

# Title 13 ► Chapter 2

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## **Floodplain Zoning**

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## Article A: Introduction

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### **Sec. 13-2-1 Statutory Authorization.**

This Chapter for floodplain protection is adopted pursuant to the authorization contained in Sections 61.35, 62.23 and 87.30, Wis. Stats.

### **Sec. 13-2-2 Finding of Fact.**

Uncontrolled development and use of the floodplains, rivers or streams of the Village of Merrilan, Wisconsin, would adversely affect the public health, safety, convenience and general welfare and impairs its tax base.

### **Sec. 13-2-3 Statement of Purpose.**

The purpose of this Chapter is to provide a uniform basis for the preparation, implementation and administration of sound floodplain regulations for all floodplains within the Village of Merrilan to:

- (a) Protect life, health and property;
- (b) Minimize expenditures of public monies for costly flood control projects;
- (c) Minimize rescue and relief efforts, generally undertaken at the expense of the general public;
- (d) Minimize business interruptions which usually result in the loss of local incomes;
- (e) Minimize damage to public facilities on the floodplains such as water mains, sewer lines, streets and bridges;
- (f) Minimize the occurrence of future flood blight areas on floodplains;
- (g) Discourage the victimization of unwary land and home buyers; and
- (h) Prevent increases in regional flood heights that could increase flood damage and may result in conflicts or litigation between property owners.

### **Sec. 13-2-4 Title.**

This Chapter shall be known as the Floodplain Zoning Ordinance for the Village of Merrilan, Wisconsin.

### **Sec. 13-2-5 through Sec. 13-2-9 Reserved for Future Use.**

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## Article B: General Provisions

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### **Sec. 13-2-10 Areas to Be Regulated.**

Areas regulated by this Chapter include all lands within the corporate limits of the Village of Merrilan that would be covered by the "regional flood" defined in the Definitions, Section 13-2-90(a) of this Chapter, and include "floodplain islands" where emergency rescue and relief routes would be inundated by the regional flood.

### **Sec. 13-2-11 District Boundaries.**

(a) **Official Map.**

- (1) The boundary of the floodplain districts including the floodway, floodfringe, and other floodplain districts, are those areas designated as floodplains or A-Zones on the November 25, 1985, Study of Trow Lake Dam and the Flood Hazard Boundary Map (FHBM) which will remain in effect as a flood insurance rate map (FIRM).
- (2) The FHBM dated May 28, 1976 is the official floodplain zoning map and has been approved by the Department of Natural Resources and the Federal Emergency Management Agency (FEMA), and is on file in the Office of the Village Clerk. If more than one map is referenced, the regional flood profiles govern boundary discrepancies according to Section 13-2-12 below.

(b) **Districts.** The regional floodplain areas within the jurisdiction of this Chapter are hereby divided into three districts: the Floodway District (FW), Flood Fringe District (FF) and General Floodplain District (GFP), defined as follows:

- (1) The Floodway District (FW) consists of the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood waters.
- (2) The Flood Fringe District (FF) consists of that portion of the floodplain between the regional flood limits and the floodway.
- (3) The General Floodplain District (GFP) consists of all areas which have been or may be covered by flood water during the regional flood. It includes both the Floodway and Flood Fringe Districts.

### **Sec. 13-2-12 Locating Floodplain Boundaries.**

- (a) Where an apparent discrepancy exists between the location of the outermost boundary of the Flood Fringe District or General Floodplain District shown on the official floodplain zoning map and actual field conditions, the location of the district boundary line shall be

initially determined by the Zoning Administrator using the criteria set forth in Subsections (b) or (c) below. Where the Zoning Administrator finds that there is a significant difference between the district boundary shown on the map and the actual field conditions, the map shall be amended using the procedures established in Article H. Disputes between the Zoning Administrator and an applicant on the location of the district boundary line shall be settled according to Section 13-2-63.

- (b) Where flood profiles exist, the location of the district boundary line shall be determined by the Zoning Administrator using both the scale appearing on the map and the elevations shown on the water surface profile of the regional flood. Where a discrepancy exists between the map and actual field conditions, the regional flood elevations shall govern. A map amendment is required where there is a significant discrepancy between the map and actual field conditions. The Zoning Administrator shall have the authority to grant or deny a land use permit on the basis of a district boundary derived from the elevations shown on the water surface profile of the regional flood, whether or not a map amendment is required. The Zoning Administrator shall be responsible for initiating any map amendments required under this Section within a reasonable period of time.
- (c) Where flood profiles do not exist, the location of the district boundary line shall be determined by the Zoning Administrator using the scale appearing on the map, visual on-site inspection and any available information provided by the Department. Where there is a significant difference between the district boundary line shown on the map and actual field conditions, the map shall be amended. Where a map amendment has been approved by both the Village Board and the Department, the Zoning Administrator shall have the authority to grant or deny a land use permit.

### **Sec. 13-2-13 Removal of Lands from Floodplain.**

Compliance with the provisions of this Chapter shall not be grounds for removing lands from the floodplain district, unless they are removed by filling to a height of at least two (2) feet above the regional flood elevation, the fill is contiguous to land lying outside the floodplain district and the map is amended pursuant to Article H. To remove the land from flood insurance requirements, FEMA must first revise the flood insurance rate map or issue a letter of map amendment or revision.

### **Sec. 13-2-14 Compliance with Chapter.**

- (a) **Compliance.** Any use or development within the areas to be regulated by this Chapter shall be in compliance with the terms of this Chapter and other applicable local, state and federal regulations.



- (b) **Municipalities and State Agencies Regulated.** Unless specifically exempted by law, all cities, villages, towns and counties are required to comply with this Chapter and obtain all necessary permits. State agencies are required to comply if Sec. 13.48(13), Wis. Stats., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when Sec. 30.12(4)(a), Wis. Stats., applies.

### **Sec. 13-2-15 Abrogation and Greater Restrictions; Interpretation of Chapter.**

- (a) **Greater Restrictions.** This Chapter supersedes all the provisions of any municipal zoning ordinance enacted under Sections 61.35, 62.23 or 87.30, Wis. Stats., which relate to floodplains except that where another municipal zoning ordinance is more restrictive than the provisions contained in this Chapter, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.
- (b) **Abrogation.** It is not otherwise intended by this Chapter to repeal, abrogate or impair any existing easements, covenants or deed restrictions; however, where this Chapter imposes greater restrictions, the provisions of this Chapter shall prevail.
- (c) **Interpretation.** In their interpretation and application, the provisions of this Chapter shall be held to minimum requirements liberally construed in favor of the governing body and shall not be deemed a limitation on or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this Chapter is required by a standard in Chapter NR 116, Wisconsin Administrative Code, and where the meaning of the Chapter provision is unclear, the provision shall be interpreted in light of the Chapter NR 116 standards in effect on the date of the adoption of this Chapter or in effect on the date of the most recent text amendment to this Chapter.

### **Sec. 13-2-16 Warning and Disclaimer of Liability.**

The degree of flood protection intended to be provided by this Chapter is considered reasonable for regulatory purposes and is based on engineering experience and scientific methods of study. Larger floods may occur or the flood height may be increased by manmade or natural causes, such as ice jams or bridge openings restricted by debris. This Chapter does not imply that areas outside of the delineated floodplain or permitted land uses within the floodplain will be totally free from flooding and associated flood damages. Nor does this Chapter create a liability on the part of or a cause of action against the Village or any officer or employee thereof for any flood damage that may result from reliance on this Chapter.

### **Sec. 13-2-17 Severability.**

If any section, clause, provision or portion of this Chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Chapter shall not be affected thereby.

### **Sec. 13-2-18 Annexed Areas.**

The Jackson County floodplain zoning provisions in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all areas annexed by the Village until the Village adopts and enforces an ordinance which meets the requirements of ch. NR 116, Wis. Adm. Code. These annexed lands are described on the Village's official zoning map. County floodplain zoning provisions are incorporated by reference for the purpose of administering this Section and are on file in the office of the Zoning Administrator.

### **Sec. 13-2-19 General Standards Applicable to All Floodplain Districts.**

#### **(a) Hydraulic and Hydrologic Analysis.**

- (1) No development, except as provided in Subsection (a)(2) below, shall be allowed in floodplain areas which will:
  - a. Cause an obstruction to flow, defined in Sec. 13-2-90(a) as any development which physically blocks the conveyance of floodwaters by itself or in conjunction with future similar development causing an increase in regional flood height; or
  - b. Cause an increase in regional flood height due to floodplain storage area lost, which is equal to or exceeding 0.01 foot.
- (2) Obstructions or increases equal to or greater than 0.01 foot may only be permitted if amendments are made to this Chapter, the official floodplain zoning maps, including floodway lines and water surface profiles, in accordance with Article H, and only if the total cumulative effect of the proposed development will not increase the height of the regional flood more than 1.0 foot for the affected hydraulic reach of the stream unless a waiver is secured from FEMA for the 1.0 foot maximum increase.
- (3) The Zoning Administrator shall deny permits where it is determined the proposed development will cause an obstruction to flow or increase in regional flood height of 0.01 foot or greater.

#### **(b) Watercourse Alterations.** Prior to any alteration or relocation of a watercourse and prior to the issuance of any land use permit which may be required for the alteration or relocation of a watercourse, the Zoning Administrator shall notify, in writing, adjacent municipalities, the appropriate district office of the Department of Natural Resources and the appropriate office of FEMA and shall require the applicant to secure all necessary state

and federal permits. The flood carrying capacity within the altered or relocated portion of any watercourse shall be maintained.

- (c) **Chapters 30, 31, Wis. Stats., Development.** Development which requires a permit from the Department of Natural Resources, under Chapters 30 and 31, Wis. Stats., such as docks, piers, wharves, bridges, culverts, dams and navigational aids may be allowed provided the necessary local permits are obtained and necessary amendments to the official floodway lines, water surface profiles, floodplain zoning maps or floodplain zoning ordinance are made according to Article H.



## Article C: Floodway District (FW)

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### **Sec. 13-2-20 Applicability.**

The provisions of this Article shall apply to all areas within the Floodway District, as shown on the official floodplain zoning maps, and to the floodway portion of the General Floodplain District, as determined pursuant to Section 13-2-43 of this Chapter.

### **Sec. 13-2-21 Permitted Uses.**

The following open space uses are permitted within the Floodway District and in the floodway portion of the General Floodplain District, provided that they are not prohibited by any other ordinance, that they meet all of the standards contained in Section 13-2-22, and all permits or certificates have been issued according to Article G.

- (a) Agricultural uses, such as: general farming, pasturing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming and wild crop harvesting.
- (b) Nonstructural industrial and commercial uses, such as: loading areas, parking areas and airport landing strips.
- (c) Nonstructural private and public recreational uses, such as: golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails, according to Section 13-2-22(d).
- (d) Uses or structures accessory to open space uses, or those classified as historic structures, that are not in conflict with the provisions of Sections 13-2-22 and 13-2-23(d).
- (e) Extraction of sand, gravel or other materials pursuant to Section 13-2-22(d).
- (f) Functionally water-dependent uses, such as: docks, piers or wharves, including docks, piers or wharves used as part of a marina, and other water-related uses, such as dams, flowage areas, culverts, navigational aids and river crossings of transmission lines, and pipelines, according to Chapters 30 and 31, Wis. Stats.
- (g) Public utilities, streets and bridges, according to Section 13-2-22(c).

### **Sec. 13-2-22 Standards for Developments in Floodway Areas.**

#### **(a) General Requirements.**

- (1) Any development in floodway areas shall:
  - a. Meet all of the provisions of Section 13-2-18; and
  - b. Have a low flood damage potential.

- (2) Applicants shall provide the following data for the Zoning Administrator to determine the effects of the proposal according to Section 13-2-18(a):
  - a. A cross-section elevation view of the proposal, perpendicular to the watercourse, indicating whether the proposed development will obstruct flow; or
  - b. An analysis calculating the effects of this proposal on regional flood height.
- (3) The Zoning Administrator shall deny the permit application where there is determined the project will increase flood elevations upstream or downstream 0.01 foot or more, based on the data submitted for Subsection 13-2-22(a) above.
- (b) **Structures.** In or over floodway areas, only structures which are accessory to permitted open space uses, those classified as historic structures, or are functionally dependent on a waterfront location, may be allowed by permit, providing the structures meet all of the following criteria:
  - (1) The structures are not designed for human habitation or associated with high flood damage potential;
  - (2) The structures are constructed and placed on the building site so as to cause an increase less than 0.01 foot in flood height and offer minimum obstruction to the flow of flood waters. Structures shall be constructed with the longitudinal axis parallel to the direction of flow of flood waters, and approximately on the same line as those of adjoining structures;
  - (3) The structures are firmly anchored to prevent them from floating away and restricting bridge openings or other restricted sections of the stream or river; and
  - (4) The structures have all service facilities, such as electrical and heating equipment at or above the flood protection elevation for that particular area.
- (c) **Utilities.** Public utilities, streets and bridges may be allowed by permit, provided that:
  - (1) Adequate flood-proofing measures are provided to the flood protection elevation;
  - (2) Construction does not cause an increase in the regional flood height according to Section 13-2-18(a), except where the water surface profiles, floodplain zoning maps and floodplain zoning ordinance are amended as needed, to reflect any changes resulted from such construction.
- (d) **Fills.** Fills or deposition of materials may be allowed by permit, provided that:
  - (1) The requirements of Section 13-2-18(a) are met;
  - (2) The fill or deposition of materials does not encroach on the channel area between the ordinary high-water mark on each bank of the stream unless a permit has been granted by the Department of Natural Resources pursuant to Chapter 30, Wis. Stats., and a permit pursuant to Section 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1334, has been issued, if applicable, and the other requirements of this Section are met;
  - (3) The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling and/or bulkheading sufficient to prevent erosion; and provided that
  - (4) Such fills are not associated with private or public solid waste disposal.

**Sec. 13-2-23 Prohibited Uses.**

All uses not listed as permitted uses in Section 13-2-21 are prohibited within the Floodway District and in the floodway portion of the General Floodplain District including the following uses which are always prohibited in the floodway:

- (a) Structures in, on or over floodway areas which are designed for human habitation, associated with high flood damage potential, or not associated with permanent open-space uses;
- (b) Storage of any materials that are capable of floating, flammable, explosive or injurious to property water quality or human, animal, plant, fish or other aquatic life;
- (c) Any uses which are not in harmony with, or which may be detrimental to, the uses permitted in the adjoining districts;
- (d) Any private or public sewage systems, except portable latrines that are removed prior to flooding, and systems associated with recreational areas and Department-approved campgrounds that meet the applicable provisions of local ordinances and Chapter ILHR 83, Wisconsin Administrative Code;
- (e) Any public or private wells which are used to obtain water for ultimate human consumption, except those for recreational areas that meet the requirements of local ordinances and Chapters NR 111 and NR 112, Wis. Adm. Code.
- (f) Any solid and hazardous waste disposal sites, whether public or private.
- (g) Any wastewater treatment ponds or facilities except those permitted under Sec. NR 110.15(3)(b), Wis. Adm. Code.
- (h) Any sanitary sewer or water supply lines except those to service existing or proposed development outside the floodway which complies with the regulations for the floodplain area occupied.

**Sec. 13-2-24 through Sec. 13-2-29 Reserved for Future Use.**

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## Article D: Flood Fringe District (FF)

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### **Sec. 13-2-30 Applicability.**

The provisions of this Article shall apply to all areas within the Flood Fringe District, as shown on the official floodplain zoning maps, and to those portions of the General Floodplain District that are determined to be in the flood fringe area pursuant to Section 13-2-64 of this Chapter.

### **Sec. 13-2-31 Permitted Uses.**

Any structures, land use or development, including accessory structures and uses, are allowed within the Flood Fringe District and flood fringe portions of the General Floodplain District, provided that the standards contained in Section 13-2-32 are met, that the use is not prohibited by this or any other ordinance or any other local, state or federal regulation and that all permits or certificates required by Article G have been issued.

### **Sec. 13-2-32 Standards for Development in Flood Fringe Areas.**

- (a) **Standards.** All of the provisions of Section 13-2-18 shall apply in addition to the following requirements of this Section, according to the use requested.
- (b) **Residential Uses.** Any structure or building used for human habitation, including mobile/manufactured homes, which is to be erected, constructed, reconstructed, altered or moved into the flood fringe area shall meet or exceed the following standards:
  - (1) The elevation of the lowest flood excluding the basement or crawlway shall be at or above the flood protection elevation (which is a point two [2] feet above the regional flood elevation) except where Subsection (2) below is applicable. The fill elevation shall be one (1) foot or more above the regional flood elevation extending at least fifteen (15) feet beyond the limits of the structure. The Department may authorize other floodproofing measures where existing streets or sewer lines are at elevations which make compliance impractical provided the Board of Appeals grants a variance due to dimensional restrictions.
  - (2) The basement or crawlway floor may be placed at the regional flood elevation providing it is floodproofed to the flood protection elevation. No permit or variance shall allow any floor, basement or crawlway below the regional flood elevation.
  - (3) Contiguous dryland access, defined in Section 13-2-90, as a vehicle access route above regional flood elevation shall be provided from a structure or building to land which is outside of the floodplain, except as provided in Subsection (4) below.
  - (4) In existing developments where existing streets or sewer lines are at elevations which make compliance with Subsection (b)(3) impractical, the Village may permit new

development and substantial improvements where access roads are at or below the regional flood elevation, provided:

- a. The Village has written assurance from the appropriate local units of police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles, considering the anticipated depth, duration and velocity of the regional flood event; or
  - b. The Village has an adequate natural disaster plan concurred with the Division of Emergency Government and approved by the Department.
- (c) **Accessory Structures or Uses.** An accessory structure or use (not connected to a principal structure, including nonresidential agricultural structures), shall meet all the applicable provisions of Section 13-2-22(a), (b) and (d) and 13-2-23. A lesser degree of protection, compatible with these criteria and the criteria in Subsection (d) may be permissible for an accessory structure or use providing that the site is not inundated to a depth greater than two (2) feet or subjected to flood velocities greater than two (2) feet per second upon the occurrence of the regional flood.
- (d) **Commercial Uses.** Any commercial structure or building which is to be erected, constructed, reconstructed, altered or moved into the flood fringe area shall meet the requirements of Section 13-2-32(b) above. Storage yards, parking lots and other accessory land uses may be at lower elevations, subject to the requirements of Subsection (f). However, no such area in general use by the public shall be inundated to a depth greater than two (2) feet or subjected to flood velocities greater than two (2) feet per second upon the occurrence of the regional flood. Inundation of such yards or parking areas exceeding two (2) feet may be allowed provided an adequate warning system exists to protect life and property.
- (e) **Manufacturing and Industrial Uses.** Any manufacturing or industrial structure or building which is to be erected, constructed, reconstructed, altered or moved into the flood fringe area shall be protected to the flood protection elevation utilizing fill, levees, floodwalls, adequate floodproofing measures in accordance with Section 13-2-65, or any combination thereof. On streams or rivers having prolonged flood durations, greater protection may be required to minimize interference with normal plant operations. A lesser degree of protection, compatible with the criteria in Subsections (d) and (f) may be permissible for storage yards, parking lots and accessory structures or uses.
- (f) **Storage or Processing Materials.** The storage or processing of materials that are buoyant, flammable, explosive or which, in times of flooding, could be injurious to property, water quality or human, animal, fish, plant or aquatic life shall be at or above the flood protection elevation for the particular area or floodproofed in compliance with Section 13-2-65. Adequate measures shall be taken to assure that said materials will not enter the river or stream during flooding.
- (g) **Public Utilities, Streets and Bridges.** All utilities, streets and bridges should be designed to be compatible with the local comprehensive floodplain development plans; and
- (1) When failure or interruption of public utilities, streets and bridges would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area, construction of and substantial improvements to such

- facilities may only be permitted if they are floodproofed in compliance with Section 13-2-65 to the flood protection elevation;
- (2) Minor or auxiliary roads or nonessential utilities may be constructed at lower elevations providing they withstand flood forces to the regional flood elevation.
- (h) **Sewage Systems.** All on-site sewage disposal systems shall be floodproofed to the flood protection elevation and shall meet the applicable provisions of all local ordinances and Chapter ILHR 83, Wisconsin Administrative Code.
  - (i) **Wells.** All public or private wells shall be floodproofed to the flood protection elevation, pursuant to Section 13-2-65, and shall meet the applicable provisions of Chapters NR 111 and NR 112, Wis. Adm Code.
  - (j) **Solid Waste Disposal Sites.** All solid or hazardous waste disposal sites, whether public or private, are prohibited in flood fringe areas.
  - (k) **Deposition of Materials.** Any materials deposited for any purpose may only be allowed if all the provisions of this Chapter are met.
  - (l) **Mobile Homes and Manufactured Homes.**
    - (1) Owners or operators of all mobile manufactured home parks and subdivisions located in the regional floodplain shall provide for adequate surface drainage to minimize flood damage and prepare, secure approval and file an evacuation plan, indicating vehicular access and escape routes, with the appropriate local emergency management authorities.
    - (2) In existing mobile home parks, all new homes with new pads, replacement units on existing pads, and substantially improved mobile/manufactured homes and recreational vehicles that remain on-site in excess of one hundred eighty (180) days, or are unlicensed or not ready for highway use and which are placed or improved on a site located in the regional floodplain, shall:
      - a. Have the lowest floor elevated to the regional flood elevations; and
      - b. Be anchored so they do not float, collapse or move laterally during a flood.
    - (3) Outside of existing mobile home parks, including new mobile home parks, and all single units outside of existing parks, all new, replacement and substantially improved mobile/manufactured homes and recreational vehicles that remain on-site more than one hundred eighty (180) days, which are unlicensed or are not ready for highway use, shall meet the residential development standards for the floodfringe in Subsection (b) above.

**Sec. 13-2-33 through Sec. 13-2-39      Reserved for Future Use.**

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## Article E: General Floodplain District (GFP)

### **Sec. 13-2-40 Applicability.**

The provisions for this district shall apply to all floodplains in the Village for which "regional flood" data, as defined in the Definitions, Section 13-2-90(a), is not available, or where regional flood data is available but floodways have not been delineated. As adequate regional flood data becomes available and floodways are delineated for portions of this district, such portions shall be placed in the Flood Fringe or Floodway District, as appropriate.

### **Sec. 13-2-41 Permitted Uses.**

The General Floodplain District encompasses both floodway and flood fringe areas. Therefore, a determination shall be made pursuant to Section 13-2-43 to determine whether the proposed use is located within a floodway or flood fringe area. Those uses permitted in floodways and flood fringe areas are allowed within the general floodplain district according to the standards of Section 13-2-42 and provided that all permits or certificates required under Section 13-2-61 have been issued.

### **Sec. 13-2-42 Standards for Development in the General Floodplain District.**

Once it is determined according to Section 13-2-43 that a proposed use is located within a floodway, the provisions of Article C shall apply. Once determined that the proposed use is located within the flood fringe, the provisions of Article D shall apply. All provisions of the remainder of this Chapter apply to either district.

### **Sec. 13-2-43 Determining Floodway and Flood Fringe Limits.**

Upon receiving an application for development within the general floodplain district, the Zoning Administrator shall:

- (a) Require the applicant to submit, at the time of application, two (2) copies of an aerial photograph or a plan which accurately locates the proposed development with respect to the general floodplain district limits, channel of stream, existing floodplain developments, together with all pertinent information such as the nature of the proposal, legal description of the property, fill limits and elevations, building floor elevations and flood proofing measures.

- (b) Require the applicant to furnish any of the following additional information as is deemed necessary by the Department for evaluation of the effects of the proposal upon flood height and flood flows, the regional flood elevation and where applicable to determine the boundaries of the floodway:
  - (1) A typical valley cross-section showing the channel of the stream, the floodplain adjoining each side of the channel, the cross-sectional area to be occupied by the proposed development and all historic high-water information.
  - (2) Plan (surface view) showing: elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types and other pertinent information.
  - (3) Profile showing the slope of the bottom of the channel or flow line of the stream.
  - (4) Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage of materials, water supply and sanitary facilities.
- (c) Transmit one (1) copy of the information described in Subsections (a) and (b) to the Department District office along with a written request for technical assistance to establish regional flood elevations and, where applicable, floodway data. Where the provisions of Sec. 13-2-61(a)(3) apply, the applicant shall provide all required information and computations, to delineate floodway boundaries and the effects of the project on flood elevations.

**Sec. 13-2-44 through Sec. 13-2-49      Reserved for Future Use.**

## Article F: Nonconforming Uses

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### Sec. 13-2-50 General.

- (a) Insofar as the standards in this Article are not inconsistent with the provisions of Section 62.23(7)(h), Wis. Stats., they shall apply to all nonconforming structures and nonconforming uses. These regulations apply to the modification of, or addition to, any structure and to the use of any structure or premises which was lawful before passage of this Chapter or any amendment thereto. The existing lawful use of a structure or building or its accessory use which is not in conformity from the provisions of this Chapter may be continued subject to the following conditions:
- (1) No modifications or additions to a nonconforming use shall be permitted unless they are made in conformity with the provisions of this Chapter for the area of floodplain occupied. The words "modification" and "addition" shall include, but not be limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Ordinary maintenance repairs are not considered modifications or additions; these include internal and external painting, decorating, paneling and the replacement of doors, windows and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities.
  - (2) If a nonconforming use or the use of a nonconforming structure is discontinued for twelve (12) consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon shall be made to conform to the applicable requirements of this Chapter.
  - (3) As requests are received by the municipality for modifications or additions to nonconforming uses or nonconforming structures in the floodway, a record shall be kept which lists the nonconforming uses and nonconforming structures, their present equalized assessed value and the cost of those additions or modifications which have been permitted.
  - (4) No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would exceed fifty percent (50%) of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this Chapter. Contiguous dry land access must be provided in compliance with Section 13-2-32(b).
  - (5) If any nonconforming structure or any structure with a nonconforming use is destroyed or is so badly damaged that it cannot be practically restored, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the requirements of this Chapter. For the purpose of this Subsection, restoration is deemed impractical where the total cost of such restoration would exceed fifty percent (50%) of the present equalized assessed value of the structure.

- (b) If the Zoning Administrator determines that any portion of a building addition or remodeling or reconstruction project is required to be allowed under the Federal Fair Housing Act, the Wisconsin Open Housing Law or the Americans with Disabilities Act, that portion of the project costs that are necessary to provide equal housing opportunity for handicapped or disabled persons shall not be counted in determining whether or not the fifty percent (50%) limit would be exceeded.

### **Sec. 13-2-51 Floodway Areas.**

- (a) No modifications or additions shall be allowed to any nonconforming structure or any structure with a nonconforming use in a floodway area, unless such modification or addition:
  - (1) Has been granted a permit or variance which meets the floodway requirements of this Chapter; and
  - (2) Meets the requirements of Section 13-2-50; and
  - (3) Will not increase the obstruction to flood flows or regional flood height; and
  - (4) Any addition to the existing structure shall be floodproofed, pursuant to Section 13-2-65, by means other than the use of fill, to the flood protection elevation.
- (b) No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the applicable provisions of local ordinances and Chapter ILHR 83, Wis. Adm. Code.
- (c) No new well or modification to an existing well, used to obtain water for ultimate human consumption, or modifications to an existing well, shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing well in a floodway area shall meet the applicable provisions of all municipal ordinances and Chapters NR 111 and NR 112, Wis. Adm. Code.

### **Sec. 13-2-52 Flood Fringe Areas.**

- (a) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in the flood fringe area unless such modification or addition has been granted a permit or variance by the Village. In addition, the modification or addition shall be placed on fill or floodproofed to the flood protection elevation in compliance with the applicable regulations for that particular use in Section 13-2-32, except where Subsection (b) is applicable.
- (b) Where compliance with the provisions of Subsection (a) above would result in unnecessary hardship and only where the structure will not be either used for human habitation or to be



associated with a high flood damage potential, the Board of Appeals, using the procedure in Section 13-2-63, may grant a variance from those provisions of Subsection (a) for modifications or additions, using the criteria listed below. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted if:

- (1) No floor is allowed below the regional flood elevation for residential or commercial structures; and
  - (2) Human lives are not endangered;
  - (3) Public facilities, such as water or sewer, will not be installed;
  - (4) Flood depths will not exceed two (2) feet;
  - (5) Flood velocities will not exceed two (2) feet per second; and
  - (6) The structure will not be used for storage of materials described in Section 13-2-32(f).
- (c) If neither the provisions of Subsections (a) nor (b) above can be met, an addition to an existing room in a nonconforming building or a building with a nonconforming use may be allowed in the flood fringe on a one (1) time basis only, if the addition:
- (1) Meets all other regulations and will not be granted by permit or variance;
  - (2) Does not exceed existing (60) square feet in area; and
  - (3) In combination with other previous modifications or additions to the building, does not exceed fifty percent (50%) of the present equalized assessed value of the building.
- (d) All new private sewage disposal systems, or addition to, replacement, repair or maintenance of a private sewage disposal system shall meet all the applicable provisions of all local ordinances and Chapter ILHR 83, Wis. Adm. Code.
- (e) All new wells, or addition to, replacement, repair or maintenance of a well shall meet the applicable provisions of this Chapter and Ch. NR 111 and NR 112, Wis. Adm. Code.

**Sec. 13-2-53 through Sec. 13-2-59      Reserved for Future Use.**

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## Article G: Administration

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(NOTE: This Article provides for the appointment of appropriate boards and staff and the development of necessary policies and procedures to administer the floodplain zoning ordinance in accordance with this Article. Where a zoning administrator, planning agency or a board of appeals has already been appointed to administer a zoning ordinance adopted under Section 62.23(7), Wis. Stats., these officials shall also administer the floodplain zoning ordinance.)

### **Sec. 13-2-60 Zoning Administrator.**

The Village Zoning Administrator is hereby authorized to administer the provisions of this Chapter. The Zoning Administrator shall have the following duties and powers:

- (a) Advise applicants of the provisions of this Chapter, assist them in preparing permit applications and appeals and assure that the regional flood elevation for the proposed development is shown on all permit applications.
- (b) Issue permits and inspect properties for compliance with this Chapter and issue Certificates of Compliance where appropriate.
- (c) Determine whether or not specific ordinance requirements shall be waived and a permit should be issued in situations where the applicant alleges that he/she is handicapped or disabled and is entitled to "reasonable accommodations" under the Federal Fair Housing Act, 42 U.S.C. Secs. 3601-3631, or the Wisconsin Open Housing Law, Sec. 106.04, Wis. Stats., or where the owner of a place of public accommodations alleges that certain zoning restrictions must be waived in order to make the public accommodations accessible to the disabled.
- (d) Keep records of all official actions such as:
  - (1) All permits issued.
  - (2) Inspections made.
  - (3) Work approved.
  - (4) Documentation of certified lowest floor and regional flood elevations for floodplain development.
  - (5) Records of water surface profiles, floodplain zoning maps and ordinances, nonconforming uses and structures including changes, appeals, variances and amendments.
- (e) Submit copies of the following items to the Department district office:
  - (1) Within ten (10) days of the decision, a copy of any decisions on variances, appeals for map or text interpretations, and map or text amendments;
  - (2) Copies of any case-by-case analyses and any other information required by the Department, including an annual summary of the number and types of floodplain zoning actions taken.

- (f) Investigate, prepare reports and report violations of this Chapter to the appropriate Village committee and to the municipal attorney for prosecution. Copies of the violation reports shall also be sent to the appropriate district office of the Department of Natural Resources.
- (g) Submit copies of map and text amendments and biennial reports to the Regional Office of FEMA.

### **Sec. 13-2-61 Administrative Procedures.**

- (a) **Zoning Permit.** A zoning permit shall be obtained from the Zoning Administrator before any new "development," as defined in Section 13-2-90(a), or any change in the use of an existing building or structure, including sewage disposal systems and water supply facilities, may be initiated. Application for a zoning permit shall be made to the Zoning Administrator upon furnished application forms and shall include the following data:
  - (1) **General Information.**
    - a. Name and address of the applicant, property owner and contractor-builder;
    - b. Legal description of the property, type of proposed use and an indication as to whether new construction or a modification to an existing structure is involved;
  - (2) **Site Development Plan.** The site development plan shall be drawn to scale and submitted as a part of the permit application form and shall contain the following information:
    - a. Location, dimensions, area and elevation of the lot;
    - b. Location of the ordinary high-water mark of any abutting navigable waterways;
    - c. Location of any structures with distances measured from the lot lines and centerline of all abutting streets or highways;
    - d. Location of any existing or proposed on-site sewage systems or private water supply systems;
    - e. Location and elevation of existing or future access roads;
    - f. Location of floodplain and floodway limits on the property as determined from the official floodplain zoning maps;
    - g. The elevation of the lowest floor of proposed buildings and any fill using National Geodetic and Vertical Datum (NGVD);
    - h. Data sufficient to determine the regional flood elevation at the location of the development and to determine whether or not the requirements of Article C or Article D of this Chapter are met.
    - i. Data sufficient to determine if the proposed development will cause either an obstruction to flow or an increase in regional flood height or discharge according to Section 13-2-18(a). This may include any of the information noted in Sec. 13-2-22(a).
  - (3) **Data Requirements to Analyze Developments.**
    - a. The applicant shall provide all computations and survey data required to show the effects of the project on flood heights, velocities and floodplain storage for all

subdivision proposals, as "subdivision" is defined in Sec. 236.02(12), Wis. Stats., and other proposed developments exceeding five (5) acres in area or where the estimated cost exceeds One Hundred Twenty-Five Thousand Dollars (\$125,000.00). The applicant shall provide:

1. An analysis of the effect of the development on the regional flood profile, velocity of flow and floodplain storage capacity.
2. A map showing location and details of vehicular access to lands outside the floodplain.
3. A surface drainage plan with adequate details showing how flood damage will be minimized.

The estimated cost of the proposal shall include all structural development, landscaping improvements, access and road development, electrical and plumbing and similar items reasonably applied to the overall development costs, but need not include land costs.

- b. The Department will determine elevations and evaluate the proposal where the applicant is not required to provide computations as above and inadequate data exists. The municipality may transmit additional information, such as the date in Section 13-2-43(b) where appropriate, to the Department with the request for analysis.

(4) **Expiration.** All permits issued under the authority of this Chapter shall expire one (1) year from the date of issuance.

(5) **Equal Housing Opportunity Waiver.** In situations where the applicant is requesting that certain zoning restrictions be waived in order to provide equal housing opportunities, or access to public accommodations, for a handicapped or disabled person, the following information shall be provided:

- a. The nature of the handicap or disability.
- b. An explanation of the need for a waiver of specified zoning restrictions.
- c. A discussion of alternative solutions that have been considered, if any.

(b) **Certificate of Compliance.** No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, rebuilt or replaced shall be occupied, until a certificate of compliance is issued by the Zoning Administrator, except where no permit is required, subject to the following provisions:

- (1) The certificate of compliance shall show that the building or premises or part thereof and the proposed use conform to the provisions of this Chapter.
- (2) Application of such certificate shall be concurrent with the application for a permit.
- (3) The certificate of compliance shall be issued within ten (10) days after notification of completion of the work specified in the permit, provided the building or premises or proposed use conforms with all the provisions of this Chapter.
- (4) The applicant shall submit a certification signed by a registered professional engineer or registered land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require

certification by a registered professional architect or registered engineer that floodproofing adequacy meets the requirements of Section 13-2-65.

- (c) **Other Permits.** It is the responsibility of the applicant to secure all other necessary permits from all appropriate Federal, State and local agencies, including those required by the U.S. Army Corps of Engineers under Section 404 of the Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1334.

### **Sec. 13-2-62 Zoning Agency.**

- (a) The Zoning Agency or committee shall have the following duties and powers to:
- (1) Oversee the functions of the office of the Zoning Administrator;
  - (2) Review all proposed amendments to the floodplain zoning ordinance map and text;
  - (3) Maintain a complete public record of all its proceedings.
- (b) The zoning agency shall not:
- (1) Grant variances to the terms of this Chapter in place of official action by the Board of Appeals.
  - (2) Amend the text or zoning maps in place of official action by the Village Board.

### **Sec. 13-2-63 Board of Appeals.**

- (a) **Statutory Authorization.** The appropriate board created by Chapter 62.23(7)(e), Wis. Stats., for cities or villages is hereby authorized to act as Board of Appeals for the purposes of this Chapter. The Board of Appeals shall exercise the powers conferred by Wisconsin Statutes and adopt rules for the conduct of business. The Zoning Administrator may not be the Secretary of the Board.
- (b) **Powers and Duties.** The Board of Appeals shall:
- (1) **Appeals.** Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this Chapter.
  - (2) **Boundary Disputes.** Hear and decide disputes concerning the district boundaries shown on the official floodplain zoning map.
  - (3) **Variances.** Hear and decide, upon appeal, variances from the dimensional standards of this Chapter.
- (c) **Appeals to the Board.** Appeals to the Board of Appeals may be taken by any person aggrieved or by an officer, department, board or bureau of the municipality affected by any decision of the Zoning Administrator or other administrative officer. Such appeal shall be taken within thirty (30) days, as provided by the rules of the Board, by filing with the Zoning Administrator and with the Board of Appeals a notice of appeal specifying the

reasons for appeal. The official whose decision is in question shall transmit to the Board all the papers constituting the record concerning the matter appealed.

(d) **Notice and Hearing for Appeals Including Variances.**

(1) **Notice.** The Board shall:

- a. Fix a reasonable time for the hearing;
- b. Publish adequate Class 1 or 2 notice pursuant to the Wisconsin Statutes, specifying the date, time, place and subject of the hearing;
- c. Assure that notice shall be mailed to the parties in interest and the district office of the Department at least ten (10) days in advance of the hearing.

(2) **Hearing.** Any party may appear in person or by an agent or attorney. The Board shall:

- a. Resolve boundary disputes according to Subsection (e);
- b. Decide variance applications according to Subsection (f);
- c. Decide appeals of permit denials according to Section 13-2-64.

(3) **Decision.** The final decision regarding the appeal or variance application shall:

- a. Be made within a reasonable time;
- b. Be sent to the district office of the Department within ten (10) days of the decision;
- c. Be a written determination signed by the chairperson or secretary of the Board;
- d. State the specific facts which are the basis for the Board's decision;
- e. Either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or grant or deny the application for a variance;
- f. Include the reasons or justifications for granting an appeal, with a description of the hardship or practical difficulty demonstrated by the applicant in the case of a variance, clearly stated in the recorded minutes of the board proceedings.

(e) **Boundary Disputes.** The following procedure shall be used by the Board of Appeals in hearing disputes concerning the district boundaries shown on the official floodplain zoning map:

- (1) Where a floodplain district boundary is established by approximate or detailed floodplain studies the regional flood elevations or profiles for the point in question shall be the governing factor in locating the district boundary. If no regional flood elevations or profiles are available to the Board, other available evidence may be examined.
- (2) In all cases, the person contesting the location of the district boundary shall be given a reasonable opportunity to present arguments and technical evidence to the Board of Appeals.
- (3) Where it is determined that the district boundary is incorrectly mapped, the Board should inform the zoning committee or the person contesting the location of the boundary to petition the governing body for a map amendment according to Article H.

(f) **Variance.**

- (1) The Board of Appeals may, upon appeal, grant a variance from the dimensional standards of this Chapter where an applicant convincingly demonstrates that:
  - a. Literal enforcement of the provisions of the Chapter will result in unnecessary hardship on the applicant.
  - b. The hardship is due to adoption of the floodplain ordinance and special conditions unique to the property, not common to a group of adjacent lots or premises (in such case the Chapter or map must be amended);
  - c. Such variance is not contrary to the public interest;
  - d. Such variance is consistent with the purpose of this Chapter as stated in Section 13-2-3.
- (2) A variance shall *not*:
  - a. Grant, extend or increase any use of property prohibited in the zoning district;
  - b. Be granted for a hardship based solely on an economic gain or loss;
  - c. Be granted for a hardship which is self-created;
  - d. Damage the rights or property values of other persons in the area;
  - e. Permit a lower degree of flood protection in the floodplain than the flood protection elevation;
  - f. Allow any floor, basement or crawlway below the regional flood elevation for residential or commercial structures;
  - g. Allow actions without the requirement amendment to this Chapter or map(s) described in Section 13-2-70.
- (3) When a variance is granted in a floodplain area, the Board shall notify the applicant in writing that increased flood insurance premiums and risks to life and property may result. A copy of this notification shall be maintained with the variance appeal record.

**Sec. 13-2-64 Review Appeals of Permit Denials.**

- (a) The Board of Appeals shall review all data constituting the basis for the appeal of permit denial. This data may include (where appropriate):
  - (1) Permit application data listed in Section 13-2-61(a);
  - (2) Floodway/flood fringe determination data in Section 13-2-43;
  - (3) Data listed in Section 13-2-22(a)(2)b where the applicant has not submitted this information to the Zoning Administrator.
  - (4) Other data submitted to the Zoning Administrator with the permit application or submitted to the Board with the appeal.
- (b) For appeals of all denied permits, the Board shall:
  - (1) Follow the procedures of Section 13-2-63;



- (2) Consider Zoning Agency recommendations;
  - (3) Either uphold the denial or grant the appeal.
- (c) For appeals concerning increases in regional flood elevation, the Board shall:
- (1) Uphold the denial where the Board agrees with the data showing an increase in flood elevation. Increases equal to or greater than 0.01 foot may only be allowed after amending the flood profile and map and any appropriate legal arrangements are made with all adversely affected property owners.
  - (2) Grant the appeal where the Board agrees that the data properly demonstrates that the project does not cause an increase equal to or greater than 0.01 foot provided no other reasons for denial exist.

### **Sec. 13-2-65 Floodproofing.**

- (a) No permit or variance shall be issued until the applicant submits a plan or document certified by a registered professional engineer or architect that the floodproofing measures are adequately designed to protect the structure or development to the flood protection elevation.
- (b) Where floodproofing measures, as defined in Section 13-2-90(a) are required, they shall be designed to:
  - (1) Withstand the flood pressures, depths, velocities, uplift and impact forces and other factors associated with the regional flood;
  - (2) Assure protection to the flood protection elevation;
  - (3) Provide anchorage of structures to foundations to resist flotation and lateral movement;
  - (4) Insure that the structural walls and floors are watertight to the flood protection elevation and the interior remains completely dry during flooding without human intervention.
- (c) Floodproofing measures could include:
  - (1) Reinforcement of walls and floors to resist rupture or collapse caused by water pressure or floating debris;
  - (2) Addition of mass or weight to structures to prevent flotation;
  - (3) Placement of essential utilities above the flood protection elevation;
  - (4) Surface or subsurface drainage systems, including pumping facilities to relieve external foundation wall and basement floor pressures;
  - (5) Construction of water supply wells and waste treatment systems to prevent the entrance of flood waters into the systems;
  - (6) Cutoff valves on sewer lines or elimination of gravity flow basement drains.

### **Sec. 13-2-66 Public Information.**

- (a) Where useful, marks on bridges or buildings or other markers may be set to show the depth of inundation during the regional flood at appropriate locations within the floodplain.
- (b) All available information in the form of maps, engineering data and regulations shall be readily available and should be widely distributed.
- (c) All legal descriptions of property in the floodplain should include information relative to the floodplain zoning classification when such property is transferred.

### **Sec. 13-2-67 Permits that Authorize Reasonable Accommodations for Handicapped Persons.**

- (a) The Zoning Administrator shall issue a zoning permit that waives specified zoning ordinance requirements if the Zoning Administrator determines that both of the following conditions have been met:
  - (1) The accommodation (i.e., the waiver of zoning restrictions) that has been requested, or another less extensive accommodation, is necessary to afford equal housing opportunity, or equal access to public accommodations, for disabled or handicapped persons, and is the minimum accommodation that will give the handicapped or disabled persons adequate relief.
  - (2) The accommodation will not unreasonably undermine the basic purposes that the Chapter seeks to achieve.
- (b) If the Zoning Administrator issues a zoning permit to a handicapped or disabled person, or to the owner of a place of public accommodations, that waives certain specified zoning requirements, the permit shall state that:
  - (1) Issuance of the permit is required by the Federal Fair Housing Act, and the Wisconsin Open Housing Law, or the Americans with Disabilities Act.
  - (2) Where appropriate, the Zoning Administrator shall attach to the permit the condition that the building addition or other structure (such as entrance ramps) that is authorized by the permit must be constructed in such a way that it can easily be removed when the handicapped or disabled person no longer occupies the property. If such a condition is attached to the permit, the property owner is required by this Section to notify the Zoning Administrator no later than thirty (30) days after the handicapped or disabled person vacates the property.
  - (3) In cases where the Zoning Administrator issues a permit to a handicapped or disabled person that is conditioned upon the building addition or other structure being removed when the handicapped or disabled person no longer occupies the property, the permit shall not become effective until the owner of the property signs an affidavit, and records it at the County Register of Deeds Office, that gives notice that the building

addition or other structure authorized by the permit is only authorized for the period of time that a handicapped or disabled person who requires the structure occupies the property.

**Sec. 13-2-68 through Sec. 13-2-69      Reserved for Future Use.**

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## Article H: Amendments

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### **Sec. 13-2-70 Amendments Generally.**

The Village Board may supplement or change the boundaries of the floodplain zoning districts and the regulations contained in this Chapter in the manner provided by law. Actions which require an amendment include, but are not limited to, the following:

- (a) Any change to the official floodplain zoning map including the floodway line or boundary of any floodplain area;
- (b) Correction of significant discrepancies between the water surface profiles and floodplain zoning maps;
- (c) Any fill in the floodplain which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain;
- (d) Any fill or encroachment into the floodplain that will obstruct flow causing an increase of 0.01 foot or more in regional flood height;
- (e) Any upgrading of floodplain zoning ordinances required by Section NR 116.05, Wisconsin Administrative Code, or otherwise required by law, or for changes by the Village.

### **Sec. 13-2-71 Amendment Procedures.**

- (a) Amendments to this Chapter may be made upon petition of any interested party in accordance with the provisions of Section 62.23, Wis. Stats. Such petitions shall include any necessary data required by Sections 13-2-43 and 13-2-61(a).
- (b) Copies of any amendment proposed to the Village Board shall be referred to the Zoning Agency, described in Section 13-2-62, for a public hearing and recommendation to the Village Board. Copies of the proposed amendment and notice of the public hearing shall be submitted to the appropriate District office of the Department of Natural Resources for review prior to the meeting. The amendment procedure shall comply with the provisions of Section 62.23, Wis. Stats.
- (c) No amendment to the maps or text of this Chapter shall become effective until reviewed and approved by the Department of Natural Resources.
- (d) All persons petitioning for a map amendment which involves an obstruction to flow causing an increase of 0.01 foot or more in the height of the regional flood shall obtain flooding easements, or other appropriate legal arrangements, from all adversely affected property owners and local units of government before the amendment can be approved by a governing body.
- (e) When considering amendments to the official floodplain zoning map, in areas where no water surface profiles exist, the zoning agency shall consider data submitted by the Department, the Zoning Administrator's visual on-site inspections and other available information.

**Sec. 13-2-72 through Sec. 13-2-79      Reserved for Future Use.**

## Article I: Enforcement and Penalties

### **Sec. 13-2-80 Enforcement and Penalties.**

Any violations of the provisions of this Chapter by any person shall be unlawful and shall be forwarded to the Village Attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to the Village a forfeiture of not less than Forty Dollars (\$40.00) and not more than Seventy Dollars (\$70.00), together with a taxable cost of such action. Each day during within such violation exists shall constitute a separate offense. Every violation of this Chapter is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated by action at suit of the Village, the State or any citizen thereof pursuant to Section 87.30, Wis. Stats.

### **Sec. 13-2-81 through Sec. 13-2-89 Reserved for Future Use.**

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## Article J: Definitions

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### Sec. 13-2-90 Definitions.

- (a) Unless specifically defined below, words or phrases used in this Chapter shall have the same meaning as they have at common law and to give this Chapter its most reasonable application. Words used in the present tense include the future. Words used in the singular number include the plural and words in the plural number include the singular. The word "may" is permissive. The word "shall" is mandatory and not discretionary.
- (1) **A Zones.** Those areas shown on the "Official Floodplain Zoning Map" which would be inundated by the "regional flood" as defined herein. These areas may be numbered or unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.
  - (2) **Accessory Structure or Use.** A detached subordinate structure or a use which is clearly incidental to and customarily found in connection with the principal structure or use to which it is related and which is located on the same lot as that of the principal structure or use.
  - (3) **Basement.** Any enclosed area of a building having its floor subgrade, i.e., below ground level, on all sides.
  - (4) **Bulkhead Line.** A geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the Department of Natural Resources pursuant to Section 30.11, Wis. Stats., and which allows limited filling between this bulkhead line and the original ordinary high-water mark, except where such filling is prohibited by the floodway provisions of this Chapter.
  - (5) **Certificate of Compliance.** A certification issued by the Zoning Administrator stating that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this Chapter.
  - (6) **Channel.** A natural or artificial watercourse with definite bed and banks to confine and conduct the normal flow of water.
  - (7) **Crawlways or Crawl Space.** An enclosed area below the first usable floor of a building, generally less than five (5) feet in height, used for limited access to plumbing and electrical utilities.
  - (8) **Department.** The Wisconsin Department of Natural Resources.
  - (9) **Development.** Any artificial change to improved or unimproved real estate, including but not limited to construction of buildings, structure or accessory structures; the construction of additions or substantial improvements to buildings, structures or accessory structures; the placement of buildings or structures; mining, dredging, filling, grading, paving, excavation or drilling operations; and the storage, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities.

- (10) **Dryland Access.** A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.
- (11) **Encroachment.** Any fill, structure, building, use or development in the floodway.
- (12) **Existing Mobile Home Park or Mobile Home Subdivision.** A parcel (or contiguous parcels) or land divided into two (2) or more mobile home lots for rent or sale for which the construction of facilities for servicing the lots (including, as a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed before the effective date of this Chapter.
- (13) **Expansion to Existing Mobile/Manufactured Home Park.** means the preparation of additional sites by the construction of facilities for servicing the lots on which the mobile homes are to be placed. This includes installation of utilities, either final site grading, pouring pads, or construction of streets.
- (14) **Federal Emergency Management Agency (FEMA).** The federal agency that administers the National Flood Insurance Program. This agency was previously known as the Federal Insurance Administration (FIA) or the Department of Housing and Urban Development (HUD).
- (15) **Flood or Flooding.** A general and temporary condition of partial or complete inundation of normally dry land areas caused by:
  - a. The overflow or rise of inland waters;
  - b. The rapid accumulation or runoff of surface waters from any source;
  - c. The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; and
  - d. The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.
- (16) **Flood Frequency.** The probability of a flood occurrence. A flood frequency is generally determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average, once in a specified number of years or as a percent (%) chance of occurring in any given year.
- (17) **Flood Fringe.** That portion of the floodplain outside of the floodway which is covered by flood waters during the regional flood, and generally associated with standing water rather than flowing water.
- (18) **Flood Hazard Boundary Map.** A map prepared by FEMA, designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A Zones and do not contain floodway lines or regional flood elevations. Said map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance program.
- (19) **Flood Insurance Study.** A technical engineering examination, evaluation and determination of the municipal flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and regional flood elevations and may provide floodway lines. The flood hazard areas are

designated as unnumbered and numbered A-Zones. Flood insurance study maps form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.

- (20) **Floodplain.** That land which has been or may be hereafter covered by flood water during the regional flood. The floodplain includes the floodway and the flood fringe and may include other designated floodplain areas for regulatory purposes.
- (21) **Floodplain Island.** A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.
- (22) **Floodplain Management.** The full range of public policy and action for insuring wise use of floodplains. It includes everything from the collection and dissemination of flood data to the acquisition of floodplain lands and the enactment and administration of codes, ordinances and statutes for land use in the floodplain.
- (23) **Flood Profile.** A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.
- (24) **Floodproofing.** Any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding for the purpose of reducing or eliminating flood damage.
- (25) **Flood Protection Elevation.** An elevation two (2) feet of freeboard above the water surface profile associated with the regional flood. (Also see: Freeboard.)
- (26) **Floodway.** The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.
- (27) **Flood Storage.** Those floodplain areas where storage of floodwaters has been taken into account in reducing the regional flood discharge.
- (28) **Freeboard.** Means a flood protection elevation requirement designed as a safety factor which is usually expressed in terms of a specified amount of feet above a calculated flood level. Freeboard compensates for the many unknown factors that contribute to flood heights greater than the height calculated. These factors include, but are not limited to, ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of urbanization on the hydrology of the watershed, loss of flood storage areas due to development and aggradation of the river or stream bed.
- (29) **Habitable Buildings.** Any building, or portion thereof, used for human habitation.
- (30) **Hearing Notice.** Publication or posting meeting the requirements of Ch. 985, Wis. Stats., Class 1 notice is the minimum required for appeals: Published once at least one (1) week (seven days) before the hearing. Class 2 notice is the minimum required for all zoning ordinances and amendments including map amendments, published twice, once each week consecutively, the last at least a week (7 days) before the hearing. Local ordinances or bylaws may require additional notice, exceeding these minimums.
- (31) **High Flood Damage Potential.** Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.

- (32) **Historic Structure.** Any structure that is:
- a. Listed individually in the National Register of Historic Places 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 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 by an approved state program, as determined by the Secretary of the Interior; or directly by the Secretary of the Interior in states without approved programs.
- (33) **Human Habitation.** A human residence or dwelling.
- (34) **Increase in Regional Flood Height.** A calculated upward rise in the regional flood elevation, equal to or greater than 0.01 foot, resulting comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.
- (35) **Land Use.** Any nonstructural use made of unimproved or improved real estate. (Also see Development.)
- (36) **Mobile Home or Manufactured Home.** A structure transportable in one (1) or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. For the purpose of this Chapter, it does not include recreational vehicles or travel trailers.
- (37) **Municipality or Municipal.** The Village governmental units enacting, administering and enforcing this floodplain zoning Chapter.
- (38) **NGVD or National Geodetic Vertical Datum.** Elevations referenced to mean sea level datum, 1929 adjustment.
- (39) **Nonconforming Structure.** An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this Chapter for the area of floodplain which it occupies. (For example, an existing residential structure in the flood fringe district is a conforming use. However, if the first floor is lower than the flood protection elevation, the structure is nonconforming.)
- (40) **Nonconforming Use.** A nonconforming use is an existing lawful use or accessory use of a structure, building which is not in conformity with the provisions of this Chapter for the area of the floodplain which it occupies. (Such as a residence in the floodway.)
- (41) **Obstruction to Flow.** Any development which physically blocks the conveyance of floodwaters such that this development by itself or in conjunction with any future similar development will cause an increase in regional flood height.

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- (42) **Official Floodplain Zoning Map.** That map, adopted and made part of this Chapter, which has been approved by the Department of Natural Resources and FEMA.
- (43) **Open Space Use.** Those uses having a relatively low flood damage potential and not involving structures.
- (44) **Ordinary High-Water Mark.** The point on the bank or shore up to which the presence and action or surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.
- (45) **Person.** An individual, or group of individuals, corporation, partnership, association, municipality or state agency.
- (46) **Private Sewage System.** A sewage treatment and disposal system serving a single structure with a septic tank and soil absorption field located on the same parcel as the structure. This term also means an alternative sewage system approved by the Department of Industry, Labor and Human Relations including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one (1) structure or a system located on a different parcel than the structure.
- (47) **Public Utilities.** Those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.
- (48) **Regional Flood.** A flood determined to be representative of large floods known to have occurred in Wisconsin or which may be expected to occur on a particular lake, river or stream once in every one hundred (100) years.
- (49) **Structure.** Any man-made object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, which includes, but is not limited to, such objects as roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.
- (50) **Substantial Improvements.**
- a. Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the present equalized assessed value of the structure either before the improvement or repair is started or if the structure has been damaged, and is being restored, before the damage occurred. The term does not, however, include either:
    1. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which existed before the improvement began, was identified by a municipal official and are necessary to assure safe living conditions; or
    2. Any alteration of a designated historical structure or site documented as deserving preservation by the Wisconsin State Historical Society, or listed in the National Register of Historic Places provided the alteration will not preclude the structure's continued designation as an historic structure.

- b. Ordinary maintenance repairs are not considered structural repairs, modifications or additions. Such ordinary maintenance repairs include internal and external painting, decorating, paneling, and the replacement of doors, windows, and other nonstructural components. "Substantial improvement" begins when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.
- (51) **Unnecessary Hardship.** Those circumstances which are special conditions affecting a particular property, which are not self-created, have made strict conformity with restrictions governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the Chapter.
- (52) **Variance.** An authorization granted by the Board of Appeals to construct, alter or use a structure in a manner which is inconsistent with the dimensional standards contained in this Chapter.
- (53) **Watershed.** The entire region or area contributing runoff or surface water to a particular watercourse or body of water.
- (54) **Water Surface Profile.** A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.
- (55) **Well.** An excavation opening in the ground made by digging, boring, drilling, driving or other methods for the purpose of obtaining groundwater regardless of its intended use.