

## **SECTION 8: "FP" FLOOD PLAIN DISTRICT**

### **Subdivision 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE**

1. Statutory Authorization. The Legislature of the State of Minnesota has, in Minnesota Statutes Chapter 104 and Chapter 394, delegated the responsibility to local governmental units to adopt regulations to minimize flood losses.
2. Findings of Fact.
  - A. The flood hazard areas of McLeod County, Minnesota, are subject to periodic inundation which results in potential loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
  - B. Method Used to Analyze Flood Hazards. The regulation of this section is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the Minnesota Department of Natural Resources.
3. Statement of Purpose. It is the purpose of this section to promote the public health, safety, and general welfare and to minimize those losses described in Subdivision 1, Paragraph 2 by provisions contained herein.

### **Subdivision 2. GENERAL PROVISION**

1. Lands to which Section Applies. This section shall apply to all lands within the jurisdiction of McLeod County shown on the Official Zoning Map as being located within the boundaries of the Floodway, Flood Fringe, or General Flood Plain Districts.
2. Establishment of Official Zoning Map. The Official Zoning Map, together with all materials, is hereby adopted by reference and declared to a part of this ordinance. The material shall include the Flood Insurance Study for the County of McLeod prepared by the Federal Insurance Administration dated August 18, 1992, and the Flood Boundary and Floodway Maps and Flood Insurance Rate Maps therein. The Official Zoning Map shall be on file in the Office of the McLeod County Zoning Administrator.
3. Regulatory Flood Protection Elevation. The Regulatory Flood Protection Elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.
4. Interpretation
  - A. In their interpretation and application, the provisions of this section shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other

powers granted by State Statutes.

- B. The boundaries of the zoning districts shall be determined by scaling distances on the County Zoning Map Flood Plain attachments. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the County Zoning Map, as for example, where there appears to be a conflict between a mapped boundary and actual field conditions and there is a formal appeal of the decision of the Zoning Administrator, the Board of Adjustment shall make the necessary interpretation based on elevations of the regional (100-year) flood profile and other available technical data. Persons contesting the location of the district boundaries shall be given a reasonable opportunity to present their case to the Board and to submit technical evidence, if so desired.
5. Abrogation and Greater Restrictions. It is not intended by this Section to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Section imposes greater restrictions, the provisions of this Section shall prevail. All other ordinances inconsistent with this Section are hereby repealed to the extent of the inconsistency only.
6. Warning and Disclaimer of Liability. This section does not imply that areas outside the flood plain districts or land uses permitted within such districts will be free from flooding or flood damages. This section shall not create liability on the part of McLeod County or any officer or employee thereof for any flood damages that result from reliance on this section or any administrative decision lawfully made thereunder.

### **Subdivision 3. ESTABLISHMENT OF ZONING DISTRICTS**

1. The flood plain areas within the jurisdiction of this ordinance are hereby divided into three districts: Floodway District (FW), Flood Fringe District (FF), and General Flood Plain District (GFP).
- A. Floodway District. The Floodway District shall include those areas designated as floodway in the Flood Insurance Study.
- B. Flood Fringe District. The Flood Fringe District shall include those areas designated as floodway fringe in the Flood Insurance Study.
- C. General Flood Plain District. The General Flood Plain District shall include those areas designated an unnumbered A Zones on the Flood Insurance Rate Map.
2. Within the Floodway, Flood Fringe and General Flood Plain Districts, all uses not listed as permitted uses or conditional uses in Subdivision 4, 5, and 6 that follow, respectively, shall be prohibited. In addition, a caution is provided here that:

- A. New manufactured homes, replacement manufactured homes and certain travel trailers and travel vehicles are subject to the general provisions of this Section and specifically Subdivision 9.
- B. Modifications, additions, structural alterations or repair after damage to existing nonconforming structures and nonconforming uses of structures or land are regulated by the general provisions of this Section and specifically Subdivision II.
- C. As-built elevations for elevated or flood proofed structures must be certified by ground surveys and flood proofing techniques must be designed and certified by a registered professional engineer or architect as specified in the general provisions of this Section and specifically as stated in Subdivision 10 of this Section.

**Subdivision 4. FLOODWAY DISTRICT (FW)**

1. Permitted Uses

- A. General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- B. Industrial-commercial uses such as loading areas, parking areas, and airport landing strips.
- C. 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 single or multiple purpose recreational trails.
- D. Residential uses such as lawns, gardens, parking areas, and play areas.

2. Standards for Floodway Permitted Uses.

- A. The use shall have a low flood damage potential.
- B. The use shall be permitted to the extent that it is not prohibited by any underlying zoning district of this Ordinance.
- C. The use shall not obstruct flood flows or increase flood elevations and shall not involve structures, fill, obstructions, excavations or storage of materials or equipment.
- D. The use shall not adversely affect the capacity of the channels or floodways or any tributary to the main stream or of any drainage ditch, or any other facility or system.

3. Conditional Uses. These uses may be permitted in the floodway only after the issuance of a Conditional Use Permit as provided in Subdivision 10, Paragraph 3 of this Section.
  - A. Structures accessory to the uses listed in 1(A) of this Subdivision.
  - B. Extraction of sand, gravel, and other materials.
  - C. Marines, boat rentals, docks, piers, wharves, and water control structures.
  - D. Railroads, streets, bridges, utility transmission lines, and pipelines.
  - E. Storage yards for equipment, machinery, or materials.
  - F. Placement of fill.
  - G. Travel trailers and travel vehicles either on individual lots of record or in existing or new subdivisions or commercial or condominium type campgrounds, subject to the exemptions and provisions of Subdivision 9 of this Section.
  - H. Structural works for flood control such as levees, dikes and floodwalls constructed to any height where the intent is to protect individual structures and levees or dikes where the intent is to protect agricultural crops for a frequency flood event equal to or less than the 10-year frequency flood event.
4. Standards for Floodway Conditional Uses
  - A. The use shall be permitted to the extent that it is not prohibited by any underlying zoning district of this Ordinance.
  - B. All uses. No structure (temporary or permanent), fill (including fill for roads and levees), deposit, obstruction, storage or materials or equipment, or other uses may be allowed as a conditional Use that will cause any increase in the stage of the 100-year or regional flood or cause an increase in flood damages in the reach or reaches affect.
  - C. The use is subject to the standards contained in Subdivision 10, Paragraph 3(D) of this Section.
  - D. Fill
    - 1.) Deposited fill shall be no more than the minimum amount necessary to conduct a conditional use listed in Subdivision 4, Paragraph 3 of this Section.

- 2.) Fill, dredge spoil and all other similar materials deposited or stored in the flood plain shall be protected from erosion by vegetative cover, mulching, riprap or other acceptable method.
- 3.) Dredge spoil sites and sand and gravel operations shall not be allowed in the floodway unless a long-term site development plan is submitted which includes an erosion/sedimentation prevention element to the plan.
- 4.) As an alternative, and consistent with Subsection (2) immediately above, dredge spoil disposal and sand and gravel operations may allow temporary, on-site storage of fill or other materials which would have caused an increase to the stage of the 100-year or regional flood but only after the Governing Body has received an appropriate plan which assures the removal of the materials from the floodway based upon the flood warning time available. The Conditional Use Permit must be title registered with the property in the Office of the County Recorder.

E. Accessory Structures

- 1.) Accessory structures shall not be used for human habitation.
- 2.) Accessory structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters.
  - a.) Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow, and,
  - b.) So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.
- 3.) Accessory structures shall be elevated on fill or structurally dry flood proofed in accordance with the FP-1 or FP-2 flood proofing classifications in the State Building Code. As an alternative, an accessory structure may be flood proofed to the FP-3 or FP-4 flood proofing classification in the State Building Code provided the accessory structure constitutes a minimal investment, does not exceed 500 square feet in size, and for a detached garage, the detached garage must be used solely for parking of vehicles and limited storage. All flood proofed accessory structures must meet the following additional standards, as appropriate:
  - a.) The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designated to equalize hydrostatic flood forces on exterior walls; and

- b.) Any mechanical and utility equipment in a structure must be elevated to or above the Regulatory Flood Protection Elevation or properly flood proofed.

F. Storage of Materials and Equipment.

- 1.) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
- 2.) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the County Board of Commissioners (or Zoning Administrator).

G. Structural works for flood control that will change the course, current or cross section of protected wetlands or public waters shall be subject to the provisions of Minnesota Statute, Chapter 103G. Community-wide structural works for flood control intended to remove areas from the regulatory flood plain shall not be allowed in the floodway.

H. A levee, dike or floodwall constructed in the floodway shall not cause an increase to the 100-year or regional flood and the technical analysis must assume equal conveyance or storage loss on both sides of the stream. \*\*Current Section does not allow these structures in the floodway.

**Subdivision 5. FLOOD FRINGE DISTRICT (FF)**

1. Permitted Uses. Permitted Uses shall be those uses of land or structures listed as Permitted Uses in the underlying zoning use district(s). If no pre-existing underlying zoning use districts exist, then any residential or non-residential structure or use of a structure or land shall be a Permitted Use in the Flood Fringe provided such use does not constitute a public nuisance. All Permitted Uses shall comply with the standards for Flood Fringe "Permitted Uses" listed in Subdivision 5, Paragraph 2 and the "Standards for all Flood Fringe Uses" listed in Subdivision 5, Paragraph 5 of this Section.

2. Standards for Flood Fringe Permitted Uses.

A. All structures, including accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the Regulatory Flood Protection Elevation. The finished fill elevation for structures shall be no lower than one (1) foot below the Regulatory Flood Protection Elevation and the fill shall alternate elevation methods are subject to the following standards:

- 1.) Design and Certification. The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the State Building Code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the Regulatory Flood Protection Elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.
  - 2.) Specific Standards for Above-grade, Enclosed Areas. Above-grade, fully enclosed areas such as crawl spaces or tuck under garages must be designed to internally flood and the design plans must stipulate:
    - a.) The minimum area of openings in the walls where internal flooding is to be used as a flood proofing technique. When openings are placed in a structure's walls to provide for entry of flood waters to equalize pressures, the bottom of all openings shall be no higher than one-foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.
    - b.) That the enclosed area will be designed of flood resistant materials in accordance with the FP-3 or FP-4 classifications in the State Building Code and shall be used solely for building access, parking vehicles or storage.
- B. Basements, as defined by Section 4, Subdivision 2, of this Ordinance, shall be subject to the following:
- 1.) Residential basement construction shall not be allowed below the Regulatory Flood Protection Elevation.
  - 2.) Non-residential basements may be allowed below the Regulatory Flood Protection Elevation provided the basement is structurally dry flood proofed in accordance with Subdivision 5, Provision 4C of this Section.
- C. All areas of non-residential structures including basements to be placed below the Regulatory Flood Protection Elevation shall be flood proofed in accordance with the structurally dry flood proofing classifications in the State Building Code. Structurally dry flood proofing must meet the FP-1 or FP-2 flood proofing classification in the State Building Code and this shall require making the structure watertight with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures flood proofed to the

FP-3 or FP-4 classification shall not be permitted.

- D. When at any one time more than 1,000 cubic yards of fill or other similar material is located on a parcel for such activities as on-site storage, landscaping, sand and gravel operations, landfills, roads, dredge spoil disposal or construction of flood control works, an erosion/sedimentation control plan must be submitted unless the community is enforcing a state approved shoreland management ordinance. In the absence of a state approved shoreland ordinance, the plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the 100-year or regional flood event. The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the Governing Body. The plan may incorporate alternative procedures for removal of the material from the flood plain if adequate flood warning time exists.
- E. Storage of Materials and Equipment
- 1.) The storage or processing of material that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
  - 2.) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Governing Body.
- F. The provisions of Subdivision 5 of this Section shall also apply.
5. Standards for Flood Fringe Uses.
- A. All new principal structures must have vehicular access at or above an elevation not more than two (2) feet below the Regulatory Flood Protection Elevation. If a variance to this requirement is granted, the Board of Adjustment must specify limitations on the period of use or occupancy of the structure for times of flooding and only after determining that adequate flood warning time and local flood emergency response procedure exist.
- B. Commercial Uses. Accessory land uses, such as yards, railroad tracks, and parking lots, may be at elevations lower than the Regulatory Flood Protection Elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a floor warning system that provides adequate time for evacuation if the area would inundated to a depth greater than two feet or be subject to flood velocities greater than four feet per second upon occurrence of the regional flood.
- C. Manufacturing and Industrial Uses. Measures shall be taken to minimize

interference with normal plant operations especially along streams having protracted flood durations. Certain accessory land uses such as yards and parking lots may be at lower elevations subject to requirements set out in Subdivision 6, Paragraph 3B above. In considering permit applications, due consideration shall be given to needs of and industry whose business requires that it be located in flood plain areas.

- D. Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation - FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure of multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.
- E. Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse of drainage system where a floodway or other encroachment limit has not been specified on the Official Zoning Map.
- F. Standards for travel trailers and travel vehicles are contained in Subdivision 9.
- G. All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

**Subdivision 6. GENERAL FLOOD PLAIN DISTRICT**

- 1. Permissible Uses
  - A. The uses listed in Subdivision 4(1) of this Section shall be permitted uses.
  - B. All other uses shall be subject to the floodway/flood fringe evaluation criteria pursuant to Provision 2 of this Subdivision. Subdivision 4 shall apply if the proposed use is in the Floodway District and Subdivision 5 shall apply if the proposed use is in the Flood Fringe District.
- 2. Procedures for Floodway and Flood Fringe Determinations Within the General Flood Plain District
  - A. Upon receipt of an application for a Conditional Use Permit for a use within the General Flood Plain District, the applicant shall be required to furnish such of the

following information as is deemed necessary by the Zoning Administrator for the determination of the Regulatory Flood Protection Elevation and whether the proposed use is within the Floodway or Flood Fringe District.

- 1.) A typical valley cross-section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and high water information.
  - 2.) Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill, or storage elevations; size, location, and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets; photographs showing existing land uses and vegetation upstream and downstream; and soil type.
  - 3.) Profile showing the slope of the bottom of the channel or flow line of the stream for at least 500 feet in either direction from the proposed development.
- B. The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the Floodway or Flood Fringe District and to determine the Regulatory Flood Protection Elevation. Procedures consistent with Minnesota Regulations 1983, Parts 6120.500 - 6120.6200 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective Department of Natural Resources Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:
- 1.) Estimate the peak discharge of the regional flood.
  - 2.) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.
  - 3.) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 foot. A lesser stage increase than .5' shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries.
- C. The Zoning Administrator shall present the technical evaluation and findings of the designated engineer or expert to the County Board. The County Board must formally accept the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary or deny the permit application. The County Board, prior to official action, may submit the application and all supporting data and

analysis to the Federal Emergency Management Agency, the Department of Natural Resources or the Joint Planning Board for review and comment. Once the Floodway and Flood Fringe Boundaries have been determined, the County Board shall refer the matter back to the Zoning Administrator who shall process the permit application consistent with the applicable provisions of Subdivisions 4 and 5 of this Section.

#### **Subdivision 7. SUBDIVISIONS**

1. No land shall be subdivided which is held unsuitable by the McLeod County Board of Commissioners for reason of flooding, inadequate drainage, water supply or sewage treatment facilities. All lots within the flood plain district shall contain a building site at or above the Regulatory Flood Protection Elevation. All subdivisions shall have water and sewage disposal facilities that comply with the provisions of this ordinance and have road access both to the subdivision and to the individual building sites no lower than two feet below the Regulatory Flood Protection Elevation. For all subdivisions in the flood plain, the Floodway and Flood Fringe boundaries, the Regulatory Flood Protection Elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents.
2. Floodway/Flood Fringe Determinations in the General Flood Plain District. In the General Flood Plain District, applicants shall provide the information required in Subdivision 6(2) of this Section to determine the 100-year flood elevation, the Floodway and Flood Fringe District boundaries and the Regulatory Flood Protection Elevation for the subdivision site.
3. Removal of Special Flood Hazard Area Designation. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be required.

#### **Subdivision 8. PUBLIC UTILITIES, RAILROADS, ROADS AND BRIDGES**

1. Public Utilities. All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the flood plain shall be flood-proofed in accordance with the State Building Code or elevated to above the Regulatory Flood Protection Elevation.
2. Public Transportation Facilities. Railroad tracks, roads, and bridges to be located within the flood plain shall comply with Subdivisions 4 and 5 of this Section. Elevation to the Regulatory Flood Protection Elevation shall be provided where failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads

or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

3. On-site Sewage Treatment and Water Supply Systems. Where public utilities are not provided: 1) New and replacement on-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and 2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Provision.

**Subdivision 9. MANUFACTURED HOMES AND MANUFACTURED PARKS AND PLACEMENT OF TRAVEL TRAILERS AND TRAVEL VEHICLES**

1. Manufactured homes and manufactured home parks and placement of travel trailers and travel vehicles are not permitted in the flood plain district.

**Subdivision 10. ADMINISTRATION**

1. Permit Requirements
  - A. Use Permit Required. A land use permit issued by the Zoning Administrator in conformity with the provisions of this section shall be secured prior to the erection, addition or alteration of any building, structure, or portion thereof; prior to the use or change of use of a building structure or land; prior to the change or extension of a nonconforming use; and, prior to the placement of fill or excavation of materials within the flood plain.
  - B. Application for Use Permit. Application for a land use permit shall be made to the Zoning Administrator and shall include the following where applicable: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the lot; existing or proposed structures, fill or storage of materials; and, the location of the foregoing in relation to the stream channel.
  - C. State and Federal Permits. Prior to granting a land use permit or processing an application for a Conditional Use Permit or Variance, the Zoning Administrator shall determine that the applicant has obtained or applied for all necessary state and federal permits.
  - D. Certification of Zoning Compliance for a New, Altered, or Nonconforming Use. It shall be unlawful to use, occupy, or permit the use or occupancy of any building or premises or part thereof hereafter created, erected, changed, converted, altered, or enlarged in its use or structure until a Certificate of Zoning Compliance shall

have been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this Section.

- E. Construction and Use to be as Provided in Applications, Plans, Permits, and Certificate of Zoning Compliance. Use Permits, Conditional Use Permits, or Certificates of Zoning Compliance issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed violation of this ordinance, and punishable as provided by Section 23 of this ordinance. The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this ordinance.
  - F. Certification. The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this Ordinance. Floodproofing measures shall be certified by a registered professional engineer or registered architect.
  - G. Record of First Floor Elevation. The Zoning Administrator shall maintain a record of the elevation of the first floor (including basement) of all new structures or additions to existing structures in the flood plain districts. He shall also maintain a record of the elevations to which structures or additions to structure are flood-proofed.
2. Variances. Requests for variances from the provisions of this Section or appeals where it is alleged there is error in any order, requirement, decision or determination made in the enforcement of this Section shall be processed and heard in the manner specified in Section 21 of this Ordinance, except that the following provisions shall also apply.
- A. Notification of Commissioner. The Zoning Administrator shall submit by mail to the Commissioner of Natural Resources a copy of all applications for proposed variances sufficiently in advance so that the Commissioner will receive at least ten (10) days notice of the hearing. A copy of all decisions granting variances shall be forwarded by mail to the Commissioner within (10) days of such action.
  - B. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area, or permit standards lower than those required by State Law.

- C. Flood Insurance Notice and Record Keeping. The Zoning Administrator shall notify the applicant for a variance that:
- 1.) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and;
  - 2.) Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. A community shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.
3. Conditional Use Permits. Applications for conditional uses shall be processed and heard in the manner specified in Section 20 of this ordinance, except the following additional requirements shall apply to conditional uses in the flood plain.
- A. Notification to Commissioner. Upon filing with the Zoning Administrator an application for a Conditional Use Permit, the Zoning Administrator shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed Conditional Uses sufficiently in advance so that the Commissioner will receive at least ten (10) days notice of the hearing. A copy of all decisions granting Conditional Use Permits shall be forwarded to the Commissioner within ten (10) days of such action.
  - B. Procedures for Evaluating Proposed Conditional Uses within the General Flood Plain District.
    - 1.) Upon receipt of an application for a Conditional Use Permit for a use within the General Flood Plain District, the applicant shall be required to furnish such of the following information as is deemed necessary by the Zoning Administrator for the determination of the Regulatory Flood Protection Elevation and whether the proposed use is within the floodway or flood fringe.
      - a.) A typical valley cross-section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and high water information.
      - 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; photographs showing existing land uses and vegetation upstream and downstream; and soil types and descriptions of soils on the site.

- c.) Profile showing the slope of the bottom of the channel or flow line of the stream for at least 500 feet in either direction from the proposed development.
- 2.) The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the Floodway or Flood Fringe District and to determine the Regulatory Flood Protection Elevation. Procedures consistent with Minnesota Regulations 1983, Parts 6120.500 - 6120.6200 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective Department of Natural Resources Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:
- a.) Estimate the peak discharge of the regional flood.
  - b.) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.
  - c.) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 foot. A lesser stage increase than .5' shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries.
3. The Zoning Administrator shall present the technical evaluation and findings of the designated engineer or expert to the County Board. The County Board must formally accept the technical evaluation and the recommended Floodway and/or Flood Fringe District Boundary or deny the permit application. The County Board, prior to official action, may submit the application and all supporting data and analysis to the Federal Emergency Management Agency, the Department of Natural Resources or the Planning Commission for review and comment. Once the Floodway and Flood Fringe Boundaries have been determined, the County Board shall refer the matter back to the Zoning Administrator who shall process the permit application consistent with the applicable provisions of Subdivisions 4 and 5 of this Section.

C. Procedures to be Followed by McLeod County for Evaluation Proposed Conditional Uses Within all Flood Plain Districts.

- 1.) Upon receipt of an application for a Conditional Use Permit for a use within all flood plain districts, the applicant shall be required to furnish such of the following information and additional information as deemed necessary by the Zoning Administrator for determining the Regulatory Flood Protection Elevation of the particular site for the proposed use and whether the proposed use is within the floodway or flood fringe.
  - a.) Plans, in triplicate, drawn to scale showing the nature, location, dimensions, and elevations of the lot, existing and proposed structures, fill, storage of materials and storage elevations, flood proofing measures, and the relationship of the above to the location of the location of the stream channel.
  - b.) Specifications for building construction and materials, flood-proofing, filling, dredging, grading, channel improvements, storage of materials, water supply and sanitary facilities.
- 2.) Transmit one copy of the information described in Subdivision 10, Provision B(1) to a designated engineer or other expert person or agency for technical assistance, where necessary, in evaluating the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, and other technical matters.
- 3.) Based upon the technical evaluation of the designated engineer or expert, the Zoning Administrator shall determine whether the proposed use is in the floodway or flood fringe and the Regulatory Flood Protection Elevation at the site.

D. Factors Upon Which the Decision of the County Shall be Based. In passing upon conditional use applications, the County shall consider all relevant factors specified in other sections of this Ordinance, and

- 1.) The danger of life and property due to increased flood heights or velocities caused by encroachments.
- 2.) The danger that materials may be swept onto other lands or downstream to the injury of others or they may block bridges, culverts or other hydraulic structures.
- 3.) The proposed water supply and sanitation systems and the ability of these

systems to prevent disease, contamination, and unsanitary conditions.

- 4.) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- 5.) The importance of the services provided by the proposed facility of the community.
- 6.) The requirements of the facility for a waterfront location.
- 7.) The availability of alternative locations not subject to flooding for the proposed use.
- 8.) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- 9.) The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
- 10.) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- 11.) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- 12.) Such other factors which are relevant to the purposes of this Ordinance.

E. Conditions Attached to Conditional Use Permits. Upon consideration of the factors listed above and the purpose of this Ordinance, the Board of Commissioners shall attach such conditions to the granting of Conditional Use Permits as it deems necessary to fulfill the purposes of this Ordinance. Such conditions may include, but are not limited to, the following:

- 1.) Modifications of waste treatment and water supply facilities.
- 2.) Limitations on period of use, occupancy, and operation.
- 3.) Imposition of operational controls, sureties, and deed restrictions.
- 4.) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.
- 5.) Flood-proofing measures, in accordance with the State Building Code and this Ordinance. The applicant shall submit a plan or document certified by

a registered professional engineer or architect that the flood-proofing measures are consistent with the Regulatory Flood Protection Elevations and associated flood factors for the particular area.

**Subdivision 11. NONCONFORMING USES**

1. A structure or the use of a structure or premises which was lawful before the passage or amendment of this Ordinance but which is not in conformity with the provisions of this Section may be continued subject to Section 17 of this Ordinance and the following conditions:
  - A. Any alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use shall be protected to the Regulatory Flood Protection Elevation in accordance with any of the elevation on fill or flood proofing techniques (i.e., FP-1 through FP-4 flood proofing classifications) allowable in the State Building Code, except as further restricted in Paragraph B below.
  - B. The cost of any structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed 50 percent of the marketing value of the structure unless the conditions of this Subdivision are satisfied. The cost of all structural alterations and additions constructed since the adoption of the County's initial flood plain controls must be calculated into today's current cost which will include all costs such as construction materials and a reasonable cost placed on all manpower and labor. If the current cost of all previous and proposed alterations and additions exceeds 50 percent of the current market value of the structure, then the structure must meet the standards of Subdivisions 4 and 5 of this Ordinance for new structures depending upon whether the structure is in the Floodway or Flood Fringe, respectively.
  - C. If any nonconforming use is discontinued for twelve (12) consecutive months, any future use of the building premises shall conform to this Ordinance. The assessor shall notify the Zoning Administrator of the nonconforming uses which have been discontinued for a period of twelve months.
  - D. If any nonconforming use or structure is destroyed by any means including floods, to an extent of fifty (50) percent or more of its market value at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance. The applicable provisions for establishing new uses or new structures in Subdivisions 4, 5, and 6 will apply depending upon whether the use or structure is in the Floodway, Flood Fringe, or General Flood Plain District, respectively.

**Subdivision 12. PENALTIES FOR VIOLATION**

1. Valuations of the provisions of this Section or failure to comply with any of its requirements shall be subject to the provisions of Section 23 of this Ordinance.
  - A. In addition to the provisions of Section 23, nothing herein shall prevent the County from taking such other lawful action as is necessary to prevent or remedy any violation. Such actions may include but are not limited to:
    - 1.) In responding to a suspected violation of the provisions of this Section, the Zoning Administrator and Local Government may make a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The County must act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.
    - 2.) When a violation of this Section is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources and Federal Emergency Management Agency Regional Office along with the County's plan of action to correct the violation to the degree possible.

**Subdivision 13. AMENDMENT TO SECTION**

1. The flood plain overlay designated to the County Zoning Map shall not be removed from flood plain areas unless it can be shown that the designated is in error or that the area has been filled to or above the elevation of the regional flood and is contiguous to lands outside the flood plain. Special exceptions to this rule may be permitted by the Commissioner of Natural Resources if he determines that, through other measures, lands are adequately protected for the intended use.
2. All amendments to this section, including amendments to the County Zoning Map, must be submitted to and approved by the Commissioner of Natural Resources prior to adoption. Changes in the Official County Zoning Map, must be submitted to and approved by the Commissioner of Natural Resources prior to adoption. Changes in the Official County Zoning Map must meet the Federal Emergency Management Agency's (FEMA) Technical Conditions and Criteria and must receive prior FEMA approval before adoption. The Commissioner of Natural Resources must be given 10-days written notice of all hearings to consider an amendment to this Section and said notice shall include a draft of the section amendment or technical study under consideration.