

ORDINANCE NO. 199

BOROUGH OF AVONDALE CHESTER COUNTY, PENNSYLVANIA

AN ORDINANCE OF AVONDALE BOROUGH, CHESTER COUNTY, PENNSYLVANIA, ESTABLISHING AND DEFINING A "FLOOD HAZARD DISTRICT," REQUIRING ALL PERSONS, PARTNERSHIPS, BUSINESSES AND CORPORATIONS TO OBTAIN CERTAIN PERMITS FOR ANY CONSTRUCTION OR DEVELOPMENT, PROVIDING FOR THE ISSUANCE OF SUCH BUILDING PERMITS, SETTING FORTH CERTAIN MINIMUM REQUIREMENTS FOR NEW CONSTRUCTION AND DEVELOPMENT WITHIN THE AREAS OF AVONDALE BOROUGH WHICH ARE SUBJECT TO FLOODING, ESTABLISHING PENALTIES FOR ANY PERSON FAILING TO COMPLY WITH THIS ORDINANCE, AND SUPERCEDING AND REPEALING INCONSISTENT ORDINANCES OR PARTS THEREOF.

BE IT ENACTED AND ORDAINED by the Borough Council of Avondale Borough, Chester County, Pennsylvania, and it is hereby enacted and ordained by authority of the same as follows:

SECTION 100. GENERAL PROVISIONS

A. Purposes

The purposes of this Ordinance include, but are not limited to prevent the loss of property and life, the creation of health and safety hazards, the destruction 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:

1. Regulating uses, activities, construction and development which, acting alone or in combination with other existing or future uses, activities, construction and development, will cause unacceptable increases in flood heights, hydraulic velocities and frequencies;

2. ~~Restricting or prohibiting certain uses, activities, construction and development from~~
being located within areas subject to flooding;
3. Requiring all those uses, activities and construction that do or will occur in flood-prone areas to be protected and/or flood-proofed against flooding and flood damage;
4. Protecting individuals from buying lands and structures which are unsuited for intended purposes because of flood hazards.

B. General

1. No structure or land shall hereafter be used, and no structure shall be located, relocated, substantially improved, constructed, reconstructed, enlarged, or structurally altered, except in full compliance with the terms and provisions of this Ordinance and any other applicable ordinance or regulations which may apply to uses or structures within the jurisdiction of this ordinance.
2. It shall be unlawful for any person, partnership, business or corporation to undertake or cause to be undertaken any construction or development anywhere within Avondale Borough unless the required Permit has been obtained from the Zoning Officer.

C. Applicability

This Ordinance shall apply to all land within the municipal limits of Avondale Borough if that land is in the designated flood plain districts which are part of the Floodway, Flood Fringe, and/or General Flood Plain Areas, as defined herein; this Ordinance shall not apply to any land or structures owned by Avondale Borough, the Avondale Borough Sewer Authority, or any authority created by Avondale Borough.

SECTION 101. WARNING AND DISCLAIMER OF LIABILITY

- A. The degree of flood protection sought by the provisions of this Ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Ordinance does not imply that areas outside any identified floodplain area, or any land uses permitted within such areas will be free from flooding or flood damage.

This Ordinance shall not, under any circumstances, create liability on the part of the Avondale Borough, any Council member thereof, or any officer or employee thereof, for any flood damage(s) which may result from reliance on this Ordinance or any administrative decision lawfully made hereunder.

SECTION 102. DEFINITIONS

A. General

Unless specifically defined below, the words and phrases defined hereinafter shall be interpreted so as to give this Ordinance its most reasonable application.

B. Specific Definitions

1. **Accessory Use or Structure:** A use or structure on the same lot with, but of a nature customarily incidental and subordinate to, the principal use or structure.

2. **Basement:** Any area of any structure having its floor below ground level on all sides.

3. **Building:** A combination of materials assembled to form a permanent structure having walls and a roof, including manufactured homes and trailers to be used for human habitation.
4. **Completely Dry Space:** A space within a structure which will remain totally dry during flooding, as the result of having been designed and constructed to prevent the passage of water and water vapor into that space.
5. **Construction:** The construction, reconstruction, renovation, repair, extension, expansion, alteration, or relocation of a building or structure.
6. **Development:** Any man-made change to improved or unimproved real estate, including by way of example and not by way of limitation, the construction of buildings or other structures, the placement of manufactured homes, streets and other paving, utilities, filling, grading, excavation, mining, dredging or drilling operations, storage of equipment or materials, and the subdivision of land.
7. **Essentially Dry Space:** A space within a structure which will remain virtually dry during flooding, except for the passage of water vapor or some minor seepage into that space; any such Essentially Dry Space shall be virtually impermeable to the admittance of water.
8. **Flood:** A temporary inundation of a normally dry land area.
9. **Floodplain Area:** A relatively flat or low land area which is subject to partial or complete inundation from an adjoining or nearby stream, river or watercourse; and/or any area of land subject to the unusual and rapid accumulation of surface waters from any source.

10. **Floodproofing:** 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.
11. **Floodway:** The designated area of a floodplain required to carry and discharge flood waters of a given magnitude; for purposes of this Ordinance, the floodway shall be capable of accommodating a flood of a one-hundred (100) year magnitude.
12. **Identified Floodplain Area:** The floodplain area specifically identified in this Ordinance as being capable of inundation by a one-hundred (100) year flood; included in this definition would be areas identified as Floodway Area (FW), Flood-Fringe Area (FF) and General Floodplain Area (FA).
13. **Land Development:** Any of the following activities: (1) the improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving (i) a group of two or more residential or non-residential buildings, whether proposed initially or cumulatively, or a single non-residential building on a lot or lots regardless of the number of occupants; and (ii) the division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, or for the purpose of, streets, common areas, lease holds, condominiums, building groups or other features, or (2) a Subdivision of land.
14. **Lowest Floor:** The lowest floor of the lowest fully enclosed area of a structure (including basement); an unfinished flood resistant partially enclosed area - used solely for parking vehicles, building access and incidental storage, in an area other than a basement area is not considered the lowest floor of a structure, provided that

such space is not designated and built so that the structure is in violation of the applicable non-elevation design requirements of this Ordinance.

15. **Manufactured Home:** A transportable, single family dwelling intended for permanent occupancy, office, or place of assembly, contained in one or more sections, built on a permanent chassis, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, and constricted so that it may be used with or without a permanent foundation. This term shall include park trailers, travel trailers, recreational and other similar vehicles which are placed on a site for more than one hundred and eighty (180) consecutive days.
16. **Manufactured Home Park:** A parcel of land under single ownership which has been planned and improved for the placement of two or more manufactured homes for non-transient use.
17. **New Construction:** Any structures for which commencement of construction began after 12:01 A.M. prevailing time July 31, 2002; this term shall include subsequent improvements to any such structures.
18. **Obstruction:** Any wall, dam, wharf, embankment, levee, dike, pile abutment, projection, excavation, channel, rectification, culvert, building, fence, stockpile, refuse, fill, structure or matter in, along, across, or projecting into any channel, watercourse, or flood-prone area (i) which may impede, retard, or change the direction of the flow of water either in itself or by catching or collecting debris carried by such water, or (ii) which is placed where the flow of the water might carry the same downstream to the damage of life and property.

19. **One-Hundred Year Flood:** A flood which, on the average, is likely to occur once every one-hundred (100) years (i.e. that has a one (1%) percent chance of occurring each year, although the flood may occur in any year).
20. **Person:** An individual, partnership, public or private association or corporation, firm, trust, estate, municipality, governmental unit, public utility or any other legal entity which is recognized by the law as having rights and duties.
21. **Regulatory Flood Elevation:** The one-hundred (100) year flood elevation, plus a freeboard safety factor of one and one-half (1-1/2) feet.
22. **Substantial Improvement:** Any rehabilitation, addition or other improvement of a building or structure when the cost of the improvement equals or exceeds fifty (50%) percent of the market value of the building or structure before the start of construction of the improvement. This term includes buildings or structures which have incurred "substantial damage", or damage of any origin sustained by a building or structure when the cost of restoring the building to its pre-damaged condition would equal or exceed fifty (50%) percent of the market value of the building before the damage occurred. This term does not include any project for improvement of a building or structure to correct existing violations of State or Local health, sanitary, or safety code specifications which have been identified by the Zoning Officer and which are the minimum necessary to assure safe living conditions. The term "substantial improvement" shall not apply to any "Historic Structures" as defined by the National Flood Insurance Program.
23. **Structure:** Anything constructed or erected on the ground or attached to the ground including, but not limited to buildings, sheds, manufactured homes and other similar items.

24. **Subdivision:** The division or re-division of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcels or other division of land, including changes in existing lot lines for the purpose, whether immediate or future, of lease, transfer of ownership, or building, or lot development, provided however, that the division of land for agricultural purposes into parcels of more than ten (10) acres, not involving any new street or easement of access, shall be exempted.

SECTION 103. DESIGNATION AND IDENTIFICATION OF FLOODPLAIN AREAS

A. Areas Considered Floodplain

1. For purposes of this Ordinance, the areas identified as floodplain shall be those areas of Avondale Borough which are subject to the one-hundred (100) year flood, as such areas are identified in the Flood Insurance Study ("FIS") dated March 17, 2002 and the accompanying Maps prepared for Avondale Borough by the Federal Emergency Management Agency ("FEMA") or the most recent revisions thereof.

B. Nomenclature For Floodplain Areas

1. The following nomenclature shall be used in referring to the various kinds of floodplain areas:
 - a. **FW (FLOODWAY AREA):** The areas identified as "Floodway" in the AE Zone in the FIS prepared by FEMA (and shown on the FIRM) referenced in §103.A.1., above. These areas, for purposes of this Ordinance, are delineated using the criteria that certain areas within the floodplain must be capable of carrying the waters of a one-hundred (100) year flood without increasing the water surface elevation of that flood more than one (1') foot

at any point. The areas included in the FW are specifically defined in the Floodway Data Table contained in the above-referenced FIS, and shall also include Floodway areas which have been identified in other available studies or sources of information for those Floodplain areas where no Floodway has been identified in the FIS.

- b. **FF (FLOOD-FRIDGE AREA):** The remaining portions of the one-hundred (100) year floodplain in those areas identified as an AE Zone in the FIS (and depicted on the accompanying FIRM) referenced in §103.A.1., above. The basis for the outermost boundary of the FF area shall be the one-hundred (100) year flood elevations contained in the flood profiles in the FIS and shown on the FIRM.

- c. **FA (GENERAL FLOODPLAIN AREA):** The areas identified as "Approximate 100 Year Floodplain," i.e., the areas identified as "Zone A" in the FIS, referenced in §103.A.1. for which no one-hundred (100) year flood elevations have been provided. When available, information from other Federal, State and other acceptable sources shall be used to determine the one-hundred (100) year elevation, as well as floodway area, if possible. When no other information is available, the one-hundred (100) year elevation shall be determined by using a point on the boundary of the identified floodplain area which is nearest the construction site in question. In lieu of the above, the Borough Council may require an applicant to determine the elevation with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualification, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be

submitted in sufficient detail to allow a thorough technical review by the Borough's Engineer.

C. Changes In Floodplain Area Delineations

1. The areas delineated as floodplain may be revised or modified by the Avondale Borough Council where studies or information provided by a qualified agency or person documents the need for, or possibility of, such revisions.
2. No modification or revision by the Avondale Borough Council of any floodplain area shall be made without prior approval of the Federal Insurance Administration.

D. Disputes

If a dispute arises concerning any identified floodplain boundary, the initial decision of the dispute shall be made by the Avondale Borough Planning Commission. Avondale Borough shall automatically be a party to any proceeding before the Avondale Borough Planning Commission. Any person disputing the identification of any identified floodplain boundary before the Avondale Borough Planning Commission shall have the burden of proof. Any party aggrieved by a decision or determination of the Avondale Borough Planning Commission may appeal that decision or determination to the Avondale Borough Council.

SECTION 104. PERMITTED AND PROHIBITED STRUCTURES AND/OR USES AND/OR ACTIVITIES IN FW, FA OR FF AREAS

A. Permitted Principal Uses

1. Recreation and conservation uses such as parks, play fields and playgrounds, hiking, bicycle and bridle trails, picnic and sitting areas, woodlands, lakes and

ponds, nature sanctuaries, wildlife refuges, conservation areas, and other non-commercial recreational and conservation uses not requiring structures.

2. Agricultural uses which do not require structures including: general farming, pasturage, orchards, grazing, outdoor plant nurseries, truck farming, vegetable and flower gardening, wild crop harvesting, horticulture and forestry.
3. Boundary fences.
4. Water lines and sealed wells.
5. Residential and Non-residential Buildings or structures, as are permitted in a particular Zoning District, subject to the provisions of the Zoning Ordinance, and specifically subject to the provisions of this Ordinance, with the exception of those buildings or structures specifically prohibited by §104.B.

B. Prohibited Uses, Structures and Activities

1. The following uses, structures and activities are specifically prohibited, either in whole or in part within an identified floodplain area, notwithstanding any provisions of this Ordinance, the Zoning Ordinance of Avondale Borough, or any other Ordinance of Avondale Borough:
 - a. Sod farming.
 - b. Removing of top soil.
 - c. On-site domestic waste disposal systems.

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- d. Cutting or removal of trees or other flora, except upon securing a variance where the area is devoted to forestry or nursery use in which case cutting or removal shall be on a selective basis with reforestation measures.
 - e. Hospitals of any kind.
 - f. Nursing Homes of any nature.
 - g. Prison, jails, holding cells, etc.
 - h. New manufactured homes, new manufactured home parks, manufactured home subdivisions, substantial improvements to existing manufactured home parks, or substantial improvements to the exterior of existing manufactured homes.
 - i. Any new or substantially improved structure which will be used for the production or storage of any of the following dangerous materials or substances or chemicals, materials, or substances or which will be used for any activity requiring the maintenance of a supply (more than 225 gallons or other comparable volume) of any of the following chemicals, materials, or substances on the premises:
 - (a) Acetone
 - (b) Ammonia
 - (c) Benzene

- (d) Calcium carbide
- (e) Carbon disulfide
- (f) Celluloid
- (g) Chlorine
- (h) Hydrochloric acid
- (i) Hydrocyanic acid
- (j) Magnesium
- (k) Nitric acid and oxides of nitrogen
- (l) Petroleum products (gasoline, fuel oil, etc.)
- (m) Phosphorus
- (n) Potassium
- (o) Sodium
- (p) Sulphur and sulphur products
- (q) Pesticides (including insecticides, fungicides and rodenticides)

- (r) Radioactive substances, insofar as such substances are not otherwise regulated.

SECTION 105. TECHNICAL PROVISIONS

A. General

1. Any person desiring to encroach, alter, or make any improvement of any kind to any watercourse shall, at that person's sole cost and expense, notify all adjacent municipalities which may be affected by such action, and secure all required permits or approvals from the Commonwealth of Pennsylvania Department of Environmental Protection, Bureau of Dams and Waterway Management, the Pennsylvania Fish and Boat Commission, or the successors thereto, and any and all other regulatory agencies with jurisdiction over the proposed encroachment, alteration, or improvement.
2. In addition, the Federal Emergency Management Agency or the Federal Insurance Administrator, as appropriate, and the Pennsylvania Department of Community and Economic Development ("DCED") (Bureau of Community Planning) shall be notified in writing by certified mail, return receipt requested, by any person requesting or seeking an or any alteration or relocation of any watercourse.
3. Any new construction, development, use or activity allowed within any identified floodplain area shall be undertaken in strict compliance with the provisions contained in this Ordinance and all other applicable statutes, codes, ordinances and regulations.

B. Floodway Area and Stream Setback Requirements

1. Within a FW (Floodway Area), the following provisions apply:
 - a. Any new construction, development, use, activity, or encroachment that would cause any increase in flood height shall be prohibited.
 - b. No new construction or development shall be allowed, unless a permit is obtained from the Department of Environmental Protection, Bureau of Dams and Waterway Management, and the Pennsylvania Fish and Boat Commission, if applicable.
2. Within a FA (General Floodplain Area), the following provisions apply:
 - a. No new construction or development shall be located within the area measured fifty (50) feet landward from the top-of-bank of any watercourse, unless a permit is obtained from the Department of Environmental Protection, Bureau of Dams and Waterway Management.

C. Elevation and Floodproofing Requirements

1. Residential Structures

Within a FW, FF or FA, the lowest floor (including basement) of any new construction or substantially improved residential structure shall be at least one and one-half (1-1/2) feet above the one-hundred (100) year flood elevation.

2. **Non-Residential Structures (including Accessory Structures)**

- a. Within a FW, FF or FA, the lowest floor (including basement) of any new construction or substantially improved non-residential structure shall be at least one and one-half (1-1/2) feet above the one-hundred year flood elevation, or be designed and constructed so that the space enclosed by such structure shall remain either completely or essentially dry during any flood up to that height.
- b. Any non-residential structure, or part thereof, which will not be completely or adequately elevated, shall be designed and constructed to be completely or essentially dry in accordance with the standards contained in the publication entitled "Flood-Proofing Regulations" (U.S. Army Corps of Engineers, June, 1972), or some other equivalent standard, for that type of construction. All plans and specifications for the floodproofing shall be accompanied by a statement certified by a registered professional engineer or architect which certifies that both the proposed design and methods of construction are in compliance with the above-referenced standards.

3. Enclosed spaces below the lowest floor (including any basement) are expressly prohibited.

SECTION 106. DESIGN AND CONSTRUCTION STANDARDS

The following design and construction standards shall apply for all construction and development proposed in any identified floodplain area:

A. Fill

If fill is used, it shall:

1. extend laterally at least fifteen (15) feet beyond the structure line from all points,
2. consist of soil or small rock materials only; Sanitary Landfills shall not be permitted,
3. be compacted to provide the necessary permeability and resistance to erosion, scouring or settling,
4. not be steeper than one (1) vertical to three (3) horizontal, unless substantiated data, justifying steeper slopes are submitted to, and approved by, the Zoning Officer,
5. be used to the extent to which it does not adversely affect adjacent properties.

B. Drainage Facilities

1. Stormwater drainage facilities shall be designed to convey the flow of storm water runoff in a safe and efficient manner. The system shall insure proper drainage along streets, and provide positive drainage away from buildings. The system shall also be designed to prevent the discharge of excess runoff onto adjacent properties.

C. Water and Sanitary Sewer Facilities and Systems

1. All new or replacement water and sanitary sewer facilities and systems or parts thereof shall be located, designed and constructed to minimize or eliminate flood damages and the infiltration of flood waters.
2. Sanitary sewer facilities and systems shall be designed to prevent the discharge of untreated sewage into flood waters.
3. No part of any on-site sanitary sewage system shall be located within any identified floodplain area except in strict compliance with all Commonwealth and local regulations for such systems. If any such system is permitted, it shall be located so as to avoid impairment to it, or contamination from it, during a flood.

D. Other Utilities

Utilities such as gas lines, electrical, cable, and telephone systems if constructed above-ground shall be located, elevated, and constructed to minimize destruction, damage, or service interruption during a flood.

E. Streets

The finished elevation of all new streets shall not be more than one (1) foot below the Regulatory Flood Elevation.

F. Storage

All materials which are buoyant, flammable, explosive or, in times of flooding, could be injurious to human, animal or plant life, and not listed in § 104.B.1.(i). shall be stored at or above the Regulatory Flood Elevation and floodproofed to the maximum extent possible.

G. Placement of Buildings and Structures

All buildings and structures shall be designed, located, and constructed to create the minimum obstruction to the flow of water and shall be designed to have a minimum effect upon the flow and height of flood water.

H. Anchoring

1. All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, or lateral movement.
2. All air ducts, large pipes, storage tanks, and other similar objects or components located below the Regulatory Flood Elevation shall be securely anchored or affixed to prevent flotation.

I. Floors, Wall and Ceilings

1. Wood flooring installed at or below the Regulatory Flood Elevation shall be installed to permit adequate lateral expansion of the flooring (perpendicular to the flooring grain) without causing structural damage to the building.

2. Plywood used at or below the Regulatory Flood Elevation shall be of "marine grade" or "water-resistant" variety.
3. Walls and ceilings at or below the Regulatory Flood Elevation shall be designed and constructed of materials which are water-resistant and will withstand inundation.
4. Windows, doors and other components at or below the Regulatory Flood Elevation shall be made of metal or other water-resistant material.

J. Paints and Adhesives

1. Paints or other finishes used at or below the Regulatory Flood Elevation shall be of "marine" or "water-resistant" quality.
2. Adhesives used at or below the Regulatory Flood Elevation shall be of "marine" or "water-resistant" quality.
3. All wooden components (e.g. doors, trim, cabinets, etc.) installed at or below the Regulatory Flood Elevation shall be finished with a "marine" or "water-resistant" paint or other finishing material.

K. Electrical Components

1. Electrical distribution panels shall be placed at least four (4) feet above the one-hundred (100) year flood elevation.

2. Separate electrical circuits shall serve lower levels and shall be dropped from above.

L. Equipment

No water heater, furnace, air conditioning and ventilating unit, and/or other electrical, mechanical or utility equipment or apparatus shall be placed or installed below the Regulatory Flood Elevation.

M. Fuel Supply Systems

All gas and oil supply systems shall be designed to prevent both the infiltration of flood waters into the system and discharge from the system into flood waters. Additional provisions shall be made for the drainage of these systems in the event flood water infiltration occurs.

SECTION 107. SPECIAL REGULATIONS FOR MANUFACTURED HOMES

- A. The placement of any manufactured home or homes within any FW (Floodway Area) is strictly prohibited.
- B. Within FA (General Floodplain Area), the placement of a manufactured home or homes shall be prohibited within the area measured fifty (50) feet landward from top-of-bank of any watercourse.
- C. Where permitted within any FF (Flood Fringe Area) or FA (General Floodplain Area) all manufactured homes and any additions thereto shall be:

1. Placed on a permanent foundation;
 2. Elevated so that the lowest floor of the manufactured home is one and one-half (1-1/2) feet or more above the elevation of the one-hundred (100) year flood;
 3. Anchored to resist flotation, collapse or lateral movement.
- D. An evacuation plan showing alternate vehicular access, access for emergency vehicles and escape routes shall be filed for all manufactured home parks with the Avondale Borough Secretary and the Chief of Police of Avondale Borough, or the Chief of the Police Department which is providing police services to Avondale Borough and the Avondale Borough Emergency Management Coordinator.

SECTION 108. EXISTING STRUCTURES IN IDENTIFIED FLOODPLAIN AREAS

A. General Provisions

Structures already existing in any identified Floodplain Area prior to the enactment of this Ordinance may continue to exist subject to the following provisions:

1. No expansion or enlargement of an existing structure shall be allowed within any identified floodway that would cause any increase in flood heights.
2. Any substantial improvement, as that term is defined in §102 of this Ordinance shall be undertaken only in full compliance with the provisions of this Ordinance.

3. Any modification, alteration, reconstruction or improvement of any kind to an existing structure, to an extent or amount of less than fifty (50%) percent of its market value, shall be elevated and/or floodproofed to the greatest extent possible.

SECTION 109.

ADMINISTRATION

A. Permits Required

1. In addition to any permit that may be required by the provisions of this Ordinance or any other ordinance of Avondale Borough, a separate "Floodplain Construction/Use Permit" ("F.C.U.P.") shall be required before any use, construction, development, land development, enlargement, and/or alteration is commenced within any floodplain area as identified in §104 of this Ordinance.

B. Issuance of Permit

1. The Zoning Officer or Code Enforcement Officer shall issue the F.C.U.P. required by §109.A. only after he or she receives a written certification by the Borough Engineer that the proposed use, construction, development, land development, enlargement, alteration, etc., will be in conformity with the requirements of this Ordinance, and any and all other applicable codes, ordinances, regulations, etc.
2. Prior to the issuance of any F.C.U.P., the Zoning Officer shall review the application for the permit to determine if all other necessary governmental permits required by Commonwealth and Federal laws have been obtained, such as those required by the Pennsylvania Sewage Facilities Act (Act 1966-537, as amended); the U.S. Clean Water Act, §404, 33, U.S.C. 1334; and the Pennsylvania Clean Streams Act

(Act 1937-394, as amended). No permit shall be issued until this determination has been made.

3. No encroachment, alteration or improvement of any kind shall be made to any watercourse until all adjacent municipalities which may be affected by such action have been notified by the municipality and until all required permits or approvals have been first obtained from the Department of Environmental Protection, Bureau of Dams and Waterways and, if applicable, the Pennsylvania Fish and Boat Commission.
4. Prior to any alteration and/or any relocation of any watercourse, any person desiring to alter and/or relocate the watercourse shall notify the Federal Insurance Administrator, the Pennsylvania Department of Community and Economic Development (Bureau of Community Planning), and the Federal Emergency Management Agency. All such notifications shall be in writing by Certified Mail, Return Receipt Requested, with copies thereof sent to the Borough Zoning Officer or the Code Enforcement Officer.

C. Application Procedures and Requirements

1. Applications for the F.C.U.P. shall be made simultaneously to the Zoning Officer or the Code Enforcement Officer and the Borough Engineer, and shall be in accordance with any Code enacted by Avondale Borough as referenced in Avondale Borough Ordinance No. 185.
2. If any proposed construction or development is located entirely or partially within any identified floodplain area, the applicant for F.C.U.P.'s shall provide all the necessary

information in sufficient detail and clarity to enable the Zoning Officer or Code Enforcement Officer and Borough Engineer to determine that:

- a. all such proposals are consistent with the need to minimize flood damage and conform with the requirements of this and all other applicable codes and ordinances;
- b. all utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage; and
- c. adequate drainage is provided so as to reduce exposure to flood hazards.

D. Information Required

In order to secure the F.C.U.P. required under this Ordinance, all applicants shall submit the following information to the Zoning Officer or the Code Enforcement Officer and Borough Engineer:

1. A completed F.C.U.P. Application form.
2. A plan of the entire site, clearly and legibly drawn at a scale of one (1") inch being equal to one hundred (100') feet or less, showing the following:
 - a. north arrow, scale and date;
 - b. topographic contour lines at one (1') foot intervals;

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- c. all property and lot lines including dimensions, and the size of the site expressed in acres or square feet;
 - d. the location of all existing and proposed buildings, structures and other improvements, including the location of any existing or proposed subdivision and land development;
 - e. the location of all existing streets, drives and other accessways; and,
 - f. the location of any existing bodies of water or watercourses, identified floodplain areas, and, if available, information pertaining to the floodway, and the flow of water including direction and velocities.
3. Plans of all proposed buildings, structures and other improvements, drawn at suitable scale showing the following:
- a. the proposed lowest floor elevation of any proposed building based upon National Geodetic Vertical Datum of 1929;
 - b. the elevation of the one-hundred (100) year flood;
 - c. if available, information concerning flood depths, pressures, velocities, impact and uplift forces and other factors associated with a one-hundred (100) year flood; and,
 - d. detailed information concerning any proposed flood-proofing measures.

4. The following data and information:

- a. a document, certified by a registered professional engineer or architect, which certifies that the proposed construction or development has been adequately designed to withstand the one-hundred (100) year flood elevations, pressures, velocities, impact and uplift forces associated with the one-hundred (100) year flood.

Such certification shall include a description of the type and extent of floodproofing measures which have been incorporated into the design of the structure and/or the development.

- b. detailed information needed to determine compliance with §106.4. (Storage), including:
 - (i) the amount, location and purpose of any materials or substances referred to in §106.F. and which are intended to be used, produced, stored or otherwise maintained on site.
 - (ii) a description of the safeguards incorporated into the design of the proposed structure to prevent leaks or spills of the dangerous materials listed in § 104.B.1.(i) during a one-hundred (100) year flood.
- c. the appropriate component of the Commonwealth of Pennsylvania Department of Environmental Protection's "Planning Module for Land Development."

- d. where any excavation or grading is proposed, a plan meeting the requirements of the Department of Environmental Protection, to implement and maintain erosion and sedimentation control.

E. Review by Chester County Conservation District

1. Complete copies of all F.C.U.P. applications and information required to be submitted to the Zoning Officer and Borough Engineer under this Ordinance shall also be submitted by the Applicant to the Chester County Conservation District for review and comment.
2. No F.C.U.P. shall be issued by the Zoning Officer of the Borough until he or she shall have received from the Chester County Conservation District its written review and comments.

F. Application Fee

1. All applications for the F.C.U.P. shall be accompanied by a fee, payable to the Avondale Borough. This fee shall be based upon the estimated cost of the proposed construction and/or improvement as determined by the Zoning Officer at the following rates:

	<u>ESTIMATED COST</u>	<u>FEE</u>
A.	\$ 0.00 to \$ 500.99	\$ 200.00
B.	\$ 501.00 to \$1,000.99	\$ 200.00

- C. Each Additional \$1,000.00 or part thereof beyond the initial \$1,000.99 \$ 5.00

SECTION 110. VARIANCES

A. General

1. Any Appeals or requests for Variances from any provision of this Ordinance shall be governed by the applicable provisions of the Act of April 28, 1978, P.L. 202, No. 53, §5, *et seq.*, as amended from time to time (2 Pa.C.S.A. §501, *et seq.*, as amended), i.e., the "Local Agency Law." All Appeals shall be in writing and shall be sent by both Certified Mail - Return Receipt Requested and by United States First Class Mail to the Secretary of Avondale Borough.
2. When an Appeal is made or a Variance is requested from the provisions of this Ordinance, the Avondale Borough Council shall consider the following standards and criteria where appropriate, and any Applicant shall have the burden of proving that the requested relief, if granted, will:
 - a. minimize the danger to life and personal property due in increased flood heights or velocities caused by encroachments;
 - b. minimize the danger that materials may be swept onto other lands or down stream to cause injury to others and/or real or personal properties;

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- c. protect proposed water supply and sanitation systems, and demonstrate the continued ability of these systems to avoid causing disease, contamination and unsanitary conditions.

B. Procedure

- 1. Upon submitting an Application for a Variance, the Applicant shall, at the Applicant's expense, simultaneously with the submission of the request for a Variance, submit the following materials and information to the Borough Secretary and the Borough Engineer:
 - a. Plans, in triplicate, drawn to scale, showing the nature, location, dimensions and elevation of the lot and existing and proposed uses.
 - b. Photographs showing existing uses and vegetation.
 - c. A report describing the soil type(s) on the lot and associated soil characteristics and other pertinent information with respect thereto.
 - d. A series of cross-sections at such intervals as the Borough's Engineer may deem necessary along the lot shore line, showing the stream channel or lake or pond bottom, and the elevation of adjoining land areas to be occupied by the proposed use(s), and high water information.
 - e. Profile showing the slope of the bottom of the channel, watercourse, lake or pond.

- f. Specifications for building materials in construction, floodproofing, filling, dredging, grading, landscaping, storage, water supply and sanitary facilities.
- g. Computation of the increase - if any - in the height of flood stages which would be attributable to an proposed uses, construction, or changes.
- h. Computation of the increase - if any - in the run-off from the one-hundred (100) year frequency, twenty (24) hour duration storm, attributable to any proposed use(s).
- i. The lowest floor (including basement) elevation of the proposed structure or building based upon National Geodetic Vertical Datum of 1929.
- j. A listing of all required Commonwealth and Federal permits.
- k. The elevation of the one-hundred (100) year flood.
- l. If any part of a proposed building or structure, or a substantial improvement to an existing building or structure is to be built below the elevation of the one-hundred (100) year flood, the applicant must submit documentation certified by a registered professional engineer or architect, which certifies that the proposed construction has been adequately designed to withstand the one-hundred (100) year flood elevations, pressures, velocities, impact and uplift forces associated with the one-hundred (100) year flood. (This statement shall include a description of the type and extent of floodproofing measures which have been incorporated into the design of the structure

and/or development. Detailed local floodproofing regulations can be substituted.)

2. Requests for variances shall be considered by the Avondale Borough Council subject to the following:

- a. No variance shall be granted for any construction, development, use or activity within any Flood Hazard Area which would cause any increase in the one-hundred (100) year flood elevation.
- b. The variance, if granted, will be the minimum variance necessary to afford relief.
- c. In granting any variance, the Avondale Borough Council shall attach whatever reasonable conditions it deems necessary to safe-guard the public health, safety and welfare, and to achieve the objectives of this Ordinance.
- d. If any Variance from the provisions of this Ordinance is granted, the Avondale Borough Council, in any Order granting any Variance, shall include the following statement, which shall be conspicuously set forth on the face of the Order in bold-faced capitalized type:

THE APPLICANT(S) IS HEREBY NOTIFIED THAT THE VARIANCE(S) GRANTED BY THIS ORDER MAY RESULT IN AN INCREASE OF PREMIUMS FOR FLOOD INSURANCE AND MAY INCREASE THE RISK TO LIFE AND PROPERTY.

C. Prospective Sale

1. In any case where the Avondale Borough Council shall grant a Variance to permit the erection of a structure in the Floodplain District, the Avondale Borough Council, for the protection of prospective future purchasers and/or lessees, shall impose the following conditions, which shall also constitute a requirement for approval of any future subdivision and/or land development:
 - a. Require, as a condition of approval, that an applicant advise prospective purchasers and/or lessees that the lot is located entirely or partially (as the case may be) in the Floodplain District.
 - b. Require that, before settlement, or before any change in non-conforming use occurs, as the case may be, the prospective purchaser or lessee acknowledges, in writing, that he, she or it has been advised that the property lies partially or entirely in a Floodplain District, and further, the prospective purchaser or lessee shall deliver a signed copy of the acknowledgment to the Borough.
 - c. Require any Deed, Lease or Declaration, as appropriate, to contain the following provision:

THIS LOT IS ENTIRELY OR PARTIALLY WITHIN THE
FLOODPLAIN DISTRICT AS DEFINED BY THE FLOOD
HAZARD ORDINANCE OF AVONDALE BOROUGH,
CHESTER COUNTY, PENNSYLVANIA.

D. Records

1. A complete copy of all Variance Applications filed pursuant to this Ordinance, Orders granting or denying Variances, and acknowledgments required in §110.C., above, shall be maintained in the Borough offices, and copies of all variances *granted* by the Avondale Borough Council during any given calendar year shall be included in the Borough's Annual Report to the Flood Insurance Administration.

SECTION 111. PENALTIES

- A. Any Person violating this Ordinance shall, upon conviction thereof before a District Justice, be sentenced to pay a fine of not less than Three Hundred Dollars (\$300.00) nor more than One Thousand Dollars (\$1,000.00) for each violation, plus costs of prosecution.
- B. Each day this Ordinance is violated shall constitute a separate offense.
- C. In addition to the penalties set forth above, Avondale Borough may enforce this Ordinance by an Action in Equity or at Law, and all costs of any such action (including attorney's fees) shall be recoverable from the defendant.

SECTION 112. REPEALER

- A. All Avondale Borough Ordinances or parts thereof inconsistent with or in conflict with this Ordinance or any parts thereof (except as specifically preserved in this Ordinance) are hereby repealed; it is the intent of the Avondale Borough Council that Section 10.3 ("Flood Plain Hazard Overlay District") of Part 10 ("Environmental Protection Standards") of

Avondale Borough Ordinance No. 172 (Chapter XXVI of the Avondale Borough Code, i.e., the "Avondale Borough Zoning Ordinance") is specifically superceded by the adoption of this Ordinance No. 199, without the necessity of specifically repealing that section of the Zoning Ordinance.

SECTION 113. SEVERABILITY

- A. If any Section or provision of this Ordinance is declared by any Court of competent jurisdiction to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect the constitutionality, legality or validity of this Ordinance as a whole, nor the constitutionality, legality or validity of any other section or provision of this Ordinance other than the one so declared to be unconstitutional, illegal or invalid.

SECTION 114. EFFECTIVE DATE

- A. This Ordinance shall be effective on the earliest date permitted by law.

ORDAINED AND ENACTED by the Council of the Avondale Borough at a Public Meeting Held this 16th day of July, 2002.

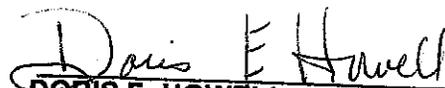
ATTEST:

AVONDALE BOROUGH COUNCIL


BECKY BROWNBACK, Secretary
Borough Secretary

BY: 
ROBERT N. McCUE, President
Avondale Borough Council

APPROVED THIS 16 DAY OF July, 2002.


DORIS E. HOWELL, Mayor