

CHAPTER 15: FLOODPLAIN OVERLAY DISTRICT "FP"

SECTION 15.1 STATUTORY AUTHORIZATION

The legislature of the State of Minnesota in Minnesota Statutes, Chapter 103F and Chapter 394 has delegated the responsibility to local government units to adopt regulations designed to minimize flood losses.

SECTION 15.2 NATIONAL FLOOD INSURANCE PROGRAM (NFIP) COMPLIANCE

This Chapter is adopted to comply with the rules and regulations of the National Flood Insurance Program (NFIP) codified as 44 Code of Federal Regulations Parts 59 -78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.

SECTION 15.3 PURPOSE

The purpose of this Chapter is to maintain the Community's eligibility in the NFIP and prevent or minimize the development of the flood hazard areas in the unincorporated areas of Dodge County that could result in the potential loss of life and property, disrupt commerce and governmental services, create health and safety hazards, and lead to extraordinary public expenditures for flood protection and relief. Dodge County recognizes that development of these areas is not essential to the orderly growth of the county, and these lands are suitable for open space uses that do not require structures, fill, obstructions, or any other form of development as defined in Chapter 4 of this Ordinance.

SECTION 15.4 WARNING OF DISCLAIMER OF LIABILITY

This Chapter does not imply that areas outside of the Floodplain Overlay District or land uses permitted within such districts will be free from flooding and flood damages. This Chapter shall not create liability on the part of Dodge County or any officer or employee thereof for any flood damages that result from reliance on this Chapter, the Flood Insurance Rate Map for Dodge County, dated September 24, 1982, (#270548), developed by the Federal Emergency Management Agency (FEMA) or any administrative decisions or boundary interpretations lawfully made there under.

SECTION 15.5 GENERAL PROVISIONS

15.5.1 LANDS TO WHICH THIS CHAPTER APPLIES

The Floodplain Overlay District for Dodge County, Minnesota shall include those "100-year" areas designated as Unnumbered or Unlettered "A" Zones on the Flood Insurance Rate Map adopted in Section 7.4.2 of this Ordinance. This Chapter shall apply to all lands designated as regulatory floodplain within the unincorporated areas of Dodge County which have not adopted a floodplain management ordinance.

15.5.2 DISTRICT APPLICATION

The Floodplain Overlay District shall be superimposed on all other Primary and Overlay Zoning Districts. The standards imposed in the Floodplain Overlay District shall be in addition to any other requirements set forth in this Ordinance. If the district standards are conflicting, the more restrictive standards shall apply.

15.5.3 REGULATORY FLOOD PROTECTION ELEVATION (RFPE)

The Regulatory Flood Protection Elevation (RFPE) shall be an elevation no lower than one foot above the elevation of the regional (100-yr) flood plus any increases in flood elevation caused by encroachments on the floodplain that result from designation of a floodway.

15.5.4 INTERPRETATION OF FLOOD PLAIN OVERLAY DISTRICT BOUNDARIES

The boundaries of the Floodplain Overlay District areas shall be determined by scaling distances on the Flood Insurance Rate Map. Where interpretation is needed as to the exact location of the boundaries of the district areas as shown on the Flood Insurance Rate Map, the Zoning Administrator shall make the necessary interpretation based upon the ground elevations that existed on the site when the *Flood Insurance Rate Map for Dodge County, dated September 24, 1982, (#270548)* was prepared by the FEMA and the regional (100-year) flood profile, if available. If 100-year flood elevations are not available, the County shall:

- A. Require a floodplain evaluation consistent with Section 15.9.5 of this Chapter to determine a 100-year flood elevation for the site; or
- B. Base its decision on available hydraulic/hydrologic or site

elevation data which demonstrates the likelihood the site is within or outside the flood plain.

SECTION 15.6 COMPLIANCE

No new structure or land located within the Floodplain Overlay District shall hereafter be used and no structure shall be constructed, located, extended, converted, repaired, maintained, or structurally altered without full compliance with the terms of this Chapter and other applicable regulations which apply to uses within the jurisdiction of this Ordinance. Within the Floodplain Overlay District, all uses not listed as permitted uses in Section 15.7 shall be prohibited. Dodge County recognizes that development of the floodplain areas is not essential to the orderly growth of the county, and these lands are suitable for open space uses that do not require structures, fill, obstructions, or any other form of development as defined in Chapter 4 of this Ordinance. Existing structure located within the Floodplain Overlay District shall be regulated by the provisions for nonconformities of Section 15.9 and Chapter 6 of this Ordinance.

SECTION 15.7 PERMITTED USES IN THE FLOODPLAIN OVERLAY DISTRICT

The following uses have a low flood damage potential and do not obstruct flood flows. These uses shall be permitted within the Floodplain Overlay District without a permit to the extent that they are not prohibited by any other ordinance and provided they do not require structures, fill, obstructions, excavations, drilling operations, storage of materials or equipment or any other form of development as defined herein in Chapter 4 of this Ordinance.

Aside from the provisions of Section 15.9 of this Chapter for nonconformities located within the Floodplain Overlay District, all other uses and all uses that require structures, fill, obstructions, excavations, drilling operations, storage of material or equipment or any other form of development are prohibited.

- 15.7.1 AGRICULTURAL DISTRICT (A)
 - A. Field crops, horticulture, sod farms, and wild crop harvesting and similar general farming practices
 - B. Livestock grazing/pasture operations that do not meet the definition of a "feedlot" under Minnesota Rules Chapter 7020 and this Ordinance.
 - C. Apiaries
 - D. Wildlife preserves, forest and wetland management areas
 - E. Minor Essential Services, subject to Section 1711

- F. Accessory uses to existing dwellings, such as lawns, gardens, parking areas, and play areas, but not including structures
- G. Public hiking and/or biking trails

15.7.2 URBAN EXPANSION DISTRICT (X)

- A. Field crops, horticulture, sod farms, wild crop harvesting and similar general farming practices
- B. Livestock grazing/pasture operations that do not meet the definition of a "feedlot" under Minnesota Rules Chapter 7020, or successor, and this Ordinance.
- C. Apiaries
- D. Wildlife preserves, forest and wetland management areas
- E. Minor Essential Services, subject to Section 1711
- F. Accessory uses to existing dwellings, such as lawns, gardens, parking areas, and play areas, but not including structures
- G. Public hiking and/or biking trails

15.7.3 RURAL RESIDENTIAL DISTRICT (R)

- A. Accessory uses to existing dwellings, such as lawns, gardens, parking areas, and play areas, but not including structures
- B. Limited agriculture and livestock grazing/pasture operations which do not to exceed one (1) animal unit per acre to a maximum of ten (10) animal units and do not meet the definition of a "feedlot" under Minnesota Rules Chapter 7020, or successor, and this Ordinance.
- C. Parks and recreation areas owned and operated by a government agency, but not including structures
- D. Minor Essential Services, subject to Section 1711

15.7.4 COMMERCIAL DISTRICT (C)

- A. Parking lots accessory to Permitted Uses in the Commercial District

- B. Minor Essential Services, subject to Section 1711

15.7.5 INDUSTRIAL DISTRICT (I)

- A. Parking lots accessory to Permitted Uses in the Industrial
- B. Minor Essential Services, subject to Section 1711

SECTION 15.8 ADMINISTRATION

15.8.1 DEVELOPMENT APPROVALS

Notwithstanding the provisions of Section 15.9 of this Chapter for nonconformities, no person shall erect, construct, enlarge, alter, repair, improve, move, or demolish any building or structure without proper approval. No mining, dredging, filling, grading, paving, excavation, obstruction, drilling operation or other form of development shall be allowed.

15.8.2 VARIANCES

All variance requests shall be processed in accordance with Section 18.11 of this Ordinance.

SECTION 15.9 NONCONFORMITIES IN THE FLOODPLAIN OVERLAY DISTRICT

A structure or the use of a structure or premises which was lawful before the adoption of this Ordinance or amendments thereto that is not currently in conformity with the provisions of this Chapter may be continued subject to the provisions of this Section and of Chapter 6 and Section 14.12 of this Ordinance.

The Floodplain Overlay District shall be superimposed on all other Primary and Overlay Zoning Districts. The standards and processes imposed for nonconformities in the Floodplain Overlay District shall be in addition to the standards and administration process for nonconformities identified in Chapter 6 (Nonconformities) and Section 14.12 (Nonconformities in the Shoreland Overlay District) of this Ordinance. In the event the standards or processes of this Section conflict with the standards or processes of Chapter 6, or Section 14.12 the more restrictive shall apply.

15.9.1 EXPANSION PROHIBITED.

- A. USE. A nonconforming use shall not be expanded, changed, enlarged, or altered in a way that increases its nonconformity.
- B. STRUCTURE. There shall be no expansion to the outside dimension of a nonconforming structure in the Floodplain Overlay District.

15.9.2 STRUCTURAL ALTERATION. Structural alteration to any structure located within the Floodplain Overlay District which would result in increasing the flood damage potential of that structure shall be protected to the RFPE in accordance with any of the flood proofing techniques (i.e., FP-1 thru FP-4 floodproofing classifications) allowable in the State Building Code, except as further restricted in Section 15.9.4 below.

15.9.3 SUBSTANTIAL DAMAGE – If a nonconforming structure is destroyed by fire or other peril to the extent of fifty percent (50%) or greater of the market value of the structure at the time the structure was made nonconforming as determined by the Dodge County Assessor's Office, and reconstruction is allowed under Chapter 6, the following provisions shall apply:

- A. If replacement of the entire structure is proposed, the structure shall be reconstructed outside of the Floodplain Overlay District whenever possible.
- B. In the event the substantially damaged structure is repaired or if there is no land available on the parcel that is located outside of Floodplain Overlay District in the case of replacement, the new structure shall be located in the Flood Fringe portion of the Floodplain Overlay District. The replacement, reconstruction or repair of a substantially damaged structure in the Floodway portion of the Flood Plain Overlay District is prohibited.
- C. The structure must comply with the standards of Section 15.9.7 of this Chapter.

15.9.4 SUBSTANTIAL IMPROVEMENT. If within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market

value of the structure before the “start of construction” of the improvement, the following provisions shall apply:

- A. The term "Substantial Improvement" includes structures that have incurred "substantial damage", regardless of the actual repair work performed. If replacement of the entire structure is proposed after "substantial damage", the structure shall be reconstructed outside of the Floodplain Overlay District whenever possible.

The term “substantial improvement” does not include:

- I. 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 Dodge County and which are the minimum necessary to assure safe living conditions.
 - II. Any alteration of an “historic structure” provided that the alteration will not preclude the structure’s continued designation as an “historic structure.” For the purpose of this Ordinance, “historic structure” shall be defined in 44 Code of Federal Regulations, Part 59.1, or successor.
- B. The structure proposed for improvement must be located within the Flood Fringe portion of the Floodplain Overlay District. "Substantial improvement" of a structure in the Floodway portion of the Floodplain Overlay District is prohibited.
 - C. The structure must comply with the standards of Section and 15.9.7 of this Chapter.

15.9.5 PROCEDURES FOR FLOODWAY AND FLOOD FRINGE DETERMINATIONS TO ADDRESS NONCONFORMITIES WITHIN THE FLOODPLAIN OVERLAY DISTRICT

- A. Upon receipt of an application for a permit pursuant to the provisions of Section 15.9.3 and 15.9.4 of this Chapter, the applicant shall be required to furnish the following information for the determination of the RFPE and whether the proposed use is within the Floodway or Flood Fringe part of the Floodplain Overlay District.

- I. A typical valley cross-section(s) showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and high water information.
 - II. Plan (surface view) showing elevations or contours of the ground, pertinent structure, fill, or storage elevations, the size, location, and spatial arrangement of all proposed and existing structures on the site, and the location and elevations of streets.
 - III. Photographs showing existing land uses, vegetation upstream and downstream, and soil types.
 - IV. Profile showing the slope of the bottom of the channel or flow line of the stream for at least 500 feet in either direction from the proposed development.
- B. The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the floodway or flood fringe and to determine the RFPE. Procedures consistent with Minnesota Regulations 1983, Parts 6120.5000 - 6120.6200 and 44 Code of Federal Regulations Part 65, or successor regulations and codes, shall be followed in this expert evaluation. The designated engineer or expert shall discuss the proposed technical evaluation methodology with the respective Department of Natural Resources' Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:
- I. Estimate the peak discharge of the regional flood.
 - II. Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.
 - III. Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 foot. A lesser stage increase than .5' shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries.

- C. The Zoning Administrator shall present the technical evaluation and findings of the designated engineer or expert to the County Board. The County Board must formally accept the technical evaluation and the recommended floodway and/or flood fringe boundaries or deny the permit application. The County Board, prior to official action, may submit the application and all supporting data and analyses to the Federal Emergency Management Agency, the Department of Natural Resources or the Planning Commission for review and comment. Once the floodway and flood fringe boundaries have been determined, the County Board shall refer the matter back to the Zoning Administrator who shall process the permit application consistent with the applicable provisions of Section 15.9.6 of this Chapter.

15.9.6 PERMIT PROCESS.

- A. PERMIT REQUIRED. A permit issued by the Zoning Administrator or other designated Environmental Services staff in conformity with the provisions of this Chapter shall be secured prior to the commencement of construction.
- B. APPLICATION. Application for a permit shall be made in duplicate to the Zoning Administrator or other designated staff on forms furnished by the Environmental Services Department and shall include the following where applicable:
 - I. Plans in duplicate drawn to scale, showing the nature, location, dimensions, and elevations of the lot;
 - II. Existing or proposed structures,
 - III. Location and volume of proposed fill
 - IV. Storage of material
 - V. The location of the watercourse and regulatory floodplain
- C. COMPLIANCE WITH STATE AND FEDERAL REQUIREMENTS. Prior to granting a permit, the Zoning Administrator or other designated Environmental Services staff shall determine that the applicant has obtained all necessary state and federal permits.

- D. **CERTIFICATION.** The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill, building elevations or flood proofing measures were accomplished in compliance with the provisions of this Chapter.
- E. **RECORD OF FIRST FLOOR ELEVATION.** The Zoning Administrator shall maintain a record of the elevation of the lowest floor (including basement) of all new structures, when allowed, and alterations to existing structures in the floodplain. The Zoning Administrator shall also maintain a record of the elevation to which structures or alterations to structures are flood proofed.

15.9.7 **DEVELOPMENT STANDARDS FOR SUBSTANTIAL DAMAGE OR SUBSTANTIAL IMPROVEMENT TO NONCONFORMING STRUCTURES**

The following provisions apply to nonconforming structures that have been substantially damaged or substantially improved in the flood fringe portion of the floodplain:

- A. **ELEVATION.** All structures, including manufactured homes, must be elevated on fill so that the lowest floor including basement floor is at or above the RFPE. The finished fill elevation for structures shall be no lower than one (1) foot below the RFPE and the fill shall extend at such elevation at least fifteen (15) feet beyond the outside limits of the structure erected thereon.
- B. **FILL.** Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method.
- C. **HYDRAULIC CAPACITY.** Floodplain development shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been determined.
- D. **MANUFACTURED HOMES.** All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This

requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

- E. WATER SUPPLY SYSTEMS. Where public utilities are not provided on-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems.
- F. SEWAGE TREATMENT SYSTEMS. Where public utilities are not provided:
 - I. New or replacement sewage treatment systems shall be located out of the Floodplain Overlay District when ever physically possible.
 - II. Where siting the sewage treatment system outside the Floodplain Overlay District is not physically possible, new or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the Dodge County Subsurface Sewage Treatment Ordinance No. 4, or successor, shall be determined to be in compliance with this Section.

SECTION 15.10 SUBDIVISION REVIEW CRITERIA

No land shall be subdivided which is unsuitable for the reason of flooding or inadequate drainage, water supply or sewage treatment facilities. All lots shall be able to contain a building site, including a location for any on-site water supply system and two "Type 1" sewage treatment facilities meeting the requirements of the Dodge County Sewage and Wastewater Treatment Ordinance No. 4, or successor, located outside of the Floodplain Overlay District. For all subdivisions in the regulatory floodplain, the Floodplain Overlay District boundary shall be clearly labeled on all required subdivision drawings and platting documents and shall be utilized for "green" or open space uses.