

## **CHAPTER 15.32: FLOOD AREA CONSTRUCTION REGULATIONS**

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#### **15.32.010 Statutory authorization.**

The legislature of the state has in its state statutes delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. Therefore, the Common Council of the city ordains as follows.

(Prior code § 9-100 (a))

#### **15.32.020 Findings.**

A. The flood hazard areas of Rapid City are subject to periodic inundation which results in loss of life and 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. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities and, when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

(Prior code § 9-100 (b))

#### **15.32.030 Purpose of provisions.**

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions to specific areas by provisions designed:

- A. To protect human life and health;
- B. To minimize expenditure of public money for costly flood control projects;

C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

D. To minimize prolonged business interruptions;

E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard; and

F. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas.

(Prior code § 9-100 (c))

#### **15.32.040 Content of provisions.**

In order to accomplish its purposes, this chapter includes methods and provisions for:

A. Restricting or prohibiting uses which are dangerous to health, safety and property or structures due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities; or which may result in damage to adjacent or downstream property or structures;

B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers which help accommodate or channel floodwaters;

D. Controlling filling, grading, dredging, and other development which may increase flood damage; and

E. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

(Prior code § 9-100 (d))

#### **15.32.050 Description of properties within the floodplain development district.**

A. A complete description of all properties within the floodplain development district is contained on the flood insurance rate maps dated as of November 18, 1981, or as amended, and to include certain annexation areas previously mapped by Pennington County. The City Engineer shall treat all areas on the flood insurance rate map dated as of November 18, 1981, or as amended, within the A1 through A31, AO, A and A99 designated areas as flood fringe, except the areas that are designated as floodway by either the flood insurance rate map dated as of November 18, 1981, or as amended, or the official zoning map of the city. In the event of new annexation, the city engineer may adopt the county flood insurance rate maps dated December 1, 1981, as necessary.

B. 1. The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled The Flood Insurance Study for the City of Rapid

City, dated February 18, 1998, and the Flood Insurance Study for Pennington County Unincorporated Areas, dated May 20, 1996, with the subsequent flood insurance rate maps and flood boundary-floodway, is adopted by reference and declared to be a part of this chapter.

2. The flood insurance studies are on file at the Rapid City Public Works Department (Engineering Office), and the Planning Department at 300 Sixth Street, Rapid City, South Dakota, 57701.

(Ord. 3394 1998: Ord. 3257, 1996: prior code §§ 9-101 (e) and 9-109)

### 15.32.060 Definitions.

A. For the purposes of this chapter and in order to carry out the provisions and intentions as set forth herein, certain words, terms and phrases are to be used and interpreted as defined hereafter. Words used in the present tense shall include the future tense; words in the singular number include the plural, and words in the plural number include the singular; the word *PERSON* includes a firm, partnership, or corporation, as well as an individual; the word *BUILDING* includes the word *STRUCTURES*; the term *SHALL* is always mandatory and not discretionary; and the word *MAY* is permissive. The word *USED* or *OCCUPIED* as applied to any land or building shall be construed to include the word *INTENDED*, *ARRANGED*, or *DESIGNED* to be used or occupied.

B. The following words, terms and phrases are defined and shall be interpreted as such through this chapter. Terms not herein defined shall have the meaning customarily assigned to them.

1. **ACCESSORY USE OR STRUCTURE.** A use or structure on the same lot, with, and of a nature customarily incidental and subordinate to, a principal use or structure.

2. **AREA OF SHALLOW FLOODING.** A designated AO or AH zone on the flood insurance rate map (FIRM). The base flood depths range from 1 to 3 feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident.

3. **BASE FLOOD.** A flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the 100-year flood.

4. **BASE FLOOD ELEVATION.** Referenced to *MEAN SEA LEVEL* means the elevation that the water reaches during a base flood.

5. **DEVELOPMENT.** Any manmade change to improve or reimprove real estate including, but not limited to, buildings or other structures, mining, dredging, fillings, grading, paving, excavation or drilling operations located within the area of special flood hazard.

6. **EQUAL DEGREE OF ENCROACHMENT.** A standard applied in determining the location of encroachment limits so that floodplain lands on both sides of a stream are capable of conveying a proportionate share of floodflows. This is determined by considering the effect of encroachment on the hydraulic efficiency of the floodplain along both sides of a stream for a significant reach.

7. **EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.** A manufactured home park for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of

concrete pads, and the construction of streets) are complete before the effective date of the floodplain management regulations adopted.

8. **EXPANSION TO AN EXISTING MOBILE HOME PARK or MOBILE HOME SUBDIVISION.** The preparation of additional sites by the construction of facilities for serving the lots on which the mobile homes are to be affixed (including the installation of utilities, either, either final site grading or pouring of concrete, or the construction of streets).

9. **FLOOD.** A temporary rise in stream level that results in inundation of areas not ordinarily covered by water.

10. **FLOOD INSURANCE RATE MAP (FIRM).** The official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

11. **FLOOD INSURANCE STUDY.** The official report provided in which the Federal Emergency Management Agency has provided flood profiles, as well as the flood boundary floodway map and the water surface elevation of the base flood.

12. **FLOODWAY.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 1 foot.

13. **FLOODWAY FREQUENCY.** The average frequency, statistically determined, for which it is expected that a specific flood level or discharge may be equaled or exceeded.

14. **LOWEST FLOOD.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area is not considered a building's lowest floor; provided that, the enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

15. **MANUFACTURED HOME.** A structure, transportable or movable in one or more sections, which is built on a permanent chassis and designed for use with or without a permanent foundation when connected to the required utilities. This term also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days.

16. **MANUFACTURED HOME PARK or SUBDIVISION.** A parcel (or contiguous parcels) of land divided into 2 or more manufactured home lots for rent or sale.

17. **NEW CONSTRUCTION.** Structures for which the start of construction commenced on or after the effective date of this chapter.

18. **NONCONFORMING USE.** A structure or the use of a structure or premises which was lawful before the passage or amendment of this chapter but which is not in conformity with the provisions of this chapter.

19. **OBSTRUCTION.** Any dam; wall; wharf; embankment; levee; dike; pipe; abutment; projection; excavation; channel; rectification; bridge; conduit; culvert; building; fence; rock, gravel; refuse; fill; structure; diversion; riprap; pile revetment; auto body; building materials or matter in, along,

across, or projecting into any channel, watercourse, or regulatory flood hazard area which may impede, retard, increase or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water or that is placed where the flow of water might carry the same downstream to the damage of life or property.

20. **PERMANENT FOUNDATION.** A system of integrally connected structural members designed using a traditionally accepted method of analysis and capable of carrying the anticipated loads and resisting the anticipated forces encountered in a flood hazard area.

21. **PERSON.** Any natural person, firm, partnership, association, corporation or any governmental unit.

22. **REACH.** A hydraulic engineering term to describe a segment of a stream or river that generally contains a specified feature that is either uniform throughout or requires special attention or study. A reach will generally include the segment of the floodway area where flood heights influenced by a manmade or natural obstruction, such as, segment of a stream or river between consecutive bridge crossings. A significant reach may include more than 1 normal reach based upon time extent of proposed change.

23. **REGULATORY FLOOD (BASE FLOOD).** A flood which is representative of large floods known to have occurred generally in the area and reasonably characteristic of what can be expected to occur in a particular stream. The regulatory flood generally has a frequency of approximately 100 years, determined from an analysis of floods on particular stream and other streams in the same general region.

24. **REGULATORY FLOOD PROTECTION ELEVATION.** One foot above the elevation established as the base flood elevation for the particular area.

25. **START OF CONSTRUCTION.** Includes substantial improvement and means the date the building permit was issued, provide the actual start of construction, repair, reconstruction, placement or other improvement was 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings; the installation of piles; the construction of columns; or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. **PERMANENT CONSTRUCTION** does not include land preparation, such as clearing, grading and filling, nor does it include the installation of street and/or walkways; nor does it include excavation for a basement, footings, piers or foundation, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds, not occupied as dwelling units or not part of the main structure.

26. **STRUCTURE.** Anything constructed or placed on the ground or attached to the ground, including, but without limitation, buildings, factories, sheds, walls, fences, culverts, conduits or any other manmade objects, or any natural object utilized as described herein.

27. **SUBSTANTIAL IMPROVEMENT.**

a. Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either

i. Before the improvement or repair is started; or

ii. If the structure has been damaged and is being restored, the value before the damage

occurred.

b. For the 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.

c. The term does not, however, include either:

i. 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

ii. Any alteration of a structure listed on the national register of historic places or the state inventory of historic places.

28. **VALUE.** The assessed value at the time of the structure becoming a nonconforming use.

29. **WATERCOURSE ALTERATION.** Any realignment or diversion of a stream, ditch, river, or watercourse, whether the water flows continuously or intermittently.

(Prior code § 9-101)

#### **15.32.070 Compliance with provisions required.**

No structure or land shall hereafter be used, and no structure shall be located, extended, converted or structurally altered without full compliance with the terms of this chapter and other applicable regulation, which apply to uses within the jurisdiction of this chapter.

(Prior code § 9-102 (a))

#### **15.32.080 Effect of provisions on existing easements, covenants or deed restrictions—Repeal of conflicting provisions.**

It is not intended by this chapter to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail. All other ordinances inconsistent with this chapter are repealed to the extent of the inconsistency only.

(Prior code § 9-102 (b))

#### **15.32.090 Interpretation of provisions.**

In their interpretation and application, the provisions of this chapter 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.

(Prior code § 9-102 (c))

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**15.32.100 Warning and disclaimer of liability.**

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by manmade or natural cause such as ice jams or bridge openings restricted by debris. This article does not imply that areas outside the floodplain districts or land uses permitted within the districts will be free from flooding or flood damages. This chapter shall not create liability on the part of the city or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

(Prior code § 9-102 (d))

**15.32.110 Floodplain development permit– Required when.**

A permit is required when building or enlarging a structure; placing a mobile home; or mining, dredging, filing, grading, paving, excavating, drilling; or any development within a flood hazard area. The fee for the permit shall be \$100.

(Ord. 3775 (part), 2002: prior code § 9-103 (a))

**15.32.120 Permitted uses.**

Any uses shall be permitted uses within the floodplain development district to the extent that they are not prohibited by any other ordinance, and the use is permitted in the applicable zoning classification, and the use is in compliance with this chapter.

(Prior code § 9-103 (b) (part))

**15.32.130 Residential construction.**

New construction and substantial improvement of any residential structure shall:

- A. Have the lowest floor (including basement) elevated to 1 foot above the base flood elevation.
- B. Require within any AO and AH zone on the FIRM that all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM (at least 2 feet if no depth number is specified).
- C. Require within zones AO and AH adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

(Prior code § 9-103 (b) (1))



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**15.32.140 Nonresidential construction.**

A. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall:

1. Either have the lowest floor (including basement) elevated to the level of the regulatory flood elevation, or, together with attendant utility and sanitary facilities, shall:

a. Be floodproofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

c. Be certified by a registered professional engineer or architect that the design and method of construction are in accordance with accepted standards of practice for meeting the provisions of this section. The certifications shall be provided to the official as set forth in § 15.32.230H.2.

2. Require within any AO and AH zone on the FIRM that all new construction and substantial improvement of nonresidential structures (i) have the lowest floor (including basement) elevated above the highest grade at least as high as the, depth number specified in fee on the FIRM (at least 2 feet if no depth number specified), or (ii) together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standard specified in subdivision 1. of this subsection;

3. Require within zones AO and AH adequate drain paths around structures on slopes to guide floodwaters around and away from the proposed structures.

B. Where existing streets or utilities are at elevations which make compliance with the provisions of this section impractical or impossible, any person aggrieved by a decision of the City Engineer may file an application for a special exception under § 15.32.240.

(Prior code § 9103 (b) (2) and (d))

**15.32.150 Construction adversely affecting capacity of channels or floodways prohibited.**

No development or obstruction shall be constructed which will adversely affect the capacity of channels or floodway of any tributary to the main stream, drainage ditch, or other drainage facility or system.

(Prior code § 9-103 (b) (3))

**15.32.160 Elevation of structures other than residences.**

Structures other than residences shall ordinarily be elevated on fill but may, in special circumstances, be otherwise elevated or protected as provided in this chapter to a point at least 1 foot above the

regulatory flood protection elevation.

(Prior code § 9103 (b) (4))

#### **15.32.170 Construction materials and methods.**

A. All new construction and substantial improvement shall be constructed with materials and utility equipment resistant to flood damage.

B. All new construction and substantial improvement shall be constructed using methods and practices the minimize flood damage.

C. All new construction and substantial improvement shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

D. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration flood waters into the system.

E. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.

F. On-site waste disposal systems shall be located or designed to prevent impairment to them or contamination from them during flooding.

(Prior code § 9-103 (b) (5))

#### **15.32.180 Floodproofing safeguards.**

Floodproofing safeguards such as the following shall be designed consistent with the flood protection elevation for the particular area, flood velocities, durations, rate of rise, hydrostatic forces and hydrodynamic forces, and other factors associated with the regulatory flood. Before the City Engineer approves a floodplain development permit for any structures under this chapter, he or she shall require that the applicant submit a plan or document certified by a registered professional engineer that the floodproofing safeguards are consistent with the regulatory flood protection elevation and associated flood factors for the particular area. The following floodproofing safeguards may be required without limitation because of specific enumeration:

A. Anchorage to resist flotation and lateral movement;

B. Reinforcement of walls to resist water pressures;

C. Addition of mass or weight to structures to resist flotation;

D. Pumping facilities or comparable practices for subsurface drainage systems for building to relieve external foundation wall and basement flood pressures;

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- E. Construction of water supply and waste treatment systems so as to prevent the entrance of floodwaters;
- F. Construction to resist rupture or collapse caused by water pressure or floating debris;
- G. Installation of valves or controls on sanitary and storm drains which will permit the drains to be closed to prevent backup of sewage and storm waters into the buildings or structures. Gravity draining of basements may be eliminated by mechanical devices;
- H. Location of all electrical equipment, circuits and installed electrical appliances in a manner which will assure that they are not subject to flooding and to provide protection from inundation by the regulatory flood;
- I. Location of any structural storage facilities for chemicals, explosives, buoyant materials, flammable liquids, or other toxic materials which could be hazardous to public health, safety and welfare in a manner which will assure that the facilities are situated at elevations above the height associated with the regulatory flood protection elevation or are adequately floodproofed to prevent flotation of storage containers or damage to storage containers which could result in the escape of toxic materials into floodwaters;
- J. On-site waste disposal systems shall be located or designed to prevent impairment to them or contamination from them during flooding; and
- K. Such other safeguards that the Planning Commission and/or Common Council shall determine necessary.

(Prior code § 9-103 (c))

#### **15.32.190 Manufactured homes.**

- A. All manufactured homes or those to be substantially improved shall be elevated on a permanent foundation such that the lowest floor to the manufactured home is at or above the base flood elevation and is securely anchored to an adequately anchored foundation system.
- B. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure and capable of resisting the hydrostatic and hydrodynamic loads.
- C. All manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement and capable of resisting the hydrostatic and hydrodynamic loads. 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 and local anchoring requirements for resisting wind forces. Specific requirements may be:
  - 1. Over-the-top ties be provided at each of the 4 corners of the manufactured home, with 2 additional ties per side, at intermediate locations, with manufactured homes less than 50 feet per side;
  - 2. Frame ties be provided at each corner of the home with 5 additional ties per side at intermediate points, with manufactured homes less than 50 feet long requiring 4 additional ties per side;

3. All components of the anchoring system be capable of carrying a force of 4,800 pounds; and
4. Any additions to the manufactured home be similarly anchored.

(Prior code § 9-103 (e))

#### **15.32.200 Subdivisions.**

- A. All subdivision proposals shall be consistent with the need to minimize flood damage.
- B. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- C. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- D. Base flood elevation data shall be provided for all subdivision proposals and other proposed developments.

(Prior code § 9-103 (f))

#### **15.32.210 Watercourse alterations.**

- A. No watercourse alteration shall diminish the flow-carrying capacity of the watercourse and the alteration shall increase or improve the capacity of the watercourse.
- B. Before the City Engineer approves a floodplain development permit for any development under this chapter, he or she shall require that the applicant submit a set of plans and calculations of the proposed alteration and its effect on flows. Generally, an applicant should provide the following information:
  1. Topographic map of area in question;
  2. A comparison of the existing and proposed channel capacity, including engineering calculations;
  3. A description of the proposed alteration;
  4. Land use of adjacent properties,
  5. Description of any obstructions; and
  6. Photos of the area.
- C. Prior to approval of the floodplain development permit, the applicant shall be required to obtain a conditional letter of map amendment from the Federal Emergency Management Agency (FEMA).
- D. Prior to any watercourse alteration, § 15.32.230E. must be fulfilled.

(Prior code § 9-103 (g))

#### **15.32.220 Floodways.**

Located within areas of special flood hazard established in § 15.32.050B, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions apply:

A. Prohibit encroachments, including fill, new construction, substantial improvements and other development unless a technical evaluation by a professional engineer demonstrates that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge;

B. If subsection A. of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of §§ 15.32.110 through 15.32.210.

(Prior code § 9-103.1)

#### **15.32.230 Administration.**

A. *Generally.* The City Engineer, or his or her designee, as designated by the mayor and the Common Council of Rapid City, shall administer and enforce this chapter. If he or she finds a violation of the provisions of this chapter, he or she shall notify the person responsible for the violation, indicating the nature of the violation and ordering the action necessary to correct it.

B. *Application for floodplain development permit.*

1. A floodplain development permit shall be obtained before construction or development begins within any area of special flood hazard established in § 15.32.050. Any person desiring a floodplain development permit shall make application to the City Engineer or his or her designee which shall state that the property is in the floodplain development district and shall be accompanied by plans in duplicate thereon to scale, showing the nature, location, dimensions, elevations of the lot, existing or proposed structure, fill, development and the location of the foregoing in relation to the channel, the floodway, base flood elevations and the flood protection elevation.

2. Any person desiring a permit shall, at the same time of application, file a preconstruction floodproofing certification form, signed by a registered professional engineer or architect, certifying that the structure design of the finished fill and building floor elevations, floodproofing or other flood protection measures are in compliance with the provisions of this chapter.

C. *Permit review.* The City Engineer, or his or her designee, shall:

1. Review all development permits to determine that the permit requirements of this chapter have been satisfied;

2. Review all development permits to determine that all necessary permits have been obtained from federal, state or local governmental agencies from which prior approval is required; and

3. Review all development permits to determine if the proposed development is located in the

floodway, and, if located in the floodway, assure that the encroachments provisions of § 15.32.220A. are met.

D. *Post-construction elevation/floodproofing certification for new, altered or nonconforming uses.*

1. It is unlawful to use or occupy or permit the use or occupancy of any building, premises, development, or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a registered professional engineer has certified that the use of the building or land is in compliance with the flood protection provisions of this chapter and a post construction elevation/flood proofing certification has been issued therefore by the City Engineer.

2. No nonconforming structure, use or development shall be used after extension or substantial alteration until a post-construction elevation/ floodproofing certification has been issued by the City Engineer. The post-construction elevation/ floodproofing certificate shall state specifically the particulars, if any, in which the nonconforming structure or use differs from the provisions of this chapter.

E. *Construction and use to be as provided in applications, plans, permits and post-construction elevation/floodproofng certification.* Special exception uses or post-construction elevation/ floodproofing certification issued on the basis of approved plans and applications authorize only the use, arrangement or construction set forth in such approved plans and applications and no other use, arrangement or construction. Use, arrangement or construction at variance with that authorized shall be deemed a violation of this chapter and punishable as provided by § 15.32.270. The applicant shall ordinarily be required to submit to the City Engineer certification by a registered professional engineer or other qualified person designated by the governing body that the finished fill and building floor elevations, floodproofing or other flood protection measures were accomplished in compliance with the provisions of this chapter.

F. *Alteration of watercourses.* The applicant shall:

1. Notify adjacent communities and the South Dakota Department of Water and Natural Resources prior to any alteration or relocation of a watercourse and submit evidence of such notification to the City Engineer and to the Federal Emergency Management Agency (FEMA):

2. Require that maintenance is provided within the altered or relocated portion of the watercourse so that the floodcarrying capacity is not diminished.

G. *Use of other base flood data.* When base flood elevation data has not been provided in accordance with § 15.32.050, basis for establishing the areas of special flood hazard, the City Engineer shall obtain, review and reasonably utilize any base flood elevation and floodway data available from any federal, state or other source as criteria for requiring that new construction, substantial improvements or other development in zone A are administered in accordance with §§ 15.32.110 through 15.32.210.

H. *Information to be obtained and maintained.*

1. The City Engineer shall obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and whether or not the structure contains a basement.

2. For all new or substantially improved floodproofed structures, the City Engineer shall:

- a. Verify and record the actual elevation (in relation to mean sea level) to which the structure has been floodproofed.
- b. Maintain the floodproofing certifications required in subsection E of this section.

3. The City Engineer shall maintain for public inspection all records pertaining to the provisions of this chapter.

I. *Interpretation of FIRM boundaries.* The City Engineer shall make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in § 15.32.240.

(Prior code § 9-104)

#### **15.32.240 Application for special exceptions.**

All application for special exceptions shall be filed with the City Engineer or his or her designee. The City Engineer shall or his or her designee shall file a copy of the request with the Planning Department, which shall schedule a review of the exception by the Planning Commission. The fee for the special exception shall be \$250.

A. *Time for action by the Planning Commission.* Within 30 days after receiving an official application, the Commission shall either recommend approval or disapproval of the application or require additional information. In those cases where additional information is requested, time for action by the Commission to recommend approval or disapproval of an application shall be extended an additional 30 days. No more than 2 extensions shall be granted.

B. *Time for action by the Common Council.* After the Planning Commission has recommended either approval or denial, a copy of their decision shall be filed within 5 days with the city's Finance Officer. The Common Council shall set, within 30 days following the date of Planning Commission action, a hearing on the application for the special exception. The counsel shall, within 30 days of the hearing, either approve or deny or require additional information of the applicant. In those cases where additional information may be required, time for action by the Council to approve or deny an application shall be extended additional 30 days. No more than 2 extensions shall be granted by the Council; however, the failure of the Council to approve or deny shall not be construed as approval.

C. *Procedure to be followed by Planning Commission in special exception permits.* Upon receiving an application for a special exception permit involving the use of fill or construction of structures, the commission or Common Council shall require prior to rendering a recommendation thereon:

1. The applications shall include postal registration data that substantiates petitioners good faith attempt of mailing certified letters with return receipts to all property owners within 250 feet, inclusive of dedicated ways, of the area described. The certified mailings shall include the dates set for the hearings before the Commission on the special exception and shall be on a form provided by the City

Engineer;

2. Require the applicant to furnish such of the following information as is deemed necessary by the Commission or Council for determining the suitability of the particular site for the proposed use:

a. Plans in triplicate drawn to scale showing the nature, location, dimensions and elevation of the lot, existing or proposed structures, fill, storage of materials, flood proofing measures, and the relationship of the preceding to the location of the channel or floodway, the base flood elevation, and regulatory flood protection elevations;

b. A typical valley cross section, to scale, showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross section areas to be occupied by the proposed development, and high-water information;

c. Plan (surface view), to scale, showing elevations or contours of the ground; pertinent structures, fill or storage elevations; size, location and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets, water supply, sanitary, facilities; photographs showing existing land uses and vegetation upstream and downstream for a significant reach, soil types, and other pertinent information;

d. Profile, to scale, showing the slope of the bottom of the channel or flow line of the stream and the existing and proposed flood elevations; and

e. Specifications of building construction and materials, floodproofing, storage of materials, water supply and sanitary facilities.

3. Transmit 1 copy of the information described in subsection C.2.a. of this section to a registered professional engineer 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;

4. Based upon the technical evaluation of the designated engineer or expert, the Commission shall determine the specific flood hazard at the site and shall evaluate the suitability of the proposed use in relation to the flood hazard.

D. *Factors upon which the decision of the Commission or Common Council shall be based.* In passing upon the applications, the Commission and Council shall consider all relevant factors specified in other sections of this chapter and:

1. The danger to health, safety, welfare 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 any person or property;

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 the damage on the individual occupant, both present and future;



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5. The importance of the services provided by the proposed facility to 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 anticipated, or other proposed developments in the foreseeable future;
9. The relationship of the proposed use to the comprehensive plan and floodplain 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 transportation of the floodwaters expected at the site; and
12. Such other factors which are relevant to the purpose of this chapter.

E. *Conditions attached to special exceptions.*

1. Upon consideration of the preceding factors and the purposes of this chapter, the commission or Council may attach such conditions to be granting of special exceptions as it deems necessary to further the purposes of this chapter.

2. Conditions for variances:

a. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and with surrounded by lots with existing structures constructed below the base level, providing subdivisions 1. through 12. of subsection D. of this section have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justifications required for issuing the variance increase.

b. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the national register of historic places or the state inventory of historic places, without regard to the procedures set forth in the remainder of this section.

c. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

d. Variances shall only be issued upon determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

e. Variances shall only be issued upon:

- i. A showing of good and sufficient cause;
- ii. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, caused fraud on or victimization of the public as identified in subsection D. of this section or conflict with existing local laws or ordinances.

f. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor below the base flood elevation and that the cost of flood insurance will be commensurate with the increasing risk from the reduced lowest floor elevation.

3. Among such conditions without limitation because of specific enumeration may be included:

- a. Modification of waste disposal and water supply facilities;
- b. Limitations on period of use and operation;
- c. Imposition of operational controls, sureties and deed restrictions;
- d. Requirements for construction of channel modification dikes, levees, and other protective measures;
- e. Floodproofing safeguard. Floodproofing safeguards such as the following shall be designed consistent with the flood protection elevation for the particular area, flood velocities, durations, rare of rise, hydrostatic and hydrodynamic forces and other factors associated with the regulatory flood. The Planning Commission shall require that the applicant submit a plan or document certified by the registered professional engineer that the floodproofing safeguards are consistent with the regulatory flood protection elevation and associated flood factors for the particular area. The following floodproofing safeguards may be required without limitation because of specific enumeration:
  - i. Anchorage to resist flotation and lateral movement;
  - ii. Installation of watertight doors, bulkheads and shutters, or similar methods of construction;
  - iii. Reinforcement of walls to resist water pressures;
  - iv. Use of paints, membranes or mortars to reduce seepage of water through walls;
  - v. Addition of mass or weight to structures to resist flotation;
  - vi. Installation of pumps to lower water levels in the structure;
  - vii. Pumping facilities or comparable practices for subsurface drainage systems for building to relieve external foundation wall and basement flood pressures;
  - viii. Construction of water supply and waste treatment systems so as to prevent the entrance of floodwaters;
  - ix. Construction to resist rupture or collapse caused by water pressure or floating debris;

x. Installation of valves or controls on sanitary and storm drains which will permit the drains to be closed to prevent backup of sewage and storm waters into the buildings or structures. Gravity draining of basement may be eliminated by mechanical devices;

xi. Location of all electrical equipment, circuits and installed electrical appliances in a manner which will assure they are not subject to flooding and to provide protection from inundation by the regulatory flood;

xii. Location of any structural storage facilities for chemicals, explosives, buoyant materials, flammable liquids, or other toxic materials which could be hazardous to public health, safety and welfare in a manner which will assure that the facilities are situated at elevations above the height associated with the regulatory flood protection elevation or are adequately floodproofed to prevent flotation of storage containers, which could result in the escape of toxic materials into floodwaters;

xiii. Such other safeguards that the commission and/or Common Council shall determine necessary.

F. *Overriding recommendation of Planning Commission.* It shall take a majority vote of the entire membership of the Common Council to over-ride the recommendation of the Planning Commission.

(Ord. 3926,2003: Ord. 3833 (part), 2002: Ord. 3775 (part), 2002: prior code § 9-105)

#### **15.32.250 Nonconforming uses.**

A structure or the use of a structure or premises which was lawful before the passage or amendment of this chapter but which is not in conformity with the provisions of this chapter may continued subject to the following conditions:

A. No such structure or use shall be expanded, changed, enlarged or altered in a way which increases its nonconformity, and any such expanding change, enlargement or alteration shall be conforming.

B. No structural alteration, addition or repair to any nonconforming structure over the life of the structure shall exceed 50% of its value at the time of its becoming a nonconforming use, unless the structure is permanently changed to a conforming use.

C. If such use is discontinued for 12 consecutive months any future use of the building premises shall conform to this chapter. The Assessor shall notify the City Engineer in writing of instances of nonconforming uses which have been discontinued for a period of 12 months.

D. If any nonconforming use or structure is destroyed by a means, including floods, to an extent of 50% or more of its value at the time of its becoming a nonconforming use, it shall not be reconstructed except in conformity with the provisions of this chapter; provided that, the Planning Commission may permit reconstruction if the use or structure is located outside of the floodway and upon reconstruction, is adequately and safely floodproofed, elevated or otherwise protected in conformity with § 15.32.240E.2.a. through e.

E. Uses or adjuncts thereof which are or become nuisance shall not be entitled to continue as nonconforming uses.

F. Except as provided in this section, any use which has been permitted as a special exception use shall be considered a conforming use.

G. Any alteration, addition or repair to any nonconforming structure which would result in substantially increasing its flood damage potential shall be protected by measures pursuant to § 15.32.240E.2.a. through e.

H. The City Engineer shall prepare a list of those nonconforming uses which have been floodproofed or otherwise adequately protected in conformity with § 15.32.240E.2.a through e. He or she shall present the list to the Planning Commission which may issue a certificate to the owner stating that such uses, as a result of these corrective measures, are in conformity with the provisions of this chapter.

(Prior code § 9-106)

#### **15.32.260 Amendments.**

A. The regulations, restrictions and boundaries set forth in this chapter may, from time to time, be amended, supplemented, changed or repealed, as provided by law. However, no such action may be taken until a public hearing in relation thereto has been held at which parties in interest and citizens shall have an opportunity to be heard. At least 15-days' notice of the time and place of the hearing shall be published in a newspaper of general circulation in the city.

B. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

(Prior code § 9-108)

#### **15.32.270 Violation–Penalty.**

A. Violation of the provisions of this chapter or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants or variances of special exceptions) shall constitute a misdemeanor.

B. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100 or imprisoned for not more than 30 days, or both (SDCL § 9-19-3), and, in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

C. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

(Prior code § 9-107)

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