

§ 370-30. Board of Appeals.

- A. Statutory authorization. The Zoning Board of Appeals established under § 12-3 of the Village Code 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. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- 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 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 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 10 days in advance of the hearing.
 - (2) Hearing. Any party may appear in person or by 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 § 370-31.
- (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 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 Plan Commission or the person contesting the location of the boundary to petition the governing body for a map amendment according to Article VIII. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- 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 this chapter will result in 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 this 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.
- (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;
 - (g) Allow actions without the required amendment to this chapter or map(s) described in § 370-34.
- G. When a variance is granted in a floodplain area, the Board shall notify the applicant, in writing, that increased flood insurance premiums may result. A copy of this notification shall be maintained with the variance appeal record.

§ 370-31. Appeals for permit denial.

- A. The Plan Commission or 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 § 370-28A;
 - (2) Floodway/flood-fringe determination data in § 370-23;
 - (3) Data listed in § 370-15A(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 § 370-30;
 - (2) Consider Plan Commission 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.

§ 370-32. 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. Where floodproofing measures, as defined in Article X of this chapter, 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) Ensure that the structural walls and floors are watertight and the interior remains completely dry during flooding without human intervention.
- B. Flooding 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.

§ 370-33. 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.

ARTICLE VIII

Amendments

§ 370-34. General provisions.

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 § NR 116.05(4), Wisconsin Administrative Code, or otherwise required by law.

§ 370-35. Procedures.

- A. Amendments to this chapter may be made upon petition of any interested party in accordance with the provisions of § 62.23, Wis. Stats. Such petitions shall include any necessary data required by §§ 370-23 and 370-28A.
- B. Copies of any amendment proposed to the Village Board shall be referred to the Plan Commission, described in § 370-29, 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 § 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 the governing body.

- E. When considering amendments to the Official Floodplain Zoning Map in areas where no water surface profiles exist the Plan Commission shall consider data submitted by the Department, the Zoning Administrator's visual on-site inspections and other available information.

ARTICLE IX Enforcement

§ 370-36. Violations and penalties.

Any violations of the provisions of this chapter by any person, firm, association, corporation (including building contractors), or his or their agent, 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 \$10 and not more than \$50, 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 § 87.30, Wis. Stats.

ARTICLE X Terminology

§ 370-37. Word usage.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them 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.

§ 370-38. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

A ZONES — Those areas shown on a municipality's Official Floodplain Zoning Map (see "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.

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.

BASE FLOOD — A flood having a 1% chance of being equalled or exceeded in any given year. (See also "regional flood.")

BASE FLOOD ELEVATION — An elevation equal to that which reflects the height of the base flood as defined above.

BOARD OF APPEALS — The body established under § 62.23, Wis. Stats., and § 12-3 of the Village Code and designated the "Zoning Board of Appeals." [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

BULKHEAD LINE — A geographic line along a reach of navigable body of water that has been adopted by a municipal ordinance and approved by the Department of Natural Resources pursuant to § 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.

CERTIFICATE OF COMPLIANCE — A certification 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 — A natural or artificial watercourse with definite bed and banks to confine and conduct the normal flow of water.

DEPARTMENT — The Wisconsin Department of Natural Resources.

DEVELOPMENT — Any artificial change to improved or unimproved real estate, including but not limited to 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.

DRY-LAND 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.

ENCROACHMENT — Any fill, structure, building, use or development in the floodway.

EXISTING MOBILE HOME PARK OR MOBILE HOME SUBDIVISION — A parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale for 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 this chapter.

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).

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.

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.

FLOOD-FRIDGE — 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 — 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.

FLOOD INSURANCE STUDY — A technical engineering examination, evaluation, and determination of the Village 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.

FLOODPLAIN — That land which has been or may be hereafter covered by floodwater 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 — A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.

FLOODPLAIN MANAGEMENT — 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.

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.

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.

FLOOD PROTECTION ELEVATION — An elevation two feet of freeboard above the water surface profile associated with the regional flood. (Also see "freeboard.")

FLOODWAY — The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.

FLOOD STORAGE — Those floodplain areas where storage of floodwaters has been taken into account in reducing the regional flood discharge.

FREEBOARD — 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 unknown 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 streambed.

HEARING NOTICE — Publication or posting meeting the requirements of Ch. 985, Wis. Stats. A Class 1 notice is the minimum required for appeals, published once at least one week (seven days) before the hearing. A 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 — 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.

HUMAN HABITATION — A human residence or dwelling.

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.

LAND USE — Any nonstructural use made of unimproved or improved real estate. (Also see Development.)

MOBILE HOME OR MANUFACTURED HOME — A structure transportable in one 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.

MUNICIPALITY or **MUNICIPAL** — The Village governmental units enacting, administering and enforcing this chapter.

NGVD or **NATIONAL GEODETIC VERTICAL DATUM** — Elevations referenced to mean sea level datum, 1929 adjustment.

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.)

NONCONFORMING USE — An existing lawful 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 — 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 — That map, adopted and made part of this chapter, which has been approved by the Department of Natural Resources and FEMA.

OPEN SPACE USE — Those uses having a relatively low flood damage potential and not involving structures.

ORDINARY HIGH-WATER MARK — 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 — An individual, or group of individuals, corporation, partnership, association, municipality or state agency.

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 Safety and Professional Services, 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 — 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 — 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 100 years.

STRUCTURE — Any man-made object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, streambed 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.

SUBSTANTIAL IMPROVEMENT — Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 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:

- A. Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or

- B. Any alteration of a structure or site documented as deserving preservation by the Wisconsin State Historical Society or listed on the National Register of Historic Places. 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. (For purposes of this definition, substantial improvement is considered to occur 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 — Those circumstances which are special conditions affecting a particular property, which are not self-created, and have made strict conformity with restrictions governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of this chapter.

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.

WATERSHED — The entire region or area contributing runoff or surface water to a particular watercourse or body of water.

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.

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.

