

Part 15

Floodplain District (FP)

§27-1501. Purpose and Specific Intent- London Grove Floodplain Regulations are governed by Ordinance 210.

To prevent the loss of property and life, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief and the impairment of the tax base by:

- A. Regulation uses, activities and development which, acting alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities and frequencies.
- B. Restricting or prohibiting certain uses, activities and development from locating within areas subject to flooding.
- C. Requiring all those uses, activities and developments that do occur in flood-prone areas to be protected and/or flood-proofed against flooding and flood damage.
- D. Protecting individuals from buying lands and structures which are not suited for intended purposes because of flood hazard.
- E. Assuring that permitted buildings, structures and activities in areas subject to water hazards shall mitigate against any risks arising from flood or water hazards.
- F. Comply with federal and state floodplain management requirements.

§27-1502. Applicability.

These provisions shall apply to all lands within London Grove Township located within the boundaries of the floodplain conservation district depicted on the Flood Hazard Map which shall be an overlay to the London Grove Township Zoning Map. These provisions shall also apply to

any lands (whether or not denominated on the Flood Hazard Map) subject to inundation by flooding or the hazards of high water tables, whether constant, seasonal or periodic.

§27-1503. Compliance.

No structure or land shall hereafter be used and no structure shall be located, relocated, constructed, reconstructed, enlarged or structurally altered except in full compliance with the terms and provisions of this Part and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this Chapter.

§27-1504. Warning and Disclaimer of Liability.

The degree of flood protection sought by the provisions of this Chapter is considered reasonable for regulatory purposes and is based on accepted methods of engineering and hydrology. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. In addition, certain areas may be subject to periodic flooding or high water table, but may not fall within the bounds of the jurisdiction of this Part by reason of other exclusions. This Chapter does not imply that areas outside of the identified floodplain districts or that land uses permitted within such districts will be free from flooding or flood damages. The Water Hazard District regulations are for the public benefit and are not to be construed to cause any user, purchaser or occupier to be deemed a third party beneficiary. The provisions of this Chapter are intended for the benefit of the public in general and not for any particular user or occupier, existing or potential. Therefore, this Chapter shall not create any liability on the part of London Grove Township or any officer or employee thereof for any flood damages that result from reliance on this Chapter or any administrative decision made thereunder.

§27-1505. Establishment of Flood Hazard Districts

1. *Description of Districts*

A. *Basis of Districts.* For the purpose of this Chapter, four flood hazard districts are designated. These include those areas identified as being subject to the 100-year flood (FM, FA, FS) and

those areas subject to small stream flooding or inundation by a high water table or seasonal high water table (FG). The Flood Hazard Districts are based upon the Flood Insurance Study (FIS) prepared for London Grove Township by the Federal Insurance Agency (FIA) dated September 06, 2017, and shall be deemed an overlay to the existing Township Zoning Map not independent districts per se. To the extent not prohibited by the Flood Hazard Regulations, the uses permitted in the underlying zoning district shall be deemed the permitted uses and, where the Flood Hazard District boundaries are revised, those area no longer within the Flood Hazard District shall be deemed to be zoned according to the underlying existing zoning districts. However, for lands within any Flood Hazard District, the use regulations of §27-1506.A shall be the only permitted uses, and the prohibitions of §27-1506.C shall apply.

B. The (FA) Approximated Flood Hazard District shall be comprised of all lands lying within the areas denominated as “Flood Area” with approximate 100-year flood boundary lying outside of the limits of detailed study, as described in the Flood Boundary and Floodway Map of London Grove Township prepared by the Federal Emergency Management Agency for the National Flood Insurance Program, dated September 06, 2017. The precise boundaries of the Approximated Flood Hazard District shall be determined in accordance with the procedures set forth in §27-1505.2.

C. The (FS) Surveyed Flood Hazard District, comprises that area shown as lying between the designated limits of detailed study in the Flood Boundary and Floodway Map cited in paragraph B above.

D. The (FM) Mapped Floodway Hazard District shall be those areas lying within the FS and FA Districts, as described in paragraphs A and B above, and constitute all lands designated as lying within the flood hazard area in the above-referenced plans.

E. The (FG) General Flood Hazard District shall constitute all those lands subject to periodic flooding of streams not included within the (FM) Flood Hazard District and all areas subject to inundating or saturation by reason of a high or seasonably high water table. The precise boundary delineations of the (FG) Flood Hazard District shall be determined as set forth in §27-1505.2.C.

2. *Establishment of District Boundaries.*

A. *(FS) and (FA) Hazard Districts.* The precise boundaries of the (FFS) Surveyed Flood Hazard District encompass those lands designated on the Flood Insurance Rate Map (FIRM) as lying within the A1-99 zones. The precise boundaries of the (FA) Approximated Flood Hazard District encompass those lands described as lying within the A zone on the FIRM.

B. The areas designated as lying within the (FM) Mapped Flood Hazard District shall be deemed the precise boundary areas. No withdrawal of lands from the FM District shall be made except by the London Grove Township Zoning Hearing Board as a special exception, provided they have jurisdiction. Jurisdiction over the lands within the FM District is conditioned upon the filing for a hearing of a letter or map amendment to the Federal Emergency Management Agency, a certificate or letter of approval of the Department of Environmental Protection and a certificate or letter of approval of the Department of Community Affairs with respect to such change. The absence of any of the required letter or certificates shall be deemed a complete bar to the jurisdiction of the Zoning Hearing Board. Applications must be accompanied by the requisite jurisdictional letters and/or certificates or they will be deemed incomplete.

C. *(FG) General Flood Hazard District.* Where any landowner desires to undertake any grading, filling, storage of materials or construction of any buildings or structures on lands within the floodplain of any small stream, as herein defined, outside the (FM) Hazard District or desires to conduct any such activities on lands mapped as Water Hazard Soils, as herein defined, and mapped in the Soil Survey of Chester and Delaware Counties, Pennsylvania, prepared by the United States Department of Agriculture Soil Conservation Service issued May, 1963 as Series 1959, No. 19, they shall submit an application to the Township accompanied by plans prepared by a professional engineer. The plan must show the flood fringe and floodway of all streams, the boundaries of any such water hazard soils, and the activities proposed. Sufficient supportive data are required to enable the Township Engineer to ascertain the accuracy and delineate the boundaries of the FG District. The

floodway of any small stream shall be regulated by the use regulations set forth in §27-1506 and the flood fringe of small streams and the water hazard soil areas shall be regulated by the provisions of §27-1506.B. The Township Engineer shall certify the boundaries within the subject tract of the FG District and certify the boundary locations of the floodways of small streams. The applicant or any other person having standing so to do and aggrieved by the determination of the Township Engineer shall have the right to appeal such determination to the Zoning Hearing Board, which shall hear evidence and determine the precise boundaries of the FG District in accordance with the provisions of paragraph .B above. The filing of the determinations with governmental agencies other than the Department of Environmental Protection with respect to small stream floodways shall not apply.

D. *Procedure for Resolution of Boundary Delineation Disputes.*

(1) The boundary lines of the FA and FS Districts as shown on the FIRM shall be deemed the precise boundaries and no withdrawal of lands shall be made except by approval of the London Grove Township Zoning Hearing Board as a special exception. The jurisdiction to hear and determine any such application requires filing a letter of map amendment of the Federal Emergency Management Agency and a certificate or letter of approval of the Department of Environmental Protection and a certificate or letter of approval of the Department of Community and Economic Development with respect to such change. These documents must be filed with the application to the Zoning Hearing Board. The absence of any of the required letters or certificates shall be deemed a complete bar to the jurisdiction of the Zoning Hearing Board to hear the application. Unless accompanied by the requisite jurisdictional certificates or letters, the application shall be deemed not filed for any purpose whatsoever.

(2) Applications with the Township for development of any tract of land with any portion within the FM or FG District shall include, as part of the building permit application, plans prepared by a professional engineer. These plans must show the boundaries of the FM and FG Districts, the boundary lines

delineating the floodway from the flood fringe and the nature of existing and proposed development of building and structures on the tract. The applicant shall also show thereon any proposed deviation from the FM District boundary limits shown on the FIRM. The applicant, the Township, or any other person having standing may challenge the accuracy of the FM District boundaries as shown on the FIRM, or may allege that the limits as shown on the applicant's plan do not properly reflect the areas subject to such regulation. The challenging party shall furnish detailed engineering studies demonstrating the inaccuracy of the FM District boundaries as shown on the FIRM and the burden of persuasion, as well as the burden of going forward with the evidence, shall lie upon the challenger. The matter shall thereupon be referred to the Township Engineer who shall certify in writing on a plan prepared by him or approved by him the precise boundaries of the (FS), (FA) and (FG) Districts, as shown on said plan and shall, where applicable, also certify the precise boundary separation between the floodway and flood fringe areas. The entire matter shall thereupon be certified to the Zoning Hearing Board as an application for special exception, provided the same is accompanied by the requisite jurisdictional letters and certificates.

(3) Copies of the plan designating the precise boundaries of the FM and FA District, as determined by the Zoning Hearing Board, shall be filed with the Department of Community Affairs and Economic Development, the Federal Emergency Management Agency and the Department of Environmental Protection.

3. *Modification of District Boundaries.* No modification of the district boundaries by means of relocation of streams, change of grade by cutting, excavation or filling or by any other means shall occur, except by special exception granted by the Zoning Hearing Board upon application of the landowner. As a jurisdictional prerequisite for the Zoning Hearing Board to hear such application, the applicant shall submit plans prepared and signed by a professional engineer, together with all supporting and explanatory data. Other documents required with the application include certificates of approval of the Department of Environmental Protection and,

if in an FM District, the Department of Community and Economic Development. When required, a Letter of Map Amendment from the Federal Emergency Management Agency, as well as the approvals of any other State, Federal or County office, agency or authority required for such modification. Upon receipt, applications shall be forwarded to the Township Engineer who shall report in writing any objections and these shall be a part of the record of the Zoning Hearing Board proceeding. The applicant shall have the burden of proof to demonstrate compliance with each and every standard mandated for the grant of special exceptions, as set forth elsewhere in this Ordinance including both the burden of going forward with the evidence and the burden of persuasion. A copy of the Zoning Hearing Board's order shall be filed with each agency that provided a certificate of approval for the application.

§27-1506. Use Regulations.

It is the policy of London Grove Township to restrict development within the (FM) Flood Hazard District and within the floodways of small streams in the (FG) Flood Hazard District to the maximum extent permitted by law. Development within the FG District is permitted except within the floodways of small streams, in accordance with the underlying zoning regulations. Development is subject to the special considerations set forth in the applicable provisions of the Subdivision and Land Development Ordinance of London Grove Township [Chapter 22]. Any use with respect to lands within the FM District shall be permitted if and only if such use is permitted both in the FM District as provided in paragraph A and also in the applicable use provisions of the underlying zoning district. Where a use is permitted in the FM District but prohibited in the underlying district or prohibited in the FM District but permitted in the underlying district, any such use application shall be deemed an application for variance and not for special exception and shall be determined under the provisions of §27-1509 and not §27-1508 relating to special exceptions.

A. *Permitted Use Regulations for FM District.* In the (FM) Mapped Floodway District, the following uses and activities are permitted provided they are in compliance with the provisions of the underlying district and are not prohibited by this or any other ordinance and provided that such uses do not require structures, fill or storage of materials or equipment:

(1) Agricultural uses such as general farming, pasture grazing, outdoor plant nurseries, horticultural, truck farming, forestry, sod farming and wild crop harvesting. Excluded are Commercial Composting Processing Operations, Agricultural Composting Processing Operations and such agricultural uses as poultry production, piggeries, fattening pens and other forms of intensive agriculture..

(2) Public and private recreational uses and activities such as parks, day camps, picnic grounds, golf courses, boat launching and swimming areas, hiking and horseback riding trails, wildlife and nature preserves, game farms, fish hatcheries, trap and skeet game ranges, hunting and fishing areas and outdoor athletic fields, excluding structures.

(3) Accessory residential uses such as yard areas, gardens, play areas, and pervious parking areas, provided, that access to the residential dwelling during a 100-year flood is possible without use of areas within the FM Zoning District.

(4) Accessory industrial and commercial uses such as yard areas, pervious parking and loading areas, etc., but excluding outdoor storage areas, except pursuant to special exceptions as provided in paragraph B.5.

B. Except within the floodways of the streams within the FM and FG Districts, the following uses and activities and no others are permitted when authorized as a special exception by the Zoning Hearing Board, provided that they are in compliance with the provisions of the underlying district and are not prohibited by this or any other ordinance:

(1) Utilities and public facilities and improvements such as railroads, streets, bridges, transmission lines, pipelines, water and sewage treatment plants, excluding subsurface disposal facilities such as tile fields and other similar or related used.

(2) Water related uses and activities such as marinas, docks, piers, etc.

(3) Excavation of sand, gravel and other materials.

(4) Temporary uses such as circuses, carnivals and similar activities, provided they can be dismantled and removed or otherwise secured from the dangers of flood on 4 hours notice. Application for such uses shall include a dismantling and security plan satisfactory to the Township.

(5) Storage of materials and equipment provided that they are not buoyant, flammable or explosive, are not subject to damage by flooding, are not soluble and will not pollute or degrade the stream as the result of any inundation and provided such material, structures and equipment are firmly anchored to prevent flotation or movement and/or can be readily removed from the area within the time available after flood warning. Any such application shall include a dismantling or flood-proofing plan satisfactory to the Township.

(6) Other similar uses and activities provided they cause no increase in flood heights and/or velocities. All uses and activities shall be undertaken in strict compliance with the provisions of this and all other applicable codes and ordinances and shall not include the construction of buildings or above-ground structures in the (FM) Mapped Flood Hazard District.

C. *Prohibited Activities.* In accordance with the Federal Emergency Management Act (FEMA) regarding contaminants, the Floodplain Management Act and the regulations adopted by the Department of Community and Economic Development, no materials nor personal property shall be stored upon the premises which if introduced into the stream could result in contamination of the waters of the Commonwealth or injury to persons or property or contamination of any water source or injury to animal or plant life.

D. *(FG) General Flood Hazard Area.*

(1) Within the floodway of small streams as herein defined, the use regulations set forth in paragraph B shall govern.

(2) Within the flood fringe of small streams and those areas within the FG District solely by reason of water hazard soils, the regulations for use in the underlying district alone shall prevail, subject to the flood-proofing and other related requirements set forth in the London Grove Township Subdivision and Land Development Regulations [Chapter 220.]

§27-1507. Existing Structures.

1. No expansion or enlargement of an existing structure and/or use shall be allowed within the FM District that would cause any increase in flood heights or velocities or cause risk to any persons or property at, above or below the location of the structure nor introduce any source of pollution to the waters of the Commonwealth.

2. Any modification, alteration, reconstruction or improvement of any kind to an existing structure and/or use to an extent or amount of 25 percent, or greater, of its then current square footage as of the date of the adoption of this Chapter shall constitute a substantial improvement and shall be undertaken only when authorized as a special exception in accordance with the provisions of §27-1508 hereof and all other provisions relating to the grant of special exceptions.

3. Any modification, alternation, reconstruction or improvement, of any kind to an existing structure and/or use to an extent or amount of less than 25 percent of its then current square footage as of the date of this Chapter shall be authorized only when approved by the Township Engineer who shall certify in writing to the Zoning Officer that all of the criteria of §27-1508 have been complied with. The burden of proof of satisfying the Township Engineer and the cost thereof shall be and remain upon the applicant.

4. No change of use shall occur within any structure in the FM District unless approved by special exception granted by the Zoning Hearing Board. In addition to the criteria set forth in §27-1508, the Zoning Hearing Board shall determine that the proposed use will not cause any greater risk nor hazard with respect to flooding, injury, or pollution than did the prior existing use.

§27-1508. Standards for Special Exceptions.

1. In addition to all other factors to be considered under the terms of this Chapter and applicable law with respect to the grant of special exceptions, the Zoning Hearing Board shall require the applicant to demonstrate:

A. That there is no increase in danger to life and/or property due to increased flood heights or velocities upstream or downstream of the subject property caused by encroachments.

B. That there is no danger that material may be swept onto other lands or downstream to the injury of others.

C. That proposed water supply and sanitation systems are adequately protected to avoid causing disease, contamination and unsanitary conditions.

D. That the proposed use is not susceptible to flood damage.

E. That there are not upon the tract of the owner alternative locations available which are not subject to flooding and could accommodate the proposed use.

F. That the proposed use is not incompatible with existing and foreseeable nearby uses.

G. That the proposed use is not inimical to the Comprehensive Plan and the Flood Management Program for the area.

H. That there is safe and convenient access during a 100-year flood to the use, buildings and structures for ordinary and emergency vehicles.

I. That the proposed use or structure will not be injured or cause injury to others by reason of the expected heights, velocities, duration, rate of rise and sediment transport of the flood water expected at the site during a 100-year storm.

J. That the special exception, if granted, will not cause any impairment of the coverage of London Grove Township and the residents therein by the Federal Emergency Management Programs or will the proposed use or structure violate any regulations of the Federal Emergency Management Agency, the Department of Community and Economic Development or any other state or federal regulations whereby the advantages unto London Grove Township and its residents would be revoked or impaired.

K. No special exception or variance shall be granted for the construction of any building within the floodway of any stream within the FM District or any stream within the (FG) District.

L. No special exception or variance shall be granted to permit the erection or installation of any structure or the undertaking of any development in the FM or FG District if the same would cause any increase in flood heights.

M. Notwithstanding any of the foregoing, all structures and buildings permitted within any FM or FG Districts shall be so designed, elevated/flood-proofed, constructed and anchored as to have the capability of resisting all forces and damages arising from a 100-year flood.

N. That the proposed use, if granted, would not be contrary to the public health, safety or welfare.

O. Such other factors which the Zoning Hearing Board may find relevant to the purposes of this Part.

2. In granting any special exception, the Zoning Hearing Board may attach reasonable conditions and safeguards in addition to those expressed in this Chapter as it may deem necessary to implement the purposes of this Part.

3. With respect to any application for special exception, all of the elements set forth in subsection 1 hereof shall be deemed definitional and the burden of going forward with evidence and of ultimate persuasion as to each of the elements therein listed shall be and remain upon the applicant.

§27-1509. Variances in FM Districts.

In addition to the mandated standards for the grant of variances under the provisions of the Municipalities Planning Code, applicable law and this Chapter, the Zoning Hearing Board, prior to the grant of any variance, shall determine that all of the criteria set forth for the grant of a special exception under §27-1508.1 have been complied with. In the grant of any variance, the Zoning Hearing Board is empowered to attach such reasonable conditions as it may deem necessary to effectuate the purpose of this Chapter and the programs supported thereunder and thereby.

§§27-1510. Administration.

1. In the granting or denial of any application under the terms of this Part, the Zoning Officer shall not receive any application unless and until all applicable forms have been completed and filed, the applicable fee paid and all of the certificates and plans required under the terms of this Chapter have been filed. No time limits shall begin to run or shall any rights accrue with respect to pending applications, vis a vis, pending ordinances unless and until all the requisite documentation is supplied and fees paid.

2. The Zoning Officer, except as herein otherwise provided, is charged with the administration of these floodplain regulations, subject to the determinations, reports and opinions of the Township Engineer, which shall be binding upon the Zoning Officer, but not the Zoning Hearing Board, in his processing and evaluation of any application under this Part.

3. Notwithstanding anything herein or elsewhere contained, no building permit shall be issued for any building, structure or development elsewhere authorized unless and until the applicant shall have established that any such structures, buildings or development have been designed and will be constructed and anchored so as to have the capability of resisting the effects of the 10-year flood.

4. Approvals, permits and certifications by State agencies shall not be binding upon the Zoning Officer or the Zoning Hearing Board in granting of any permit, but no permit may be granted in the absence of such certification or the refusal of any such agency to so certify where, under the terms of this Chapter, such approval or certification is required.