

ARTICLE 5
ENVIRONMENTAL PROTECTION

501. **EROSION CONTROL.** The landowner, person and/or entity performing any earth disturbance shall utilize sufficient measures to prevent soil erosion and sedimentation of creeks.

501.A. The disturbed land area and the duration of exposure shall be kept to a practical minimum.

501.B. Except for agricultural activities, any earth disturbance over 5,000 square feet of land area shall require the submission of an adequate Erosion and Sedimentation Control Plan to the County Conservation District.

501.C. See State erosion control regulations (Note: as of 2007 in 25 PA. Code Chapter 102).

502. **NUISANCES AND HAZARDS TO PUBLIC SAFETY.**

502.A. No land owner, tenant nor lessee shall use or allow to be used any land or structures in a way that results or threatens to result in any of the following conditions:

1. Transmission of communicable disease, including conditions that may encourage the breeding of insects or rodents.
2. A physical hazard to the public, or a physical hazard that could be an attractive nuisance that would be accessible by children.
3. Pollution to groundwaters or surface waters, other than as authorized by a State or Federal permit.
4. Risks to public health and safety, such as but not limited to explosion, fire or biological hazards.
5. Interference with the reasonable use and enjoyment of property by a neighboring landowner of ordinary sensitivities.

502.B. **Additional Information.** If the Zoning Officer has reason to believe that the proposed use may have difficulty complying with the standards of this Article, then the Zoning Officer may require an applicant to provide written descriptions of proposed machinery, hazardous substances, operations and safeguards.

503. **WETLANDS.** The Zoning Officer may require an applicant to prove that a suspect area proposed for alteration does or does not meet the State or Federal definition of a "wetland."

504. **FLOOD HAZARD OVERLAY DISTRICT.**

504.A. **Purposes.**

1. The purpose of these provisions is to prevent the loss of property and life, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:
 - a) Regulating uses, activities and land development which, acting alone or in combination with other existing or future uses, activities and land development, will cause unacceptable increases in flood heights, velocities and frequencies;
 - b) Restricting or prohibiting certain uses, activities and land development from locating within areas subject to flooding;

- c) Requiring all uses, activities and land development that do occur in flood-prone areas to be protected and/or flood-proofed against flooding and flood damage;
- d) Minimizing the financial burden imposed on the community, its governmental bodies and individuals by floods;
- e) Maintaining, to the maximum extent possible, the floodplain in its natural state and minimizing the removal of vegetation and compaction of soil to maximize its flood carrying capacity and water filtering capabilities; and
- f) Complying with the provisions of the National Flood Insurance Program and the Pennsylvania Flood Plain Management Act (Act 1978-166).

504.B. General Provisions.

- 1. These provisions shall apply to all lands within the jurisdiction of Fountain Hill Borough and shown as being located within the boundaries of any identified Flood Hazard District which are considered as a part of the official Zoning Map.
- 2. The Flood Hazard District shall be an overlay to the existing zoning districts as shown on the Fountain Hill Borough Zoning Map and, as such, the provisions of the Flood Hazard District shall be imposed in addition to the requirements of the underlying zoning districts. In the event that a conflict exists between the overlay and the underlying districts, the more restrictive provisions shall apply. No development shall be undertaken, no structure or land shall hereafter be used; no structure shall be located, relocated, constructed, reconstructed, enlarged or structurally altered; and no area shall be developed, graded, filled or excavated in any Flood Hazard District except in full compliance with the terms and provisions of this Ordinance and any other applicable ordinances and regulations.
- 3. Failure to comply with the provisions of this Ordinance is a violation of the Fountain Hill Borough Zoning Ordinance and Fountain Hill Borough may proceed with Court Action and/or issue a declaration of violation, under Section 1316 of the National Flood Insurance Act of 1968 to the Federal Emergency Management Agency to deny flood insurance on the property in violation. The effects of having a Section 1316 violation are non-availability of flood insurance for any buildings, possible reduction of market value, risk of damage without compensation, possible mortgage foreclosure, and denial of disaster assistance for repair of structural damage.
- 4. 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 on rare occasions. 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 the identified Flood Hazard District or that land uses permitted within such a district will be free from flooding or flood damages.
 - b) This Ordinance shall not create liability on the part of Fountain Hill Borough or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made hereunder.

504.C. Identification and Establishment of Flood Hazard Districts.

1. The identified floodplain area shall be those areas of Fountain Hill Borough which are subject to the one hundred (100) year flood as identified in the Flood Insurance Study (FIS) and the accompanying Flood Insurance Rate Maps (FIRM) prepared for Fountain Hill Borough by the Federal Emergency Management Agency (FEMA) or other sources and studies found acceptable by Fountain Hill Borough. The referenced Flood Insurance Study is declared to be part of this Ordinance and shall be kept at the Fountain Hill Borough offices.
2. The Flood Hazard District shall consist of the following specific areas:
 - a) The Floodway Area (FW) - The areas identified as "Floodway" in the AE Zone in the Flood Insurance Study prepared by FEMA. The term 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 Flood Insurance Study. Such studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by Fountain Hill Borough.
 - b) The Flood-Fringe Area (FF) - The portion of the AE Zone not included in the Floodway. The basis for the outermost boundary of this area shall be the base flood elevations shown in the flood profiles contained in the Flood Insurance Study.
 - c) The General Floodplain Area (FA) - The areas identified as A Zone in the Flood Insurance Study for which no base flood elevations have been provided or areas subject to flooding defined by one of the following methods:
 - i) Soils identified with potential for flooding, as described and mapped by the United States Department of Agriculture;
 - ii) Hydrologic and hydraulic analyses undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods reflect accepted technical concepts. Such studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by Fountain Hill Borough.
 - d) An initial determination shall be made by the Zoning Officer should a dispute concerning any district boundary arise. Any party aggrieved by this decision may appeal to the Zoning Hearing Board under the provisions of this Ordinance. The burden of proof is on the appellant.
 - e) The delineation of the Flood Hazard District may be revised by Fountain Hill Borough where natural or man-made changes have occurred and/or where more detailed studies have been conducted or undertaken by FEMA, U. S. Army Corps of Engineers or other qualified agency, or an individual. However, prior to any such change, approval must be obtained from FEMA.

504.D. Nonconforming Uses and Structures in the Flood Hazard District.

1. A structure or use of a structure or premises which lawfully existed before the enactment of the Flood Hazard District provisions, but which is not in conformity with those provisions, shall be subject to the requirements of this Article.

504.E General Provisions.

1. No encroachment, land development, improvement or reconstruction of any kind shall be made to any watercourse until all adjacent municipalities which may be affected by such action have been notified by Fountain Hill Borough, and until all required permits or approvals have been first obtained from the Department of Environmental Protection Regional Office. In addition, the Federal Emergency Management Agency and the Pennsylvania Department of Community and Economic Development (DCED) shall be notified prior to any alteration or relocation of any watercourse.
2. Any new construction, uses, activities or land development occurring within the Flood Hazard District shall be undertaken only in strict compliance with the provisions of this Ordinance and with all other applicable codes, ordinances and regulations including the Fountain Hill Borough Building Code, as amended and Fountain Hill Borough Subdivision and Land Development Ordinance.
3. Under no circumstances shall any new construction, uses, activity and/or land development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch or any other drainage facility or system.
4. Any new construction and/or land development, with the exception of redevelopment projects, that would cause any increase in the base flood elevation shall be prohibited.
5. New construction, development or redevelopment in the FW area is prohibited.

504.F Permitted Uses and Development in the Flood Hazard District.

1. In the Flood Hazard District, the following uses and activities are permitted in the FF or FA areas provided they are in compliance with the provisions of the underlying district and are not prohibited by any other ordinance:
 - a) Agriculture, horticulture, and forestry that:
 - i) Do not include any structures;
 - ii) Do not require grading which would cause any increase in flood heights or frequency;
 - iii) Are conducted in accord with recognized soil conservation and water quality practices.
 - b) Public and private recreational uses and activities, limited to parks, day camps, picnic grounds, boat launching and swimming areas, hiking and horseback riding trails, wildlife and nature preserves, game farms, fish hatcheries, and hunting and fishing areas;
 - c) Uses accessory to those permitted in the underlying zoning district, including yard areas, gardens, play areas and parking areas, provided that no structures are erected, and no impervious surfaces are created;
 - d) Redevelopment projects that:
 - i) Do not include residential structures or critical facilities;
 - ii) Do not include prohibited uses listed in Section 504.G;
 - iii) Are consistent with the goals and objectives of the Fountain Hill Borough Comprehensive Plan;

- iv) Are permitted in the applicable underlying zoning district;
- v) Are elevated to Flood Protection Elevation (FPE) and in full compliance with the floodproofing requirements in the Fountain Hill Borough Building Code as amended;
- e) The repair or expansion of riparian buffers;
- f) Floodproofing to protect only lawfully existing non-conforming structures and lawfully existing non-conforming uses within structures;
- g) Fences and temporary protective fencing that do not impede floodwaters;
- h) Dams, culverts, bridges, and altered or relocated watercourses with permits and/or approvals from the PA Department of Environmental Protection, PA Public Utility Commission, and/or US Army Corps of Engineers. Furthermore, notification of such actions shall be provided to all affected adjoining municipalities, FEMA and the Pennsylvania DCED. The approval of a permit by any of the preceding State or Federal agencies for one of the uses allowed in the Flood Hazard District shall in no way affect or conflict with the requirements imposed upon the use under the regulations of the Flood Hazard District;
- i) Public utility facilities under the exclusive jurisdiction of the Pennsylvania Public Utility Commission.

504.G Prohibited Uses and Development in the Flood Hazard District.

1. The following uses are prohibited from locating within the Flood Hazard District.
 - a) All uses prohibited in the underlying zoning district;
 - b) New construction, development or redevelopment in the FW area;
 - c) All structures, with the exception of those specifically allowed in Section 504.F;
 - d) The production, storage, or use of any amount of radioactive substances;
 - e) The production, storage or use of a substance or material, underground or aboveground, that is buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or aquatic life including but not limited to the following:
 - i) Acetone
 - ii) Ammonia
 - iii) Benzene
 - iv) Calcium carbide
 - v) Carbon disulfide
 - vi) Celluloid
 - vii) Chlorine
 - viii) Hydrochloric acid
 - ix) Hydrocyanic acid
 - x) Magnesium
 - xi) Nitric acid and oxides of nitrogen
 - xii) Petroleum products (gasoline, fuel oil, etc.)
 - xiii) Phosphorus
 - xiv) Potassium
 - xv) Sodium
 - xvi) Sulphur and sulphur products

xvii) Pesticides (including insecticides, fungicides, and rodenticides)
xviii) Radioactive substances, insofar as such substances are not otherwise regulated;

- f) The production, storage or use of explosives;
- g) The storage or disposal of materials used for snow and ice control including sand, salt and other deicing chemicals;
- h) Sanitary landfills, dumps, junk and salvage yards, and outdoor storage of vehicles and/or materials;
- i) The storage or disposal of any soil, loam, peat, sand, gravel, rock, or other mineral substance, refuse, trash, rubbish, debris, or dredged/excavated spoil;
- j) Draining, excavation, or dredging, or removal or relocation of loam, peat, sand, gravel, soil, rock, or other mineral substance, except as accessory to work permitted as of right or by special permit;
- k) Manure storage facilities and manure stockpiles;
- l) Improvements to existing manufactured home parks and subdivisions;
- m) Sewage disposal facilities;
- n) Other than required to meet the requirements of Sections 504.B.4 and Section 504.G, fill is prohibited in the Flood Hazard District.

505.H Existing Structures in Flood Hazard Districts.

1. No improvement or reconstruction of an existing structure shall be allowed within any FW area as identified by the Flood Insurance Study prepared by FEMA or other available studies or sources of information found acceptable by Fountain Hill Borough and approved by FEMA.
2. No improvement of an existing structure shall be allowed within any FF or FA area that would, together with all other existing and anticipated development, increase the base flood elevation more than one (1) foot at any point.
3. The improvement or reconstruction of existing structures that store materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or aquatic life shall be prohibited in the Flood Hazard District.
4. Existing structures in the FF and FA areas are defined and regulated as follows:
 - a) Intact Structures. Any improvement to an existing intact structure, to an extent ten (10) percent or more of its market value, shall be undertaken only in full compliance with the floodproofing requirements in the Fountain Hill Borough Building Code as amended.

- b) Partially Damaged Structures. Any improvement or reconstruction to an existing partially damaged structure shall be undertaken only in full compliance with the floodproofing requirements in the Fountain Hill Borough Building Code as amended.
- c) Substantially Damaged Structures. Any improvement or reconstruction to a substantially damaged structure shall be in full compliance with the floodproofing requirements in the Fountain Hill Borough Building Code as amended, and shall have the lowest floor, including basement, elevated to Flood Protection Elevation.
- d) Repetitive Loss Structures. An improvement to a repetitive loss structure to an extent ten (10) percent or more of its market value of the intact structure shall be prohibited. Any permitted improvement to a repetitive loss structure shall be in full compliance with the floodproofing requirements of the Fountain Hill Borough Building Code as amended, and shall have the lowest floor, including basement, elevated to Flood Protection Elevation.

The reconstruction of a repetitive loss structure shall be in full compliance with the Fountain Hill Borough Building Code, as amended, and shall have the lowest floor, including basement, elevated to Flood Protection Elevation.

- e) Severe Repetitive Loss Structures. An improvement to a severe repetitive loss structure to an extent five (5) percent or more of its market value as an intact structure shall be prohibited. Any permitted improvement to a severe repetitive loss structure shall be in full compliance with the floodproofing requirements of the Fountain Hill Borough Building Code as amended, and shall have the lowest floor, including basement, elevated to Flood Protection Elevation.

The reconstruction of a severe repetitive loss structure shall be:

- i) in full compliance with the Fountain Hill Borough Building Code, as amended;
 - ii) have the lowest floor, including basement, elevated to Flood Protection Elevation; and
 - iii) the applicant shall provide documentation from Fountain Hill Borough, the State of Pennsylvania and the Federal Emergency Management Agency that states Fountain Hill Borough, the State of Pennsylvania or FEMA will not acquire the property for the purposes of flood mitigation prior to the reconstruction of the structure.
- 5. The cost of improvements or reconstruction commenced since the adoption of this ordinance must be calculated at today's current cost.
 - 6. It is the responsibility of the applicant to supply the information necessary (e.g. appraisals, construction costs, estimates, etc. to make the determination that the market value is reasonably accurate and that the cost estimate reasonably reflects the actual costs of the improvements to the structure.
 - 7. Acceptable estimates of market value shall be determined from one of the following methods:
 - a) Independent appraisals by a state licensed real estate appraiser.
 - b) The value of the building taken from NFIP claims data.
 - 8. Acceptable estimates of cost of improvement shall be determined from one of the following methods:

- a) Itemized estimates made by contractors licensed to work in Fountain Hill Borough.
- b) Building code valuation tables.

- 9. The Zoning Hearing Board shall have the right to waive, as a special exception, any of the requirements of this Section for any structure listed on a National, State or Local Register of Historic Places; provided, however, that the provisions of Section 504.J shall be applied in such a case.

504.I. Building and Zoning Permits.

- 1. Building and zoning permits shall be required for all proposed development, construction, reconstruction, placement, improvement of uses or structures, regardless of value and activities such as mining, dredging, grading, logging, paving, excavation or drilling operations.
- 2. The requirements of the Fountain Hill Borough Building Code, as amended, shall apply to this Article.

504.J. Variances Within Flood Hazard Districts.

- 1. General. If compliance with any of the requirements of this Ordinance would result in an exceptional hardship for a prospective builder, developer or landowner, the Zoning Hearing Board and Building Code Appeals Board (Boards) may, upon request, grant relief from the strict application of the requirements.
- 2. Variance Procedures and Requirements. Requests for variances shall be considered by the Boards in accordance with this Ordinance and with the following:
 - a) No variance shall be granted for any construction, development, use or activity within any floodplain or floodway area that would cause any increase in the base flood elevation.
 - b) No variance shall be granted for any of the prohibited uses or activities in Section 504.G to locate in the Flood Hazard District.
 - c) If granted, a variance shall involve only the least modification necessary to provide relief.
 - d) In granting any variance, the Boards shall attach whatever reasonable conditions and safeguards they consider necessary in order to protect the public health, safety and welfare and to achieve the objectives of this Ordinance.
 - e) Whenever a variance is granted, the Boards shall notify the applicant in writing that:
 - i) The granting of the variance may result in increased premium rates for flood insurance.
 - ii) Such variances may increase the risks to life and property.
 - f) In reviewing any request for a variance, the Boards shall consider, but not be limited to the following:
 - i) There is good and sufficient cause for the variance.
 - ii) Failure to grant the variance would result in exceptional hardship to the applicant.

- iii) The granting of the variance will not result in an unacceptable or prohibited increase in flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with any other applicable state or local ordinance regulations.
 - iv) The review factors listed in Section 504.J. 3, below.
- g) A complete record of all variance requests and related actions shall be maintained by the Boards. In addition, a report of all variances granted during the year shall be included in the annual report to the Federal Emergency Management Agency.
3. Review Factors. In reviewing applications for a variance, the Boards shall consider all relevant factors and procedures specified in other Articles of this Ordinance and:
- a) The danger to life and property due to increased flood heights or velocities caused by encroachments.
 - b) The danger that materials may be swept on to other lands or downstream to the injury of others.
 - c) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.
 - d) The susceptibility of the proposed use and its contents to flood damage and the effect of such damage on the individual owners.
 - e) The importance of the services provided by the proposed use to the community.
 - f) The requirements of the use for a waterfront location.
 - g) The availability of alternative locations not subject to flooding for the proposed use.
 - h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 - i) The relationship of the proposed use to the Fountain Hill Borough Comprehensive Plan and the Fountain Hill Borough stormwater management objectives and regulations.
 - j) The safety of access to the property in times of flood of ordinary and emergency vehicles.
 - k) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.
 - l) The requirements of the National Flood Insurance Program Regulations, Part 59: General Provisions, and Part 60: Criteria for Land Management and Use.
 - m) Such other factors which are relevant to the purposes of this Ordinance.
4. Supplemental Technical Review. The Boards may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for:

- a) Technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for protection and other related matters.
- b) All hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications 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 Fountain Hill Borough and the Pennsylvania Department of Community and Economic Development.

504.K. Definitions.

A Zone. The flood insurance rate zone that corresponds to the 100 year floodplain where base flood elevations are not shown.

AE Zone. The flood insurance rate zone that corresponds to the 100 year floodplain where base flood elevations are shown at selected intervals.

Base Flood. The flood having a 1% chance of being equaled or exceeded in any given year, also known as the “100-year” flood.

Base Flood Elevation. The elevation shown on the Flood Insurance Rate Map (FIRM) that indicates the water surface elevation resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year.

Cost of Improvement. Cost that includes both the structural and finish or labor and materials, minus those required to meet floodproofing and flood elevation regulations and the cost of permits. This includes lighting fixtures, built-in appliances, interior moldings, paneling, tiling, wall-to-wall carpet over sub-flooring, built-in cabinets, etc. The cost to demolish undamaged building components must be established and included.

Cost of Reconstruction. Cost that includes both the structural and finish or labor and materials minus those required to meet floodproofing and flood elevation regulations and the cost of permits, to reproduce by new construction the exact form and detail of a structure or a part thereof, as it appeared at a specific period of time.

Critical Facilities. Those facilities that are vital to the community in the event of a hazard event or disaster, that provide essential services to the general public, are necessary to preserve the welfare and quality of life in the region, that fulfill important public safety, emergency response or disaster recovery functions, or contain at-risk or special needs populations such as the elderly or children. Examples include emergency shelters, emergency services, hospitals, public utilities, government buildings, schools, day cares and elderly housing.

Current Cost. A basis of valuation, which values an asset at the amount which it would currently cost to obtain.

Encroachment. Construction, placement of fill or similar alteration of topography in the floodplain that reduces the area available to convey floodwaters.

Fill. Any clean soil or rock materials (sand or clay) used to raise the ground elevation.

Flood. A temporary inundation of normally dry land area.

Flood, One Hundred Year. A flood that has a 1% chance of being equaled or exceeded in any given year. Over a long period, it is a flood that is likely to occur, on average, once for every 100 years of record.

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 subject to the unusual and rapid accumulation of surface waters from any source. For the purpose of this Ordinance, the floodplain area shall include the area within the Flood Hazard District as defined by Section 300.

Floodproofing. Any combination of structural and nonstructural 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 as specified in the Fountain Hill Borough Building Code, as amended.

Floodway. The channel of a river, stream, or other watercourse, plus the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Flood Protection Elevation. The base flood elevation plus 1.5 feet of freeboard. In areas where no base flood elevations exist from any authoritative source, the flood protection elevation can be historical flood elevations or base flood elevations determined and/or approved by Fountain Hill Borough plus 1.5 feet of freeboard.

Freeboard. An additional amount of height above a flood elevation used as a factor of safety (e.g., 1.5 feet above the base flood elevation) in determining the level at which a structure's lowest floor, including basement, must be elevated or floodproofed.

Historic Structure. Any structure that is:

1. 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;
2. 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;
3. Individually listed on a State of Pennsylvania inventory of historic places; and
4. Individually listed on a local inventory of historic places in Fountain Hill Borough that has been approved by the Pennsylvania Historic and Museum Commission (PHMC).

Identified Floodplain Area. The floodplain area specifically identified in this Ordinance as being inundated by the one hundred (100) year flood.

Improvement. The creation or addition of structural or functional capacity of a structure that adds to its value and useful life. The term does not include either:

1. Any project for improvement of a structure to correct existing violations 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 improvement of a "historic structure," provided that the improvement will not preclude the structure's continued designation as a "historic structure."

Intact Structure. A structure that is undamaged in any way; whole.

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:
 - a) A group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure; or
 - b) 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, leaseholds, condominiums, building groups or other features.
2. A subdivision of land.
3. A development in accordance with section 503(1)(1) of the Pennsylvania Municipalities Planning Code.

Manure. The animal excrement, including poultry litter, which is produced at an agricultural operation. It includes materials such as bedding and raw materials which are commingled with that excrement.

Manure Stockpile. A storage pile of manure accumulated for future use that is not confined within a manure storage facility.

Manure Storage Facility. A permanent structure or pond, a portion of a structure or pond, or a group of structures or ponds at one agricultural operation, utilized for the purpose of containing manure or agricultural process wastewater. This includes concrete, metal or other fabricated tanks and underground structures, as well as earthen and synthetically-lined manure storage ponds.

Market Value. The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale; the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus.

Minimize. To reduce to the smallest amount or extent possible. "Minimize" shall not mean complete elimination but shall require that the most substantial efforts possible under the circumstances have been taken to reduce the adverse effect(s) of the action required to be minimized. "Minimize" shall include but not be limited to the requirement that the placement of dwellings and other structures and the locations of roads, stormwater management facilities, and other land disturbance shall be planned and designed to reduce the adverse effect(s) of the activity in question to the smallest amount possible under the circumstances consistent with otherwise permitted development.

New Construction. Any structure that was not constructed on the effective date of this ordinance. The first placement of permanent features of the structure such as pouring of slabs or footings constitute beginning of construction but land preparation, grading and filling do not.

Non-conforming Structure. A structure or part thereof which does not conform to the applicable provisions or requirements of the district in which it is located, either at the time of enactment of an Ordinance, or as a result of subsequent amendments thereto, where such structure lawfully existed prior to the enactment of such Ordinance or amendment.

Non-conforming Use. Use of land or structure, which use does not conform to the applicable regulations of the district in which it is located, either at the time of the enactment of an Ordinance or as a result of subsequent amendment of an Ordinance or as a result of subsequent amendments thereto, but which did not violate such regulations prior to the enactment of Ordinance or amendments.

Partially Damaged Structure. A structure that has sustained damage from any cause whereby the cost of restoring the structure to its before-damaged condition is less than fifty (50) percent of the market value of the structure before the damage occurred.

Reconstruction. The act or process of reproducing by new construction the exact form and detail of a structure or a part thereof, as it appeared at a specific period of time.

Redevelopment. The removal and replacement, rehabilitation, or adaptive reuse of an existing structure or structures, or of vacant but formerly developed land.

Repetitive Loss Structure. As determined by FEMA, structures for which two or more claims of more than \$1,000 were paid by the National Flood Insurance Program (NFIP) within any rolling ten-year period, since 1978. At least two of the claims must be more than 10-days apart but, within ten-years of each other.

Residential Structure. A structure regularly used by its occupants as a permanent place of abode, which is made one's home as opposed to one's place of business.

Severe Repetitive Loss Structure. As determined by FEMA, a residential structure that is covered under flood insurance by the NFIP and has incurred flood-related damage for which four or more separate claim payments have been paid since 1978 under flood insurance coverage with the amount of each claim payment exceeding \$5,000 and with cumulative amount of such claim payments exceeding \$20,000; or for which at least two separate claim payments have been made since 1978 with the cumulative amount of such claims exceeding the reported value of the property.

Structure. Any man-made object having an ascertainable stationary location on or in land or water whether or not affixed to land.

Substantially Damaged Structure. A structure that has sustained damage from any cause whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent or more of the market value of the structure before the damage occurred.

Vacant but Formerly Developed Land. Land from which previous improvements have been removed.

Watercourse. A watercourse is a channel or conveyance of surface water having defined bed and banks, whether natural or artificial, with perennial or intermittent flow. Manmade swales, constructed specifically for stormwater management purposes, are excluded from this definition.

505. **NOISE.**

505.A. No principal or accessory use, or operations or activities on its lot, shall generate a sound level exceeding the limits established in the table below, when measured at the specified locations:

Sound Level Limits by Receiving Land Use/ District

LAND USE OR ZONING DISTRICT <u>RECEIVING</u> THE NOISE	HOURS/ DAYS	MAXIMUM SOUND LEVEL
At a Lot Line of a Residential Use in a Residential District	1) 7 a.m. to 9 p.m. other than Sundays, Christmas Day, Thanksgiving Day, New Years Day, Labor Day and Memorial Day	1) 60 dBA
	2) 9 p.m. to 7 a.m. plus all day Sundays, Christmas Day, Thanksgiving Day, New Years Day, Easter Sunday, Labor Day and Memorial Day	2) 52 dBA
At any Other Lot Line	All times and days	70 dBA

Note- dBA means "A" weighted decibel.

505.B. The maximum permissible sound level limits set forth in the above table shall not apply to any of the following noise sources:

1. Sound needed to alert people about an emergency.
2. Repair or installation of utilities or construction of structures, sidewalks or streets between the hours of 7 a.m. and 8 p.m., except for clearly emergency repairs which are not restricted by time.
3. Household power tools and lawnmowers between the hours of 8 a.m. and 9 p.m.
4. Animals, livestock and agricultural activities, but not exempting a kennel.
5. Public celebrations specifically authorized by the Borough Council or a County, State or Federal Government agency or body.
6. Unamplified human voices.
7. Vehicles operating on a public street, railroads and aircraft.

506. **ODORS AND DUST.** No use shall generate odors or dust that are offensive to persons of average sensitivities beyond the boundaries of the subject lot.

507. **CONTROL OF LIGHT AND GLARE.** This section 507 shall only regulate exterior lighting that spills across lot lines or onto public streets.

507.A. Purposes. To control outdoor lighting for safety, security, nighttime privacy and nighttime enjoyment of residential property. To minimize excessive outdoor lighting and control glare that can pose a danger to motorists. To make sure lighting is properly shielded and directed.

- 507.B. Street Lighting Exempted. This Section 507 shall not apply to street lighting that is owned, financed or maintained by the Borough or the State, to temporary emergency lighting, or to an individual porch light of a dwelling.
- 507.C. Definitions. For the purposes of this Section 507, the following definitions shall apply:
1. Directly Visible. Allowing a direct line of sight to the light source or lamp.
 2. Footcandle. The amount of light striking a vertical or horizontal plane, measured in lumens per square foot. One footcandle equals one lumen per square foot.
 3. Full Cutoff Light Fixture. A light fixture for which no light output is emitted above 90 degrees horizontal at any lateral angle around the fixture.
 4. Fully Shielded Light Fixture. A light fixture with all light emitted from the fixture being projected below the horizontal.
- 507.D. Height of Lights. No luminaire, spotlight or other light source that is within 150 feet of a lot line of an existing primarily residential use lot shall be placed at a height exceeding 20 feet above the average surrounding ground level. In other areas, this height shall not exceed 25 feet above the average surrounding ground level. This limitation shall not apply to lights needed for air safety nor lights intended solely to illuminate an architectural feature of a building, nor lighting of outdoor public recreation facilities.
- 507.E. Diffused. All light sources, including signs, shall be properly diffused as needed with a translucent or similar cover to prevent exposed bulbs from being directly visible from streets, public sidewalks, dwellings or adjacent lots.
- 507.F. Shielding. All light sources, including signs, shall be installed and maintained so that they are shielded around the light source and carefully directed, aimed and placed to prevent the lighting from creating a nuisance to persons in adjacent dwellings, and to prevent the lighting from shining into the eyes of passing motorists.
- 507.G. Flickering. Flashing, flickering or strobe lighting are prohibited, except for temporary non-advertising seasonal lights between October 25th and January 10th.
- 507.H. Spillover. Exterior lighting on a lot shall not cause a spillover of light onto a residential lot after 10 p.m. that exceeds 0.1 horizontal foot-candle at a residential lot line. Exterior lighting on a lot shall not cause a spillover of light onto a street that exceeds 5 foot-candles.
- 507.I. Gasoline Sales Canopies. Any canopy over gasoline pumps shall have a maximum distance between the ground level and the underside of the canopy of 20 feet. If the ground level is sloped, or the canopy is sloped to deflect noise and soot away from neighboring properties, then a portion of the canopy may have a greater height, provided that the maximum height is 20 feet at the portion of the canopy that is closest an adjacent street. All light fixtures under the canopy shall be recessed into the canopy or screened by an extension around the bottom of the canopy so that lighting elements are not visible from another lot or street.

507.J. Hours of Sign Lighting. If an internally lit sign is within a residential district or across the street from a residential district, the lighting shall be turned off between the hours of 10 p.m. and 5 a.m. if the use is not open to the public during those hours. If such use is open to the public between 10 p.m. and 5 a.m., the lighting of the sign shall be turned off a maximum of 30 minutes after the use closes to the public.

508. **STEEP SLOPES**

508.A. Purpose. The purpose of this section is to control the intensity of development on slopes exceeding 15 percent. Such slopes are considered steep. Controlling the intensity of development on steep slopes will assist in preventing future problems associated with accelerated soil erosion and sedimentation, stormwater runoff, on-lot sewage disposal operations, earth slippages, and vehicular access to buildings. Further, this section will assist in steering development to lands more physically suited for new construction.

508.B. Regrading. Non-man-made slopes of over 15 percent shall not be re-graded after the adoption of this Ordinance in such a manner that circumvents the requirements of this Ordinance.

508.C. Applicability. This section shall apply to all land, buildings and uses and all grading of land in preparation for building in all zoning districts. This section shall not regulate slopes that were clearly man-made prior to the adoption of this Ordinance.

508.D. Submission.

1. Any application for subdivision or land development or any application for a zoning or building permit for a principal building or principal use or any proposal to extensively alter the pre-existing contour of land shall include the submission of a detailed topographic map if the existing lot involved includes any areas of 15 percent or greater slope that in the aggregate total greater than 1000 square feet.
2. The topographic maps shall be at a scale of 1"=50' or larger and shall show the pre-existing contours of all lands proposed for any subdivision, land development, building or use. Such contours shall be at intervals of 5 feet of vertical change. Contours shall be based on an actual field survey supervised and certified by a registered land surveyor.
3. The topographic map shall clearly identify areas that have a pre-existing slope of between 15 percent and 25 percent slope and areas of greater than 25 percent slope.
4. The applicant shall clearly designate the proposed building site, including an area 25 feet around the proposed building location and 15 feet around all driveways, patio or deck areas for each lot that includes or is proposed to include any areas of 15 percent or greater slopes. Such building location shall then become binding, once approved, unless a subsequent submission and approval occurs under this section.

508.E. Lot Areas.

1. If a proposed building site would not include any areas with slopes exceeding 15 percent, the requirements of the steep slopes section are not applicable.

2. If a proposed building site would include any areas with existing slopes of between 15 percent and 25 percent, but would not include any areas of 25 percent or greater slope, the following requirements shall apply to each lot:
 - a) A minimum lot area of 43,560 square feet,
 - b) A minimum lot width of 120 feet measured at the minimum front yard setback line,
 - c) 30 foot minimum setbacks along the front yard, the rear yard and each of two side yards, and
 - d) A maximum impervious cover of 30 percent.

3. If a proposed building site would include any areas with existing slopes of 25 percent or greater, the following requirements shall apply to each lot:
 - a) A minimum lot area of 3 acres,
 - b) A minimum lot width of 200 feet measured in minimum front yard setback line,
 - c) 30 foot minimum setbacks along the front yard, the rear yard and each of two side yards, and
 - d) A maximum impervious cover of 15 percent.

508.F. Slopes of Accessways and Driveways. No portion of any accessway or driveway, including parking area driving isles and other routes for vehicular access shall have a finished slope in excess of 12 percent.

509. **TREE PRESERVATION.**

- 509.A. The presence of living trees in our surrounds is important and desirable from an ecological, environmental and aesthetic standpoint.

- 509.B. Except as otherwise herein provided, it shall be unlawful for anyone to cut down any tree in any zone in the Borough of Fountain Hill which is six (6") inches or more in diameter at a point four and one-half (4½') feet above ground level.

- 509.C. It shall be lawful to cut down such trees six (6") inches or more in diameter if the tree is sick, infected, damaged, dead, is in such position or condition that it constitutes a danger to neighboring property or to the public generally, or is located within the legal right-of-way of a public street. Provided, however, that, except in case of emergency, no such tree shall be cut down unless and until a permit to do so has been obtained from the Zoning Officer. In case of emergency where time does not allow the prior obtaining of such a permit, a permit shall be applied for within seventy-two (72) hours of the cutting down of any tree.

- 509.D. It shall be lawful in any calendar year for the owner of any tract of land to cut down on said tract of land up to three (3) trees six (6") inches or more in diameter not of the type referred to in Paragraph C above for any private or commercial purpose upon first obtaining from the Zoning Officer a permit to do so.

- 509.E. When a Zoning Permit is issued for a building, structure or use it shall be lawful to cut down any trees which exist in the space occupied by such building, structure or use, any space within fifteen (15') feet of any such building or structure, and any space to be occupied by, and all space within ten (10') feet of all sides of any driveway, parking area, water system or sewage disposal system. Provided, however, that no such trees shall be cut down until the Zoning Officer has issued a permit

for the marked trees to be cut down in such manner that it can be determined after the cutting that only those trees for which the permit was issued have been cut down.

509.F. The above regulations in this Section 509 shall not apply to Forestry which is permitted in accordance with the provisions of Section 510.

510. **FORESTRY.**

510.A. Forestry shall be a permitted by right use in all zoning districts of Fountain Hill. Forestry activities (see **definition** of forestry in Article 2).

510.B. Forestry shall be conducted in accordance with the following requirements, conditions and/or approvals:

1. Zoning Permit. A zoning permit shall be obtained from the Zoning Officer prior to harvesting or otherwise removing 40 or more trees with a trunk diameter of three inches or more at a height of three feet above the average ground level on any tract of land larger than two acres. Prior to the issuance of a Zoning Permit, an Erosion and Sedimentation Control Plan shall be submitted by the Applicant to the County Conservation District for review, recommendation and approval.
2. Forestry Management Plan. A forestry management plan shall be prepared and filed when harvesting 40 or more trees involving more than two acres. This plan shall be prepared by a qualified forester or forest technician and shall be consistent with the Timber Harvesting Guidelines of the Pennsylvania Forestry Association.
3. Clear Cutting and Canopy Preservation.
 - a) Clear cutting shall be prohibited except on tracts of less than 15,000 square feet in size. On tracts of land ranging in size between 15,000 square feet and two acres at least 10% of the timber shall be preserved.
 - b) Clear cutting shall be prohibited on areas with slopes greater than 15%.
 - c) When harvesting or otherwise removing 40 or more trees on tracts larger than two acres, at least 30% of the forest cover (canopy) shall be kept and the residual tree(s) shall be well distributed. At least 30% of these residual trees shall be composed of highest value species as determined by a forester and pursuant to the Forestry Management Plan.

511. **VIBRATION CONTROL.**

511.A. No person shall operate or permit the operation of any device or conduct or permit any use to be conducted that creates vibration which is above the vibration perception threshold of an individual at or beyond the property boundary of the source (if on private property) or at fifty (50') feet from the source (if on a public space or public right-of-way).

511.B. For the purposes of Section 511.A., "vibration perception threshold" means the minimum ground-or-structure-borne vibrational motion necessary to cause a normal person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects.