

TOWN OF BATH ORDINANCE 2009-07

AUTHORITY AND PURPOSE:

THE PROVISIONS OF THIS ORDINANCE HAVE BEEN PREPARED WITH THE INTENTION OF MEETING THE REQUIREMENTS OF SECTION 60.3 (d) OF THE NATIONAL FLOOD INSURANCE PROGRAM, THE NATIONAL FLOOD INSURANCE ACT OF 1968 (PUBLIC LAW 91-152) AMENDED BY THE CONGRESS OF THE UNITED STATES THROUGH THE 15TH. OF FEBRUARY, 1975, WEST VIRGINIA CODE 7-1-3v, 7-1-3n and 7-1-3kk. And WEST VIRGINIA CODE 8A-4-2, 8A-5-7, 8A-7-2

AN ORDINANCE ESTABLISHING A FLOOD PLAIN AREA AND REQUIRING ALL PERSONS, PARTNERSHIPS, BUSINESSES, AND CORPORATIONS TO OBTAIN A PERMIT FOR DEVELOPMENT AND THE CONSTRUCTION, SUBSTANTIAL IMPROVEMENT OR RELOCATION OF ANY BUILDING OR STRUCTURE; PROVIDING FOR CERTAIN MINIMUM STANDARDS FOR CONSTRUCTION WITHIN THE FLOOD PLAIN AREA AND SETTING FORTH SPECIAL PROCEDURES FOR SUBMISSION AND APPROVAL OF PLANS; AND ESTABLISHING PENALTIES FOR ANY PERSON WHO FAILS TO COMPLY WITH THE REQUIRMENTS OR PROVISIONS OF THIS ORDINANCE.

BE IT ENACTED AND ORDAINED by the Town of Bath, Morgan County, as follows:

ARTICLE I-GENERAL PROVISIONS

Section 1.1 Intent

The intent of this Ordinance is to:

- A. Promote the general health, welfare, and safety of the community.
- B. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
- C. Minimize danger to public health and safety by protecting water supply, sanitary sewage disposal, and natural drainage.

- D. Reduce financial burdens imposed on the community, its governmental units and its residents, by preventing the unwise design and construction of development in areas subject to flooding.

Section 1.2 Abrogation and Greater Restrictions

This Ordinance supersedes any ordinances currently in effect in flood prone areas. However, any ordinance shall remain in full force and effect to the extent that its provisions are more restrictive.

Section 1.3 Applicability

It shall be unlawful for any person, partnership, business, or corporation to undertake or cause to be undertaken, any development or the new construction, substantial improvement, the placement or relocation of any structure (including manufactured homes) within the Flood Plain Area, unless a permit has been obtained from the Permit Officer. In addition, where land is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a site plan must be submitted to, and approved by, the Permit Officer prior to any development.

Provision of all other codes, ordinances, and regulations shall be applicable insofar as they are consistent with the provisions of this Ordinance and the community's need to minimize the hazards and damage resulting from flooding.

ARTICLE II – DEFINITIONS

Base Flood

The flood, which has been selected to serve as the basis upon which the flood plain management provision of this and other ordinances have been prepared; for purposes of this Ordinance, the one-hundred (100) year flood.

Base Flood Elevation

The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. For the purposes of this ordinance, the one hundred (100) year flood or 1% annual chance flood.

Basement

Any area of the building having its floor sub grade (below ground level) on all sides.

Development

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Existing Manufactured Home Park or Subdivision

A manufactured home park or subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of this Ordinance.

Expansion To An Existing Manufactured Home Park or Subdivision

The preparation of additional sites by the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood

A general and temporary inundation of normally dry land areas.

Flood Insurance Rate Map (FIRM)

The official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study

The official report in which the Federal Emergency Management Agency has provided flood profiles, floodway information, and water surface elevations.

Flood Plain

(1) A relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation; (2) an area subject to the unusual and rapid accumulation or runoff of surface waters from any source.

Floodway

The channel of a river or other watercourse and the adjacent land area that must be reserved to discharge the base flood without increasing the water surface elevation of that flood more than one foot at any point.

Flood proofing

Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

Historic Structure

Any structure that is:

- (a) Listed individually in the National Register Of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

[1] By an approved state program as determined by Secretary of the Interior; or,

[2] Directly by the Secretary of the Interior in states without approved programs

Lowest Floor

The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; Provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured Home

A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when

connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured Home Park or Subdivision

A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New Construction

Structures for which the Start of Construction as herein defined commenced on or after the effective date of this Ordinance and include any subsequent improvements to such structures.

New Manufactured Home Park or Subdivision

A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the Ordinance.

One-Hundred (100) Year Flood

A flood that has one chance in one-hundred or a one percent chance of being equaled or exceeded in any given year.

Person

Any individual or group of individuals, corporation, partnership, association or other entity, including State and local governments and agencies.

Principally Above Ground

Where at least 51 percent of the actual cash value of a structure, less land value, is above ground.

Recreational Vehicle

A vehicle which is:

- (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Special Flood Hazard Area

The land in the floodplain subject to a one percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency in Flood Insurance Studies and on Flood Insurance Rate Maps as Zones A, AE, AO, A1-30, and A99. The term includes areas shown on other flood hazard maps that are specifically listed or otherwise described in this ordinance.

Start of Construction

For other than new construction or substantial improvements under the Coastal barrier Resources Act, Pub Law 97-348, includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building whether or not that alteration affects the external dimensions of the building.

Structure

A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial Damage

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement

Any repair, reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the Start of Construction of the improvement. This term includes structures, which have incurred "substantial damage", as defined herein, regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violation of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or
- (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structures continued designation as a "historic structure."

Violation

The failure of any structure or development to be fully compliant with all requirements of this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this ordinance is presumed to be in violation until such time as that documentation is provided.

ARTICLE III – ESTABLISHMENT OF THE FLOOD PLAIN AREA

Section 3.1 – Identification

The identified floodplain area shall be those areas of the Town of Bath, which are subject to the one hundred (100) year flood, as shown on the Flood Insurance Rate Map (FIRM) and described on the Flood Insurance Study (FIS) prepared for the Town of Bath by the Federal Emergency Management Agency (FEMA) dated September 25th, 2009, or the most recent revision thereof.

Section 3.2 – Description of Floodplain Areas

The identified floodplain shall consist of the following four specific areas:

- a) The floodway area shall be those areas identified as such in the FIS and as shown on the floodway map or FIRM. The term shall also include floodway areas identified in other studies for the approximated area discussed in section c. below.

- b) The Floodway Fringe area shall be those areas for which specific one hundred (100) year flood elevations have been provided in the FIS but which lie beyond the floodway area. These areas are shown on the floodway map or FIRM.
- c) The AE Area without Floodway (F3) shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which 100-year flood elevations have been provided but no Floodway has been delineated.
- d) The approximated area shall be those areas identified as an A Zone on the floodway map or FIRM included in the FIS prepared by FEMA and for which no one hundred (100) year flood elevations have been provided. For these areas, elevation and floodway information from other Federal, State or other acceptable source shall be used when available. Where other acceptable information is not available, the elevation shall be determined by using the elevation of a point on the boundary of the identified floodplain area, which is nearest the construction site. The Town of Bath may require the applicant to determine the elevation with hydrologic and hydraulic engineering techniques. Only professional engineers shall undertake hydrologic and hydraulic analyses or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computation, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Town of Bath.

Section 3.3 – Changes in Designation of Area

The delineation of the identified flood plain area may be revised by the Town of Bath where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers, a River Basin Commission or other qualified agency or individual document the necessity for such changes. However, prior to any such change, approval must be obtained from the Federal Insurance Administration (FIA).

A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable but, not later than six months after the date such information becomes available, the community shall notify the NFIP Administrator of the changes by submitting technical or scientific data.

Section 3.4 – Boundary Disputes

Should a dispute concerning any district boundary arise, an initial determination shall be made by the Permit Officer and any party aggrieved by this decision may appeal to the Town Council, The burden of proof shall be on the appellant.

ARTICLE IV – UTILIZATION OF THE FLOODPLAIN AREA

1. In the Floodplain Area any development and/or use of land may be permitted provided that all such uses, activities, and/or development shall be undertaken in strict compliance with the flood proofing and related provisions contained herein and in all other applicable codes, ordinances and regulations.
2. Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in the Base Flood Elevation.
3. Whenever a developer intends to alter or relocate a watercourse within the Floodplain Area, the developer shall notify in writing by certified mail all adjacent communities and the State Coordinating Office of all such intended activities prior to any alteration or relocation of the watercourse, and shall submit copies of such notification to the Federal Insurance Administrator. The developer shall also assure the Town of Bath in writing that the flood carrying capacity within the altered or relocated portion of the watercourse in question will be maintained.

ARTICLE V – CRITERIA FOR BUILDING AND SITE PLAN APPROVAL

Section 5.1 – General

Building permits are required in order to determine whether all new construction or substantial improvements are:

- (1) Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy
- (2) Constructed with material and utility equipment resistant to flood damage.
- (3) Constructed by methods and practices that minimize flood damage.
- (4) Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed

and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Section 5.2 – Basic Format

The basic format of the Building Permit shall include the following:

- (1) Name and address of applicant.
- (2) Name and address of owner of land on which proposed construction is to occur.
- (3) Name and address of contractor.
- (4) Site location.
- (5) Brief description of proposed work and estimated cost.
- (6) A plan of the site showing the exact size and location of the proposed construction as well as any existing buildings or structures.

Section 5.3 – Elevation and Flood Proofing Information

Depending on the type of structure involved, the following information shall also be included in the application for work within the Flood Plain Area:

A. For structures to be elevated to the Base Flood Elevation:

- (1) A plan showing the size of the proposed structure and its relation to the lot where it is to be constructed.
- (2) A determination of elevations of the existing ground, proposed finished ground and lowest floor, certified by a Registered Professional Engineer, Surveyor or Architect.
- (3) Plans showing the method of elevating the proposed structure including details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, etc. When required by the Permit Officer, a Registered Professional Engineer or Architect shall prepare these plans.
- (4) Plans showing the methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to the Base Flood Elevation at the building site.

B. For structures to be flood proofed to the Base Flood Elevation (nonresidential structures only):

- (1) Plans showing details of all flood proofing measures, prepared by a Registered Professional Engineer or Architect, and showing the size of the proposed structure and its relation to the lot where it is to be constructed.
- (2) A determination of elevations of existing ground, proposed finished ground, lowest floor, and flood proofing limits; certified by a Registered Professional Engineer, Surveyor, or Architect.
- (3) A certificate prepared by the registered Professional Engineer or Architect who prepared the plans in 1) above, that the structure in question, together with attendant utility and sanitary facilities is designed so that:
 - (a) Below the Base Flood Elevation the structure is water tight with walls substantially impermeable to the passage of water.
 - (b) The structure will withstand the hydrostatic, hydrodynamic, buoyant, impact, and other forces resulting from the flood depths, velocities, pressures, and other factors associated with the Base Flood.

Section 5.4 Site Plan Criteria

The owner or developer of any proposed subdivision, Manufactured Home Park or subdivision or other development shall submit a site plan to the Permit Officer which includes the following information:

- 1) Name of engineer, surveyor, or other qualified person responsible for providing the information required in this section.
- 2) A map showing the location of the proposed subdivision and/or development with respect to the municipality's flood plain areas, proposed lots and sites, fills, flood or erosion protective facilities and areas subject to special deed restriction. In addition, it is required that all subdivision proposals and other proposed new developments greater than 50 lots or five (5) acres, whichever is the lesser, shall include base flood elevation data.
- 3) Where the subdivision and/or development lies partially or completely in the flood plain areas, the plan map shall include detailed information giving the location and elevation of proposed roads, public utilities and building sites. All such maps shall also show contours at intervals of two (2) or five (5) feet

depending upon the slope of the land and identify accurately the boundaries of the flood plain areas.

ARTICLE VI – SPECIFIC REQUIREMENTS

Section 6.1 – Design and Construction Standards

In order to prevent excessive damage to buildings, structures and related utilities and facilities, the following restrictions apply to all development, subdivision proposals, manufactured home parks, new construction and to construction of substantial improvements to existing structures occurring in the Flood Plain Area.

(a) Basements and Lowest Floors

- (1) All new construction and substantial improvements of residential structures must have the lowest floor (including basement) elevated to or above the Base Flood Elevation.
- (2) All new construction and substantial improvements of non-residential structures must have the lowest floor (including basement) elevated to or above the Base Flood Elevation; or, together with attendant utility and sanitary facilities, be designed so that below the Base Flood Elevation the structure is flood proofed in accordance with Section 5.3B.
- (3) For all new construction and substantial improvements, those fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
 - (a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (b) The bottom of all openings shall be no higher than one foot above grade.
 - (c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(b) Manufactured Home Placement

- 1) Manufactured homes to be placed or substantially improved within any floodplain area on sites (a) outside of a manufactured home park or subdivision, (b) in a new manufactured home park or subdivision, (c) in an expansion to an existing manufactured home park or subdivision or (d) in an existing manufactured home park or subdivision in which a manufactured home has incurred "substantial damage", as defined herein, as the result of a flood shall:
 - (a) Be elevated on a permanent foundation so that the lowest floor of the manufactured home is elevated to or above the Base Flood Elevation and,
 - (b) Be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- 2) Manufactured homes to be placed or substantially improved within any floodplain area in an existing manufactured home park or subdivision and not subject to the provision of the paragraph above shall be elevated so that either:
 - (a) The lowest floor of the manufactured home is at or above the Base Flood Elevation, or
 - (b) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength 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.

(c) Recreational Vehicle Placement

Recreational vehicles to be placed within any floodplain area shall either: (a) be on the site for fewer than 180 consecutive days and (b) be fully licensed and ready for highway use or meet the provision of Section 6.1 (B.1) of this Ordinance. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect utilities and security devices, and has no permanently attached additions

(d) Fill

If fill is used to raise the finished surface of the lowest floor to the Base Flood Elevation:

- 1) Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally fifteen (15) feet beyond the building line from all points. For non-residential structures, fill shall be placed to provide access acceptable for intended use. At grade access, with fill extending laterally fifteen (15) feet beyond the building line shall be provided to a minimum of twenty five (25) percent of the perimeter of a non-residential structure.
- 2) Fill shall consist of soil or rock material only. Sanitary landfills shall not be permitted.
- 3) Fill material shall be compacted to provide the necessary stability and resistance to erosion, scouring, or settling.
- 4) Fill slopes shall be no steeper than one (1) vertical on two (2) horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Permit Officer
- 5) Fill shall be used only to the extent to which it does not adversely affect adjacent properties.

(e) Placement of Buildings

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

(f) Anchoring

- 1) All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, and lateral movement, thus reducing the threat to life and property and decreasing the possibility of the blockage of bridge openings and other restricted sections of the watercourse.
- 2) All air ducts, large pipes and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation.
- 3) All manufactured homes shall be anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include but are not limited to the over-the-top and frame ties to ground anchors such as the following:

- (a) Over-the-top ties shall be provided at each of the four corners of the manufactured home, with two additional ties per side for manufactured homes less than 50 feet long.
- (b) Frame ties shall be provided at each corner of the home with five additional ties per side at intermediate points, with manufactured homes less than 50 feet long requiring four additional ties per side.
- (c) All components of the anchoring system shall be capable of carrying a force of 4,800 pounds.
- (d) Any additions to a manufactured home shall be similarly anchored.

This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

(g) Storage

No materials that are buoyant, flammable, explosive, or in times of flooding could be injurious to human, animal or plant life, shall be stored below Base Flood Elevation.

(h) Utility and Facility Requirements

- 1) All new or replacement water systems whether public or private, shall be designed to minimize or eliminate infiltration of flood- waters into the systems.
- 2) All new or replacement sanitary disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- 3) All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.
- 4) Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(i) Drainage

Adequate drainage shall be provided to reduce exposure to flood hazard.

ARTICLE VII – ADMINISTRATION

Designation of Floodplain Administrator

The Chairman of the Public Safety Committee, Town of Bath is hereby appointed as Floodplain administrator to administer and implement this local law by granting or denying floodplain development permits in accordance with its provisions.

Section 7.1 – Building permits and Site Plan Approvals Required

It shall be unlawful for any person, partnership, business, or corporation to undertake or cause to be undertaken, any development or the new construction, substantial improvement, the placement or relocation of any structure (including manufactured homes) within the Flood Plain Area, unless a permit has been obtained from the Permit Officer. In addition, where land is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a site plan must be submitted to, and approved by, the Permit Officer prior to any development.

Section 7.2 – Approval of Permits and Plans

All permits and plans shall be approved only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of the state and all other applicable codes and ordinances.

The Floodplain Administrator shall review, or shall cause to be reviewed; all permit applications and plans in order to determine whether proposed building sites are reasonably safe from flooding.

The Permit Officer shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval.

A record of all information supplied to the Permit Officer shall be kept on file by the Town of Bath.

Section 7.3 – Application Procedures

Application for building permit and site plan approvals shall be made, in writing, to the Permit Officer, and shall include all information stipulated under Article V of this Ordinance.

Section 7.4 Changes

After the issuance of a building permit or site plan approval by the Permit Officer, no changes of any kind shall be made to the application, permit, or any of the plans, specification or other documents submitted with the application without the written consent or approval of the Permit Officer.

Section 7.5 – Placards

In addition to the building permit, the Permit Officer shall issue a placard which shall be displayed on the premises during the time construction is in progress. This placard shall show the number of the building permit, the date of its issuance and be signed by the Permit Officer.

Section 7.6 – Start of Construction

Work on the proposed construction shall begin within six (6) months after the date of issuance of the building permit or the permit shall expire unless a time extension is granted, in writing, by the Permit Officer.

Section 7.7 – Inspection and Revocation

During the construction period, the Permit Officer or other authorized official may inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable laws and ordinances. If the Permit Officer discovers that the work does not comply with the permit application or any applicable laws and ordinances or that there has been a false statement or misrepresentation by any applicant, the Permit Officer shall revoke the building permit and report such fact to the Town Council for whatever action it considers necessary.

Section 7.8 – Fees

Application for a building permit shall be accompanied by a fee, payable to the Town of Bath, based upon the estimated cost of the proposed construction as determined by the Permit Officer at the following rates:

| <u>Estimated Cost</u> | <u>Fee</u> |
|--|------------|
| \$0.00 to \$50.00 | \$15.00 |
| \$51.00 to \$500.00 | \$15.00 |
| \$501.00 to \$1,000.00 | \$15.00 |
| Each additional thousand or part thereof | \$1.00 |

ARTICLE VIII – APPEALS AND PENALTIES

Section 8.1 - Appeals

Whenever any person is aggrieved by a decision of the Permit Officer with respect to the provision of this Ordinance, it is the right of that person to appeal to the Town Council, which shall be known as the Appeals Authority. Such appeal must be filed, in writing, within thirty (30) days after the determination by the Permit Officer. Upon receipt of such appeal, the Appeals Authority shall set a time and place not less than ten (10) nor more than thirty (30) days for the purpose of hearing the appeal. Notice of the time and place of the hearing shall be given to all parties at which time they may appear and be heard. The determination by the Appeals Authority shall be final in all cases.

Section 8.2 - Appeal Review Criteria

All appeals contesting only the permit fee established by the Permit Officer may be handled at the discretion of the Appeals Authority. All decisions on appeals to all other provisions of this Ordinance shall adhere to the following criteria:

- 1) Affirmative decisions shall only be issued by the Appeals Authority upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the appeal would result in exceptional hardship to the applicant, and (iii) a determination that the granting of an appeal will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinance. FEMA does not consider financial hardship to be adequate grounds to grant a variance.
- (j) 2) An affirmative decision shall be issued only upon determination that it is the minimum necessary, considering the flood hazard, to afford relief. Financial hardship, as a sole criterion, shall not be considered sufficient justification to grant an appeal.
- 3) An affirmative decision 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 a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- 4) The Appeals Authority shall notify the applicant in writing over the signature of a community official that (i) the issuance of a decision to

allow construction of a structure below the base Flood Elevation will result in increased premium rates for flood insurance, (ii) such construction below the Base Flood Elevation increases risk to life and property. Such notifications shall be maintained with a record of all decisions as required in paragraph (4) of this section; and

- 5) The Appeals Authority shall (i) maintain a record of all decisions including justification for their issuance, and (ii) report such decisions issued in its biennial report submitted to the Federal Insurance Administration.
- 6) An affirmative decision shall not be granted for any construction, development, use or activity within any floodway area that would cause any increase in the Base Flood Elevation.

Section 8.3 – Penalties

Any person who fails to comply with any or all of the requirements or provisions of this ordinance or direction of the Permit Officer or any other authorized employee of the community shall be guilty of an offense and, upon conviction, shall pay a fine to the Town of Bath of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00) plus cost of prosecution. In default of such payment such person shall be imprisoned in county prison for a period not to exceed 10 days. Each day during which any violation of this Ordinance continues shall constitute a separate offence. In addition to the above penalties all other actions are hereby reserved including an action in equity for the proper enforcement of this Ordinance. The imposition of a fine or penalty for any violation of, or non-compliance with, this Ordinance shall not excuse the violation or non-compliance with the Ordinance or permit it to continue; and all such persons shall be required to correct or remedy such violations or non-compliances within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in non-compliance with this Ordinance may be declared by the Town of Bath to be a public nuisance and abatable as such.

ARTICLE IX – SEVERABILITY AND MUNICIPAL LIABILITY

Section 9.1 – Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this Ordinance which shall remain in full force and effect, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

Section 9.2 – Municipal Liability

The granting of a permit or approval of a subdivision or development plan in an identified flood-prone area, shall not constitute a representation, guarantee, or warranty of any kind by the Town of Bath or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the *Town of Bath.

ARTICLE X – ENACTMENT

PASSED FOR FIRST READING September 1, 2009

PASSED FOR SECOND READING September 16, 2009

Steve Hedrick Pro Tem
MAYOR

Margie Allgren, Clerk
ATTEST