

**(D) Compliance.** No structure shall hereafter be located, extended, converted or structurally altered within the SFHA without full compliance with the terms of this ordinance and other applicable regulations. No land or stream within the SFHA shall hereafter be altered without full compliance with the terms of this ordinance and other applicable regulations.

**(E) Abrogation and Greater Restrictions.** This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**(F) Discrepancy between Mapped Floodplain and Actual Ground Elevations:**

(1) In cases where there is a discrepancy between the mapped floodplain (SFHA) on the FIRM and the actual ground elevations, the elevation provided on the profiles shall govern.

(2) If the elevation of the site in question is below the base flood elevation, that site shall be included in the SFHA and regulated accordingly.

(3) If the elevation (natural grade) of the site in question is above the base flood elevation, that site shall be considered outside the SFHA and the floodplain regulations will not be applied. The property owner should be advised to apply for a LOMA.

**(G) Interpretation.** In the interpretation and application of this ordinance all provisions shall be:

(1) Considered as minimum requirements.

(2) Liberally construed in favor of the governing body.

(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

**(H) Warning and Disclaimer of Liability.** The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this ordinance does not create any liability on the part of Posey County, the City of Mount Vernon, the Town of Cynthiana, and the Town of Poseyville, the Indiana Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this ordinance or any administrative decision made lawfully there under.

**(I) Penalties for Violation.** Failure to obtain a Floodplain Development Permit in the SFHA or failure to comply with the requirements of a Floodplain Development Permit or conditions of a variance shall be deemed to be a violation of this ordinance. All violations shall be considered a common nuisance and shall be punishable by a fine not less than twenty-five dollars (\$25.00) and not more than five hundred dollars (\$500.00).

(1) A separate offense shall be deemed to occur for each day the violation continues to exist.

(2) The Floodplain Administrator shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.

(3) Nothing herein shall prevent Posey County, the City of Mount Vernon, the Town of Cynthiana, and the Town of Poseyville from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.

**(J) Increased Cost of Compliance (ICC).** In order for buildings to qualify for a claim payment under ICC coverage as a "repetitive loss structure", the National Reform Act of 1994 requires that the building be covered by a contract for flood insurance and incur flood-related damages on two occasions during a 10-year period ending on the date of the event for which the second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25 percent of the market value of the building at the time of each such flood event.

### **153.114 ADMINISTRATION**

**(A) Designation of Administrator.** The Executive Director of the Posey County Area Plan Commission shall administer and implement the provisions of this ordinance and is herein referred to as the Floodplain Administrator.

**(B) Permit Procedures.** Application for a Floodplain Development Permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically the following information is required:

- (1) Application stage:
  - (a) A description of the proposed development.
  - (b) Location of the proposed development sufficient to accurately locate property and structure in relation to existing roads and streams.
  - (c) A legal description of the property site.
  - (d) A site development plan showing existing and proposed development locations and existing and proposed land grades.
  - (e) Elevation of the top of the lowest floor (including basement) of all proposed buildings. Elevation should be in NAVD 88 or NGVD.
  - (f) Elevation (in NAVD 88 or NGVD) to which any non-residential structure will be flood-proofed.
  - (g) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(2) Construction stage. Upon placement of the lowest floor; or flood-proofing, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the NAVD 88 or NGVD elevation of the lowest floor or flood-proofed elevation, as built. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by the same. When flood-proofing is utilized for a particular structure said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holders' risk. (The Floodplain Administrator shall review the lowest floor and flood-proofing elevation survey data submitted.) The permit holder shall correct deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.

**(C) Duties and Responsibilities of the Floodplain Administrator.** The Floodplain Administrator and/or designated staff is hereby authorized and directed to enforce the provisions of this ordinance. The administrator is further authorized to render interpretations of this ordinance, which are consistent with its spirit and purpose. Duties and Responsibilities of the Floodplain Administrator shall include, but not be limited to:

- (1) Review all floodplain development permits to assure that the permit requirements of this ordinance have been satisfied.
- (2) Inspect and inventory damaged structures in the SFHA and complete substantial damage determinations.
- (3) Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to Section 153.115(E) and (G)(1) of this ordinance, and maintain a record of such authorization (either copy of actual permit or floodplain analysis/regulatory assessment).
- (4) Ensure that all necessary federal or state permits have been received prior to issuance of the local floodplain development permit. Copies of such permits are to be maintained on file with the floodplain development permit.
- (5) Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.
- (6) Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, SFHA maps, Letters of Map

Amendment (LOMA), Letters of Map Revision (LOMR), copies of DNR permits and floodplain analysis and regulatory assessments (letters of recommendation), federal permit documents, and “as-built” elevation and flood-proofing data for all buildings constructed subject to this ordinance.

(7) Utilize and enforce all Letters of Map Revision (LOMR) or Physical Map Revisions (PMR) issued by FEMA for the currently effective SFHA maps of the community.

(8) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

(9) Verify and record the actual elevation of the lowest floor (including basement) of all new or substantially improved structures, in accordance with Section 153.114(B).

(10) Verify and record the actual elevation to which any new or substantially improved structures have been flood-proofed in accordance with Section 153.114(B).

(11) Review certified plans and specifications for compliance.

(12) Stop Work Orders

(a) Upon notice from the floodplain administrator, work on any building, structure or premises that is being done contrary to the provisions of this ordinance shall immediately cease.

(b) Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed.

(13) Revocation of Permits

(a) The floodplain administrator may revoke a permit or approval, issued under the provisions of the ordinance, in cases where there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.

(b) The floodplain administrator may revoke a permit upon determination by the floodplain administrator that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this ordinance.

(14) Inspect sites for compliance. For all new and/or substantially improved buildings constructed in the SFHA, inspect before, during and after construction. Authorized County, City, and Town officials shall have the right to enter and inspect properties located in the SFHA.

### ***153.115 Provisions for Flood Hazard Reduction***

**(A) General Standards.** In all SFHAs and known flood prone areas the following provisions are required:

(1) New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

(2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.

(3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the FPG.

(4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage.

(5) Electrical, heating, ventilation, plumbing, air conditioning equipment, utility meters, and other service facilities shall be located at/above the FPG or designed so as to prevent water from entering or accumulating within the components below the FPG. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG.

(6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(9) Any alteration, repair, reconstruction or improvements to a structure that is in compliance with the provisions of this ordinance shall meet the requirements of "new construction" as contained in this ordinance.

(10) Any alteration, repair, reconstruction or improvement to a structure that is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not further extended, or replaced.

**(B) Specific Standards.** In all SFHAs, the following provisions are required:

(1) In addition to the requirements of Section 153.115(A), all structures to be located in the SFHA shall be protected from flood damage below the FPG. This building protection requirement applies to the following situations:

(a) Construction or placement of any new structure having a floor area greater than 400 square feet.

(b) Addition or improvement made to any existing structure:

(i) where the cost of the addition or improvement equals or exceeds 50% of the value of the existing structure (excluding the value of the land).

(ii) with a previous addition or improvement constructed since the community's first floodplain ordinance.

(c) Reconstruction or repairs made to a damaged structure where the costs of restoring the structure to it's before damaged condition equals or exceeds 50% of the market value of the structure (excluding the value of the land) before damage occurred.

(d) Installing a travel trailer or recreational vehicle on a site for more than 180 days.

(e) Installing a manufactured home on a new site or a new manufactured home on an existing site. This ordinance does not apply to returning the existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage.

(f) Reconstruction or repairs made to a repetitive loss structure.

(2) Residential Construction. New construction or substantial improvement of any residential structure (or manufactured home) shall have the lowest floor; including basement, at or above the FPG (two feet above the base flood elevation). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Section 153.115(B)(4).

(3) Non-Residential Construction. New construction or substantial improvement of any commercial, industrial, or non-residential structure (or manufactured home) shall either have the lowest floor, including basement, elevated to or above the FPG (two feet above the base flood elevation) or be flood-proofed to or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Section 153.115(B)(4). Structures located in all "A Zones" may be flood-proofed in lieu of being elevated if done in accordance with the following:

(a) A Registered Professional Engineer or Architect shall certify that the structure has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The structure design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. Such certification shall be provided to the official as set forth in Section 153.114(C)(10).

(b) Flood-proofing measures shall be operable without human intervention and without an outside source of electricity.

(4) Elevated Structures. New construction or substantial improvements of elevated structures shall have the lowest floor at or above the FPG. Elevated structures with fully enclosed areas formed by

foundation and other exterior walls below the flood protection grade shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls. Designs must meet the following minimum criteria:

(a) Provide a minimum of two openings located in a minimum of two exterior walls (having a total net area of not less than one square inch for every one square foot of enclosed area).

(b) The bottom of all openings shall be no more than one foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher.

(c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

(d) Openings are to be not less than 3 inches in any direction in the plane of the wall. This requirement applies to the hole in the wall, excluding any device that may be inserted such as typical foundation air vent device.

(e) Access to the enclosed area shall be the minimum necessary to allow for parking for vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).

(f) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.

(g) The interior grade of such enclosed area shall be at an elevation at or higher than the exterior grade.

(h) Where elevation requirements exceed 6 feet above the highest adjacent grade, a copy of the legally recorded deed restriction prohibiting the conversion of the area below the lowest floor to a use or dimension contrary to the structure's originally approved design, shall be presented as a condition of issuance of the final Certificate of Occupancy.

(5) Structures Constructed on Fill. A residential or nonresidential structure may be constructed on a permanent land fill in accordance with the following:

(a) The fill shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test method.

(b) The fill should extend at least ten feet beyond the foundation of the structure before sloping below the FPG.

(c) The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulk-heading. If vegetative cover is used, the slopes shall be no steeper than 3 horizontal to 1 vertical.

(d) The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.

(e) The top of the lowest floor including basements shall be at or above the FPG.

(6) Standards for Manufactured Homes and Recreational Vehicles. Manufactured homes and recreational vehicles to be installed or substantially improved on a site for more than 180 days must meet one of the following requirements:

(a) The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all manufactured homes to be placed on a site;

(i) outside a manufactured home park or subdivision;

(ii) in a new manufactured home park or subdivision;

(iii) in an expansion to an existing manufactured home park or subdivision; or

(iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood.

(b) The manufactured home shall be elevated so that the lowest floor of the manufactured home chassis is supported by reinforced piers or other foundation elevations that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all manufactured homes to be placed on a site in an existing manufactured home park or subdivision that has not been substantially damaged by a flood.

(c) Manufactured homes with fully enclosed areas formed by foundation and other exterior walls below the flood protection grade shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Section 153.115(B)(4).

(d) Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.

(e) Recreational vehicles placed on a site shall either:

(i) be on site for less than 180 days; and,

(ii) be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or

(iii) meet the requirements for “manufactured homes” as stated earlier in this section.

**(C) Standards for Subdivision Proposals:**

(1) All subdivision proposals shall be consistent with the need to minimize flood damage.

(2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(4) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions), which is greater than the lesser of fifty lots or five acres.

(5) All subdivision proposals shall minimize development in the SFHA and/or limit density of development permitted in the SFHA.

(6) All subdivision proposals shall ensure safe access into/out of SFHA for pedestrians and vehicles (especially emergency responders).

**(D) Critical Facility.** Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA. Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated to or above the FPG at the site. Flood-proofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the FPG shall be provided to all critical facilities to the extent possible.

**(E) Standards for Identified Floodways:**

(1) Located within SFHAs, established in Section 153.113(B), are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential. If the site is in an identified floodway, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources and apply for a permit for construction in a floodway. Under the provisions of IC 14-28-1 a permit for construction in a floodway from the Indiana Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing and paving etc. undertaken before the actual start of construction of the structure. However, it does exclude non-substantial additions/improvements to existing (lawful) residences in a non-boundary river floodway. (IC 14-28-1-26 allows construction of non-substantial additions/

improvements to residences in a non-boundary river floodway without obtaining a permit for construction in the floodway from the Indiana Department of Natural Resources. Please note that if fill is needed to elevate an addition above the existing grade, prior approval (construction in a floodway permit) for the fill is required from the Indiana Department of Natural Resources.)

(2) No action shall be taken by the Floodplain Administrator until a permit (when applicable) has been issued by the Indiana Department of Natural Resources granting approval for construction in the floodway. Once a permit for construction in a floodway has been issued by the Indiana Department of Natural Resources, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in Section 153.115 of this ordinance have been met. The Floodplain Development Permit cannot be less restrictive than the permit for construction in a floodway issued by the Indiana Department of Natural Resources. However, a community's more restrictive regulations (if any) shall take precedence.

(3) No development shall be allowed which acting alone or in combination with existing or future development, will increase the regulatory flood more than 0.14 of one foot.

(4) For all projects involving channel modifications or fill (including levees) the Floodplain Administrator shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data.

**(F) Standards for Identified Fringe.** If the site is located in an identified fringe, then the Floodplain Administrator may issue the local Floodplain Development Permit provided the provisions contained in Section 153.115 of this ordinance have been met. The key provision is that the top of the lowest floor of any new or substantially improved structure shall be at or above the FPG.

**(G) Standards for SFHAs Without Established Base Flood Elevation and/or Floodways/Fringes:**

(1) Drainage area upstream of the site is greater than one square mile:

(a) If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined, and the drainage area upstream of the site is greater than one square mile, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.

(b) No action shall be taken by the Floodplain Administrator until either a permit for construction in a floodway or a floodplain analysis/regulatory assessment citing the one-percent annual chance flood elevation and the recommended Flood Protection Grade has been received from the Indiana Department of Natural Resources.

(c) Once the Floodplain Administrator has received the proper permit for construction in a floodway or floodplain analysis/regulatory assessment approving the proposed development, a Floodplain Development Permit may be issued provided the conditions of the Floodplain Development Permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in Section 153.115 of this ordinance have been met.

(2) Drainage area upstream of the site is less than one square mile:

(a) If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined and the drainage area upstream of the site is less than one square mile, the Floodplain Administrator shall require the applicant to provide an engineering analysis showing the limits of the floodplain and one-percent annual chance flood elevation for the site.

(b) Upon receipt, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in Section 153.115 of this ordinance have been met.

(3) The total cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the regulatory flood more than 0.14 of one foot and will not increase flood damages or potential flood damages.

**(H) Standards for Flood Prone Areas.** All development in known flood prone areas not identified on FEMA maps, or where no FEMA published map is available, shall meet applicable standards as required per Section 153.115.

### **153.116 VARIANCE PROCEDURES**

**(A) Designation of Appeals Board.** The Board of Zoning Appeals shall hear and decide appeals and requests for variances from requirements of this ordinance.

**(B) Duties of Variance and Appeals Board.** The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the board may appeal such decision to the Posey County Circuit Court.

**(C) Variance Procedures.** In passing upon such applications, the Board of Zoning Appeals shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and;

- (1) The danger of life and property due to flooding or erosion damage.
- (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- (3) The importance of the services provided by the proposed facility to the community.
- (4) The necessity to the facility of a waterfront location, where applicable.
- (5) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
- (6) The compatibility of the proposed use with existing and anticipated development,
- (7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
- (8) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (9) The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site.
- (10) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

**(D) Conditions for Variances:**

- (1) Variances shall only be issued when there is:
  - (a) A showing of good and sufficient cause.
  - (b) A determination that failure to grant the variance would result in exceptional hardship.
  - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
- (2) No variance for a residential use within a floodway subject to Section 153.115(E) or (G)(1) of this ordinance may be granted.
- (3) Any variance granted in a floodway subject to Section 153.115(E) or (G)(1) of this ordinance will require a permit from the Indiana Department of Natural Resources.
- (4) Variances to the Provisions for Flood Hazard Reduction of Section 153.115(B), may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.
- (5) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief
- (6) Variances may be granted for the reconstruction or restoration of any structure individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.
- (7) Any application to which a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation [see Section 153.116(E)].

(8) The Floodplain Administrator shall maintain the records of appeal actions and report any variances to the Federal Emergency Management Agency or the Indiana Department of Natural Resources upon request [see Section 153.116(E)].

**(E) Variance Notification:**

(1) Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

(a) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and;

(b) Such construction below the base flood level increases risks to life and property. A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

(2) The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in the community's biennial report submission to the Federal Emergency Management Agency.

**(F) Historic Structures.** Variances may 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 an "historic structure" and the variance is the minimum to preserve the historic character and design of the structure.

**(G) Special Conditions.** Upon the consideration of the factors listed in Section 153.116, and the purposes of this ordinance, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

**153.117 SEVERABILITY**

If any section, clause, sentence, or phrase of Sections 153.110 through 153.117 are held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

**Indiana Department of Natural Resources / Division of Water  
Floodplain Analysis and Regulatory Assessment**

File Number: GN-33198-0  
Request Date: 06/06/2016  
County: Posey  
Waterbody: Unnamed Tributary McFadden Creek

402 West Washington Street, Room W264  
Indianapolis, IN 46204-2641  
Telephone: (317) 232-4160 or (877) 928-3755  
Fax: (317) 233-4579 Website: www.in.gov/dnr/water

Site Location: Beginning approximately 75' south of the Indian Mound Road stream crossing and extending approximately 135' east and 130' south, Black Township, Section 1, Township 7S, Range 13W

Drainage Area: Less than one square mile  
Base Flood Elevation (BFE): 379.0 Feet (NAVD88) Source: Limited Information

**Additional Waterbody Information**

- The base flood elevation (BFE) is controlled by McFadden Ditch.

**Floodplain Mapping Indicators**

 Special Flood Hazard Area. Waterway stretches with drainage areas of less than one square mile are not regulated by the DNR, Division of Water; no permit is required from the Division. Local floodplain ordinances may require local construction permits. Flood insurance is strongly recommended and is required by FEMA for any building in the Special Flood Hazard Area that has a federally backed mortgage. See Special Information.

- The Special Flood Hazard Area is the land subject to the 1% annual chance flood. The 1% annual chance flood, also known as the base flood, has a 1% chance of being equaled or exceeded in any given year. Land in the Special Flood Hazard Area is considered to have a high flood risk. Land outside the Special Flood Hazard Area is considered to have a low to moderate flood risk.

**Disclaimers**

- As a cautionary note, please understand that the determination of the base flood elevation was based on limited detailed information. Due to lack of stream data at your site, the computed flood elevations may be subject to change if a detailed floodway analysis is completed.

If you choose to pursue obtaining a detailed hydraulic model, the model needs to be developed by an engineering consultant with experience in stream modeling. When selecting an engineering consultant, it is important to evaluate the experience, expertise, and references among potential consultants. Inquiring about the engineer's familiarity with developing hydraulic models in accordance with the General Guidelines for the Hydrologic-Hydraulic Assessment of Floodplains in Indiana may help you determine if the engineer has sufficient experience. Contacting a professional society for civil engineers or engineering consulting firms may also facilitate the selection process in choosing a qualified engineer.

**Special Information**

**Division of Water Permitting**

- Approval for construction from the DNR, Division of Water under the Flood Control Act (IC 14-28-1) is not required for waterway stretches with a drainage area of less than one square mile unless the construction project is a proposed dam that is regulated by IC 14-27-7.5.

**Flood Insurance**

- Under the federal regulations of FEMA, the National Flood Insurance Program (NFIP) requires the purchase of flood insurance on buildings in the Special Flood Hazard Area that have a federally backed mortgage. The final decision regarding flood insurance is left to the mortgage lending institution.

Map Change Instructions

- If the property owner wishes to have the federal requirement to purchase flood insurance waived, they must prove that 1) the structure or property is on natural ground levels with an elevation higher than the base flood elevation (BFE); or that 2) the structure or property is located outside of a Special Flood Hazard Area (SFHA). If one of those conditions exists, the property owner can apply for a Letter of Map Amendment (LOMA) from the Federal Emergency Management Agency (FEMA). A LOMA is a letter which allows a mortgage lender to waive federal flood insurance requirements by stating that an existing structure, property, or portion of a property that has not been elevated by fill is not located in the SFHA.

If the structure or property is located inside of the SFHA, the property owner may apply for a LOMA if it can be demonstrated that it is located on natural ground levels with an elevation higher than the base flood elevation (BFE). Specific elevation information must be submitted with the LOMA application, typically documented by a licensed surveyor or registered engineer.

If the structure or property is located outside of the Special Flood Hazard Area (SFHA), the property owner may apply for a Letter of Map Amendment Out-As-Shown (LOMA-OAS). Elevation information is not required in this review process. If requesting a LOMA-OAS, please write "Out-As-Shown" at the top of the application form.

Visit [www.fema.gov/mt-ez-form-instructions](http://www.fema.gov/mt-ez-form-instructions) to submit a LOMA application online or to obtain the LOMA application form, instructions, and Elevation Certificate form. These can also be obtained by contacting FEMA toll free at 1-877-336-2627. There is no fee for a LOMA application, although fees may be associated with hiring a surveyor to obtain the elevation information for the Elevation Certificate.

If the LOMA is issued by FEMA and the mortgage lender accepts the LOMA determination, the property owner may be reimbursed up to one year of flood insurance payments.

Be aware that regardless if FEMA issues a LOMA, the mortgage lender has the final decision regarding flood insurance requirements.

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This Floodplain Analysis and Regulatory Assessment is not a building permit, approval of any project, or a waiver of provisions of local or zoning ordinances. Additionally, projects must comply with all other applicable federal, state, and local permit requirements.

If you have any questions concerning this letter, please contact Justin Eshelman at (317) 234-1038.



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Justin Eshelman

06/16/2016

Copies Sent To: Mindy Bourne (Floodplain Administrator), Thomas Kroh (Requestor)

Attachments: GN-33198\_DNR\_FloodplainMap.pdf

#### Additional Permitting Agencies

- **Local Ordinances / Permitting:** For proposed construction on this tract, you may also be required to obtain permits from or coordinate with the local floodplain administrator, plan commission, zoning office, and county drainage board.

Construction permitting by local government entities is independent of the State's permitting authority. Local floodplain ordinances may require that the lowest floor of a new building or an addition to an existing building proposed in the Special Flood Hazard Area (SFHA ) be elevated at least 2 feet above the base flood elevation (BFE). If a basement is included, the basement floor should be considered to be the lowest floor.

**Indiana Department of Environmental Management:** You may also be required to obtain construction permits from the Indiana Department of Environmental Management. Call (317) 233-8488 or (800) 451-6027 or visit their webpage at [www.in.gov/idem](http://www.in.gov/idem).

**U.S. Army Corps' of Engineers:** You may have to obtain a permit from the Corps of Engineers under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act. Information relative to the Corps' of Engineers permits may be obtained by contacting:

U.S. Army Corps of Engineers, Louisville District Office, Regulatory Branch  
P.O. Box 59, Louisville, Kentucky 40201-0059 Telephone: (502) 315-6686

Contacting these agencies is your responsibility.