

## Chapter 38 FLOODS\*

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\***Cross references:** Buildings and building regulations, ch. 14; health and welfare, ch. 42; mobile homes, ch. 54; planning, ch. 66; subdivisions, ch. 86; zoning, ch. 106.

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## ARTICLE I. IN GENERAL

### Sec. 38-1. Definitions.

- (a) Unless specifically defined in subsection (b) of this section, words and 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. The singular number includes the plural and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.
- (b) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*A zones* means those areas shown on the official floodplain zoning map which would be inundated by the regional flood as defined in this section. 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.

*Accessory structure or use* means 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.

*Basement* means any enclosed area of a building having its floor subgrade, i.e., below ground level, on all sides.

*Building.* See Structure.

*Bulkhead line* means a geographic line along a reach of navigable water than has been adopted by a municipal ordinance and approved by the department of natural resources pursuant to Wis. Stats. § 30.11, and which allows limited filling between this bulkhead line and the original ordinary highwater mark, except where such filling is prohibited by the floodway provisions of this chapter.

*Certificate of compliance* means 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.

*Channel* means a natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.

*Crawlways or crawl space* means an enclosed area below the first usable floor of a building, generally less than five feet in height, used for limited access to plumbing and electrical utilities.

*Department* means the state department of natural resources.

*Development* means any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures 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.

*Dryland access* means 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.

*Encroachment* means any fill, structure, building, use or development in the floodway.

*Existing manufactured or mobile home park or subdivision.* A parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale on which the construction of facilities for servicing the lots, including, at 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 the ordinance from which this chapter is derived.

*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.

*Federal emergency management agency (FEMA)* means the federal agency that administers the national flood insurance program. This agency was previously known as the Federal Insurance Administration (FIA) or Department of Housing and Urban Development (HUD).

*Flood or flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas caused by:

- (1) The overflow or rise of inland waters;
- (2) The rapid accumulation or runoff of surface waters from any source;
- (3) The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; and
- (4) 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.

*Flood frequency* means the probability of a flood occurrence which 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.

*Flood fringe* means that portion of the floodplain outside of the floodway which is covered by floodwaters during the regional flood and generally associated with standing water rather than flowing water.

*Flood hazard boundary map* means a map prepared by FEMA designating approximate flood hazard area. Flood hazard areas are designated as unnumbered A zones and do not contain floodway lines or regional flood elevations. Such map forms the basis for both the regulatory and insurance aspects of the national flood insurance program.

*Flood insurance study* means a technical engineering examination, evaluation, and determination of the local 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 numbered and unnumbered A zones. Flood insurance study maps form the basis for both the regulatory and the insurance aspects of the national flood insurance program.

*Flood profile* means 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.

*Flood protection elevation* means an elevation two feet of freeboard above the water surface profile elevation designated for the regional flood. Also see Freeboard.

*Flood storage* means those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.

*Floodplain* means that land which has been or may be 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.

*Floodplain island* means a natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.

*Floodplain management* means the full range of public policy and action for ensuring 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.

*Floodproofing* means 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.

*Floodway* means the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.

*Freeboard* means a flood protection elevation requirement designed as a safety factor which is usually expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for the effects of any factors that contribute to flood heights greater than those 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 aggregation of the river or stream bed.

*Habitable buildings* means any building or portion thereof used or designed for human habitation.

*Hearing notice* means publication or posting meeting the requirements of Wis. Stats.

ch. 985. Class 1 notice is the minimum required for appeals: published once at least one 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 (seven days) before the hearing. Local ordinances or bylaws may require additional notice exceeding these minimums.

*High flood damage potential* means 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.

*Historic structure* means any structure that is:

- (1) 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;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) 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.

*Increase in regional flood height* means a calculated upward rise in the regional flood elevation, equal to or greater than 0.01 foot, resulting by a 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 contractions coefficients and discharge.

*Land use* means any nonstructural use made of unimproved or improved real estate. Also see Development.

*Mobile home or manufactured home* means a structure transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. For the purpose of this chapter, it does not include recreational vehicles or travel trailers which remain licensed and ready for highway use and remain on site less than 180 days.

*Municipality or municipal* means the county, city or village governmental units enacting, administering and enforcing this zoning chapter.

*NGVD or National Geodetic Vertical Datum* means elevations referenced to mean sea level datum, 1929 adjustment.

*Nonconforming structure* means an existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this chapter for the area of the

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.

*Nonconforming use* means an existing use or accessory use of a structure or 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.

*Obstruction to flow* means 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.

*Official floodplain zoning map* means that map, adopted and made part of this chapter, as described in section 38-10, which has been approved by the department of natural resources and FEMA.

*Open space use* means those uses having a relatively low flood damage potential and not involving structures.

*Ordinary highwater mark* means the point on the bank or shore up to which the presence and action of 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.

*Person* means an individual, or group of individuals, corporation, partnership, association, municipality or state agency.

*Private sewage system* means 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 structure or a system located on a different parcel than the structure.

*Public utilities* means 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.

*Regional flood* means a flood determined to be representative of large floods known to have occurred in the state or which may be expected to occur on a particular lake, river or stream once in every 100 years.

*Structure* means any manmade object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.

*Substantial improvement* means any structural repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent 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, which was identified by a municipal official and is necessary to assure safe living conditions.
- (2) Any alteration of a designated historic structure or site documented as deserving preservation by the state historical society, or listed on the National Register of Historic Places, provided the alteration will not preclude the structure's continued designation as an historic structure.

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.

*Unnecessary hardship* means special conditions affecting a particular property, which were 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.

*Variance* means an authorization by the board of adjustment or appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in this chapter.

*Water surface profile* means 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.

*Watershed* means the entire region or area contributing runoff or surface water to a particular watercourse or body of water.

*Well* means an excavation opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.

**Cross references:** Definitions generally, § 1-2.

### **Sec. 38-2. Statutory authorization.**

This chapter is adopted pursuant to the authorization in Wis. Stats. §§ 61.35 and 62.23, for villages and cities; Wis. Stats. § 87.30.

### **Sec. 38-3. Finding of fact; statement of purpose.**

- (a) Uncontrolled development and use of the floodplains, rivers or streams of this municipality would adversely affect the public health, safety, convenience and general welfare, and impair the tax base.
- (b) To regulate development in flood hazard areas to protect life, health and property, the city council does ordain that the purpose of this chapter is to:

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

#### **Sec. 38-4. Interpretation.**

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements liberally construed in favor of the city council, and shall not be deemed a limitation on or repeal of any other powers granted by the state statutes. Where a provision of this chapter is required by a standard in Wis. Admin. Code ch. NR 116, where the chapter provision is unclear, the provision shall be interpreted in light of the Wis. Admin. Code ch. NR 116 standards in effect on the date of the adoption of the ordinance from which this chapter is derived or in effect on the date of the most recent text amendment to this chapter.

#### **Sec. 38-5. Compliance.**

Any development or use within the areas regulated by this chapter shall be in full compliance with the terms of this chapter, and other applicable local, state and federal regulations.

#### **Sec. 38-6. 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 Wis. Stats. § 13.48(13) applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the state department of transportation are exempt when Wis. Stats. § 30.12(4)(a) applies.

#### **Sec. 38-7. Abrogation and greater restrictions.**

- (a) This chapter supersedes all the provisions of any municipal zoning ordinance enacted under Wis. Stats. § 62.23 for cities or Wis. Stats. § 87.30, which relates 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) This chapter is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.

**Sec. 38-8. Warning and disclaimer of liability.**

The degree of flood protection 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. Therefore, this chapter does not imply that areas outside of the delineated floodplains; or permitted land uses within the floodplain, will be totally free from flooding and associated flood damages. Nor does this chapter create liability on the part of, or a cause of action against, the municipality or any officer or employee thereof for any flood damage that may result from reliance on this chapter.

**Sec. 38-9. Areas to be regulated.**

Areas regulated by this chapter include all areas within the limits of the municipality that would be covered by the regional flood and include floodplain islands designated on the official map where emergency rescue and relief routes would be inundated by the regional flood.

**Sec. 38-10. Official map.**

The boundary of the floodplain districts, including the floodway, floodfringe and other floodplains districts, are those areas designated as floodplains or A zones on that certain map of the city known as the Flood Insurance Study from the Federal Emergency Management Agency (FEMA) which has been most recently approved (as defined by the respective agency) by both FEMA and the department of natural resources. Such map is the official floodplain zoning map. If more than one map is referenced the regional flood profiles govern boundary discrepancies according to section 38-13.

(Ord. No. OR00-18, § I, 10-9-2000)

**Sec. 38-11. Annexed areas.**

The 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 municipality until the municipality adopts and enforces an ordinance which meets the requirements of Wis. Admin. Code ch. NR 116. These annexed lands are described on the municipality'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 municipal zoning administrator.

**Sec. 38-12. Establishment of districts.**

The regional floodplain areas are divided into three districts defined in section 38-1 and 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 floodwaters.

- (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 floodwater during the regional flood. It includes both the floodway and flood fringe districts.

### **Sec. 38-13. 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 shall be initially determined by the zoning administrator using the criteria in this section. Where the zoning administrator finds that there is a significant difference between the map and the actual field conditions, the map shall be amended using the procedures established in section 38-42. Disputes between the zoning administrator and an applicant over the location of the district boundary line shall be settled according to section 38-39.
- (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 map and actual field conditions, the map shall be amended. Where a map amendment has been approved by both the city council and the department, the zoning administrator shall have the authority to grant or deny a land use permit.

### **Sec. 38-14. 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 feet above the regional flood elevation, the fill is contiguous to land lying outside the floodplain district, and the map is amended pursuant to section 38-42. To remove flood insurance requirements, FEMA must first revise the flood insurance rate map or issue a letter of map amendment or revision.

**Sec. 38-15. Public information.**

- (a) Where useful, marks or 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.

Secs. 38-16--38-35. Reserved.

**ARTICLE II. ADMINISTRATION AND ENFORCEMENT**

**Sec. 38-36. Administration.**

Where a zoning administrator, planning agency or a board of adjustment/appeals has already been appointed to administer a zoning ordinance adopted under Wis. Stats. §§ 59.97, 59.971 or 62.23(7), these officials shall also administer this chapter.

**Sec. 38-37. Zoning administrator.**

- (a) *Duties and powers.* The zoning administrator is authorized to administer the provisions of this chapter and shall have the following duties and powers:
  - (1) Advise applicants of the provisions of this chapter; assist them in preparing permit applications and appeals, and ensure that the regional flood elevation for the proposed development is shown on all permit applications.
  - (2) Issue permits and inspect properties for compliance with provisions of this chapter and issue certificates of compliance where appropriate.
  - (3) Keep records of all official actions such as:
    - a. All permits issued, inspections made, and work approved.
    - b. Documentation of certified lowest floor and regional flood elevations for floodplain development.
    - c. Records of water surface profiles, floodplain zoning maps and ordinances, nonconforming uses and structures including changes, appeals, variances and amendments.
  - (4) Submit copies of the following items to the department district office:
    - a. Within ten days of the decision, a copy of any decisions on variances, appeals for map or text interpretations, and map or text amendments.
    - b. 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.

- (5) Investigate, prepare reports and report violations of this chapter to the appropriate municipal zoning agency and the municipal attorney for prosecution. Copies of the violation reports shall also be sent to the department district office.
  - (6) Submit copies of text and map amendments and biennial reports to the regional office of FEMA.
- (b) *Land use permit.* A land use permit shall be obtained from the zoning administrator before any new development or any change in the use of an existing building or structure, including sewage disposal systems and water supply facilities, may be initiated. Application 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 highwater 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 system 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 vertical datum (NGVD).
    - h. Data sufficient to determine the regional flood elevation in NGVD at the location of the development and to determine whether or not the requirements of divisions 2 and 3 of article III 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 38-61. This may include any of the

information noted in section 38-83(a).

(3) *Data requirements to analyze developments.*

- a. The applicant shall provide all survey data and computations required to show the effects of the project on flood heights, velocities and floodplain storage, for all subdivision proposals, as "subdivision" is defined in Wis. Stats. ch. 236 and other proposed developments exceeding five acres in area or where the estimated cost exceeds \$125,000.00. 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. 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.
- b. The department will determine regional flood 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 data in section 38-124 where appropriate, to the department with the request for analysis.

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

(c) *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 for such certificate shall be concurrent with the applicant for a permit.
- (3) The certificate of compliance shall be issued within ten days after written notification of completion of the work specified in the permit, provided the building or premises or proposed use conforms with all 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 engineer or registered architect that floodproofing adequacy meets the requirements of section 38-41.

- (d) *Other permits.* The applicant must 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 USC 1334.

**Sec. 38-38. Plan commission.**

- (a) The plan commission shall:
  - (1) Oversee the functions of the office of the zoning administrator; and
  - (2) Review and make recommendations to the city council on all proposed amendments to this chapter, maps and text.
- (b) The plan commission shall not:
  - (1) Grant variances to the terms of this chapter in place of action by the board of adjustment/appeals; or
  - (2) Amend the text or zoning maps in place of official action by the city council.

**Sec. 38-39. Board of adjustment/appeals.**

- (a) *Authorized.* The appropriate board created under Wis. Stats. § 62.23(7)(e) for cities or villages is authorized or shall be appointed to act as the board of adjustment/appeals for the purposes of this chapter. The board of adjustment/appeals shall exercise the powers conferred by state statute 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 adjustment/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.*
  - (1) *Initiation.* Appeals to the board may be taken by any person aggrieved or by any 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 30 days unless otherwise provided by the rules of the board, by filing with the official whose decision is in question, and with the board, a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the board all the papers constituting the record concerning the matter appealed.
  - (2) *Notice and hearing for appeals including variances.*

- a. *Notice.* The board shall:
    - 1. Fix a reasonable time for the hearing.
    - 2. Publish adequate notice pursuant to state statutes, specifying the date, time, place and subject of the hearing.
    - 3. Ensure that notice shall be mailed to the parties in interest and the district office of the department at least ten days in advance of the hearing.
  - b. *Hearing.* Any party may appear in person or by agent or attorney. The board shall:
    - 1. Resolve boundary disputes according to subsection (d) of this section.
    - 2. Decide variance applications according to subsection (e) of this section.
    - 3. Decide appeals of permit denials according to section 38-40.
- (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 days of the decision.
  - c. Be a written determination signed by the chairman 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.
- (d) *Boundary disputes.* The following procedure shall be used by the board of adjustments/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 adjustment/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 section 38-42.

(e) *Variance.*

- (1) The board of adjustment/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 practical difficulty or unnecessary hardship on the applicant.
  - b. The hardship is due to adoption of this chapter 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 in section 38-3(b).
- (2) A variance shall not:
  - a. Grant, extend or increase any use 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 of a basement or crawlway below the regional flood elevation for residential or commercial structures.
  - g. Allow actions without the amendments to this chapter or map required in section 38-42(a).
  - h. Allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.
- (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. 38-40. Review of appeals of permit denials.**

- (a) The zoning agency as designated in section 38-38 or board of adjustment/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 38-37(b).
  - (2) Floodway/flood fringe determination data in section 38-124.
  - (3) Data listed in section 38-83(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 38-39.
  - (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 all 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. 38-41. 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) Floodproofing measures shall be designed to:
- (1) Withstand the flood pressures, depths, velocities, uplift and impact forces, and other factors associated with the regional flood.
  - (2) Ensure protection to the flood protection elevation.
  - (3) Provide anchorage of structures to foundations to resist flotation and lateral movement.
  - (4) Ensure 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 floodwaters into the systems.
- (6) Cutoff valves on sewer lines or elimination of gravity flow basement drains.

### **Sec. 38-42. Amendments.**

- (a) The city council may change or supplement 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:
  - (1) Any change to the official floodplain zoning map including the floodway line or boundary of any floodplain area.
  - (2) Correction of significant discrepancies between the water surface profiles and floodplain zoning maps.
  - (3) 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.
  - (4) Any fill or encroachment into the floodplain that will obstruct flow causing an increase of 0.01 foot or more in regional flood height.
  - (5) Any upgrading of this chapter's text required by Wis. Admin. Code § NR 116.05, or otherwise required by law, or for changes by the municipality.
- (b) Amendments to this chapter may be made upon petition of any interested party according to the provisions of Wis. Stats. § 62.23 for cities and villages. Such petitions shall include all necessary data required by sections 38-37(b) and 38-124.
  - (1) Copies of any amendment proposed shall be referred to the zoning agency for a public hearing and recommendation to the city council. 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 hearing. The amendment procedure shall comply with the provisions of Wis. Stats. § 62.23 for cities and villages.
  - (2) No amendment to the maps or text of this chapter shall become effective until reviewed and approved by the department.
  - (3) 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 notify local units of government before the amendment can be approved by the city council.

- (4) When considering amendments to the official floodplain zoning map, in areas where no water surface profiles exist, the zoning agency or board shall consider data submitted by the department, the zoning administrator's visual on-site inspections and other available information. See section 38-13.

### **Sec. 38-43. Enforcement and penalties.**

Any violation of the provisions of this chapter by any person shall be unlawful and shall be referred to the municipal attorney, who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to the municipality a penalty of not less than \$50.00 and not more than \$200.00, together with a taxable cost of such action. Each day of continued violation shall constitute a separate offense. Every violation of this chapter is a public nuisance and the creation may be enjoined and the maintenance may be abated by action at suit of the municipality, the state, or any citizen thereof pursuant to Wis. Stats. § 87.30.

Secs. 38-44--38-60. Reserved.

## **ARTICLE III. FLOODPLAIN DISTRICTS**

### **DIVISION 1. GENERALLY**

#### **Sec. 38-61. Hydraulic and hydrologic analyses.**

- (a) No development, except as provided in subsection (b) of this section, shall be allowed in floodplain areas which will:
  - (1) Cause an obstruction to flow, defined in section 38-1 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
  - (2) Cause an increase in regional flood height due to floodplain storage area lost, which is equal to or exceeding 0.01 foot.
- (b) 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 section 38-42, 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.
- (c) 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.

#### **Sec. 38-62. 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

local zoning official shall notify, in writing, adjacent municipalities, the appropriate district office of the department of natural resources and the appropriate office of the Federal Emergency Management Agency 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.

### **Sec. 38-63. Development under Wis. Stats. chs. 30 and 31.**

Development which requires a permit from the department of natural resources, under Wis. Stats. chs. 30 and 31, 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 this chapter are made according to section 38-42.

Secs. 38-64--38-80. Reserved.

## **DIVISION 2. FLOODWAY (FW) DISTRICT**

### **Sec. 38-81. Applicability.**

The provisions of this division apply to all areas mapped as floodway on the official floodplain zoning maps, and to those portions of the general floodplain district determined to be floodway according to the procedures in section 38-124.

### **Sec. 38-82. Permitted uses.**

The following open space uses are allowed in the floodway district and the floodway portion of the general floodplain district, providing they are not prohibited by any other ordinance; they meet the standards in sections 38-83 and 38-84; and all permits or certificates have been issued according to section 38-37:

- (1) Agricultural uses, such as: general farming, pasturing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming and wild crop harvesting.
- (2) Nonstructural industrial and commercial uses, such as loading areas, parking areas, and airport landing strips.
- (3) 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, and hiking and horseback riding trails, subject to the fill limitations of section 38-83(d).
- (4) Uses or structures accessory to open space uses, or those classified as historic structures, that are not in conflict with the provisions in sections 38-83 and 38-84.

- (5) Extraction of sand, gravel or other material according to section 38-83(d).
- (6) Functionally water-dependent uses such as docks, piers or wharves, including those 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 Wis. Stats. chs. 30 and 31.
- (7) Public utilities, streets and bridges, according to section 38-83(c).

### **Sec. 38-83. Standards for developments.**

(a) *Generally.*

- (1) Any development in floodway areas shall meet all of the provisions of division 1 of this article and 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 38-61:
  - 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 it is determined the project will increase flood elevations upstream or downstream 0.01 foot or more, based on the data submitted for subsection (a)(2) of this section.

(b) *Structures.* In or over floodway areas, only structures which are accessory to permanent open space uses, those classified as historic structures, or which 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 floodwaters. Structures shall be constructed with the longitudinal axis parallel to the direction of flow of floodwaters, 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 the particular area.

(c) *Public utilities, streets, bridges.* Public utilities, streets and bridges may be allowed by permit, provided that:

- (1) Adequate floodproofing measures are provided to the flood protection elevation.
  - (2) Construction does not cause an increase in the regional flood height, except where the water surface profiles, floodplain zoning maps and floodplain zoning ordinance are amended, as needed to reflect any changes resulting from such construction.
- (d) *Fills and deposition of materials.* Fills or deposition of materials may be allowed by permit, provided that:
- (1) The requirements of section 38-61 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 Wis. Stats. ch. 30, and a permit pursuant to section 404 of the Federal Water Pollution Control Act, amendments of 1972, 33 USC 1334, has been issued, if applicable, and the other requirements of this division are met;
  - (3) The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading sufficient to prevent erosion; and
  - (4) Such fills are not associated with private or public solid waste disposal.

#### **Sec. 38-84. Prohibited uses.**

All uses not listed as permitted uses in section 38-82 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:

- (1) 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.
- (2) The 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.
- (3) Any uses which are not in harmony with, or which may be detrimental to, the uses permitted in the adjoining districts.
- (4) 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 Wis. Admin. Code ch. ILHR 83.
- (5) 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 Wis. Admin. Code chs. NR 111 and NR 112.
- (6) Any solid and hazardous waste disposal sites, whether public or private.
- (7) Any wastewater treatment ponds or facilities except those permitted under Wis.

Admin. Code § NR 110.15(3)(b).

- (8) Any sanitary sewer or water supply lines except those to service existing or proposed development located outside the floodway which complies with the regulations for the floodplain area occupied.

Secs. 38-85--38-100. Reserved.

### **DIVISION 3. FLOOD FRINGE (FF) DISTRICT**

#### **Sec. 38-101. Applicability.**

The provisions of this division 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 floodfringe area pursuant to section 38-124.

#### **Sec. 38-102. 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 38-103 are met, that the use is not prohibited by this chapter or any other ordinance or any other local, state or federal regulation and that all permits or certificates specified in section 38-37 have been issued.

#### **Sec. 38-103. Standards for development.**

- (a) *Generally.* All of the provisions of section 38-61 shall apply in addition to the following requirements 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 floor, excluding the basement or crawlway, shall be at or above the flood protection elevation (which is a point two feet above the regional flood elevation) on fill where subsection (b)(2) of this section is applicable. The fill elevation shall be one foot or more above the regional flood elevation extending at least 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 adjustment/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 basement or crawlway below the regional flood elevation.
  - (3) Contiguous dryland access, defined in section 38-1, 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 (b)(4) of this section.

- (4) In existing developments where existing streets or sewer lines are at elevations which make compliance with subsection (b)(3) of this section impractical, the municipality may permit new development and substantial improvements where access roads are at or below the regional flood elevation, provided:
  - a. The municipality has written issuance from the appropriate local units of police, fire and emergency services that rescue and relief will be provided to the structure by wheeled vehicles, considering the anticipated depth, duration and velocity of the regional flood event; or
  - b. The municipality 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 78-83(b)(1), (3) and (4), and subsection (b) of this section. A lesser degree of protection, compatible with these criteria and the criteria in subsection (d) of this section may be permissible for an accessory structure or use providing that the site is not inundated to a depth greater than two feet or subjected to flood velocities greater than two feet per second during 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 subsection (b) of this section. Storage yards, parking lots and other accessory structures or land uses may be at lower elevations, subject to the requirements of subsection (f) of this section. However, no such area in general use by the public shall be inundated to a depth greater than two feet or subjected to flood velocities greater than two feet per second during the regional flood. Inundation of such yards or parking areas exceeding two 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 38-41, or any combination thereof. On streets 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) of this section may be permissible for storage yards, parking lots and other accessory structures or uses.
- (f) *Storage of materials.* The storage of materials that are buoyant, flammable, explosive, or which in times of flooding could be injurious to property, water quality or human, animal, plant, fish or aquatic life, shall be at or above the flood protection elevation for the particular area or floodproofed in compliance with section 38-41. Adequate measures shall be taken to assure that such 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 the following:
- (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 38-41, to the flood protection elevation.
  - (2) Minor or auxiliary roads or nonresidential 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 Wis. Admin. Code. ch. ILHR 83.
- (i) *Wells.* All public or private wells shall be floodproofed to the flood protection elevation, pursuant to section 38-41, and shall meet the applicable provisions of Wis. Admin. Code chs. NR 111 and NR 112.
- (j) *Solid waste disposal sites.* All public or private solid or hazardous waste disposal sites 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 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 elevation; 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 180 days, which are unlicensed or are not ready for highway use, shall meet the residential development standards for the flood fringe in subsection (b) of this section.

Secs. 38-104--38-120. Reserved.

## **DIVISION 4. GENERAL FLOODPLAIN (GFP) DISTRICT**

### **Sec. 38-121. Applicability.**

The provisions for the general flood plain district shall apply to all floodplains for which regional flood data 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 designated in the flood fringe district or floodway district, as appropriate.

### **Sec. 38-122. Permitted uses.**

- (a) The general floodplain district encompasses both floodway and flood fringe areas. Therefore, a determination shall be made pursuant to section 38-124 to determine whether the proposed use is located within a floodway or flood fringe area.
- (b) Those uses permitted in floodways (section 38-82) and floodfringe areas (section 38-102) are allowed within the general floodplain district, according to the standards of section 38-123 and provided that all permits or certificates required under section 38-37 have been issued.

### **Sec. 38-123. Standards for development.**

Once it is determined according to section 78-124 that a proposed use is located within a floodway, the provisions of division 2 of this article shall apply. Once determined that the proposed use is located within the flood fringe, the provisions of division 3 of this article shall apply. All provisions of the remainder of this chapter apply to either district.

### **Sec. 38-124. Determining floodway and flood fringe limits.**

Upon receiving an application for development within the general floodplain district, the zoning administrator shall:

- (1) Require the applicant to submit, at the time of application, two 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 and 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 floodproofing measures.
- (2) 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:
  - a. 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.

- b. 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.
  - c. Profile showing the slope of the bottom of the channel or flow line of the stream.
  - d. Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage of materials, water supply and sanitary facilities.
- (3) Transmit one copy of the information described in subsections (1) and (2) of this section 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 section 38-37(b)(3) apply, the applicant shall provide all required information and computations, to delineate floodway boundaries and the effects of the project on flood elevations.

Secs. 38-125--38-140. Reserved.

## **ARTICLE IV. NONCONFORMING USES**

### **Sec. 38-141. Applicability.**

Insofar as the standards in this section are not inconsistent with the provisions of Wis. Stats. § 62.23(7)(h), for cities and villages, they shall apply to all nonconforming uses and nonconforming structures. 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 the passage of the ordinance from which this chapter is derived or any amendment thereto.

### **Sec. 38-142. Existing uses.**

The existing lawful use of a structure or building or its accessory use which is not in conformity with the provisions of this chapter may continue subject to the following conditions:

- (1) No modifications or additions to a nonconforming use or a nonconforming structure shall be permitted unless they are made in conformity with the provisions of this chapter for the area of the floodplain occupied. The words "modification" and "addition" include, but are not 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 12 consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall 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, 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, and the percentage of the structure's total current value those modifications represent.
- (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 50 percent 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 for residential and commercial uses in compliance with section 38-103(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 50 percent of the present equalized assessed value of the structure.

### **Sec. 38-143. Floodway areas.**

- (a) No modification or addition 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;
  - (2) Meets the requirements of section 38-142;
  - (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 38-41, 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 requirements of all municipal ordinances and

Wis. Admin. Code ch. ILHR 83.

- (c) No new well or modification to an existing well, used to obtain water for ultimate human consumption, shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing well in a floodway area shall meet the applicable requirements of all municipal ordinances and Wis. Admin. Code ch. NR 111 and NR 112.

**Sec. 38-144. Flood fringe areas.**

- (a) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a permit or variance by the municipality. In addition, the modification or addition shall be placed on fill or floodproofed to the flood protection elevation in compliance with the standards for that particular use in section 38-103, except where subsection (b) of this section is applicable.
- (b) Where compliance with the provisions of subsection (a) of this section would result in unnecessary hardship, and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the board of adjustment/appeals, using the procedures established in section 38-39, may grant a variance from those provisions of subsection (a) of this section for modifications or additions, using the criteria listed in this subsection. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted provided:
  - (1) No floor is allowed below the regional flood elevation for residential or commercial structures;
  - (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 feet;
  - (5) Flood velocities will not exceed two feet per second; and
  - (6) The structure will not be used for storage of materials described in section 38-103(b).
- (c) If neither the provisions of subsection (a) nor subsection (b) of this section 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-time basis only, if the addition:
  - (1) Meets all other regulations and will be granted by permit or variance;
  - (2) Does not exceed 60 square feet in area; and
  - (3) In combination with other previous modifications or additions to the building, does not exceed 50 percent 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 Wis. Admin. Code ch. ILHR 83.

- (e) All new wells, or addition to replacement, repair or maintenance of a well, shall meet the applicable provisions of this chapter and Wis. Admin. Code ch. NR 111 and NR 112.