



*Winnebago County*

*Chapter 26*

***Floodplain Zoning Code***



## Chapter 26

### Floodplain Zoning Code

#### Article

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**ARTICLE 1  
GENERAL PROVISIONS**

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**26.1-1 Name of chapter**

This chapter shall be known as "Floodplain Zoning Code" and may be referred to herein as "this chapter."

**26.1-2 Authority**

This chapter is adopted pursuant to authorization in ss. 59.69, 59.692, and 59.694, Wis. Stats., and the requirements in s. 87.30, Wis. Stats.

**26.1-3 Jurisdiction**

(a) **Unincorporated areas of the county.** This chapter applies to those areas in the unincorporated area of Winnebago County that would be covered by the regional flood or base flood as shown on the adopted flood insurance rate maps (FIRMs) or other maps approved by the Department of Natural Resources. Base flood elevations are derived from the flood profiles in the flood insurance study and are shown as AE, A1-30, and AH zones on the flood insurance rate maps. Other regulatory zones are displayed as A and AO zones. Regional flood elevations may be derived from other studies. If more than one map or revision is referenced, the most restrictive information shall apply.

(b) **Annexed lands.** This chapter applies to any land annexed by a city or village, until the municipality adopts and enforces an ordinance which meets the requirements of ch. NR 116, Wis. Adm. Code and 44 CFR 59-72, National Flood Insurance Program (NFIP).

**26.1-4 Legislative findings**

Uncontrolled development and use of the floodplains and rivers in the unincorporated areas of Winnebago County would impair the public health, safety, convenience, general welfare, and tax base.

**26.1-5 Purpose**

This chapter is intended to regulate floodplain development to:

- (1) protect life, health, and property;
- (2) minimize expenditures of public funds for flood control projects;
- (3) minimize rescue and relief efforts undertaken at the expense of the taxpayers;
- (4) minimize business interruptions and other economic disruptions;
- (5) minimize damage to public facilities in the floodplain;
- (6) minimize the occurrence of future flood blight areas in the floodplain;

- (7) discourage the victimization of unwary land and home buyers;
- (8) prevent increases in flood heights that could increase flood damage and result in conflicts between property owners; and
- (9) discourage development in a floodplain if there is any practicable alternative to locate the activity, use, or structure outside of the floodplain.

#### **26.1-6 Compliance**

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

#### **26.1-7 Liability**

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

#### **26.1-8 Applicability to public entities**

(a) **Municipalities.** Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this chapter and obtain all necessary permits.

(b) **State agencies.** State agencies are required to comply if s. 13.48(13), Wis. Stats., applies.

(c) **Specified Department of Transportation projects.** The construction, reconstruction, maintenance, and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when s. 30.2022, Wis. Stats., applies.

#### **26.1-9 Relationship of this chapter to zoning regulations**

This chapter supersedes all the provisions of any municipal zoning ordinance enacted under ss. 59.69, 59.692 or 59.694, Wis. Stats., or s. 30.2022, Wis. Stats., which relate to floodplains. If another ordinance is more restrictive than this chapter, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

#### **26.1-10 Relationship of this chapter to private agreements**

This chapter is not intended to repeal, abrogate, annul, impair, or interfere with any easement, covenant, deed restriction, or other private agreement governing land development. However, when this chapter imposes a greater restriction than the aforementioned, the provisions of this chapter shall apply.

#### **26.1-11 Severability**

The various sections of this chapter are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision and shall not affect the validity of other provisions, sections, or portions of the chapter. The remainder of the chapter shall remain in full force and effect.

**ARTICLE 2**  
**INTERPRETATION AND CONSTRUCTION**

**Sections**

26.2-1	General rules of construction	26.2-5	Use of graphics, illustrations, headings, references, statutory citations, and commentary notes
26.2-2	Responsibility for interpretation	26.2-6	General rules of interpretation
26.2-3	Delegation of authority	26.2-7	Computation of time
26.2-4	Internal conflicts		

**26.2-1 General rules of construction**

In their interpretation and application, the provisions of this chapter are minimum requirements and shall be liberally construed in favor of Winnebago County and are not a limitation on or repeal of any other powers granted by Wisconsin Statutes. If a provision of this chapter, required by ch. NR 116, Wis. Adm. Code, is unclear, the provision shall be interpreted in light of the standards in ch. NR 116 in effect on the date of the adoption of this chapter or in effect on the date of the most recent text amendment to this chapter.

**26.2-2 Responsibility for interpretation**

In the event a question arises concerning any provision or the application of any provision of this chapter, interpretations shall be issued by the zoning administrator consistent with division 15 of article 7 of chapter 23 of the general code.

**26.2-3 Delegation of authority**

If a provision in this chapter states that an elected official, department supervisor, or some other employee is to perform some act, such individual may designate, delegate, or authorize a subordinate to perform the act unless state law or the provision clearly prohibits such delegation.

**26.2-4 Internal conflicts**

More specific provisions of this chapter shall be followed in lieu of more general provisions that may be more lenient than or in conflict with the more specific provision.

**26.2-5 Use of graphics, illustrations, headings, references, statutory citations, and commentary notes**

(a) **Purpose.** Graphics, illustrations, headings, references, statutory citations, and commentary notes may be included to improve the readability of this chapter and increase reader comprehension. Specifically, graphics and illustrations are included to help the reader visualize the meaning of the text. Headings and subheadings generally state the content of that section and are intended to help the reader quickly find information. References and statutory citations are included when the section is related to a state or local law or another section in this chapter. These are included to help the reader understand the relationship among various provisions. Commentary notes are included to supplement and/or further clarify a sentence or provision.

(b) **Interpretation.** A graphic, illustration, heading, reference, statutory citation, or commentary note shall not govern, limit, modify, or in any manner affect the scope, meaning, or intent of any provision.

(c) **Effect of deficiency.** Because the text controls, no provision shall be held invalid by reason of any deficiency in any graphic, illustration, heading, reference, statutory citation, or commentary note.

#### **26.2-6 General rules of interpretation**

In the construction of this chapter, the following shall be observed, unless such construction would be inconsistent with the text or with the manifest intent of this chapter:

- (1) **Gender.** Words of the masculine gender include the feminine and neuter, and vice versa.
- (2) **Singular and plural words.** Words in the singular include the plural and words in the plural include the singular.
- (3) **Tense.** Words in the present tense include the past and future tense, and the future tense includes the present tense.
- (4) **“Must”, “shall” and “will”.** The words “must”, “shall” and “will” imply a mandatory condition.
- (5) **“May” or “should”.** The words “may” and “should” imply a permissive condition.
- (6) **“Includes” or “including”.** The words “includes” or “including” shall not limit a provision to the specific example(s) listed, but are intended to extend their meaning to all other instances or circumstances of like kind or character.
- (7) **“Such as”.** The phrase “such as” shall not limit a provision to the specific example(s) listed, but is intended to extend its meaning to all other instances or circumstances of like kind or character.
- (8) **Conjunctions.** When used at the end of a series, the word “and” indicates that all listed items apply. When the word “or” is used at the end of a series, it indicates that one or more of the listed items apply.

#### **26.2-7 Computation of time**

When a time period is specified in this chapter, the first day of the period shall be the first day after the event that triggered the time clock to start. If the last day of the time period is a Saturday, Sunday, or a legal holiday, that day shall be excluded and the time period shall be extended to the next business day.

**ARTICLE 3  
DEFINITIONS**

**Sections**

26.3-1	Words and phrases not defined	
26.3-2	Words and phrases defined	

**26.3-1 Words and phrases not defined**

Unless specifically defined in this article, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter it’s most reasonable application.

**26.3-2 Words and phrases defined**

For the purposes of this chapter, certain words and terms are defined below and shall have the meaning ascribed to them, except where the context clearly indicates a different meaning.

**A**

- (1) **A Zones** Those areas shown on the Official Floodplain Zoning Map which would be inundated by the regional flood. These areas may be numbered or unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.
- (2) **AH Zone** See Area of shallow flooding
- (3) **AO Zone** See Area of shallow flooding
- (4) **Accessory structure or use** A facility, structure, building, or use which is accessory or incidental to the principal use of a property, structure, or building.
- (5) **Alteration** An enhancement, upgrading or substantial change or modifications other than an addition or repair to a dwelling or to electrical, plumbing, heating, ventilating, air conditioning, and other systems within a structure.
- (6) **Area of shallow flooding** A designated AO, AH, AR/AO, AR/AH, or VO zone on a community’s Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flood may be evident. Such flooding is characterized by ponding or sheet flow.

**B**

- (7) **Base flood** A flood having a one percent chance of being equaled or exceeded in any given year, as published by the Federal Emergency Management Agency as part of a flood insurance study and depicted on a flood insurance rate map.
- (8) **Basement** Any enclosed area of a building having its floor sub-grade (i.e., below ground level, on all sides).
- (9) **Board of adjustment** The entity created under authority of ch. 23 (Town/County Zoning Code) of the general code.
- (10) **Building** See Structure

- (11) **Bulkhead line** A geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the Department of Natural Resources pursuant to s. 30.11, Wis. Stats., and which allows limited filling between this bulkhead line and the original ordinary high-water mark, except where such filling is prohibited by the floodway provisions of this chapter.

**C**

- (12) **Campground** Any parcel of land which is designed, maintained, intended, or used for the purpose of providing sites for non-permanent overnight use by 4 or more camping units, or which is advertised or represented as a camping area.
- (13) **Camping unit** Any portable device, no more than 400 square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pick-up truck, or tent that is fully licensed, if required, and ready for highway use.
- (14) **Certificate of compliance** A certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this chapter.
- (15) **Channel** A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.
- (16) **Crawlways or crawl space** An enclosed area below the first usable floor of a building, generally less than 5 feet in height, used for access to plumbing and electrical utilities.

**D**

- (17) **Deck** An unenclosed exterior structure that has no roof or sides, but has a permeable floor which allows the infiltration of precipitation.
- (18) **Development** Any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures, or accessory structures; the construction of additions or alterations to buildings, structures, or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving, excavation, or drilling operations; the storage, deposition, or extraction of materials or equipment; and the installation, repair, or removal of public or private sewage disposal systems or water supply facilities.
- (19) **Dryland access** A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above the regional flood elevation and wide enough for wheeled rescue and relief vehicles.

**E**

- (20) **Encroachment** Any fill, structure, equipment, building, use, or development in the floodway.
- (21) **Equalized assessed value** The estimated market value of an improvement on a parcel.<sup>1</sup>

<sup>1</sup> Commentary: In Wisconsin, the local assessor determines the assessed value for each property in the municipality. These values are then adjusted using an assessment ratio which is set by the Department of Revenue for that municipality. That value is referred to as the "equalized assessed value."

**F**

- (22) **Federal Emergency Management Agency (FEMA)** The federal agency that administers the National Flood Insurance Program.
- (23) **Flood insurance rate map (FIRM)** A map of a community on which the Federal Insurance Administration has delineated both the floodplain and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.
- (24) **Flood or flooding** A general and temporary condition of partial or complete inundation of normally dry land areas caused by (1) the overflow or rise of inland waters; (2) the rapid accumulation or runoff of surface waters from any source; (3) the inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; or (4) the sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.
- (25) **Flood frequency** The probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average once in a specified number of years or as a percent chance of occurring in any given year.
- (26) **Floodfringe** That portion of the floodplain outside of the floodway which is covered by flood waters during the regional flood and associated with standing water rather than flowing water.
- (27) **Flood hazard boundary map** A map designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A-Zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a flood insurance study and a flood insurance rate map.
- (28) **Flood insurance study (FIS)** A technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A Zones. Flood insurance rate maps, that accompany the flood insurance study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.
- (29) **Floodplain** Land which has been or may be covered by flood water during the regional flood. It includes the floodway and the floodfringe, and may include other designated floodplain areas for regulatory purposes.
- (30) **Floodplain island** A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.
- (31) **Floodplain management** Policy and procedures to ensure wise use of floodplains, including mapping and engineering, mitigation, education, and administration, and enforcement of floodplain regulations.
- (32) **Flood profile** A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.
- (33) **Floodproofing** Any combination of structural provisions, changes, or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage.

- (34) **Flood protection elevation** An elevation of 2 feet of freeboard above the water surface profile elevation designated for the regional flood. (Also see Freeboard)
- (35) **Flood storage** Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.
- (36) **Floodway** The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.
- (37) **Freeboard** A safety factor expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for any factors that cause flood heights greater than those calculated, including ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of watershed urbanization, loss of flood storage areas due to development, and aggregation of the river or stream bed.

**G**

- (38) **General code** The compilation of laws as adopted by the Winnebago County Board of County Supervisors.

**H**

- (39) **Habitable structure** Any structure or portion thereof used or designed for human habitation.
- (40) **Hearing notice** Publication or posting meeting the requirements of ch. 985, Wis. Stats. For appeals, a Class 1 notice, published once at least one week (7 days) before the hearing, is required. For all zoning ordinances and amendments, a Class 2 notice, published twice, once each week consecutively, the last at least a week (7 days) before the hearing. Local ordinances or bylaws may require additional notice, exceeding these minimums.
- (41) **High flood damage potential** Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.
- (42) **Highest adjacent grade** The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- (43) **Historic structure** Any structure that is (1) listed individually in the National Register of Historic Places or preliminarily determined by the U.S. Secretary of the Interior as meeting the requirements for individual listing on the National Register; (2) certified or preliminarily determined by the U.S. Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the U.S. Secretary of the Interior to qualify as a registered historic district; (3) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the U.S. Secretary of the Interior; or (4) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the U.S. Secretary of the Interior; or by the U.S. Secretary of the Interior in states without approved programs.

**I**

- (44) **Increase in regional flood height** A calculated upward rise in the regional flood elevation, equal to or greater than 0.00 foot, based on a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain but not attributable to

manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients, and discharge.

**L**

- (45) **Land use** Any nonstructural use made of unimproved or improved real estate. (Also see Development)
- (46) **Lowest adjacent grade** Elevation of the lowest ground surface that touches any of the exterior walls of a building.
- (47) **Lowest floor** 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 such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR 60.3.

**M**

- (48) **Maintenance** The act or process of restoring to original soundness, including redecorating, refinishing, nonstructural repairs, or the replacement of existing fixtures, systems or equipment with equivalent fixtures, systems or structures.
- (49) **Manufactured home** A structure transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. The term "manufactured home" includes a mobile home but does not include a "mobile recreational vehicle."
- (50) **Mobile/manufactured home park or subdivision** A parcel (or contiguous parcels) of land, divided into two or more manufactured home lots for rent or sale.
- (51) **Mobile/manufactured home park or subdivision, existing** A parcel of land, divided into two or more manufactured home lots for rent or sale, on which the construction of facilities for servicing the lots is completed before the effective date of this chapter. At a minimum, this would include the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.
- (52) **Mobile/manufactured home park, expansion to existing** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed. This includes installation of utilities, construction of streets and either final site grading or the pouring of concrete pads.
- (53) **Mobile recreational vehicle** A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried, or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use. Manufactured homes that are towed or carried onto a parcel of land, but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of "mobile recreational vehicle."
- (54) **Model, corrected effective** A hydraulic engineering model that corrects any errors that occur in the Duplicate Effective Model, adds any additional cross sections to the Duplicate Effective Model, or incorporates more detailed topographic information than that used in the current effective model.

- (55) **Model, duplicate effective** A copy of the hydraulic analysis used in the effective flood insurance study and referred to as the effective model.
- (56) **Model, effective** The hydraulic engineering model that was used to produce the current effective flood insurance study.
- (57) **Model, existing (pre-project)** A modification of the Duplicate Effective Model or Corrected Effective Model to reflect any man made modifications that have occurred within the floodplain since the date of the effective model but prior to the construction of the project for which the revision is being requested. If no modification has occurred since the date of the effective model, then this model would be identical to the Corrected Effective Model or Duplicate Effective Model.
- (58) **Model, revised (post-project)** A modification of the Existing or Pre-Project Conditions Model, Duplicate Effective Model, or Corrected Effective Model to reflect revised or post-project conditions.

## N

- (59) **North American Vertical Datum (NAVD)** Elevations referenced to mean sea level datum, 1988 adjustment.
- (60) **National Geodetic Vertical Datum (NGVD)** Elevations referenced to mean sea level datum, 1929 adjustment.
- (61) **New construction** For floodplain management purposes, "new construction" means structures for which the start of construction commenced on or after the effective date of floodplain zoning regulations adopted by this community and includes any subsequent improvements to such structures. For the purpose of determining flood insurance rates, it includes any structures for which the "start of construction" commenced on or after the effective date of an initial flood insurance rate map or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.
- (62) **Nonconforming structure** An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this chapter for the area of the floodplain which it occupies.<sup>2</sup> (Also see nonconforming use)
- (63) **Nonconforming use** An existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this chapter for the area of the floodplain which it occupies.<sup>3</sup> A residence in the floodway is an example of a nonconforming use. (Also see nonconforming structure)

## O

- (64) **Obstruction to flow** Any development which blocks the conveyance of floodwaters such that this development alone or together with any future development will cause an increase in regional flood height.

<sup>2</sup> Commentary: For example, an existing residential structure in the floodfringe district is a conforming use. However, if the lowest floor is lower than the flood protection elevation, the structure is nonconforming.

<sup>3</sup> Commentary: For example, a residence in the floodway is considered a nonconforming use.

- (65) **Official floodplain zoning map** That map, adopted and made part of this chapter, which has been approved by the Department of Natural Resources and the Federal Emergency Management Agency.
- (66) **Open space use** Those uses having a relatively low flood damage potential and not involving a structure.
- (67) **Ordinary high-water mark** The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

**P**

- (68) **Person** An individual or a group of individuals, corporation, partnership, association, municipality, or state agency.
- (69) **Planning and Zoning Committee** The five-member committee appointed by the Winnebago County Board of Supervisors to review and make recommendations to the County Board on planning and land use issues as authorized by Wisconsin Statutes. The Planning and Zoning Committee is also known as the “P&Z.”
- (70) **Private sewage system** A sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Wisconsin Department of Commerce, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure.
- (71) **Public utilities** Those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer, and storm sewer.

**R**

- (72) **Reasonably safe from flooding** Base flood waters will not inundate the land or damage structures to be removed from the floodplain and that any subsurface waters related to the base flood will not damage existing or proposed buildings.
- (73) **Regional flood** A flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a one percent chance of being equaled or exceeded in any given year, and if depicted on the flood insurance rate map, the regional flood elevation is equivalent to the base flood elevation.

**S**

- (74) **Start of construction** The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial 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 streets and/or walkways, nor does it include excavation for a basement, footings, piers, or foundations

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. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

- (75) **Structure** Any man-made object with form, shape, and utility, either permanently or temporarily attached to, placed upon, or set into the ground, stream bed or lake bed, including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges, dams, and culverts.
- (76) **Subdivision** Has the meaning given in s. 236.02(12), Wis. Stats.
- (77) **Substantial damage** Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the equalized assessed value of the structure before the damage occurred.
- (78) **Substantial improvement** Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the equalized assessed value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the work performed. The term does not, however, include either any project for the improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions; or any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

**U**

- (79) **Unnecessary hardship** A situation where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing areas, setbacks, frontage, height, or density unnecessarily burdensome or unreasonable in light of the purposes of this chapter.

**V**

- (80) **Variance** An authorization by the board of adjustment for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in this chapter.
- (81) **Violation** The failure of a structure or other development to be fully compliant with the requirements of this chapter. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates, or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.

**W**

- (82) **Watershed** The entire region contributing runoff or surface water to a watercourse or body of water.

- (83) **Water surface profile** A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow.<sup>4</sup>
- (84) **Well** An excavation opening in the ground made by digging, boring, drilling, driving, or other methods, to obtain groundwater regardless of its intended use.

**Z**

- (85) **Zoning administrator** The individual so designated by the county executive for Winnebago County to perform those duties enumerated in ch. 23 (Town/County Zoning Code) of the general code.

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<sup>4</sup> Commentary: A water surface profile of the regional flood is used in regulating floodplain areas.

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**ARTICLE 4  
MAPS AND DISTRICTS**

**Sections**

26.4-1	Official maps	26.4-4	Removal of lands from floodplain
26.4-2	Establishment of floodplain zoning districts		
26.4-3	Locating floodplain boundaries		

**26.4-1 Official maps**

The boundaries of all floodplain districts are designated as A, AE, AH, AO or A1-30 on the maps based on the flood insurance study (FIS) listed below. Any change to the base flood elevations or any changes to the boundaries of the floodplain or floodway in the flood insurance study or on the flood insurance rate map must be reviewed and approved by the Department of Natural Resources and the Federal Emergency Management Agency through the Letter of Map Change process (see s. 26.6-4) before it is effective. No changes to regional flood elevations on non-FEMA maps shall be effective until approved by the Department of Natural Resources. These maps and revisions are on file in the office of the Winnebago County Planning and Zoning Department. If more than one map or revision is referenced, the most restrictive information shall apply.

The following maps are hereby adopted as part of this chapter:

- (1) A Zones on the Flood Insurance Study Maps, dated March 17, 2003, and all subsequent revisions, and in the Flood Insurance Study (#55139CV000A), dated March 17, 2003, as approved by the Department of Natural Resources (DNR) and the Federal Emergency Management Agency. Panel numbers include the following: 55139C0025E, 55139C0030E, 55139C0035E, 55139C0050E, 55139C0065E, 55139C0070E, 55139C0075E, 55139C0095E, 55139C0100E, 55139C0105E, 55139C0110E, 55139C0111E, 55139C0112E, 55139C0113E, 55139C0114E, 55139C0150E, 55139C0165E, 55139C0170E, 55139C0175E, 55139C0176E, 55139C0177E, 55139C0180E, 55139C0186E, 55139C0190E, 55139C0200E, 55139C0215E, 55139C0220E, 55139C0225E, 55139C0250E, 55139C0260E, 55139C0280E, 55139C0285E, 55139C0300E, 55139C0310E, 55139C0315E, 55139C0320E, 55139C0330E, 55139C0335E, 55139C0350E, 55139C0355E, and 55139C0365E.
- (2) 100 year Flood Analysis Millbrook Creek - Parkwood Estates, prepared by Martenson & Eisele, Inc., July 6, 1992. Floodplain area to be effective until subsequent flood analysis determines new floodplain limits and new study is adopted in accordance with ch. NR 116, Wis. Admin. Code.
- (3) Honey Creek 4th Addition/Woodland Creek, Gremmer & Associates, July 13, 1998.
- (4) Maps/Profiles in Town of Wolf River as identified in October Wisconsin Department of Natural Resources Wolf River Floodplain Restudy, October 28, 1988. SDDF Districts are specifically established for Riverview Lane, specifically that portion of Assessors Plat #1, town of Wolf River lying between the Wolf River and Riverview Lane as annotated on the Orthophoto-topographic map of Section 9, T20N, R14E, Town of Wolf River dated 1977, and as adopted by the County Board on August 20, 1990.

**26.4-2 Establishment of floodplain zoning districts**

Regional floodplain areas are divided into three districts as follows:

- (1) The Floodway District includes the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwaters. The floodway district is contained within AE Zones as shown on the flood insurance rate map.
- (2) The Floodfringe District includes those areas between the regional flood limits and the floodway. The floodfringe district is contained within AE zones as shown on the flood insurance rate map.
- (3) The General Floodplain District (GFP) includes those areas that may be covered by floodwater during the regional flood but do not have a base flood elevation or floodway boundary determined. The general floodplain district is designated as A, AH, and AO zones on the flood insurance rate map.
- (4) The Shallow-Depth Long-Duration Floodway District (SDDF) includes all such areas as mapped on the official floodplain zoning maps.
- (5) The Flood Storage District (FSD) is that area of the floodplain where storage of floodwaters is calculated to reduce the regional flood discharge.

#### **26.4-3 Locating floodplain boundaries**

Discrepancies between boundaries on the official floodplain zoning map and actual field conditions shall be resolved using the following the criteria:

- (1) If flood profiles exist, the map scale and the profile elevations shall determine the district boundary. The regional or base flood elevations shall govern if there are any discrepancies.
- (2) Where flood profiles do not exist for projects, the location of the boundary shall be determined by the map scale.

If a significant difference exists, the map shall be amended according to s. 26.6-4. The zoning administrator can rely on a boundary derived from a profile elevation to grant or deny a land use permit, whether or not a map amendment is required. The zoning administrator shall be responsible for documenting actual pre-development field conditions and the basis upon which the district boundary was determined and for initiating any map amendments required under this section. Disputes between the zoning administrator and an applicant over the district boundary line shall be settled according to procedures in s. 26.6-6 and the criteria in this section. Where the flood profiles are based on established base flood elevations from a flood insurance rate map, the Federal Emergency Management Agency must approve any map amendment or revision pursuant to s. 26.6-4.

#### **26.4-4 Removal of lands from floodplain**

Compliance with the provisions of this chapter shall not be grounds for removing land from the floodplain unless it is filled at least 2 feet above the regional or base flood elevation, the fill is contiguous to land outside the floodplain, and the map is amended pursuant to s. 26.6-4.

**ARTICLE 5  
DEVELOPMENT STANDARDS**

**Divisions**

<ol style="list-style-type: none"> <li>1. General provisions applicable to all floodplain districts</li> <li>2. Floodway district</li> <li>3. Floodfringe district</li> <li>4. General floodplain district</li> <li>5. Shallow-depth long-duration floodway district</li> <li>6. Flood storage district</li> </ol>
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**DIVISION 1  
GENERAL PROVISIONS APPLICABLE TO ALL FLOODPLAIN DISTRICTS**

**Sections**

26.5-1 Hydraulic and hydrological analyses	26.5-4 Floodproofing standards for nonconforming structures or uses
26.5-2 Watercourse alterations	26.5-5 Public or private campgrounds
26.5-3 Chapter 30, 31, Wis. Stats., development	

**26.5-1 Hydraulic and hydrological analyses**

Development in the floodplain shall not obstruct flow, defined as development which blocks the conveyance of floodwaters by itself or with other development, causing any increase in the regional flood height; or cause any increase in the regional flood height due to floodplain storage area lost. The zoning administrator shall deny permits if it is determined the proposed development will obstruct flow or cause any increase in the regional flood height, based on the officially adopted FIRM or other adopted map, unless the provisions of s. 26.6-4 are met.

**26.5-2 Watercourse alterations**

No land use permit to alter or relocate a watercourse in a mapped floodplain shall be issued until the zoning administrator has notified in writing all adjacent municipalities, the Wisconsin Department of Natural Resources, and the regional office of the Federal Emergency Management Agency, and require the applicant to secure all necessary state and federal permits. The standards of s. 26.5-1 must be met and the flood carrying capacity of any altered or relocated watercourse shall be maintained. As soon as practicable, but not later than 6 months after the date of the watercourse alteration or relocation and pursuant to s. 26.6-4, Winnebago County shall apply for a letter of map revision (LOMR) from the Federal Emergency Management Agency. Any such alterations must be reviewed and approved by the Federal Emergency Management Agency and the Department of Natural Resources through the LOMC process.

**26.5-3 Chapter 30, 31, Wis. Stats., development**

Any development that requires a permit from the Department of Natural Resources under chs. 30 and 31, Wis. Stats., such as docks, piers, wharves, bridges, culverts, dams, and navigational aids, may be allowed if the necessary permits are obtained from the department and amendments to this chapter are made according to s. 26.6-4, if applicable.

**26.5-4 Floodproofing standards for nonconforming structures or uses**

(a) No permit or variance shall be issued for a nonresidential structure designed to be watertight below the regional flood elevation until the applicant submits a plan certified by a registered professional engineer or architect that the floodproofing measures will protect the structure or development to the flood protection elevation and submits a FEMA floodproofing certificate.

(b) For a structure designed to allow the entry of floodwaters, no permit or variance shall be issued until the applicant submits a plan prepared by a certified by a registered professional engineer or architect or that meets or exceeds the following standards:

- (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
- (2) the bottom of all openings shall be no higher than one foot above grade; and
- (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(c) Floodproofing measures shall be designed, as appropriate, to (1) withstand flood pressures, depths, velocities, uplift and impact forces, and other regional flood factors; (2) protect structures to the flood protection elevation; (3) anchor structures to foundations to resist flotation and lateral movement; (4) minimize or eliminate infiltration of flood waters; and (5) minimize or eliminate discharges into flood waters.

**26.5-5 Public or private campgrounds**

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

- (1) The campground is approved by the Department of Health Services.
- (2) A land use permit for the campground is issued by the zoning administrator.
- (3) The character of the river system and the elevation of the campground are such that a 72-hour warning of an impending flood can be given to all campground occupants.
- (4) There is an adequate flood warning procedure for the campground that offers the minimum notice required under this section to all persons in the campground. This procedure shall include a written agreement between the campground owner, the municipal emergency government coordinator and the chief law enforcement official which specifies the flood elevation at which evacuation shall occur, personnel responsible for monitoring flood elevations, types of warning systems to be used and the procedures for notifying at-risk parties, and the methods and personnel responsible for conducting the evacuation. This agreement shall be for no more than one calendar year, at which time the agreement shall be reviewed and updated to remain in compliance with all applicable regulations, including those of the Department of Health Services and all other applicable regulations.
- (5) Only camping units are allowed.
- (6) A camping unit shall not occupy any site in the campground for more than 180 consecutive days, at which time the camping unit must be removed from the floodplain for a minimum of 24 hours.
- (7) A camping unit that remains on site for more than 30 days shall be issued a limited authorization by the campground operator, a written copy of which is kept on file at the

campground. Such authorization shall allow placement of a camping unit for a period not to exceed 180 days and shall ensure compliance with all the provisions of this section.

- (8) The zoning administrator shall monitor the limited authorizations issued by the campground operator to assure compliance with the terms of this section.
- (9) All camping units that remain in place for more than 180 consecutive days must meet the applicable requirements in either division 2, 3, or 4 for the floodplain district in which the structure is located.
- (10) The campground shall have signs clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when a flood warning is issued.
- (11) All service facilities, including but not limited to refuse collection, electrical service, natural gas lines, propane tanks, sewage systems, and wells shall be properly anchored and placed at or flood proofed to the flood protection elevation.

**26.5-6 to 26.5-10      Reserved**

**DIVISION 2  
FLOODWAY DISTRICT**

**Sections**

26.5-11    Applicability	26.5-13    Development standards
26.5-12    Permitted uses	26.5-14    Prohibited uses

**26.5-11    Applicability**

This division applies to all floodway areas on the floodplain zoning maps and those delineated pursuant to s. 26.5-34.

**26.5-12    Permitted uses**

The following open space uses are allowed in the floodway district and the floodway areas of the general floodplain district if they are not prohibited by any other ordinance and all permits or certificates have been issued according to s. 26.6-8:

- (1) Agricultural uses, such as farming, outdoor plant nurseries, horticulture, viticulture, and wild crop harvesting.
- (2) Nonstructural industrial and commercial uses, such as loading areas, parking areas, and airport landing strips.
- (3) Nonstructural recreational uses, such as golf courses, tennis courts, archery ranges, picnic grounds, boat ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting, trap and skeet activities, hunting and fishing areas, and hiking and horseback riding trails, subject to the fill limitations of s. 26.5-13(d).
- (4) Uses or structures accessory to open space uses, or classified as historic structures that comply with ss. 26.5-13(a) and (b).
- (5) Extraction of sand, gravel, or other materials that comply with s. 26.5-13(d).

- (6) Functionally water-dependent uses, such as docks, piers or wharves, dams, flowage areas, culverts, navigational aids, and river crossings of transmission lines and pipelines that comply with chs. 30 and 31, Wis. Stats.
- (7) Public utilities, streets, and bridges that comply with s. 26.5-13(c).

#### **26.5-13 Development standards**

(a) **General standards.** Development shall have a low flood damage potential and shall not cause an obstruction or raise the flood elevations upstream and downstream as more fully described in s. 26.5-1.

(b) **Structures.** Structures accessory to permanent open space uses or functionally dependent on a waterfront location may be allowed by permit if the structures comply with the following criteria:

- (1) The structure is not designed for human habitation and does not have a high flood damage potential and is constructed to minimize flood damage.
- (2) The structure shall have a minimum of two openings on different walls having a total net area not less than one square inch for every square foot of enclosed area, and the bottom of all such openings being no higher than one foot above grade. The openings shall be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (3) The structure is anchored to resist flotation, collapse, and lateral movement.
- (4) Mechanical and utility equipment is elevated or flood proofed to or above the flood protection elevation.
- (5) The structure does not obstruct flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood.

(c) **Public utilities, streets, and bridges.** Public utilities, streets and bridges may be allowed by permit if adequate floodproofing measures are provided to the flood protection elevation and construction meets the development standards of s. 26.5-1.

(d) **Fill or deposition of materials.** The placement of fill or deposition of other materials may be allowed by permit if (1) the requirements of s. 26.5-1 are met; (2) no material is deposited in the navigable channel unless a permit is issued by the Department of Natural Resources pursuant to ch. 30, Wis. Stats., and a permit pursuant to s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344 has been issued, if applicable, and the other requirements have been met; (3) the fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling, or bulkheading; and (4) the fill is not classified as a solid or hazardous material.

#### **26.5-14 Prohibited uses**

Any use that is not listed as permitted uses in s. 26.5-12 is prohibited, including the following:

- (1) Habitable structures, structures with high flood damage potential, or those not associated with permanent open space uses;
- (2) Storing materials that are buoyant; flammable; explosive; or injurious to property, water quality, or human, animal, plant, fish or other aquatic life;
- (3) Uses not in harmony with or detrimental to uses permitted in the adjoining districts;
- (4) Any private or public sewage systems, except portable latrines that are removed prior to flooding and systems associated with recreational areas and Department-approved

campgrounds that meet the applicable provisions of local ordinances and ch. COMM 83, Wis. Adm. Code;

- (5) Any public or private wells which are used to obtain potable water, except those for recreational areas that meet the requirements of local ordinances and chs. NR 811 and NR 812, Wis. Adm. Code;
- (6) Any solid or hazardous waste disposal sites;
- (7) Any wastewater treatment ponds or facilities, except those permitted under s. NR 110.15(3)(b), Wis. Adm. Code;
- (8) Any sanitary sewer or water supply lines, except those to service existing or proposed development located outside the floodway which complies with the regulations for the floodplain area occupied.

**26.5-15 to 26.5-20      Reserved**

**DIVISION 3  
FLOODFRINGE DISTRICT**

**Sections**

26.5-21    Applicability 26.5-22    Permitted uses	26.5-23    Development standards 26.5-24    Solid waste disposal
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**26.5-21    Applicability**

This division applies to all floodfringe areas shown on the floodplain zoning maps and those delineated pursuant to s. 26.5-34.

**26.5-22    Permitted uses**

Any structure, land use, or development is allowed in the floodfringe district if (1) the standards in s. 26.5-23 are met, (2) the use is not prohibited by this or any other ordinance or regulation, and (3) all permits or certificates specified in ss. 26.6-8 and 26.6-9 have been issued.

**26.5-23    Development standards**

(a) **General standards.** Development shall not cause an obstruction or raise the flood elevations upstream or downstream as more fully described in s. 26.5-1.

(b) **Residential structures.** Any habitable structure, including a manufactured home, which is to be newly constructed or moved into the floodfringe, shall meet or exceed the following standards:

- (1) The elevation of the lowest floor shall be at or above the flood protection elevation on fill unless the requirements in subsection (b)(2) can be met. The fill shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure.
- (2) The basement or crawlway floor may be placed at the regional flood elevation if it is flood proofed to the flood protection elevation. No basement or crawlway floor is allowed below the regional flood elevation.
- (3) Contiguous dryland access shall be provided from the structure to land outside of the floodplain, except that in developments where existing street or sewer line elevations

make compliance impractical, the zoning administrator may permit new development and substantial improvements where roads are below the regional flood elevation, if the municipality has written assurance from police, fire, and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event or the county has an emergency evacuation plan approved by the Department of Natural Resources.

(c) **Accessory structures.** Accessory structures shall be constructed on fill with the lowest floor at or above the regional flood elevation.

(d) **Commercial structures.** Any commercial structure which is erected, altered or moved into the floodfringe shall meet the requirements of s. 26.5-23(b). Subject to the requirements of s. 26.5-23(f), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

(e) **Manufacturing and industrial structures.** Any manufacturing or industrial structure which is erected, altered, or moved into the floodfringe shall have the lowest floor elevated to or above the flood protection elevation or meet the floodproofing standards in s. 26.5-4. Subject to the requirements of s. 26.5-23(f), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

(f) **Storage of materials.** Materials that are buoyant; flammable; explosive; or injurious to property, water quality or human, animal, plant, fish or aquatic life shall be stored at or above the flood protection elevation or flood proofed in compliance with s. 26.5-4. Adequate measures shall be taken to ensure that such materials will not enter the water body during a flood event.

(g) **Public utilities, streets, and bridges.** Utilities, streets, and bridges shall be designed to be compatible with comprehensive floodplain development plans. When failure of public utilities, streets, and bridges would endanger public health or safety, or where such facilities are deemed essential, construction or repair of such facilities shall only be permitted if they are designed to comply with 26.5-4. Minor roads or non-essential utilities may be constructed at lower elevations if they are designed to withstand flood forces to the regional flood elevation.

(h) **Sewage systems.** Sewage disposal systems shall be designed to minimize or eliminate infiltration of flood water into the system, pursuant to s. 26.5-4(c), to the flood protection elevation and meet the provisions of all local ordinances and ch. COMM 83, Wis. Adm. Code.

(i) **Wells.** Wells shall be designed to minimize or eliminate infiltration of flood water into the system, pursuant to s. 26.5-4(c), to the flood protection elevation and shall meet the provisions of chs. NR 811 and NR 812, Wis. Adm. Code.

(j) **Deposition of materials.** Any deposited material must meet all the provisions of this chapter.

(k) **Manufactured homes.** The owner or operator of a manufactured home park and subdivision shall provide adequate surface drainage to minimize flood damage, and prepare, secure approval, and file an evacuation plan, indicating vehicular access and escape routes, with local emergency management authorities. In an existing manufactured home park, all new homes, replacement homes on existing pads, and substantially improved homes shall have the lowest floor elevated to the flood protection elevation and be anchored so they do not float, collapse, or move laterally during a flood. Outside of an existing manufactured home park, including new manufactured home parks and all single units outside of existing parks, all new, replacement, and substantially improved manufactured homes shall meet the residential development standards for the floodfringe in s. 26.5-23(b).

(l) **Mobile recreational vehicles.** A mobile recreational vehicle that is on site for 180 consecutive days or more or is not licensed and ready for highway use shall meet the elevation and anchoring

requirements in subsection (k) of this section. A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices, and has no permanently attached additions.

**26.5-24 Solid waste disposal**

Disposal of solid or hazardous waste is prohibited in floodfringe areas.

**26.5-25 to 26.5-30 Reserved**

**DIVISION 4  
GENERAL FLOODPLAIN DISTRICT**

**Sections**

<p>26.5-31 Applicability 26.5-32 Permitted uses</p>	<p>26.5-33 Development standards 26.5-34 Determining the extent of the floodway and floodfringe</p>
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**26.5-31 Applicability**

This division applies to those floodplains mapped as A, AO, or AH zones.

**26.5-32 Permitted uses**

Pursuant to s. 26.5-34, it shall be determined whether the proposed use is located within the floodway or floodfringe. The uses listed in s. 26.5-12 are permitted within the floodway and the uses listed in s. 26.5-22 are permitted within the floodfringe, provided that all permits or certificates required under s. 26.6-8 and 26.6-9 have been issued.

**26.5-33 Development standards**

(a) The development standards in s. 26.5-13 apply to floodway areas and the standards in s. 26.5-23 apply to floodfringe areas. The rest of this chapter applies to either district.

(b) In AO and AH zones the structure’s lowest floor must meet one of the following, whichever is higher:

- (1) at or above the flood protection elevation;
- (2) 2 feet above the highest adjacent grade around the structure; or
- (3) the depth as shown on the flood insurance rate map.

(c) In AO and AH zones, provide plans showing adequate drainage paths to guide floodwaters around structures.

**26.5-34 Determining the extent of the floodway and floodfringe**

(a) **Request for assistance.** Upon receiving an application for development within the general floodplain district, the zoning administrator shall (1) require the applicant to submit two copies of an aerial photograph or a plan that shows the proposed development with respect to the general floodplain district limits, stream channel, and existing floodplain developments, along with a legal description of the property, fill limits and elevations, building floor elevations and flood proofing measures; and the flood zone as shown on the FIRM and (2) require the applicant to furnish any of the

following information deemed necessary by the Department to evaluate the effects of the proposal upon flood height and flood flows, regional flood elevation and to determine floodway boundaries.

- (1) A Hydrologic and Hydraulic Study as specified in s. 7.1(2)(c).
- (2) Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types and other pertinent information;
- (3) Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage, water supply and sanitary facilities.

(b) **Determination.** The extent of the floodway and floodfringe shall be as determined by the Department of Natural Resources.

**26.5-35 to 26.5-40      Reserved**

**DIVISION 5  
RESERVED**

**DIVISION 6  
FLOOD STORAGE DISTRICT**

**Sections**

26.5-51 Generally 26.5-52 Applicability	26.5-53 Permitted uses 26.5-54 Standards for development in flood storage districts
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**26.5-51 Generally**

The flood storage district delineates that portion of the floodplain where storage of floodwaters has been taken into account and is relied upon to reduce the regional flood discharge. The district protects the flood storage areas and assures that any development in the storage areas will not decrease the effective flood storage capacity which would cause higher flood elevations.

**26.5-52 Applicability**

The provisions of this division apply to all areas within the Flood Storage District as shown on the official floodplain zoning maps.

**26.5-53 Permitted uses**

Any use or development within a flood storage district must meet the applicable requirements in s. 26.6-4.

**26.5-54 Standards for development in flood storage districts**

(a) Development in a flood storage district shall not cause an increase equal or greater than 0.00 of a foot in the height of the regional flood.

(b) No development shall be allowed which removes flood storage volume unless an equal volume of storage as defined by the pre-development ground surface and the regional flood elevation shall be provided in the immediate area of the proposed development to compensate for the volume of storage which is lost (compensatory storage). An excavation below the groundwater table is not considered to provide an equal volume of storage.

(c) If compensatory storage cannot be provided, the area may not be developed unless the entire area zoned as flood storage district – on this waterway – is rezoned to the floodfringe district. This must include a revision to the floodplain study and map done for the waterway to revert to the higher regional flood discharge calculated without floodplain storage, as per s. 26.6-4 of this chapter.

(d) No area may be removed from the flood storage district unless it can be shown that the area has been filled to the flood protection elevation and is contiguous to other lands lying outside of the floodplain.

**ARTICLE 6  
ADMINISTRATION AND ENFORCEMENT**

**Sections**

26.6-1	Zoning administrator	26.6-10	Other permits
26.6-2	Planning and zoning committee	26.6-11	Submittal requirements for land use permit
26.6-3	Board of adjustment	26.6-12	Hydraulic and hydrologic studies
26.6-4	Amendments to this chapter	26.6-13	Record of nonconforming uses and nonconforming structures
26.6-5	Appeals to the board of adjustment	26.6-14	Public information
26.6-6	Floodplain boundary disputes	26.6-15	Application fees and other charges
26.6-7	Variances	26.6-16	Enforcement and penalties
26.6-8	Land use permit		
26.6-9	Certificate of compliance		

**26.6-1 Zoning administrator**

(a) **Designation.** The zoning administrator designated under ch. 23 (Town/County Zoning Code) of the general code shall serve as the zoning administrator referred to in this chapter.

(b) **Duties and powers.** The zoning administrator is authorized to administer this chapter and shall have the following duties and powers:

- (1) Meet with applicants to advise them of the requirements contained in this chapter.
- (2) Assure that the regional flood elevation for the proposed development is shown on all permit applications.
- (3) Issue permits and inspect properties for compliance with provisions of this chapter, and issue certificates of compliance where appropriate.
- (4) Inspect all damaged floodplain structures and perform a substantial damage assessment to determine if substantial damage to the structures has occurred.
- (5) Keep records of all official actions such as (1) permits issued, inspections made, and work approved; (2) documentation of certified lowest floor and regional flood elevations; (3) floodproofing certificates; (4) records of water surface profiles, floodplain zoning maps and ordinances, nonconforming uses and structures including changes, appeals, variances and amendments; (5) substantial damage assessment reports for floodplain structures; and (6) list of nonconforming structures and uses.
- (6) Submit a copy of any decisions on variances, appeals for map or text interpretations, and map or text amendments to the regional office of the Department of Natural Resources within 10 days of such decision.
- (7) Submit copies of case-by-case analyses and other required information including an annual summary of floodplain zoning actions taken to the regional office of the Department of Natural Resources.
- (8) Submit copies of substantial damage assessments performed and all related correspondence concerning the assessments to the regional office of the Department of Natural Resources.
- (9) Submit any information requested by the Department of Natural Resources including an annual summary of the number and types of floodplain zoning actions taken.

- (10) Investigate, prepare reports, and report violations of this chapter to the Planning and Zoning Committee and corporation counsel for Winnebago County for prosecution. Copies of the reports shall be sent to the regional office of the Department of Natural Resources.
- (11) Submit copies of text and map amendments and biennial reports to the regional office of the Federal Emergency Management Agency.

#### **26.6-2 Planning and zoning committee**

(a) **Duties.** The Planning and Zoning Committee shall oversee the activities of the zoning administrator and review and advise the Winnebago County board of county supervisors on all proposed amendments to this chapter.

(b) **Prohibited activities.** The Planning and Zoning Committee does not have the power to grant variances to the terms of the chapter in place of action by the board of adjustment; or amend the text or zoning maps in place of official action by the Winnebago County board of county supervisors.

#### **26.6-3 Board of adjustment**

(a) **Establishment.** The board of adjustment created under ch. 23 (Town/County Zoning Code) of the general code shall serve as the board of adjustment referred to in this chapter. The zoning administrator may not be the secretary of the board.

(b) **Powers and duties.** The board of adjustment shall have the authority to (1) hear and decide administrative appeals according to s. 26.6-5 where it is alleged there is an error in any order, requirement, decision, or determination made by an administrative official in the enforcement or administration of this chapter; (2) hear and decide disputes concerning the district boundaries shown on the official floodplain zoning map according to s. 26.6-6; and (3) hear and decide variances according to s. 26.6-7.

#### **26.6-4 Amendments to this chapter**

(a) **Generally.** Obstructions or increases may only be permitted if amendments are made to this chapter, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with this section.

(b) **AE Zones.** In AE zones with a mapped floodway, no obstructions or increases shall be permitted unless the applicant receives a Conditional Letter of Map Revision from the Federal Emergency Management Agency and amendments are made to this chapter, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with this section. Any such alterations must be reviewed and approved by the Federal Emergency Management Agency and the Department of Natural Resources.

(c) **A zones.** In A zones increases equal to or greater than 1.0 foot may only be permitted if the applicant receives a Conditional Letter of Map Revision from the Federal Emergency Management Agency and amendments are made to this chapter, the official floodplain maps, floodway lines, and water surface profiles, in accordance with this section.

(d) **Specified actions requiring amendment.** Actions which require an amendment to this chapter and/ or submittal of a Letter of Map Change (LOMC) include, but are not limited to, the following:

- (1) Any fill or floodway encroachment that obstructs flow causing any increase in the regional flood height;
- (2) Any change to the floodplain boundaries and/or watercourse alterations on the flood insurance rate map;

- (3) Any changes to any other officially adopted floodplain maps listed in s. 23.4-1;
- (4) Any floodplain fill which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain;
- (5) Correction of discrepancies between the water surface profiles and floodplain maps;
- (6) Any upgrade to the text of this chapter as may be required by s. NR 116.05, Wis. Adm. Code, or otherwise required by law, or for changes by the municipality; and
- (7) All channel relocations and changes to the maps to alter floodway lines or to remove an area from the floodway or the floodfringe that is based on a base flood elevation from a flood insurance rate map requires prior approval by the Federal Emergency Management Agency.

(e) **Initiation.** Amendments to this chapter may be made upon petition of any party according to the provisions of s. 59.69, Wis. Stats.

(f) **Petition.** The petitions shall include all data required by ss. 23.5-34 and 23.6-11. The land use permit shall not be issued until a Letter of Map Revision is issued by the Federal Emergency Management Agency for the proposed changes.

(g) **Procedure.** The proposed amendment shall be referred to the Planning and Zoning Committee for a public hearing and recommendation to the Winnebago County Board of County Supervisors. The amendment and notice of public hearing shall be submitted to the Department Regional office for review prior to the hearing. The amendment procedure shall comply with the provisions of s. 59.69, Wis. Stats.

(h) **DNR approval required.** No amendments shall become effective until reviewed and approved by the Department of Natural Resources.

(i) **Flooding easements.** A person petitioning for a map amendment that obstructs flow causing any increase in the regional flood height shall obtain flooding easements or other appropriate legal arrangements from all adversely affected property owners and notify local units of government before the amendment can be approved by the Board of County Supervisors.

#### **26.6-5 Appeals to the board of adjustment**

(a) **Generally.** Appeals to the Board of Adjustment may be taken by any person aggrieved, or by any officer or department of Winnebago County affected by any decision of the zoning administrator or other administrative officer. Such appeal shall be taken within 30 days unless otherwise provided by the rules of the board, by filing with the official whose decision is in question, and with the board, a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the Board all records regarding the matter appealed.

(b) **Notice and hearing for appeals including variances.** The board shall fix a reasonable time for the hearing; publish adequate notice pursuant to Wisconsin Statutes, specifying the date, time, place and subject of the public hearing; and ensure that notice is mailed to the parties in interest and the regional office of the Department of Natural Resources at least 10 days in advance of the public hearing.

(c) **Hearing.** Any party may appear in person or by agent. The Board shall:

- (1) Decide appeals of permit denials according to s. 26.6-5.
- (2) Resolve boundary disputes according to s. 26.6-6.
- (3) Decide variance applications according to s. 26.6-7.

- (d) **Decision.** The final decision regarding the appeal or variance application shall:
- (1) Be made within a reasonable time.
  - (2) Be sent to the regional office of the Department of Natural Resources within 10 days of the decision.
  - (3) Be a written determination signed by the chairman or secretary of the Board of Adjustment.
  - (4) State the specific facts which are the basis for the Board's decision.
  - (5) Either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or grant or deny the variance application;
  - (6) Include the reasons for granting an appeal, describing the hardship demonstrated by the applicant in the case of a variance, clearly stated in the recorded minutes of the Board proceedings.

(e) **Related data.** The Planning and Zoning Committee or Board of Adjustment shall review all data related to the appeal, which may include:

- (1) Permit application data listed in s. 26.6-11.
- (2) Floodway/floodfringe determination data in s. 26.5-34.
- (3) Data listed in s. 26.6-11 where the applicant has not submitted this information to the zoning administrator.
- (4) Other data submitted with the application, or submitted to the board with the appeal.

(f) **Denied permits.** For an administrative appeal of a denied land use permit, the Board of Adjustment shall consider any recommendation of the Planning and Zoning Committee and either uphold the denial or grant the appeal.

(g) **Regional flood elevation.** For an administrative appeal concerning increases in regional flood elevation the board shall:

- (1) Uphold the denial where the board agrees with the data showing an increase in flood elevation. Increases may only be allowed after amending the flood profile and map and all appropriate legal arrangements are made with all adversely affected property owners as per s. 26.6-4.
- (2) Grant the appeal where the board agrees that the data properly demonstrates that the project does not cause an increase provided no other reasons for denial exist.

#### **26.6-6 Floodplain boundary disputes**

The following procedure shall be used by the Board of Adjustment in hearing disputes concerning floodplain district boundaries:

- (1) If a floodplain district boundary is established by approximate or detailed floodplain studies, the flood elevations or profiles shall prevail in locating the boundary. If none exist, other evidence may be examined.
- (2) In all cases, the person contesting the boundary location shall be given a reasonable opportunity to present arguments and technical evidence to the board.

- (3) If the boundary is incorrectly mapped, the board should inform the Planning and Zoning Committee or the person contesting the boundary location to petition the governing body for a map amendment according to s. 26.6-4.

#### **26.6-7 Variances**

(a) **Review criteria.** The Board of Adjustment may, upon appeal, grant a variance from the standards of this chapter if an applicant convincingly demonstrates that (1) literal enforcement of this chapter will cause unnecessary hardship; (2) the hardship is due to adoption of the floodplain chapter and unique property conditions, not common to adjacent lots or premises—in such case the chapter or map must be amended—; (3) the variance is not contrary to the public interest; and (4) the variance is consistent with the purpose of this chapter in s. 26.1-5.

(b) **Additional criteria.** In addition to the criteria in subsection (a), to qualify for a variance under FEMA regulations, the following criteria must be met:

- (1) The variance shall not cause any increase in the regional flood elevation;
- (2) Variances can only be granted for lots that are less than 0.5 acres and are contiguous to existing structures constructed below the regional flood elevation;
- (3) Variances shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts, and shall not be contrary to the purpose of the chapter.

(c) **Limitations.** A variance shall not (1) grant, extend, or increase any use prohibited in the zoning district; (2) be granted for a hardship based solely on an economic gain or loss; (3) be granted for a hardship which is self-created; (4) damage the rights or property values of other persons in the area; (5) allow actions without the amendments to this chapter or map(s) required in s. 26.6-4; or (6) allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.

(d) **Notice to petitioner if approved.** When a floodplain variance is granted, the Board of Adjustment shall notify the applicant in writing that it may increase flood insurance premiums and risks to life and property. A copy shall be maintained with the variance record.

#### **26.6-8 Land use permit**

(a) **Generally.** A land use permit shall be obtained before any new development; repair, modification or addition to an existing structure; or change in the use of a building or structure, including sewer and water facilities, may be initiated.

(b) **Expiration of permit.** A permit issued under the authority of this chapter shall expire no more than 180 days after issuance. Upon written petition, the zoning administrator may grant a one-time extension for a maximum of 180 days for good and sufficient cause.

#### **26.6-9 Certificate of compliance**

No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied until a certificate of compliance is issued by the zoning administrator, except where no permit is required, subject to the following provisions:

- (1) The certificate of compliance shall show that the building or premises or part thereof, and the proposed use, conform to the provisions of this chapter;

- (2) Application for such certificate shall be concurrent with the application for a permit;
- (3) If all chapter provisions are met, the certificate of compliance shall be issued within 10 days after written notification that the permitted work is completed;
- (4) The applicant shall submit a certification signed by a registered professional engineer, architect or land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or architect that the requirements of s. 23.5-4 are met.

#### **26.6-10 Other permits**

Prior to obtaining a floodplain development permit the applicant must secure all necessary permits from federal, state, and local agencies, including those required by the U.S. Army Corps of Engineers under s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344.

#### **26.6-11 Submittal requirements for land use permit application**

(a) **Generally.** An application submitted to the zoning administrator shall include an application form as may be used by the zoning administrator; a site development plan, as described in this section; and hydraulic and hydrologic studies as described in s. 26.6-12. For any proposed project located in the floodway, the application submittal shall also provide a cross-section elevation view of the proposal, perpendicular to the watercourse, showing if the proposed development will obstruct flow or an analysis calculating the effects of the proposal on the regional flood height. For any proposed project located in the general floodplain district, the application submittal shall also include 2 copies of an aerial photograph or a plan that shows the proposed development with respect to the general floodplain district limits, the stream channel, and existing floodplain developments, along with a legal description of the subject property, fill limits and elevations, building floor elevations and flood proofing measures and the flood zones as shown on the flood insurance rate map. Depending on the nature of the project, the applicant may also be required to furnish additional information deemed necessary by the zoning administrator or the Department of Natural Resources to evaluate the effects of the proposal upon flood height and flood flows, regional flood elevation, and to determine floodway boundaries. Such additional information may include the following:

- (1) A hydrologic and hydraulic study as specified in s. 23.6-12.
  - (2) Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types; and other pertinent information.
  - (3) Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage, water supply and sanitary facilities.
- (b) **Site development plan.** A site plan shall contain the following information:
- (1) Location, dimensions, area and elevation of the lot;
  - (2) Location of the ordinary high-water mark of any abutting navigable waterways;
  - (3) Location of any structures with distances measured from the lot lines and street center lines;
  - (4) Location of any existing or proposed on-site sewage systems or private water supply systems;

- (5) Location and elevation of existing or future access roads;
- (6) Location of floodplain and floodway limits as determined from the official floodplain zoning maps;
- (7) The elevation of the lowest floor of proposed buildings and any fill using the vertical datum from the adopted study – either National Geodetic Vertical Datum (NGVD) or North American Vertical Datum (NAVD);
- (8) Data sufficient to determine the regional flood elevation in NGVD or NAVD at the location of the development and to determine whether or not the requirements of s. 23.5-13 or s. 23.5-23 are met; and
- (9) Data to determine if the proposed development will cause an obstruction to flow or an increase in regional flood height or discharge according to s. 23.5-1.

#### **26.6-12 Hydraulic and hydrologic studies**

(a) **Generally.** All hydraulic and hydrologic studies shall be completed under the direct supervision of a registered professional engineer. The study contractor shall be responsible for the technical adequacy of the study. All studies shall be reviewed and approved by the Department of Natural Resources.

(b) **Zone A floodplain.** For projects located in a Zone A floodplain, the following provisions apply:

- (1) **Hydrology.** The appropriate method shall be based on the standards in ch. NR 116.07(3), Wis. Admin. Code, *Hydrologic Analysis: Determination of Regional Flood Discharge*.
- (2) **Hydraulic modeling.** The regional flood elevation shall be based on the standards in ch. NR 116.07(4), Wis. Admin. Code, *Hydraulic Analysis: Determination of Regional Flood Elevation* and the following:
  - (i) Determination of the required limits of the hydraulic model shall be based on detailed study information for downstream structures (dam, bridge, culvert) to determine adequate starting WSEL for the study.
  - (ii) Channel sections must be surveyed.
  - (iii) Minimum four foot contour data in the overbanks shall be used for the development of cross section overbank and floodplain mapping.
  - (iv) A maximum distance of 500 feet between cross sections is allowed in developed areas with additional intermediate cross sections required at transitions in channel bottom slope including a survey of the channel at each location.
  - (v) The most current version of HEC-RAS shall be used.
  - (vi) A survey of bridge and culvert openings and the top of road is required at each structure.
  - (vii) Additional cross sections are required at the downstream and upstream limits of the proposed development and any necessary intermediate locations based on the length of the reach if greater than 500 feet.
  - (viii) Standard accepted engineering practices shall be used when assigning parameters for the base model such as flow, Manning's N values, expansion and contraction coefficients or effective flow limits. The base model shall be calibrated to past flooding data such as high water marks to determine the reasonableness of the

model results. If no historical data is available, adequate justification shall be provided for any parameters outside standard accepted engineering practices.

- (ix) The model must extend past the upstream limit of the difference in the existing and proposed flood profiles in order to provide a tie-in to existing studies. The height difference between the proposed flood profile and the existing study profiles shall be no more than 0.00 feet.
- (3) **Mapping.** A work map of the reach studied shall be provided, showing all cross section locations, floodway/floodplain limits based on best available topographic data, geographic limits of the proposed development and whether the proposed development is located in the floodway.
- (i) If the proposed development is located outside of the floodway, then it is determined to have no impact on the regional flood elevation.
  - (ii) If any part of the proposed development is in the floodway, it must be added to the base model to show the difference between existing and proposed conditions. The study must ensure that all coefficients remain the same as in the existing model, unless adequate justification based on standard accepted engineering practices is provided.
- (c) **Zone AE floodplains.** For projects located in a Zone AE floodplain, the following provisions apply:
- (1) **Hydrology.** If the proposed hydrology will change the existing study, the appropriate method to be used shall be based on ch. NR 116.07(3), Wis. Admin. Code, *Hydrologic Analysis: Determination of Regional Flood Discharge*.
  - (2) **Hydraulic model.** The regional flood elevation shall be based on the standards in ch. NR 116.07(4), Wis. Admin. Code, *Hydraulic Analysis: Determination of Regional Flood Elevation* and the following:
    - (i) **Duplicate Effective Model.** The effective model shall be reproduced to ensure correct transference of the model data and to allow integration of the revised data to provide a continuous FIS model upstream and downstream of the revised reach. If data from the effective model is available, models shall be generated that duplicate the FIS profiles and the elevations shown in the Floodway Data Table in the FIS report to within 0.1 foot.
    - (ii) **Corrected Effective Model.** The Corrected Effective Model shall not include any man-made physical changes since the effective model date, but shall import the model into the most current version of HEC-RAS for Department review.
    - (iii) **Existing (Pre-Project Conditions) Model.** The Existing Model shall be required to support conclusions about the actual impacts of the project associated with the Revised (Post-Project) Model or to establish more up-to-date models on which to base the Revised (Post-Project) Model.
    - (iv) **Revised (Post-Project Conditions) Model.** The Revised (Post-Project Conditions) Model shall incorporate the Existing Model and any proposed changes to the topography caused by the proposed development. This model shall reflect proposed conditions.

- (v) All changes to the Duplicate Effective Model and subsequent models must be supported by certified topographic information, bridge plans, construction plans and survey notes.
  - (vi) Changes to the hydraulic models shall be limited to the stream reach for which the revision is being requested. Cross sections upstream and downstream of the revised reach shall be identical to those in the effective model and result in water surface elevations and topwidths computed by the revised models matching those in the effective models upstream and downstream of the revised reach as required. The Effective Model shall not be truncated.
- (3) **Mapping.** Maps and associated engineering data shall meet the following conditions:
- (i) Consistency between the revised hydraulic models, the revised floodplain and floodway delineations, the revised flood profiles, topographic work map, annotated FIRMs and/or Flood Boundary Floodway Maps (FBFMs), construction plans, bridge plans.
  - (ii) Certified topographic map of suitable scale, contour interval, and a planimetric map showing the applicable items. If a digital version of the map is available, it may be submitted in order that the FIRM may be more easily revised.
  - (iii) Annotated FIRM panel showing the revised 1% and 0.2% annual chance floodplains and floodway boundaries.
  - (iv) If an annotated FIRM and/or FBFM and digital mapping data (GIS or CADD) are used then all supporting documentation or metadata must be included with the data submission along with the Universal Transverse Mercator (UTM) projection and State Plane Coordinate System in accordance with FEMA mapping specifications.
  - (v) The revised floodplain boundaries shall tie into the effective floodplain boundaries.
  - (vi) All cross sections from the effective model shall be labeled in accordance with the effective map and a cross section lookup table shall be included to relate to the model input numbering scheme.
  - (vii) Both the current and proposed floodways shall be shown on the map.
  - (viii) The stream centerline, or profile baseline used to measure stream distances in the model shall be visible on the map.

#### **26.6-13 Record of nonconforming uses and structures**

(a) **Nonconforming uses.** The zoning administrator shall maintain a list of those properties that contain a nonconforming use.

(b) **Nonconforming structures.** The zoning administrator shall maintain a list of those properties that have a nonconforming structure. For each such structure, the following information shall be recorded:

- (1) present equalized assessed value,
- (2) cost of all modifications or additions which have been permitted, and
- (3) percentage of the structure's total current value those modifications represent.

**26.6-14 Public information**

- (a) Place marks on structures to show the depth of inundation during the regional flood.
- (b) All maps, engineering data, and regulations shall be available and widely distributed.
- (c) All real estate transfers should show what floodplain zoning district any real property is in.

**26.6-15 Application fees and other charges**

- (a) **Assessment of fees.** From time to time, the Board of County Supervisors may by resolution establish application fees and other charges it deems necessary in the administration of this chapter.
- (b) **Timing for payment.** Application fees shall be paid at the time the application is submitted for review.
- (c) **Doubling of application fee.** If an activity which requires prior authorization under this chapter is started before the authorization is granted, the application fee is automatically doubled unless the Board of County Supervisors specifically establishes a different fee by resolution. Payment of such fee shall not release the applicant from full compliance with this chapter nor from prosecution for violation of this chapter.
- (d) **Refunds.** Application fees are nonrefundable, except when the application and fee were accepted by the zoning administrator or county staff in error.

**26.6-16 Enforcement and penalties**

Any violation of the provisions of this chapter by any person shall be unlawful and shall be referred to the corporation counsel for Winnebago County who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to Winnebago County a penalty of not less than \$10.00 and not more than \$50.00, together with a taxable cost of such action. Each day of continued violation shall constitute a separate offense. Every violation of this chapter is a public nuisance and the creation may be enjoined and the maintenance may be abated by action at suit of Winnebago County, the state of Wisconsin, or any citizen thereof pursuant to s. 87.30, Wis. Stats.

**ARTICLE 7  
NONCONFORMITIES**

**Sections**

26.7-1	General provisions	26.7-3	Floodfringe areas
26.7-2	Floodway areas	26.7-4	Flood storage areas

**26.7-1 General provisions**

(a) **Applicability.** If these standards conform with s. 59.69(10), Wis. Stats., they shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the passage of this chapter or any amendment thereto.

(b) **Continuance of existing use.** The existing lawful use of a structure or its accessory use which is not in conformity with the provisions of this chapter may continue subject to the following conditions:

- (1) **Modifications and additions less than 50 percent.** No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this chapter. The words "modification" and "addition" include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Maintenance is not considered a modification; this includes painting, decorating, paneling and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Any costs associated with the repair of a damaged structure are not considered maintenance. The construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition. The roof of the structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure.
- (2) **Cessation of use.** If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this chapter;
- (3) **Modifications and additions less than 50 percent.** No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would equal or exceed 50 percent of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this chapter. Contiguous dry land access must be provided for residential and commercial uses in compliance with s. 26.5-23(b). The costs of elevating the lowest floor of a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50 percent provisions of this paragraph.
- (4) **Maintenance of 50 percent or more.** No maintenance to any nonconforming structure or any structure with a nonconforming use, the cost of which would equal or exceed 50 percent of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this chapter. Contiguous dry land access must be provided for residential and commercial uses in compliance with s. 26.5-23(b).

- (5) **Modifications and maintenance of 50 percent or more.** If on a per event basis the total value of the work being done under subsections (3) and (d) equals or exceeds 50 percent of the present equalized assessed value the work shall not be permitted unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this chapter. Contiguous dry land access must be provided for residential and commercial uses in compliance with s. s. 26.5-23(b).
- (6) **Destruction and substantial damage.** Except as provided in subsection (7), if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the current requirements in this chapter. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition equals or exceeds 50 percent of the structure's present equalized assessed value.
- (7) **Nonflood disasters.** For nonconforming buildings that are substantially damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building shall be permitted in order to restore it to the size and use in effect prior to the damage event, provided that the minimum federal code requirements below are met and all required permits have been granted prior to the start of construction. Residential structures shall comply with each of the following:
- (i) Shall have the lowest floor, including basement, elevated to or above the base flood elevation using fill, pilings, columns, posts or perimeter walls. Perimeter walls must meet the requirements of s. 26.5-4(b).
  - (ii) Shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy and shall be constructed with methods and materials resistant to flood damage.
  - (iii) Shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.
  - (iv) In A zones, obtain, review and utilize any flood data available from a federal, state or other source.
  - (v) In AO zones with no elevations specified, shall have the lowest floor, including basement, meet the corresponding standards in s. 26.5-33.
  - (vi) In AO zones, shall have adequate drainage paths around structures on slopes to guide floodwaters around and away from the structure.

Nonresidential structures shall comply with each of the following:

- (i) Shall meet the requirements of subsections (b)(1 and 2) and (4, 5, and 6).
- (ii) Shall either have the lowest floor, including basement, elevated to or above the regional flood elevation; or, together with attendant utility and sanitary facilities, shall meet the standards in s. 26.5-4(a) or (b).
- (iii) In AO zones with no elevations specified, shall have the lowest floor, including basement, meet the corresponding standards in s. 26.5-33(b).

(c) **Special requirements for historic structures.** A nonconforming historic structure may be altered if (1) the alteration will not preclude the structures continued designation as a historic structure, (2) the alteration will comply with s. 26.5-13(a), (3) flood resistant materials are used, and (4) construction practices and floodproofing methods that comply with s. 26.5-4 are used. Repair or rehabilitation of historic structures shall be exempt from the development standards of s. 26.7-1 for residential structures if it is determined that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and design of the structure.

### 26.7-2 Floodway areas

(a) **Structures.** No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in a floodway district, unless such modification or addition (1) has been granted a permit or variance which meets requirements of this chapter; (2) meets the requirements of s. 26.7-1; (3) will not increase the obstruction to flood flows or regional flood height; and (4) any addition to the existing structure shall be flood proofed pursuant to s. 26.5-4 by means other than the use of fill, to the flood protection elevation. If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:

- (1) The enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of 2 openings must be provided with a minimum net area of at least one square inch for every one square foot of the enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade;
- (2) The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials;
- (3) Mechanical and utility equipment must be elevated or flood-proofed to or above the flood protection elevation; and
- (4) The use must be limited to parking, building access, or limited storage.

(b) **Sewage disposal systems.** No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in a floodway district. Any replacement, repair, or maintenance of an existing on-site sewage disposal system in a floodway area shall comply with (1) all applicable rules and regulations of Winnebago County, (2) s. 26.5-4(c), and (3) ch. COMM 83, Wis. Adm. Code.

(c) **Wells.** No new well or modification to an existing well used to obtain potable water shall be allowed in a floodway district. Any replacement, repair, or maintenance of an existing well in a floodway district shall comply with (1) all applicable rules and regulations of Winnebago County, (2) s. 26.5-4(c), and (3) chs. NR 811 and NR 812, Wis. Adm. Code.

### 26.7-3 Floodfringe areas

(a) **Structures.** No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a permit or variance by the board of adjustment, and the modification or addition meets the requirements in s. 26.5-23, except where s. 26.7-3(b) is applicable.

(b) **Variations.** Where compliance with the subsection (a) of this section would result in an unnecessary hardship and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the board of adjustment, using the procedures

established in s. 26.6-7, may grant a variance from those provisions of subsection (a) for modifications or additions, using the criteria listed below. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted if (1) no floor is allowed below the regional flood elevation for residential or commercial structures; (2) human lives are not endangered; (3) public facilities, such as water or sewer, will not be installed; (4) flood depths will not exceed 2 feet; (5) flood velocities will not exceed 2 feet per second; and (6) the structure will not be used for storage of materials described in s. 26.5-23(f).

(c) **Sewage disposal systems.** New private sewage disposal systems and any addition to, or replacement, repair, or maintenance of an existing private sewage disposal system shall comply with (1) all applicable rules and regulations of Winnebago County; (2) s. 26.5-4(c); and (3) chs. NR 811 and NR 812, Wis. Adm. Code.

(d) **Wells.** New wells and any addition to, or replacement, repair, or maintenance of an existing well shall comply with (1) all applicable rules and regulations of Winnebago County; (2) s. 26.5-4(c); and (3) chs. NR 811 and NR 812, Wis. Adm. Code.

#### **26.7-4 Flood storage areas**

No modifications or additions shall be allowed to any nonconforming structure in a flood storage area unless the standards outlined in 26.5-23 are met.