
28l. Floodplain Districts

Introduction

The Floodplain Districts also function as overlay districts, but are placed in a separate subchapter because of their length. This subchapter combines the provisions of two separate sections of the current ordinance, 28.04(20) and 28.105.

All overlay districts share a common relationship to the underlying or “primary” district. If there is a conflict between overlay and primary district requirements, the most restrictive standards usually apply – unless the ordinance states otherwise. Floodplain standards always override the underlying district standards.

28I-0700 General Provisions

(1) Statement of Purpose

Pursuant to Wis. Statutes sec. 62.23(7), this ordinance is intended to regulate floodplain development to:

- A. Protect life, health, and property;
- B. Maximize expenditures of public funds for flood control projects;
- C. Minimize rescue and relief efforts undertaken at the expense of the taxpayers;
- D. Minimize business interruptions and other economic disruptions;
- E. Minimize damages to public facilities in the floodplains;
- F. Minimize the occurrence of future flood blight areas in the floodplain;
- G. Discourage the victimization of unwary land and homebuyers;
- H. Prevent increases in flood heights that could increase flood damage and result in conflicts between property owners; and
- I. Discourage development in the floodplain if there is any practicable alternative to locate the activity, use, or structure outside the floodplain.

(2) Areas to be Regulated

This Subchapter regulates all areas that would be covered by the regional flood or base flood.

(3) Establishment of Districts

The regional floodplain area is divided into four (4) districts as follows:

- A. The F1 Floodway District is the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwaters.
- B. The F2 Flood Fringe District is that portion of the floodplain between the regional flood limits and the floodway.
- C. The F3 General Floodplain District consists of those areas that have been or may be covered by floodwater during the regional flood.

- D. The F4 Flood Storage District is that area of the floodplain where storage of floodwaters is calculated to reduce the regional flood discharge.

(4) Floodplain Maps

See Subchapter 28B, Zoning Districts and Maps, for listing of floodplain maps and determination of floodplain boundaries.

(5) Removal of Lands From Floodplain

Compliance with the provisions of this ordinance shall not be grounds for removing land from the floodplain unless it is filled at least two (2) feet above the regional or base flood elevation; the fill is contiguous to land outside the floodplain, and the map is amended.

(6) Warning and Disclaimer of Liability

The flood protection standards in this ordinance are based on engineering experience and scientific research. Larger floods may occur or the flood height may be increased by man-made or natural causes. This ordinance does not imply or guarantee that non-floodplain areas or permitted floodplain use areas will be free from flooding and flood damages. Nor does this ordinance create liability on the part of, or a cause of action against, the City of Madison or any officer or employee thereof for any flood damage that may result from reliance on this ordinance.

(7) General Development Standards

- A. No development shall be allowed in floodplain areas which will:
1. Obstruct flow, defined as development that blocks the conveyance of floodwaters by itself or with other development, increasing regional flood height; or
 2. Increase regional flood height due to floodplain storage area lost, which equals or exceeds 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 ordinance, the official floodplain zoning maps, floodway lines, and water surface profiles.
- C. The Zoning Administrator shall deny permits where it is determined that the proposed development will obstruct flow or increase regional flood heights 0.01 foot or greater based on the adopted Flood Insurance Rate Map or other adopted map, unless amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles.
- D. All proposed building sites in subdivisions or new developments in flood prone areas shall be reasonably free from flooding. If a proposed building site is in a flood prone area, all new construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads; be constructed with materials resistant to flood damage; be constructed by methods and practices that minimize flood damages; and be constructed with electrical, heating,

ventilation, plumbing, and air conditioning equipment and other service facilities designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. Subdivisions and all new development shall be reviewed for compliance with the above standards. All proposals (including manufactured home parks) shall include regional flood elevation and floodway data.

(8) Watercourse Alterations

No land use permit to alter or relocate a watercourse in a mapped floodplain shall be issued until the Zoning Administrator has notified in writing all adjacent municipalities, the Southern District Office of the DNR and the appropriate office of FEMA and required the applicant to secure all necessary state and federal permits. The flood-carrying capacity of any altered or relocated watercourse shall be maintained. As soon as practicable, but not later than six months after the date of the watercourse alteration or relocation, the Zoning Administrator shall notify FEMA of the changes by submitting appropriate technical or scientific data in accordance with the National Floodplain Insurance Program guidelines that shall be used to revise the Flood Insurance Rate Map, risk premium rates, and floodplain management regulations as required.

(9) Development Under Chapters 30 and 31, Wis. Stats

Development which requires a permit from the Department of Natural Resources, under Ch. 30 and 31, Wis. Stats., such as docks, piers, wharves, bridges, culverts, dams and navigational aids, may be allowed provided the necessary local permits are obtained and necessary amendments are made to the official floodway lines, water surface profiles, base flood elevations established in a flood insurance study, other data from an adopted flood insurance boundary map, floodplain zoning maps, and/or floodplain zoning ordinance.

(10) Nonconforming Uses

The existing lawful use of a structure or its accessory use that is not in conformity with the provisions of this ordinance may continue subject to the conditions set forth in Section 28I-0705(2).

(11) Compliance Required

Unless specifically exempted by law, all cities, villages, towns and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply if Wis. Stat. sec. 13.48(13) applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation is exempt when Wis. Stat. sec. 30.2022 applies.

(12) Floodproofing

- A. To withstand flood velocities, forces, and other factors associated with the regional flood, floodproofing measures shall be designed that will protect the structure or development to the flood protection elevation and such measures shall be certified by a registered professional engineer or architect.

- B. All flood-proofing measures shall be designed to:
 - 1. Withstand floor pressures, depths, velocities, uplift and impact forces and other regional flood factors;
 - 2. Protect structures to the flood protection elevation.
 - 3. Anchor structures to foundations to resist flotation and lateral movement; and
 - 4. Insure that structural walls and floors are watertight to the flood protection elevation, and the interior remains completely dry during flooding without human intervention.
- C. Flood-proofing measures may include the following:
 - 1. Installation of watertight doors, bulkheads and shutters.
 - 2. Reinforcement of walls and floors to resist rupture or collapse caused by water pressure or floating debris.
 - 3. Use of paints, membranes or mortars to reduce seepage of water through walls.
 - 4. Addition of mass or weight to structures to prevent flotation.
 - 5. Placement of essential utilities above the flood protection elevation.
 - 6. Installation of pumping facilities and/or subsurface drainage systems to relieve foundation wall and basement floor pressures and to lower water levels in structures.
 - 7. Construction of water supply wells and waste treatment systems to prevent the entry of flood waters.
 - 8. Installation of cutoff valves on sewer lines or the elimination of gravity basement drains.

(13) Public or Private Campgrounds

Public or private campgrounds shall have a low flood damage potential and shall meet the following provisions:

- A. The campground is approved by the Department of Health and Family Services.
- B. A land use permit for the campground is issued by the zoning administrator.
- C. The character of the river system and the elevation of the campground is such that a seventy-two (72) hour warning of an impending flood can be given to all campground occupants.
- D. There is an adequate flood warning procedure for the campground that offers the minimum notice required under this section to all persons in the campground. This procedure shall include a written agreement between the campground owner, the municipal emergency government coordinator and the chief law enforcement official which specifies the flood elevation at which evacuation shall occur, personnel responsible for monitoring flood elevations, types of warning systems to be used and the procedures for notifying at-risk parties, and the methods and personnel responsible for conducting

the evacuation.

- E. This agreement shall be for no more than one (1) calendar year, at which time the agreement shall be reviewed and updated - by the officials identified in sub. d to remain in compliance with all applicable regulations, including those of the state department of health and family services and all other applicable regulations.
- F. Only camping units are allowed.
- G. The camping units may not occupy any site in the campground for more than one hundred-eighty (180) consecutive days, at which time the camping unit must be removed from the floodplain for a minimum of twenty-four (24) hours.
- H. All camping units that remain on site for more than thirty (30) days shall be issued a limited authorization by the campground operator, a written copy of which is kept on file at the campground. Such authorization shall allow placement of a camping unit for a period not to exceed one hundred-eighty (180) days and shall ensure compliance with all the provisions of this section.
- I. The municipality shall monitor the limited authorizations issued by the campground operator to assure compliance with the terms of this section.
- J. All camping units that remain in place for more than one hundred-eighty (180) consecutive days must meet the applicable requirements in either sub. c. or d. for the floodplain district in which the structure is located.
- K. The campground shall have signs clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when a flood warning is issued.
- L. All service facilities, including but not limited to refuse collection, electrical service, natural gas lines, propane tanks, sewage systems and wells shall be properly anchored and placed at or floodproofed to the flood protection elevation.

(14) Application Requirements For Permits And Zoning Certificates

- A. Site Development Plan. Within the Floodplain Districts, all permit applications shall include a site development plan drawn to scale and containing the following information:
 - 1. Location, dimensions, area and elevation of the lot.
 - 2. Location of the ordinary high-water mark of any abutting navigable waterways.
 - 3. Location of any structures with distances measured from the lot lines and center line of all abutting streets highways.
 - 4. Location of any existing or proposed on-site sewage systems or private water supply systems.

5. Location and elevation of existing or future access roads.
 6. Location of floodplain and floodway limits on the property as determined from the official floodplain zoning maps.
 7. The elevation of the lowest floor of proposed buildings and any fill using National Geodetic and Vertical Datum (NGVD).
 8. 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 the Floodway District or the Floodfringe District apply.
 9. 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 Sec. 28.0700(7). This may include any of the information noted in Sec. 28I.0701(3).
- B. Data Required to Analyze Developments. 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 subdivisions or new developments exceeding five (5) acres in area or where the estimated cost exceeds one hundred twenty-five thousand dollars (\$125,000). The estimated costs of the proposal shall include all structural development, landscaping, access and road development, utilities, and other pertinent items, 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; and
 3. A surface drainage plan showing how flood damage will be minimized.

28I-0701 F1 Floodway District

(1) Applicability

The provisions of this section shall apply to all floodway areas on the floodplain zoning maps and to those portions of the F3 General Floodplain District determined to be in the floodway area.

(2) Permitted Uses

The following open space uses are permitted in the F1 Floodway District:

- A. Agricultural uses, including general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, and wild crop harvesting.
- B. Nonstructural industrial and commercial uses, including parking and loading areas and airport landing strips.
- C. Nonstructural recreational uses, including golf course, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game

farms, fish hatcheries, shooting trap and skeet activities, hunting and fishing areas, and hiking and horseback riding trails.

- D. Uses or structures accessory to open space uses or classified as historic structures.
- E. Public utilities, streets, and bridges.
- F. Extraction or deposition of sand, gravel or other materials.
- G. Functionally water-dependent uses, such as docks, piers or wharves, dams, flowage areas, culverts, navigational aids and river crossings of transmission lines, and pipelines that comply within Wis. Stats. Chs. 30 and 31.

(3) Standards for Developments in Floodway Areas

A. General.

- 1. Any development in floodway areas shall comply with the provisions of Section 28I.0700(7) 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 Sec. 28I.0700(7)A and B:
 - 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 if the project will increase flood elevations upstream or downstream 0.01 foot or more, based on the data submitted for Subparagraph b. above.

B. Structures. Structures accessory to permitted open space uses, classified as historical areas, or 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 and do not have a high flood damage potential;
 - 2. The structures are constructed and placed on the building site so as to increase flood heights less than 0.01 foot and minimally obstruction to the flow of floodwaters. Structures shall be constructed with the long axis parallel to the direction of flow of floodwaters, and approximately on the same line as adjoining structures;
 - 3. The structures are properly 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 at or above the flood protection elevation.
3. Public utilities, streets and bridges may be allowed by permit,

provided that:

- a. Adequate flood-proofing measures are provided to the flood protection elevation; and
 - b. Construction meets the standards in Sec. 28I.0700(7)A and B.
- C. Fills or deposition of materials may be allowed by permit, provided that:
1. The requirements of Sec. 28I.0700(7)A and B are met.
 2. No material is deposited in the navigable channel unless a permit has been granted by the Department of Natural Resources pursuant to Ch. 30, Wis. Stats., and a permit pursuant to S. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344 has been issued, if applicable, and the other requirements of this section are met.
 3. The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading sufficient to prevent erosion; and
 4. The fill is not classified as a solid or hazardous material.

28I-0702 F2 Flood Fringe District

(1) Applicability.

The provisions of this section shall apply to all areas within the F2 Flood Fringe District and to those portions of the F3 General Floodplain District determined to be in the flood fringe area. The F2 Flood Fringe District shall also include the A-zones so designated on the floodplain zoning district maps and for which floodways are delineated and mapped.

(2) Permitted Uses.

The following uses are permitted in the F2 Flood Fringe District and to those portions of the F3 General Floodplain District determined to be in the flood fringe area: Any building, structure or use otherwise allowed as permitted or conditional uses in the underlying primary zoning district, except for mobile home parks and solid waste disposal sites.

(3) Standards for Development in Flood Fringe Areas.

All of the provisions of Sec. 28I.0700(7)A and B shall apply in addition to the following requirements according to the use requested.

- A. Residential Uses. Any structure or building used for human habitation, including a manufactured home, 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 placed on fill at or above the flood protection elevation (which is a point two feet above the regional flood elevation) except where Subparagraph 2. below is applicable.

The fill elevation shall be one foot or more above the regional flood elevation extending at least fifteen (15) feet beyond the limits of the structure. The DNR may authorize other flood-proofing measures where existing streets or sewer lines are at elevations which make compliance impractical, provided the Board of Appeals grants a variance due to dimensional restrictions.

2. The basement or crawlway floor may be placed at the regional flood elevation provided it is flood-proofed to the flood protection elevation. No permit or variance shall allow any floor, basement or crawlway below the regional flood elevation.
3. Contiguous dry land access, 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 sub. 4.
4. In developments where existing street or sewer line elevations make compliance with sub. 3 impractical, the municipality may permit new development and substantial improvements where access roads are at or below the regional flood elevation, if:
 - a. The municipality has written assurance from police, fire, and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or
 - b. The municipality has a natural disaster plan approved by Wisconsin Emergency Management and the Department of Natural Resources.

B. Accessory Structures or Uses.

1. Except as provided in Subparagraph 2., below, an accessory structure that is not connected to a principal structure shall be constructed with its lowest floor at or above the Regional Flood Elevation.
2. An accessory structure that is not connected to the principal structure and which is less than six hundred (600) square feet in size and valued at less than ten thousand dollars (\$10,000) may be constructed with its lowest floor no more than two (2) feet below the regional flood elevation, provided that it is subject to flood velocities of no more than two (2) feet per second and that it meets all the provisions in Sec. 28I.0701(3)B and sub. E below.

C. 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 for residential uses above. Storage yards, surface parking lots and such uses may be at lower elevations, subject to the requirements of subparagraph E. below provided an adequate warning system exists to protect life and property.

D. 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, flood

walls, or other flood-proofing measures. Subject to the requirements in sub. E below, storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

- E. Storage or Processing of Materials. The storage or processing of materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or aquatic life, shall be stored at or above the flood protection elevation for the particular area or flood-protected. Adequate measures shall be taken to ensure that such materials will not enter the water body during flooding.
- F. Public Utilities, Streets and Bridges. All utilities, streets and bridges shall be designed to be compatible with the local comprehensive floodplain development plans and:
 - 1. When failure or interruption of public utilities, streets and bridges would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area, construction of and substantial improvements to such facilities may only be permitted if they are flood-proofed to the flood protection elevation.
 - 2. Minor roads or nonessential utilities may be constructed at lower elevations providing they withstand flood forces to the regional flood elevation.
- G. Sewage Systems. All on-site sewage disposal systems shall be flood-proofed to the flood protection elevation and shall meet the applicable provisions of all local ordinances and Ch. COMM 83, Wis. Adm. Code.
- H. Wells. All public or private wells shall be flood-proofed to the flood protection elevation and shall meet the applicable provisions of Chs. NR 811 and NR 812, Wis. Adm. Code.
- I. Solid Waste Disposal Sites. Disposal of solid or hazardous waste is prohibited in flood fringe areas.
- J. Deposition of Materials. Any deposited material must meet all the provisions of this ordinance.
- K. Manufactured Homes.
 - 1. Owners or operators of all manufactured home parks and subdivisions shall provide adequate surface drainage to minimize flood damage, and prepare, secure approval and file an excavation plan, indicating vehicular access and escape routes, with local emergency management authorities.
 - 2. In existing manufactured home parks, all new homes, replacement homes on existing pads, and substantially improved homes shall:
 - a. Have the lowest floor elevated to the flood protection elevation; and
 - b. Be anchored so they do not float, collapse or move laterally during a flood.

3. Outside of existing manufactured home parks, including manufactured home parks and all single units outside of existing parks, all new, replacement and substantially improved manufactured homes shall meet the requirements for residential uses in para. (3)(A) above.

28I-0703 F3 General Floodplain District

(1) Applicability.

The F3 General Floodplain District consists of the land which has been or may be hereafter covered by flood water during the regional flood and encompasses both the F1 Floodway and F2 Flood Fringe Districts. The provisions of this district shall apply to all floodplains for which flood profiles are not available or where flood profiles are available but floodways have not been delineated. Floodway and flood fringe districts shall be delineated when adequate data are available. The F3 General Floodplain district shall include all A-zones so designated on the zoning district maps and for which no floodways are delineated and mapped.

(2) Permitted Uses.

The following uses are permitted in the F3 General Flood Plain District, provided a determination shall be made as to what portion of the floodplain is within the floodway or flood fringe as provided in Sec. 28I.0700(14)A.8: *[current code 28.04(20)(c) is wrong ref.]*

- A. Uses permitted in the F1 Floodway District are permitted in that portion determined to be within the floodway.
- B. Uses permitted in the F2 Flood Fringe District are permitted in that portion determined to be within the flood fringe.

(3) Standards for Development in the General Floodplain District.

Once it is determined according to Subdivision (4) below that a proposed use is located within a floodway, the provisions of Subsection 28-0701 above shall apply. Once determined that the proposed use is located within the flood fringe, the provisions of Subsection 28-0702 above shall apply. The rest of this subchapter applies to either district.

(4) Determining Floodway and Flood Fringe Limits.

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

- A. Require the applicant to submit, at the time of application, two (2) copies of an aerial photograph, or a plan which accurately locates the proposed development with respect to the general floodplain district limits, stream channel, 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 flood-proofing measures.

- B. Require the applicant to furnish any of the following additional information as is deemed necessary by the DNR for evaluation of the effects of the proposal upon flood height and flood flows, regional flood elevation, and to determine the boundaries of the floodway:
1. A typical valley cross-section showing the stream channel, the floodplain adjoining each side of the channel, the cross-sectional area to be occupied by the proposed development, and all historic high-water information.
 2. Plan (surface view) showing: elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and spatial layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types and other pertinent information.
 3. Profile showing the slope of the bottom of the channel or flow line of the stream.
 4. Specifications for building construction and materials, flood-proofing, filling, dredging, channel improvement, storage of materials, water supply and sanitary facilities.
- C. Transmit one copy of the information described in Paragraphs (a) and (b) above to the Southern District office along with a written request for technical assistance to establish regional flood elevations and where applicable, floodway data. Where the provisions of Sec. 28.04(20)(a)5. [WRONG REF - NOT CLEAR] apply, the applicant shall provide all required information and computations to delineate floodway boundaries and the effects of the project on flood elevations.

28I-0704 F4 Flood Storage District

(1) Applicability.

The F4 Flood Storage District consists of that portion of the floodplain where storage of floodwaters is calculated to reduce the regional flood discharge. The district provides for the protection of the storage areas and assures that development in the storage areas will not cause higher floodplain elevations. The provisions of this section shall apply to all areas within the F4 Flood Storage District and to those portions of the F3 General Floodplain District determined to be in the flood storage area.

(2) Development in Flood Storage District.

- A. Development in a flood storage district shall not cause an increase equal to or greater than 0.01 of a foot in the height of the regional flood.
- B. No development shall be allowed that would remove flood storage volume, unless an equal volume of storage, as defined by the predevelopment ground surface and the regional flood elevation, shall be provided in the immediate area of the proposed development to compensate for the volume of storage which is lost (compensatory storage). Excavation below the groundwater table is not considered

to provide an equal volume of storage.

- C. No area in the floodplain may be removed from the flood storage district unless it can be shown that the area has been filled to the flood protection elevation and is contiguous to other lands lying outside the floodplain.
- D. If compensatory storage cannot be provided, the area may not be developed unless the entire area zoned as flood storage district is rezoned to the flood fringe district.

(3) Rezoning from Flood Storage District to Flood Fringe District.

- A. Department of Natural Resources approval of any project that results in an increase in the height of the regional flood shall be secured prior to the submitting of a petition to rezone.
- B. The effect of rezoning from the flood storage district to the flood fringe district shall be calculated by comparing the current flood profile to the flood profile determined by assuming that the area to be rezoned is not available to store floodwater.
- C. The zoning maps for the flood storage district may not be amended without first amending the applicable portions of the water surface profiles, and floodplain zoning ordinances and securing Department of Natural Resources approval for such amendments.

(4) Permitted Uses

Any use permitted in the F1 Floodway District is permitted in the F4 Flood Storage District.

28-0705 Nonconforming Uses

(1) Applicability.

If these standards conform with section 62.23(7)(h), Wis. Stats., they shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the passage of this ordinance or any amendment thereto.

(2) Conditions.

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

- A. No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this ordinance. 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.

- B. Ordinary maintenance repairs are not considered an extension, modification or addition; these include 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. Ordinary maintenance repairs do not include any costs associated with the repair of a damaged structure.
- C. The construction of a deck that does not exceed two hundred (200) square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition. The roof of the structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure.
- D. If a nonconforming use or the use of a nonconforming structure is discontinued for twelve (12) consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this ordinance;
- E. The City shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent;
- F. No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would exceed fifty percent (50%) of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with Sec. 28I.0702(3)A.3. The costs of elevating a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the fifty percent (50%) provisions of this paragraph;
- G. Except as provided in subparagraph H. below, if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the current ordinance requirements. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition exceeds fifty percent (50%) of the structure's present equalized assessed value.
- H. For nonconforming buildings that are damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building may be permitted in order to restore it after the nonflood disaster, provided that the nonconforming building will meet all of the minimum requirements under 42 USC 4001-4129, or under the regulations promulgated thereunder.
- I. A nonconforming historic structure may be altered if the alteration will not preclude the structures continued designation as a historic structure, the alteration will comply with Sec. 28I-0701(3), flood

resistant materials are used, and construction practices and floodproofing methods that comply with Sec. 28I-0700(12) are used.

(3) Nonconformities in Floodway District Areas.

- A. Additions or modifications shall not be allowed to any nonconforming structure or any structure with a nonconforming use in a floodway area unless such addition or modification:
1. Has been granted a permit or variance that meets all ordinance requirements;
 2. Meets the requirements of Subchapter 28N. *[Nonconformities]*
 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 Sec. 28I-0700(12), 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 Ch. COMM 83, Wis. Adm. Code.
- C. No new well or modification to an existing well, used to obtain potable water, 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 Ch. NR 811 and NR 812, Wis. Adm. Code.

(4) Nonconformities in Flood Fringe District Areas.

- A. Additions or modifications shall not be allowed to any nonconforming structure or any structure with a nonconforming use unless such addition or modification has been granted a permit or variance. In addition, the addition or modification shall be placed on fill or flood-proofed to the flood protection elevation in compliance with the standards for that particular use in Subdivision 28.0702(3) above except where Paragraph (B) below is applicable.
- B. Where compliance with the provisions of Paragraph (A) above 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 Zoning Board of Appeals may grant a variance from those provisions of Paragraph (A) above for additions or modifications using the criteria listed below. Additions or modifications 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 structures with residential or commercial uses;

2. Human lives are not endangered;
 3. Public facilities, such as water or sewer, will not be installed;
 4. Flood depths will not exceed two (2) feet;
 5. Flood velocities will not exceed two (2) feet per second; and
 6. The structure will not be used for storage of materials described in Sec.28I.0702(3)E.
- C. If neither the provisions of Paragraphs (A) nor (B) above can be met, one addition to an existing room in a nonconforming building or a building with a nonconforming use may be allowed in the flood fringe, if the addition:
1. Meets all other regulations and will be granted by permit or variance;
 2. Does not exceed sixty (60) square feet in area; and
 3. In combination with other previous modifications or additions to the building, is equal to or exceeds fifty percent (50%) of the present equalized assessed value of the building.
- D. All new private sewage disposal systems, or addition to, replacement, repair or maintenance of a private sewage disposal system shall meet all the applicable provisions of all local ordinances and Ch. COMM 83, Wis. Adm. Code.
- E. All new wells, or addition to, replacement, repair or maintenance of a well shall meet the applicable provisions of this ordinance and Ch. NR 811 and NR 812, Wis. Adm. Code.

(5) Nonconformities in General Floodplain Areas.

The requirements of Subsection (2) above apply.

(6) Nonconformities in Flood Storage Areas.

No modifications or additions shall be allowed to any nonconforming structure in a flood storage district unless the standards in Sec. 28.0704(2) are met.

