

**CODIFIED ORDINANCES OF GLEN DALE**  
**PART SEVENTEEN - BUILDING AND HOUSING CODE**

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**Art. 1709. West Virginia State Building Code.**

**Art. 1715. Building Enforcement Agency.**

**Art. 1721. Flood Plain Area.**

**Art. 1727. Wireless Telecommunications Towers and Facilities.**



**ARTICLE 1709**  
**West Virginia State Building Code**

**1709.01 Adoption.**

**1709.99 Penalty.**

**CROSS REFERENCES**

Adoption by reference - see CHTR. Sec. 2.15

Building regulation- see W. Va. Code 8-12-13

State Building Code - see W. Va. Code 29-3-5b

**1709.01 ADOPTION.**

(a) There is hereby adopted and incorporated by reference as if set out at length herein for the purpose of safeguarding life and property and to ensure the quality of construction of all structures erected or removed throughout the Municipality that certain code known as the State Building Code as promulgated by the Fire Marshal under West Virginia Code 29-3-5b.

(b) The State Building Code and its application within this City shall be subject to Legislative Rules adopted by the West Virginia State Fire Commission and authorized by the West Virginia Legislature.

**1709.99 PENALTY.**

Any person who shall violate a provision of the State Building Code, as adopted by the City, or shall fail to comply with any of the requirements thereof or who shall erect, construct, alter, or repair a building or structure in violation of an approved plan or directive of the Code Official, or of a permit or certificate issued under the provisions of this Code, shall be guilty of a misdemeanor punishable by a fine of not more than \$500.00. Each day that a violation continues shall be deemed a separate offense.



**ARTICLE 1715**  
**Building Enforcement Agency**

<p><b>1715.01</b> Established.</p> <p><b>1715.02</b> Authority.</p> <p><b>1715.03</b> Unsafe structures.</p> <p><b>1715.04</b> Dilapidated structures.</p> <p><b>1715.05</b> Right of entry.</p> <p><b>1715.06</b> Service of notice.</p> <p><b>1715.07</b> Occupancy prohibited.</p> <p><b>1715.08</b> Hearing.</p>	<p><b>1715.09</b> Appeals.</p> <p><b>1715.10</b> Notice by publication; posting.</p> <p><b>1715.11</b> Repair or demolition by City; compliance.</p> <p><b>1715.12</b> Costs of repair, demolition; lien on property.</p> <p><b>1715.99</b> Penalty.</p>
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**CROSS REFERENCES**

Building Enforcement Agency - see W. Va. Code 8-12-16

**1715.01 ESTABLISHED.**

There is hereby created a Building Enforcement Agency, which shall consist of the Mayor, the Building Inspector, and one member at large, to be selected by and to serve at the will and pleasure of the Mayor. The County Health Officer or his designee and the Chief of the Fire Department shall serve as ex-officio members of the Agency.  
(1987 Code 4-2-1.)

**1715.02 AUTHORITY.**

The Building Enforcement Agency shall have the power and authority to require the repair, closing or demolition of any dwelling or other building, situated in the City, which is unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such building to be unsafe, unsanitary, dangerous or detrimental to the public welfare.  
(1987 Code §4-2-2.)

**1715.03 UNSAFE STRUCTURES.**

For the purposes of this article if all or part of any building or structure, including, among others, a fence, billboard, or sign, or the equipment for the operation thereof, including, among others, the heating plant, plumbing, electric wiring, moving stairways, elevators and fire extinguishing apparatus, is found, in the opinion of the Building Enforcement Agency, to cause such building or structure to be unsafe, unsanitary, dangerous or detrimental to the public welfare, then the Building Enforcement Agency shall take appropriate action in accordance with this article.  
(1987 Code §4-2-3.)

**1715.04 DILAPIDATED STRUCTURES.**

For the purposes of this article, if the Building Enforcement Agency finds that all or any part of any building is unfit for human habitation because it is dilapidated, or contains defects increasing the hazards of fire, accident or other calamities, lacks ventilation, light or sanitary facilities, but has not yet reached such state of complete disrepair as to be designated unsafe, unsanitary, dangerous or detrimental to the public welfare, as provided in Section 1715.03, the Building Enforcement Agency may, in accordance with this article, declare such building to be unfit for human occupancy and cause it to be vacated and closed.

(1987 Code §4-2-4.)

**1715.05 RIGHT OF ENTRY.**

The Building Enforcement Agency shall have the right and authority through either its members or duly authorized agents, to enter any dwelling or building for the purpose of making any inspection or examination that may be necessary in order for the Agency to determine whether such dwelling or building is unfit for human habitation, unsafe, unsanitary, dangerous or detrimental to the public welfare. However, any entrance upon premises for the purpose of making an examination or inspection, as aforesaid, shall be made in such manner as to cause the least possible inconvenience to the persons in possession.

(1987 Code §4-2-5.)

**1715.06 SERVICE OF NOTICE.**

If, after proper investigation and such hearing as the Building Enforcement Agency may deem necessary, the Agency determines that a dwelling or building, or portion thereof, is unfit for human habitation, unsafe, unsanitary, dangerous or detrimental to the public welfare, the Agency shall cause notice to be issued, and served on the owner or person in charge of such dwelling or building, advising him of the Agency's findings, and instructing him to take such action, either by repairing, closing or demolishing such dwelling or building as the Agency deems necessary; in the interest of public welfare.

(1987 Code §4-2-6.)

**1715.07 OCCUPANCY PROHIBITED.**

If the Building Enforcement Agency so prescribes, no dwelling or building shall be occupied or used for any purpose, after the service of a notice, upon the owner or person in charge thereof, as aforesaid, until the instructions of the Building Enforcement Agency have been complied with, rescinded or set aside.

(1987 Code §4-2-7.)

**1715.08 HEARING.**

Any person upon whom a notice is served, as aforesaid, shall have the right, within ten days from the date of service, to demand a hearing before the Building Enforcement Agency. Such hearing, at which the owner or other person shall have the right to be heard in full and to introduce such pertinent evidence and testimony as he desires, shall be held within five days after the receipt of a written demand therefor by the Building Enforcement Agency. The decision of the Building Enforcement Agency, affirming, rescinding, altering or modifying its original finding, shall be handed down within ten days after the termination of the hearing.

(1987 Code §4-2-8.)

**1715.09 APPEALS.**

Any owner or person in charge of a dwelling or building also shall have the right, within ten days after the service of a notice, as aforesaid, to appeal to the Circuit Court of Marshall County for a temporary injunction restraining the Building Enforcement Agency from taking any action pending final disposition of the cause. Hearings shall be had by the Court within twenty days, or as soon thereafter as possible, to enter such final order or decree as law and justice may require. Costs shall be imposed at the discretion of the Court.  
(1987 Code §4-2-9.)

**1715.10 NOTICE BY PUBLICATION; POSTING.**

(a) If the owner or person in charge of any dwelling or building is not a resident of the State, or is unknown, the notice required by Section 1715.06 shall be published, once a week for three successive weeks, in a local newspaper of general circulation. The service thereof shall be complete upon the third publication. A copy of such notice shall be sent to such owner or other person, by registered mail, at his last known address.

(b) All notices and orders issued by the Building Enforcement Agency shall be served in accordance with the laws of the State concerning the service of process in civil actions, and shall, in addition thereto, be posted in a conspicuous place on the premises affected by the notice or order.

(1987 Code §§4-2-10, 4-2-11.)

**1715.11 REPAIR OR DEMOLITION BY CITY; COMPLIANCE.**

In the event of the failure of an owner or person in charge of any dwelling or building to comply with the terms and requirements of any notice or order of the Building Enforcement Agency, within twenty days after the service or entry thereof, except where a proper request has been made for a hearing and the matters arising thereon remain undetermined, or within twenty days after the dissolution of any injunction they may be granted, the Building Enforcement Agency may extend the period for compliance with the terms and requirements of any notice which it may issue, or order which it may enter, upon receipt of written request from the owner or person in charge of any building or dwelling and proper showing by such owner or other person that he is unable, because of circumstances over which he has no control, to comply with the terms and requirements of such notice or order within the aforesaid twenty-day period.

(1987 Code §4-2-12.)

**1715.12 COSTS OF REPAIR, DEMOLITION; LIEN ON PROPERTY.**

All costs and expenses incurred by the Building Enforcement Agency in making necessary repairs, alterations or improvements to a building or dwelling, or in closing, removing or demolishing a building or dwelling, shall be borne by the City. A statement of such costs and expenses shall be transmitted by the Building Enforcement Agency to Council, which shall cause the same, after crediting the proceeds of the sale of salvaged materials to the owner or person in charge of the building or dwelling, to be assessed against the real estate upon which such dwelling or building is, or was, located. Such assessment shall constitute a lien against such property, and a transcript thereof, duly certified and acknowledged by the Mayor, shall be recorded in the office of the Clerk of the County Commission of Marshall County, West Virginia. Such lien may be enforced by an appropriate suit or proceeding, in the name of the City, in the Circuit Court of Marshall County, West Virginia.

(1987 Code §4-2-13.)

**1715.99 PENALTY.**

Whoever fails to request a hearing or apply for an injunction as provided in Sections 1715.08 and 1715.09, knowingly fails to comply with any notice issued by the Building Enforcement Agency, or any person who fails to comply with any order entered by the Building Enforcement Agency, shall be fined not more than three hundred dollars (\$300.00).  
(1987 Code §4-2-14.)

**ARTICLE 1721  
Flood Plain Area**

<p>1721.01 General provisions. 1721.02 Interpretations and definitions. 1721.03 Establishment of the flood plain area. 1721.04 Utilization of the floodplain area. 1721.05 Criteria for building and site plan approval.</p>	<p>1721.06 Specific requirements. 1721.07 Administration. 1721.08 Appeals and penalties. 1721.09 Government actions. 1721.10 Severability and municipal liability.</p>
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**CROSS REFERENCES**

Treatment of streams to prevent floods - see W. Va. Code 7-1-3(u)  
Flood plain area management - see W. Va. Code 7-1-3(v)  
Flood control projects - see W. Va. Code 8-30-1

**1721.01 GENERAL PROVISIONS.**

- (a) Intent. The intent of this article 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 WV State Code 11-3-3A.
  - (5) Assure County E-911 addresses are obtained to maintain the currency of established emergency response dispatch systems.
  - (6) 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 article supersedes any ordinance currently in effect in flood prone areas. Any ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive.

(c) Applicability.

- (1) It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any development, new construction, substantial improvement, repair of substantial damage, or the placement or relocation of any structure (including manufactured homes) within the City of Glen Dale unless a permit application has been completed and a permit or certificate of compliance has been obtained from the Floodplain Administrator. In addition, where land partially or fully in the floodplain is to be subdivided developed, utilized for a manufactured home park or subdivision or otherwise developed, a site plan with elevation data must be submitted to, and approved by, the Floodplain Administrator prior to any development.
- (2) Provision of all other codes, ordinances, and regulations shall be applicable insofar as they are consistent with the provisions of this article 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 Floodplain Administrator shall determine the applicability of the provisions of this Ordinance in accordance with its intent, and shall require the applicant to take appropriate measures pursuant to such determination. (Ord. 9-28-09.)

**1721.02 INTERPRETATIONS AND DEFINITIONS.**

(a) Interpretations. For the purpose of this article, the following interpretations shall apply:

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

(b) Definitions. Unless specifically defined below, words and phrases used in this article shall be interpreted so as to give this Ordinance it's most reasonable application.

- (1) Appurtenant structure: A structure on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. This does not include a gas or liquid storage tank.
- (2) 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.
- (3) 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 the purposes of this Ordinance, the one hundred (100) year flood or 1% annual chance flood.
- (4) Basement: Any area of the building having its floor sub grade (below ground level) on all sides.
- (5) Certificate of Compliance: 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.

- (6) Contractor - WV State Code 21-11-3( c): A person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is one thousand dollars or more. Contractor includes a construction manager who performs management and counseling services on a construction project for a professional fee. Contractor does not include:
- A. One who merely furnishes materials or supplies without fabricating or consuming them in the construction project.
  - B. A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes.
  - C. A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work.
  - D. A pest control operator licensed under the provisions of section seven, article sixteen-a, chapter nineteen of this code to engage in the application of pesticides for hire, unless the operator also performs structural repairs exceeding one thousand dollars on property treated for insect pests; or
  - E. A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in this section and who employs full time a registered architect licensed to practice in this State or a registered professional engineer licensed to practice in this State. Contractor also does not include employees of such corporation, partnership or sole proprietorship.
- (7) Development: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.
- (8) Flood: A general and temporary inundation of normally dry land areas.
- (9) Floodplain:
- A. A relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation;
  - B. An area subject to the unusual and rapid accumulation or runoff of surface waters from any source.
- (10) Flood Insurance Rate Map (FIRM): The official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

- (11) Flood Insurance Study: The official report in which the Federal Emergency Management Agency has provided flood profiles, floodway information, and water surface elevations.
- (12) Floodplain Administrator: The Building Inspector shall be the Floodplain Administrator. The Floodplain Administrator may also be identified as the Floodplain Manager.
- (13) 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.
- (14) 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.
- (15) 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.
- (16) Historic Structure: Any structure that is:
  - A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  - B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district.
  - C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
  - D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
    1. By an approved state program as determined by the Secretary of the Interior; or,
    2. Directly by the Secretary of Interior in states without approved programs.
- (17) Licensed Manufactured Home Dealer: A business licensed to sell Manufactured Homes in the State of WV as set forth in the WV State Code.
- (18) Licensed Manufactured Home Installer: A contractor licensed to install Manufactured Homes in WV as set forth in the WV State Code.
- (19) Licensed Professional Surveyor: Any person licensed by the WV state Board of Examiners of Land Surveyors to engage in the practice of land surveying as defined in WV State Code.

- (20) Lowest Floor: The lowest floor of the lowest enclosed area (including basement). An unfinished enclosure constructed with flood resistant materials as defined in the 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.
- (21) Manufactured Home: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".
- (22) New Construction: Structures for which the Start of Construction as herein defined commenced on or after May 15, 1980, and including any subsequent improvements to such structures.
- (23) 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.
- (24) Person: Any individual or group of individuals, corporation, partnership, association or other entity, including State and local governments and agencies.
- (25) Practice of Engineering:  
A. Any service or creative work, as described WV State Code Article 13, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems; planning the use of land and water; teaching of advanced engineering subjects, engineering surveys and studies; and the review of construction for the purpose of assuring compliance with drawings and specifications any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Engineering surveys include all survey activities required to support the sound conception, planning, design, construction, maintenance and operation of engineered projects.

- B. Any person who practices any branch of the profession of engineering or who, by verbal claim, sign, advertisement, letterhead, card or in any other way represents himself or herself to be a registered professional engineer, or by using another title implies that he or she is a registered professional engineer or that he or she is registered under WV State Code, article 13 or who holds himself or herself out as able to perform, or who performs any engineering service or work or any other service designated by the practitioner which is recognized as engineering, is considered to practice or offer to practice engineering within the meaning and intent of WV State Code article 13.
- (26) Principally Above Ground: Where at least 51 percent of the actual cash value of a structure, less land value, is above ground.
- (27) Reasonably Safe from Flooding: Means that during the base flood, water should not damage structures and any subsurface waters related to the base flood should not damage existing or proposed structures.
- (28) Recreational Vehicle: A vehicle which is:
- A. Built on a single chassis;
  - B. 400 square feet or less when measured at the largest horizontal projection;
  - C. Designed to be self-propelled or permanently towable by a light duty truck; and
  - D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- (29) Registered Professional Engineer: A person who has been duly registered or licensed as a registered professional engineer by the West Virginia State Board of Registration for Professional Engineers as required under WV State Code article 13 et seq.
- (30) Remedy a Violation: To bring a structure or other development into compliance with the requirements of this Ordinance, or, if full compliance is not possible, to reduce the adverse impacts of the non-compliance to the greatest extent feasible.
- (31) 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 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.
- (32) Start of Construction: ( The definition for start of construction is to be used only when calculating the starting time for expiration of a permit.) The date the permit was issued, including permits for substantial improvement or repair of substantial damage, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction

of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Although a permit must be obtained prior to beginning, permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

- (33) State Coordinating Office: The West Virginia Division of Homeland Security and Emergency Management.
- (34) Stream: As defined in WV State Code 7-1-3U, any watercourse, whether natural or man-made, distinguishable by banks and a bed, regardless of their size, through which water flows continually or intermittently, regardless of its volume.
- (35) Structure: A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.
- (36) Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means cumulative flood-related damages sustained by a structure on two separate occasions during a 10 year period for which the cost of repairs at the time of each flood event equals or exceeds 25 percent of the market value of the structure before the damage occurred. See "Substantial Improvement."
- (37) Substantial Improvement:
- A. Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the Start of Construction of the improvement.
  - B. This term includes structures, which have incurred "substantial damage", as defined herein regardless of the actual repair work performed. The term does not, however, include any project for improvement of a structure to correct existing violation of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
  - C. Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic Places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

- D. For the purpose of this definition improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences whether or not that alteration affects the external dimensions of the structure.
- (38) Top of Bank: Top of bank in the field of a professional familiar with fluvial geomorphology should document the top of bank. When a professional is not employed the top of the bank will be considered to be the top of the first significant slope landward of the water's edge when it is followed by at least 50 feet of relatively flat land.
- (39) Violation: The failure of any structure or development to be fully compliant with all requirements of this Ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this Ordinance is presumed to be in violation until such time as that documentation is provided.  
(Ord. 9-28-09.)

### 1721.03 ESTABLISHMENT OF THE FLOODPLAIN AREA.

(a) Identification.

- (1) The identified floodplain area shall be those areas of the City of Glen Dale which are subject to the one hundred (100) year flood, as shown on the Flood Insurance Rate Map (FIRM) and described in the most recent Flood Insurance Study (FIS) prepared for the City of Glen Dale by the Federal Emergency Management Agency (FEMA), dated September 25, 2009, or the most recent revision thereof.
- (2) The identified floodplain area shall also be those areas of the City of Glen Dale which have been identified as flood hazard areas by the City of Glen Dale by use of historic or other technical data and shown on the City of Glen Dale "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 floodway map or FIRM. The term shall also include floodway areas identified in other studies for the approximated area discussed in subsection (b)(4) 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 community, 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 area (F4) shall be those areas identified as an A Zone on the FIRM or floodway map 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 City of Glen Dale 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) The City of Glen Dale 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.
- (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 Section 1721.06. 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 required to conform to all appropriate provisions of this article.

(e) Boundary Disputes: Should a dispute concerning any district boundary arise, an initial determination shall be made by the Floodplain Administrator and any party aggrieved by this decision may appeal to the City of Glen Dale. The burden of proof shall be on the appellant/applicant. (Ord. 9-28-09.)

#### **1721.04 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.
  - A. 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.
  - B. When the floodway is the only reasonable alternative the applicant shall demonstrate that the floodway encroachment is the minimum necessary to accomplish the project.
  - C. 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.
  - A. In the Approximated Floodplain (F4) the Floodplain Manager shall review, or shall cause to be reviewed, all proposed development not covered by subsection (b)(2) below to ascertain the amount being invested and the specific flood risk at the building site and assign a "minimal, moderate or significant" risk level.
    1. Development determined to represent a minimal risk and costing less than \$10,000 shall be required to provide "Point on Boundary" elevation data and historic flood heights. The Floodplain Manager shall attempt to determine a height that will be reasonably safe from flooding using this elevation data. The Floodplain Manager shall enter the flood height in Section "G" of the Elevation Certificate. Any new or substantially improved structures permitted using this

method (other than appurtenant structures) shall be required to have the lowest floor elevated at least three feet above the highest adjacent grade even if the "point on boundary" or historic flood height data would indicate a lower flood elevation. If this method is not adequate to allow the Floodplain Manager to confidently determine the flood height or if the applicant is not satisfied with the height determined the applicant shall be required to utilize one of the alternate methods set forth below.

2. Development determined to represent a low to moderate risk and/or costing less than \$50,000 shall provide the results of a Quick-2 engineering analysis or attempt to obtain a free Base Flood Elevation by submitting a Letter Of Map Amendment request to FEMA or obtain flood height data by using the USGS methodology set forth in the USGS water resources investigations report 87-4111. These semi-detailed methods will be used by the Floodplain Manager to determine a "Community Flood Elevation". The Floodplain Manager shall enter the "Community Flood Elevation" in Section "G" of the Elevation Certificate. If the applicant is not satisfied with the height determined the applicant shall be required to utilize the method set forth below.
3. Development determined to represent a high risk and/or costing more than \$50,000 shall develop a Base Flood Elevation using a detailed engineering study method such as HEC-ras. This data shall be prepared and certified by a registered professional engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms and a completed Elevation Certificate. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Manager. Base Flood Elevations determined using this method can be used to rate flood insurance, typically resulting in a reduced premium.

- (2) 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.

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 City of Glen Dale Floodplain Administrator, the State Coordinating Office, and any adjacent communities and 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 local permit 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 notifications of appropriate County, State and Federal government agencies are contained in the City of Glen Dale Stream Alteration administrative procedures.
- (2) The developer shall also assure the City of Glen Dale 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) 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 gates or required 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 1721.08(c).

- (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. (Ord. 9-28-09.)

#### **1721.05 CRITERIA FOR BUILDING 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 or Floodway.
- (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.

(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 the proposed development is to occur.
- (3) Names, addresses, and valid WV license numbers of all contractors working at the building site, or affidavits stating that work is being performed by individuals exempt from contractor licensing as set forth in Title 28, Series 2, section 3.9 (b) of the West Virginia Code of State Regulations or the most recent revision thereof.
- (4) A description of site location sufficient to locate the project including tax map and parcel number and most recent deed book and page number.
- (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 1721.07(j).
- (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 WV Code of State Regulations, Title 28, Series 4, and all addendums 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 addendums. Failure to present contract or addendums 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.
- (1) 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.
- (2) Depending on the type of structure involved, the following information shall also be included in the application for work within the Floodplain Area:
- A. For structures to be elevated eighteen inches above the Base Flood Elevation:
1. A plan showing the size of the proposed structure and its relation to the lot where it is to be constructed.
  2. A determination of elevations of the Base Flood, existing ground, proposed finished ground and lowest floor, certified by a registered professional engineer or licensed professional surveyor.
  3. Plans showing the method of elevating the proposed structure including details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, etc. When required by the Floodplain Administrator, a Registered Professional Engineer or Architect shall prepare these plans.
  4. Plans showing the methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to eighteen inches above the Base Flood Elevation at the building site.
  5. During the course of construction, as soon as the basic elements of the lowest floor are in place and before further vertical construction, it is highly recommended that the applicant check for error by obtaining elevation data completed by a registered professional engineer or licensed professional surveyor certifying the height of the lowest floor. If a mistake in elevation has been made this is the best time to correct the error.
  6. A Nonconversion 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 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 1721.08(c).
- B. For structures to be flood proofed to eighteen inches above the Base Flood Elevation (nonresidential structures only):
- All applicants are encouraged to exceed the minimum flood proofing requirements contained herein. Flood insurance rates can be lowered significantly by increasing the level of flood proofing above the height required by this Ordinance. In order to obtain an "elevation credited" flood insurance rate on dry flood proofed buildings, flood proofing must extend at least one foot above the Base Flood Elevation.
1. Plans showing details of all 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.
  2. A determination of elevation 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.
  3. A Flood Proofing Certificate, FEMA 81-65, as revised by FEMA, shall be prepared by the registered professional engineer who prepared the plans in subsection (c)(2)A. hereof, stating the structure in question, together with attendant utility and sanitary facilities is designed so that:
    - a. The structure is watertight with walls substantially impermeable to the passage of water from the lowest structural element to eighteen inches above the Base Flood Elevation.
    - b. The structure will withstand the hydrostatic, hydrodynamic, buoyant, impact, and other forces resulting from the flood depths, velocities, pressures, and other factors associated with the Base Flood.

- C. For structures constructed of flood resistant materials - used solely for parking of vehicles, or storage, (Appurtenant Structures only).
1. A site plan prepared by a licensed professional surveyor or others of demonstrated qualifications showing elevation of existing ground, proposed finished ground and lowest floor. The plan shall also show details of proposed flood resistant materials usage and the size of the proposed structure and its relation to the lot where it is to be constructed. The location of the floodway boundary shall be represented on the plan when a floodway is present on the site.
  2. An elevation report or certificate, based on finished construction, must be prepared by a licensed professional surveyor or others of demonstrated qualifications. This certificate or report must confirm that the structure in question, together with attendant utilities is designed so that:
    - a. 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 eighteen inches above the Base Flood Elevation and that all utilities are located at least eighteen inches above the Base Flood Elevation.
    - b. 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:
      - 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 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.
  3. 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 this article.

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

(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. (Ord. 9-28-09.)

**1721.06 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.

(b) Basements and Lowest Floors.

- (1) 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 eighteen inches above the Base Flood Elevation.
- (2) 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 eighteen inches 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 eighteen inches above the Base Flood Elevation.
- (3) 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:
  - 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) Manufactured Home Placement. Certain unique characteristics of manufactured homes installed in flood hazard areas pose an elevated risk of substantial damage to property. Thus:

- (1) All manufactured homes to be sited within the identified flood hazard areas of the City of Glen Dale shall be installed by a contractor possessing a valid WV Manufactured Home Installer's license. The installer shall use an installation design engineered to withstand flood hazards specific to the particular home site. Manufactured homes to be placed or substantially improved within the flood hazard areas shall be installed in accordance with the following standards:

- A. The lowest floor, ductwork and utilities including HVAC/heat pump shall be elevated eighteen inches above the Base Flood Elevation.
  - B. Elevation shall be on reinforced piers on a permanent foundation or other foundation elements of at least equivalent strength engineered for use in a flood hazard area. Installation designs incorporating dry stacked blocked piers shall not be used in flood hazard areas.
  - C. All manufactured homes shall be securely anchored to an adequately anchored foundation system in compliance with the requirements of 42 West Virginia Code of State Regulations, Series 19, Sections 10.1, 10.2, and 10b as authorized by West Virginia Code §21-9-4. The anchoring shall be adequate to resist flotation, collapse, or lateral movement. Methods of anchoring may include but are not limited to over-the-top and frame ties, attached to permanent foundation elements. Ground anchors may not be adequate to satisfy flood specific anchoring requirements.  
This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
  - D. Permanently attached rigid skirts and perimeter wall skirts of brick or block must have openings. The openings must be designed to automatically equalize hydrostatic flood forces by allowing for entry and exit of flood waters. Designs for meeting this requirement must either be certified by a Registered Professional Engineer or meet or exceed the following minimum criteria:
    - 1. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
    - 2. The bottom of all openings shall be no higher than one foot above grade.
    - 3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
  - E. Any additions to a manufactured home shall be similarly anchored and vented.
- (2) The licensed WV Manufactured Home Installer placing the unit shall perform a site inspection and certify in writing that the manufactured home has been installed to the standards set forth in this article. The Floodplain Administrator may perform or cause to be performed a site inspection to verify the installer's certification.
- (d) Appurtenant Structures.
- (1) Except as provided in subsection (d)(2) below, appurtenant structures shall be located out of the floodplain area or elevated to eighteen inches above the Base Flood Elevation.
  - (2) Where appurtenant 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:

- A. Structures shall be no more than 600 square feet in size and valued at less than \$10,000.00.
  - B. Floors shall be at or above grade on at least one side.
  - C. Structures shall be located, oriented and constructed to minimize flood damage.
  - D. Structures shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
  - E. Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2) shall be used in the construction of the structure from the lowest structural element to eighteen inches above the Base Flood Elevation.
  - F. Machinery, electric devices or appliances, and all utilities shall be located at least eighteen inches above the Base Flood Elevation.
  - G. The venting requirements contained in subsection (b) hereof are applicable and shall be strictly adhered to.
- (3) A Nonconversion Agreement shall be signed by the applicant stating that the use of the appurtenant 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 the 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 this article.

(e) Recreational Vehicle Placement. Recreational vehicles to be placed within any floodplain area shall either:

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

(f) Fill. The City of Glen Dale 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. In the floodway, no fill shall be permitted unless it meets the requirements of Section 1721.04(a). All fill placed in the floodplain area shall meet or exceed the following standards:

- (1) Fill shall be used only to the extent to which it does not adversely affect adjacent properties. The City of Glen Dale may require the applicant to demonstrate through engineering reports that proposed fill would not adversely affect adjacent properties. When required, hydrologic and hydraulic analyses shall be undertaken only by professional engineers who shall certify that the technical methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed and sealed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the City of Glen Dale. During permit review the community shall consider the following issues that have the potential to cause adverse impact to adjacent properties:
  - A. Unacceptable increases in flood heights.
  - B. Blocking drainage from adjacent property.
  - C. Deflection of floodwaters onto adjacent existing structures.
  - D. Increases to stream velocity initiating or exacerbating erosion problems.
  - E. Other unique site conditions may be considered when determining whether fill will cause adverse impact to adjacent property including, but not limited to, subsidence areas, Karst topography, stream blockages, and steep topography adjacent to the channel.
- (2) Fill shall 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.
- (3) Filled site must be contoured to drain properly (avoid ponding).
- (4) 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.
- (5) Fill shall consist of soil or rock material only. Sanitary landfills shall not be permitted. No trash or woody debris shall be buried on site.
- (6) Fill material shall be compacted to provide the necessary stability and resistance to erosion, scouring or settling. Fill compaction standards must be appropriate to proposed post fill use. Particular attention is necessary when fill is being used to elevate a structure.
- (7) 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.
- (8) Fill site and fill must be protected from erosion.

- (9) All applicants placing fill in a mapped flood hazard area must obtain a Conditional Letter of Map Revision (CLOMR) from FEMA when directed to do so by the Floodplain Administrator before a permit can be issued. After fill is finished the applicant must convert the CLOMR to a Letter of Map Revision based on Fill (LOMR-F) before a certificate of compliance can be issued.
- (10) 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.

(g) Placement of Structures. All buildings and structures shall be constructed and placed on the lot so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum obstruction effect upon the flow and height of floodwater.

- (1) Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow and,
- (2) So far as practicable, structures shall be placed approximately on the same flood-flow lines as those of adjoining structures.

(h) Anchoring.

- (1) All buildings and structures including stream crossings shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, and lateral movement, thus reducing the threat to life and property and decreasing the possibility of the blockage of bridge openings and other restricted sections of the watercourse.
- (2) All air ducts, large pipes, and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation.

(i) Storage.

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

(j) Utility and Facility Requirements.

- (1) All new or replacement water systems whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
- (2) 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.

- (3) All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.
  - (4) Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (k) Drainage. Adequate drainage shall be provided to reduce exposure to flood hazard.
- (l) Backflow Preventers. Back flow prevention valves should be used for all enclosed structures with sewage or drainage facilities located in the floodplain.  
(Ord. 9-28-09.)

#### 1721.07 ADMINISTRATION.

(a) Designation of Floodplain Administrator. The Building Inspector 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.

(b) 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 (including manufactured homes) within the City of Glen Dale, unless a permit application and standard site plan has been completed, and a permit has been obtained from the Floodplain Administrator. In addition, where land that is either partially or fully in the regulatory floodplain is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a detailed site plan must be submitted to, and approved by, the Floodplain Administrator prior to any development.

(c) Approval of Permits and Plans.

- (1) The Floodplain Administrator shall review, or shall cause to be reviewed, all permit applications and plans in order to determine whether proposed building sites are reasonably safe from flooding.
- (2) All permits and plans shall be approved only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of the State and all other applicable codes and ordinances.
- (3) The Floodplain Administrator shall not issue a permit to any person who does not possess a valid contractor's license when a contractor's license is required by West Virginia State Code § 21-11-10.
- (4) The Floodplain Administrator, before issuance of the permit, shall require the applicant to furnish satisfactory proof that such person is duly licensed as a contractor under the provisions of West Virginia State Code. If the applicant is not licensed a written affidavit that such person is not subject to licensure as a contractor or subcontractor as defined in §21-11-3 shall be provided to the Floodplain Administrator and placed in the permit file.
- (5) The Floodplain Administrator 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 permits to the County Assessor as required by West Virginia State Code 11-3-3A.
- (7) The Floodplain Administrator shall provide a copy of all permits for new structures to the County E-911 addressing coordinator.

- (8) The County E-911 addressing coordinator shall provide a copy of all requests for addresses for new structures to the County Floodplain Administrator.
- (9) The City of Glen Dale 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 City of Glen Dale and shall include all information stipulated under Section 1721.05.

(e) Changes. After the issuance of a permit or site plan approval by the Floodplain Administrator, no changes of any kind shall be made to the application, permit, or any of the plans, specifications or other documents submitted with the application without the written consent or approval of the Floodplain Administrator.

(f) Permit Placards.

- (1) The Floodplain Administrator shall issue a permit placard, which shall be prominently displayed on the premises during the time construction is in progress. This placard shall show the number of the permit, 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 Local Floodplain Administrator indicating that the development has applied for a permit and agreed to the requirements of this local law or, in the case of development occurring outside of the identified flood hazard area, a Certificate of Compliance has been issued.

(g) Start of Construction. Work on the proposed development shall begin within 180 days after the date of issuance of the permit or the permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator. All work on the proposed development must be completed within 18 months of permit issuance, at which time the permit shall expire, unless a time extension is granted in writing by the Floodplain Administrator. The request for a time extension shall be in writing and shall state the reasons for the extension. When considering an extension, the Floodplain Administrator shall consider the following criteria:

- (1) Has the developer diligently pursued the completion of the proposed development during the 18 months?
- (2) Will the granting of the extension be detrimental to public safety, health, or welfare or injurious to other property?

(h) 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 without having obtained a permit. Disregard of a stop work order shall subject the violator to the penalties described in this article.

- 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 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 1721.08(c).
- (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.
- (i) 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 certificate of compliance has been issued by the Local 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 this article.
- (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 certificate of compliance issued by the Local 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 this article.
- (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 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 this article.

- (4) A certificate of compliance shall be issued by the Local 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 article 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.

(j) Fees.

- (1) A Floodplain Determination fee of \$20.00 payable to the City of Glen Dale shall be assessed on all proposed development.
- (2) Application for a permit for proposed development determined to be occurring in a flood hazard area regulated by this Ordinance shall be accompanied by an additional fee, payable to the City of Glen Dale based upon the estimated value of the proposed construction as determined by the Floodplain Administrator at the following rates:

<u>Type of Development</u>	<u>Fee</u>
1 & 2 Family Dwelling	\$1.00/per thousand
Accessory Structures	\$1.00/per thousand
Any Other Structures	\$1.00/per thousand
Site Plans, Grading & Filling (additional fee)	\$100.00/acre or part thereof
Floodway Development Reviews (additional fee)	\$1.50/per thousand

- (3) In addition, the applicant shall be responsible for reimbursing the City of Glen Dale 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.
- (4) Due to the increased cost of processing, when any work for which a permit is required by this article is started or proceeded with prior to obtaining a permit the fees above specified shall be doubled. The additional fee is intended to partially reimburse the County for the additional cost of processing permits for work already underway. To more fully recover this cost the fees above shall be tripled for every subsequent occurrence by the same person. Payment of the increased fee shall not relieve any person from complying fully with the requirements of this Ordinance in the execution of the work or from other penalties prescribed herein.

- (5) There is created in the City of Glen Dale a special revenue fund, administered by the City Clerk, designated the "floodplain development fund". This fund is not part of the general revenue fund of the City of Glen Dale. All fees collected pursuant to this Ordinance shall be deposited into the floodplain development fund. The floodplain development fund shall contain all fees or penalties collected pursuant to this Ordinance, any appropriations to the fund, and any gifts, grants or contributions received.
- (6) The City of Glen Dale is restricted to, and shall distribute funds from, the floodplain development fund only for administrative costs associated with studies used to administer floodplain development and other activities which will promote and enhance flood plain management issues generally. (Ord. 9-28-09.)

#### **1721.08 APPEALS AND PENALTIES.**

(a) Appeals. Whenever any person is aggrieved by a decision of the Floodplain Administrator with respect to the provision of this Ordinance, it is the right of that person to appeal to the Glen Dale City Council which shall be known as the Appeals Board. Such appeal must be filed with the City of Glen Dale in writing, within thirty (30) days after notification of the decision. Upon receipt of such appeal, the Appeals Board shall set a time and place not less than ten (10) nor more than sixty (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 Appeals Board 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 Appeals Board.
- (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 Appeals Board upon a showing of good and sufficient cause, a determination that failure to grant the appeal would result in exceptional hardship to the applicant, and 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 ordinances.
  - 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 Appeals Board shall notify the applicant in writing over the signature of a community official that the issuance of a decision to allow construction of a structure below the Base Flood Elevation will result in increased premium rates for flood insurance. Such construction below the Base Flood Elevation increases risk to life and property. Such notifications shall be maintained with a record of a decision; and
- E. The Appeals Board shall maintain a record of all decisions including justification for their issuance, and 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 article or direction of the Floodplain Administrator, or any other authorized employee of the community, shall be unlawful and shall be referred to the City Attorney for prosecution in municipal court. A violator shall, upon conviction, pay a fine to the City of Glen Dale of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00) plus cost of prosecution. 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 noncompliance 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 noncompliance with this Ordinance may be declared by the City of Glen Dale to be a public nuisance and abatable as such. (Ord. 9-28-09.)

#### 1721.09 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 flood plain management regulations for a particular area. In order that all Flood Insurance Rate Maps accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority must be included with the notification.

- (5) NFIP participating communities must notify the State Coordinating Office in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. A copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority must be included 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.  
(Ord. 9-28-09.)

#### **1721.10 SEVERABILITY AND MUNICIPAL LIABILITY.**

(a) Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this article 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 City of Glen Dale, or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the City of Glen Dale. 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.  
(Ord. 9-28-09.)



**ARTICLE 1727**  
**Wireless Telecommunication Towers and Facilities**

<b>1727.01 Findings.</b>	<b>1727.12 Access. (Reserved)</b>
<b>1727.02 Purposes.</b>	<b>1727.13 Stealth design. (Reserved).</b>
<b>1727.03 Definitions.</b>	<b>1727.14 Telecommunications facilities on antenna support structures.</b>
<b>1727.04 Development of towers.</b>	<b>1727.15 Modification of towers.</b>
<b>1727.05 Setbacks.</b>	<b>1727.16 Certifications and inspections.</b>
<b>1727.06 Structural requirements.</b>	<b>1727.17 Maintenance.</b>
<b>1727.07 Separation or buffer requirements.</b>	<b>1727.18 Criteria for site plan development modifications.</b>
<b>1727.08 Method of determining tower height.</b>	<b>1727.19 Abandonment.</b>
<b>1727.09 Illumination.</b>	<b>1727.20 Conflicts.</b>
<b>1727.10 Exterior finish.</b>	
<b>1727.11 Landscaping.</b>	

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**1727.01 FINDINGS.**

(a) The Communications Act of 1934 as amended by the Telecommunications Act of 1996 ("the Act") grants the Federal Communications Commission (FCC) exclusive jurisdiction over:

- (1) The regulation of the environment effects of radio frequency (RF) emissions from Telecommunications Facilities; and
- (2) The regulation of radio signal interference among users of the RF spectrum.

(b) The City's regulation of Towers and Telecommunications Facilities in the City will not have the effect of prohibiting any Person from providing wireless telecommunications services in violation of the Act.

(c) On February 8, 1996, Congress enacted the Telecommunications Act of 1996, P.L. No. 104-104, to deregulate the telecommunications industry, providing a more competitive environment for wired and wireless telecommunications services in the United States.

(d) A concomitant effect of increased competition in the market for wireless telecommunications services is an increased demand for antenna sites on Towers and other Antenna Support Structures necessary for providing wireless service via existing and new technologies.

(e) The Telecommunications Act of 1996 preserves the authority of the City to regulate the placement, construction and modification of Towers, Antenna Support Structures and Telecommunications Facilities, as hereafter defined, in order to protect the health, safety and welfare of the public.

(Ord. 8-27-01.)

### **1727.02 PURPOSES.**

(a) The general purpose of this article is to regulate the placement, construction and modification of Towers and Telecommunications Facilities in order to protect the health, safety and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the City.

(b) Specifically, the purposes of this article are:

- (1) To regulate the location of Towers and Telecommunications Facilities in the City;
- (2) To protect residential areas and land uses from potential adverse impact of Towers and Telecommunications Facilities;
- (3) To minimize adverse visual impact of Towers and Telecommunications Facilities through careful design, siting, landscaping and innovative camouflaging techniques;
- (4) To promote and encourage shared use/collection of Towers and Antenna Support Structures as a primary option, rather than construction of additional single-use Towers;
- (5) To promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new Tower structures to support Antenna and Telecommunications Facilities;
- (6) To avoid potential damage to property caused by Towers and Telecommunications Facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained and removed when no longer used or are determined to be structurally unsound; and
- (7) To ensure that Towers and Telecommunications Facilities are compatible with surrounding land uses.

(Ord. 8-27-01.)

### **1727.03 DEFINITIONS.**

(a) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicated a different meaning:

- (1) "Antenna Support Structure" means any building or structure other than a Tower which can be used for location of Telecommunications Facilities.
- (2) "Applicant" means any Person that applies for a Tower development permit.
- (3) "Application" means the process by which the Owner of a parcel of land within the City submits a request to develop, construct, build, modify or erect a Tower upon such parcel of land. "Application" includes all written documentation, verbal statements and representations, in whatever form or forum, made by and Applicant to the City concerning such request.
- (4) "Engineer" means any engineer licensed by the State of West Virginia.

- (5) "Owner" means any Person with fee title or a long-term (exceeding ten (10) years) leasehold to any parcel of land within the City who desires to develop, or construct, build, modify or erect a Tower upon such parcel of land.
- (6) "Person" is any natural Person, firm, partnership, association, corporation, company or other legal entity, private or public, whether for profit or not for profit.
- (7) "Stealth" means any Towers and Telecommunications Facility which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and Towers designed to look other than like a Tower, such as light poles, power poles and trees. The term "stealth" does not necessarily exclude the use of uncamouflaged lattice, guyed or monopole Tower designs.
- (8) "Telecommunications Facilities" means any cables, wires, lines, wave guides, antennas and any other structure, equipment or facilities associated with the transmission or reception of communications which a Person seeks to locate or has installed upon or near a Tower or Antenna Support Structure. However, Telecommunications Facilities shall not include:
  - A. Any satellite earth station antenna two (2) meters in diameter or less, which is located in an area zoned industrial or commercial; or
  - B. Any satellite earth station antenna one (1) meter or less in diameter, regardless of zoning category.
- (9) "Tower" means a self-supporting lattice, guyed or monopole structure constructed from grade which supports Telecommunication Facilities. The term "tower" shall not include amateur radio operator's equipment, as licensed by the FCC.
- (10) "Landscaping" means the modification or ornamentation of the natural landscape by altering the plant cover.  
(Ord. 8-27-01.)

#### **1727.04 DEVELOPMENT OF TOWERS.**

(a) Towers shall be permitted in any zone, but only as a special exception granted by City Council. Application shall be made to City Council in the manner provided in this Article. No person shall build, erect or construct a Tower upon any parcel of land within any zoning district unless a special exception permit shall have been issued by the City Council, through its regular procedures and those contained herein.

(b) Towers are exempt from the maximum height restrictions of the districts where located. Towers shall be permitted to a height of one hundred (100) feet. However, Towers may be permitted in excess of one hundred (100) feet in accordance with Section 1727.18, "Criteria for Site Plan Development Modifications" of this article.

(c) No new Tower shall be built, constructed or erected in the City unless the Tower is capable of supporting another Person's operating Telecommunications Facilities comparable in weight, size and surface area to the Telecommunications Facilities by the Applicant on the Tower within six (6) months of the completion of the Tower construction. The Tower must be capable of co-location of the City's telecommunication system if such co-location is deemed necessary by the City Council to preserve the health, safety and welfare of the City.

- (d) An Application to develop a Tower shall include:
- (1) The name, address and telephone number of the Owner and lessee of the parcel of land upon which the Tower is to be situated. If the Applicant is not the Owner of the parcel of land upon which the Tower is to be situated, the written consent of the Owner shall be evidenced in the Application.
  - (2) The legal description, book and page number from the record of such land kept in the Office of the Clerk of the County Commission of Marshall County, and address of the parcel of land upon which Tower is to be situated.
  - (3) The names, addresses and telephone numbers of all owners of other Towers or usable Antenna Support Structures within a one-half ( $\frac{1}{2}$ ) mile radius of the proposed new Tower site, including City owned property. The Applicant must notify such property owners in writing and supply the City with copies of such notices.
  - (4) The names, addresses and telephone numbers of adjacent property owners and those property owners within three hundred (300) feet of the property line of the proposed new Tower site, including City owned property. The Applicant must notify such property owners in writing and supply the City with copies of such notices.
  - (5) A description of the design plan proposed by the Applicant in the City. Applicant must identify its utilization of the most recent technological design, including microcell design, as part of the design plan. The Applicant must demonstrate the need for Towers and why design alternatives, such as the use of microcell, cannot be utilized to accomplish the provision of the Applicant's telecommunications services.
  - (6) An affidavit attesting to the fact that the Applicant made diligent, but unsuccessful, efforts to obtain permission to install or co-locate the Applicant's Telecommunications Facilities on another usable Antenna Support Structures located within a one-half ( $\frac{1}{2}$ ) mile radius of the proposed Tower site.
  - (7) An affidavit attesting to the fact that the Applicant made diligent, but unsuccessful, efforts to install or co-locate the Applicant's Telecommunications Facilities on Towers or usable Antenna Support Structures owned by other Persons located within one-half ( $\frac{1}{2}$ ) mile radius of the proposed Tower site.
  - (8) Written technical evidence from an engineer that the proposed Tower or Telecommunications Facilities cannot be installed or co-located on another Person's Tower or usable Antenna Support Structures owned by other Persons located within one-half ( $\frac{1}{2}$ ) mile radius of the proposed Tower site.
  - (9) A written statement from an Engineer that the construction and placement of the Tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television or other communications services enjoyed by adjacent residential and non-residential properties.
  - (10) Written, technical evidence from an Engineer that the proposed structure meets the standards set forth in Section 1727.06, "Structural Requirements" of this article.

- (11) Written, technical evidence from a qualified Engineer(s) acceptable to the Fire Marshal and the building official that proposed site of the Tower or Telecommunications Facilities does not pose a risk of explosion, fire or other danger to life or property due to its proximity to volatile, flammable, explosive or hazardous materials such as LP gas, propane, gasoline, natural gas or corrosive or other dangerous chemicals.
- (12) In order to assist the City in evaluating visual impact, the Applicant shall submit color photo simulations showing the proposed site of the Tower with a photo-realistic representation of the proposed Tower as it would appear viewed from the closest residential property and from adjacent roadways.
- (13) The Act gives the FCC sole jurisdiction of the field of regulation of RF emissions and does not allow the City condition or deny on the basis of RF impacts the approval of any Telecommunications Facilities (whether mounted on Towers or Antenna Support Structures) which meet FCC standards. In order to provide information to its citizens, the City shall make available upon request, copies of ongoing FCC information and RF emissions standards for Telecommunications Facilities transmitting from Towers or Antenna Support Structures. Applicants shall be required to submit information on the proposed power density of their proposed Telecommunications Facilities and demonstrate how this meets FCC standards.

(e) The City may require the Application to be reviewed by an independent Engineer. The cost of review by the City's Engineer shall be reimbursed to the City by Applicant.

(f) The Zoning Administration Officer or City Council may require an Applicant to supplement any information that the City considered inadequate or that the Applicant has failed to supply. The City may deny an Application on the basis that the Applicant has not satisfactorily supplied the information required in this subsection. Applications shall be reviewed by the City in a prompt manner setting forth the reasons for approval or denial.

(g) A fee for management of the Application in the amount of two hundred dollars (\$200.00) must be included with the Application. Such fee includes administrative costs for processing this Application, including, but not limited to, expenses incurred for inspections, document review and mapping. This fee is nonrefundable.

(h) The Applicant will provide proof of appropriate licenses required by the City and assure payment of any taxes, liens, fees, service charges or other assessments.  
(Ord. 8-27-01.)

#### **1727.05 SETBACKS.**

(a) Residential Zones. Towers shall be set back from all residential property lines by a minimum of one hundred (100) feet or one hundred percent (100%) of the height of the proposed Tower, whichever is greater.

(b) Commercial and Industrial Zones. All Towers up to one hundred (100) feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable Zoning district. Towers in excess of one hundred (100) feet in height shall be set back one (1) additional foot per each foot of Tower height in excess of one hundred (100) feet.

(c) Setback requirements for Towers shall be measured from the base of the Tower to the property line of the parcel of land which it is located.

(d) Setback requirements may be modified, as provided in Section 1727.18, when placement of a Tower in a manner and location, which will reduce the visual impact, can be accomplished or otherwise override the need for setback requirements.  
(Ord. 8-27-01.)

#### **1727.06 STRUCTURAL REQUIREMENTS.**

All Towers must be designed and certified by an Engineer to be structurally sound and, at minimum, in conformance with the Building Code, and any other standards outlined in this article. All Towers in operation shall be fixed to the land or an existing structure or building.  
(Ord. 8-27-01.)

#### **1727.07 SEPARATION OR BUFFER REQUIREMENTS.**

(a) For the purpose of this article, the separation distances between Towers shall be measured by drawing or following a straight line between the base of the existing or approved structure and the proposed base, pursuant to a site plan of the proposed Tower. Tower separation distances from residentially zoned property shall be measured from the base of a tower to the closest point of residentially zoned property. The minimum Tower separation distances from residentially zoned land and from other Towers shall be calculated and applied irrespective of City jurisdictional boundaries.

(b) Towers shall be set back from all residential property lines by a minimum of one hundred (100) feet or one hundred percent (100%) of the height of the proposed Tower, whichever is greater.

(c) Proposed Towers must meet the following minimum separation requirements from existing Towers or Towers which have been approved by Council, but are not yet constructed at the time a development permit is granted, pursuant to this Code:

- (1) Monopole Tower structures shall be separated from all other Towers, whether monopole, self-supporting lattice, or guyed, by a minimum of seven hundred fifty (750) feet.
- (2) Self-supporting lattice or guyed Tower structures shall be separated from all other self-supporting or guyed Towers by a minimum of one thousand five hundred (1,500) feet.
- (3) Self-supporting lattice or guyed Tower structures shall be separated from all monopole Towers by a minimum of seven hundred fifty (750) feet.

(d) Separation or buffer requirements may be modified, as provided in Section 1727.18, when placement of a Tower in a manner and location which will reduce the visual impact can be accomplished, or otherwise override the need for separation or buffer requirements.  
(Ord. 8-27-01.)

#### **1727.08 METHOD OF DETERMINING TOWER HEIGHT.**

Measurement of Tower height for the purpose of determining compliance with all requirements of this article shall include the Tower structure itself, the base pad, and any other Telecommunications Facilities attached thereto which extend more than twenty (20) feet over the top of the Tower structure itself. Tower height shall be measured from grade.  
(Ord. 8-27-01.)

**1727.09 ILLUMINATION.**

Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred percent (300%) of the height of the Tower when required by federal law, dual mode lighting shall be requested from the FAA. (Ord. 8-27-01.)

**1727.10 EXTERIOR FINISH.**

Towers not requiring FAA painting or marking shall have an exterior finish which enhances compatibility with adjacent land uses, as approved by the City. (Ord. 8-27-01.)

**1727.11 LANDSCAPING.**

All landscaping on a parcel of land containing Towers, Antenna Support Structures or Telecommunication Facilities shall be in accordance with the conditions as set forth by the City Council in its consideration of a special exception, where the Tower, Antenna Support Structure or Telecommunication Facilities are located. The City may require landscaping in excess of other requirements in the City Code in order to enhance compatibility with adjacent land uses. Landscaping shall be installed on the outside of any fencing. (Ord. 8-27-01.)

**1727.12 ACCESS. (RESERVED)**

Reserved.

**1727.13 STEALTH DESIGN. (RESERVED)**

Reserved,

**1727.14 TELECOMMUNICATIONS FACILITIES ON ANTENNA SUPPORT STRUCTURES.**

Any Telecommunications Facilities which are not attached to a Tower may be permitted on any existing Antenna Support Structure at least fifty (50) feet tall, regardless of the zoning restrictions applicable to the zoning district where structure is located. Telecommunications Facilities are prohibited on all other structures. The Owner of such structure shall, by written certification to the Zoning Administrator, establish the following at the time plans are submitted for a building permit:

- (a) That the height from grade of the Telecommunications Facilities shall not exceed the height from grade of the Antenna Support Structure by more than twenty (20) feet;
- (b) That any Telecommunications Facilities and their appurtenances, located above the primary roof of an Antenna Support Structure, are set back one (1) foot from the edge of the primary roof for each one (1) foot in height above the primary roof of the Telecommunications Facilities. This setback requirement shall not apply to Telecommunications Facilities and their appurtenances, located above the primary roof of an Antenna Support Structure, if such facilities are appropriately screened from view through the use of panels, walls, fences or other screening techniques approved by the City. Setback requirements shall not apply to Stealth antennas which are mounted to the exterior of Antenna Support Structures below the primary roof, but which do not protrude more than eighteen (18) inches from the side of such an Antenna Support Structure.

(Ord. 8-27-01.)

**1727.15 MODIFICATION OF TOWERS.**

(a) A Tower existing prior to the effective date of this article, which was in compliance with the City's zoning regulations immediately prior to the effective date of this article, may continue in existence as a nonconforming structure. Such nonconforming structures may be modified or demolished and rebuilt without complying with any of the additional requirements of this section, except for Section 1727.07, "Separation or Buffer Requirements," Section 1727.16, "Certifications and Inspections," and Section 1727.17, "Maintenance," of this article, provided:

- (1) The Tower is being modified or demolished and rebuilt for the sole purpose of accommodating, within six (6) months of the completion of the modification or rebuild, additional Telecommunications Facilities comparable in weight, size and surface area to the discrete operating Telecommunications Facilities of any Person currently installed on the Tower.
- (2) An Application for a special exception permit is made according to the provisions of this article. The granting of a special exception permit pursuant to this Section allowing the modification or demolition and rebuild an existing nonconforming Tower shall not be considered a determination that the modified or demolished and rebuilt Tower is conforming.
- (3) The height of the modified or rebuilt Tower and Telecommunications Facilities attached thereto do not exceed the maximum height allowed under this article.

(b) Except as provided in this section, a nonconforming structure or use may not be enlarged, increased in size, or discontinued in use for a period of more than one hundred eighty (180) days. This article shall not be interpreted to legalize any structure or use existing at the time this article is adopted which structure or use is in violation of the Code prior to enactment of this article. (Ord. 8-27-01.)

**1727.16 CERTIFICATIONS AND INSPECTIONS.**

(a) All Towers shall be certified by an Engineer to be structurally sound and in conformance with the requirements of the Building Code and all other construction standards set forth by the applicable City, federal and state laws. For new monopole Towers, such certification shall be submitted with an Application pursuant to Section 1727.04, and every five (5) years thereafter. For existing monopole Towers, certification shall be submitted within sixty (60) days of the effective date of this article, and then every five (5) years thereafter. For new lattice or guyed Towers, such certification shall be submitted with an Application pursuant to Section 1727.04, and every two (2) years thereafter. For existing lattice or guyed Towers, certification shall be submitted within sixty (60) days of the effective date of this article, and then every two (2) years thereafter. The Tower owner may be required by the City to submit more frequent certifications should there be reason to believe that the structural and component integrity of the Tower is jeopardized.

(b) The City, or its designated representatives, shall have authority to enter onto the property upon which a Tower is located, between the inspections and certifications required above, to inspect the Tower for the purpose of determining whether it complies with the approved application requirements, the Building Code and all other construction standards provided by City, federal and state laws.

(c) The City reserves the right to conduct such inspections at any time, upon reasonable notice to the Tower owner. All expenses related to such inspections by the City shall be borne by the Tower owner. (Ord. 8-27-01.)

#### **1727.17 MAINTENANCE.**

(a) Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

(b) Tower owners shall install and maintain Towers, Telecommunications Facilities, wires, cables, fixtures and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC state and local regulations, and in such manner that will not interfere with the use of other property.

(c) All Towers, Telecommunications Facilities and Antenna Support Structures shall at all times be kept and maintained in good condition, order and repair so that the same shall not menace or endanger the life or property of any Person.

(d) All maintenance or construction of Towers, Telecommunications Facilities or Antenna Support Structures shall be performed by properly licensed maintenance and construction personnel.

(e) All Towers shall maintain compliance with current RF emission standards of the FCC.

(f) In the event that the use of a Tower is discontinued by the Tower owner, the Tower owner shall provide written notice to the City of its intent to discontinue such use and the date when the use shall be discontinued.  
(Ord. 8-27-01.)

#### **1727.18 CRITERIA FOR SITE PLAN DEVELOPMENT MODIFICATIONS.**

(a) Notwithstanding the Tower requirements provided in this article, a modification to the requirements may be approved by the City Council as amended special exception in accordance with the following:

- (1) In addition to the requirement for a Tower Application, the Application for modification shall include:
  - A. A description of how the plan addresses any adverse impact that might occur as a result of approving the modification.
  - B. A description off-site or on-site factors which mitigate any adverse impacts which might occur as a result of the modification.
  - C. A technical study that documents and supports the criteria submitted by the Applicant upon which request for modification is based. The technical study shall be certified by an Engineer and shall document the existence of the facts related to the proposed modifications and its relationship to surrounding rights-of-way and properties.

- D. For a modification of the setback requirement, the Application shall identify all parcels of land where the proposed Tower could be located, attempts by the Applicant to contract and negotiate an agreement for collocation, and the result of such attempts.
  - E. The City may require the Application to be reviewed by an independent Engineer under contract to the City to determine whether the antenna study supports the basis for the modification requested. The cost of review by the City's Engineer shall be reimbursed to the City by Applicant.
- (2) The City Council shall consider the Application for modification based on the following criteria:
- A. That the Tower as modified will be compatible with and not adversely impact the character and integrity of surrounding properties.
  - B. Off-site or on-site conditions exist which mitigate the adverse impacts, if any, created by the modification.
  - C. In addition, the Council may include conditions on the site where the Tower is to be located, if such conditions are necessary to preserve the character and integrity of the neighborhoods affected by the proposed Tower, and mitigate any adverse impacts which arise in connection with the approval of the modification.
- (b) In addition to the requirements of subsection (a) hereof, the following cases, the Applicant must also demonstrate, with written evidence, the following:
- (1) In the case of a requested modification to the setback requirement, Section 1727.05, that the setback requirement cannot be met on the parcel of land upon which the Tower is proposed to be located and the alternative for the Person is to locate the Tower at another site which would be unreasonable.
  - (2) In the case of a request for modification to the separation and buffer requirements from other Towers of Section 1727.07, "Separation or Buffer Requirements," that the proposed site is zoned "Industrial" or "Heavy Industrial" and the proposed site is at least double the minimum standard for separation from residentially zoned lands as provided for in Section 1727.07.
  - (3) In the case of a request for modification of the separation and buffer requirements from residentially zoned land of Section 1727.07, if the Person provides written technical evidence from an Engineer(s) that the proposed Tower and Telecommunications Facilities must be located at the proposed site in order to meet the coverage requirements of the Applicant's wireless communications system or it is otherwise unreasonable to locate elsewhere, and if the Person is willing to create approved landscaping and other buffers to help screen the Tower from being visible to residentially zoned property.
  - (4) In the case of a request for modification of the height limit for Towers and Telecommunications Facilities or to the minimum height requirements for Antenna Support Structures, that the modification is necessary:

- A. To facilitate collection of Telecommunications Facilities in order to avoid construction of a new Tower; or
- B. To meet the coverage requirements of the Applicant's wireless communications system, which requirements must be documented with written, technical evidence from an Engineer(s) that demonstrates the height of the proposed Tower is the minimum height required to function satisfactorily, and no Tower that is taller than such minimum height shall be approved.  
(Ord. 8-27-01.)

#### **1727.19 ABANDONMENT.**

(a) If any Tower shall cease to be substantially used for a period of one (1) year, the Code Enforcement Officer shall notify the Owner, with a copy to the Applicant, that the site will be subject to a determination that such site has been abandoned. The Owner shall have thirty (30) days from receipt of said notice to show, by a preponderance of the evidence, that the Tower has substantially been in use, or under repair, during the period. If the Owner fails to show that the Tower has substantially been in use or under repair during the period, the Code Enforcement Officer shall issue a final determination of abandonment for the site. Upon issuance of the final determination of abandonment, the Owner shall, within seventy-five (75) days, completely dismantle and remove the Tower and restore the site to a suitable condition.

(b) To secure the obligation set forth in this section, the Applicant (and/or Owner) shall post a bond. Such amount as shall be determined by the Code Enforcement Officer based on the anticipated cost of removal of the Tower and restoration of the site.  
(Ord. 8-27-01.)

#### **1727.20 CONFLICTS.**

The provisions of this article shall supersede all ordinances or code provisions in conflict herewith.  
(Ord. 8-27-01.)