements allowed as a special exception or by variance to nonresidential structures shall be elevated to the regulatory flood elevation and, if such is impossible, then shall be floodproofed in accordance with the publication "Floodproofing Regulations," as prepared by the U.S. Army Corps of Engineers, June 1972, as amended March 1992.
- (4) All development shall be accompanied by adequate storm drainage facilities designed to convey the flow of stormwater runoff in a safe and efficient manner. The system shall insure drainage at all points along streets and provide positive drainage away from buildings. The system shall also be designed to prevent the discharge of excess runoff onto adjacent properties.
- (5) If any development and/or construction is permitted under this subsection, it shall only be permitted where it is demonstrated that it will strictly comply with all requirements of this and other applicable ordinances and the requirements of the National Flood Insurance Program regulations of 44 CFR 60.3(d) and the Pennsylvania Floodplain Management of 1978, as amended.⁵ **[Added 10-11-2006 by Ord. No. 2006-08]**
- (6) The standards and specifications contained 34 Pa. Code Chapters 401 through 405, as amended, and not limited to the following provisions, shall apply to the above and other sections and subsections of this chapter, to the extent that they are more restrictive and/or supplement the requirements of this chapter: **[Added 10-11-2006 by Ord. No. 2006-08]**

International Building Code (IBC) 2003 or the latest edition thereof: Sections 801, 1202, 1403, 1603, 1605, 1612, 3402, and Appendix G.

International Residential Building Code (IRC) 2003 or the latest edition thereof: Sections R104, R105, R109, R323, Appendix AE101, Appendix E and Appendix J.

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