

VILLAGE OF ELM GROVE

13600 Juneau Boulevard
Elm Grove, WI 53122

LEGISLATIVE COMMITTEE

Thursday, June 9, 2022 * 5:00 PM * Parkview Room

AGENDA

1. Call the Meeting to Order and Roll Call.

2. Review and act on meeting minutes dated 1/11/22.

Documents:

[2022-01-11 LC Minutes DRAFT.pdf](#)

3. Review and act on Draft Model Floodplain Zoning Ordinance as recommended by the Wisconsin Department of Natural Resources.

Documents:

[2022 flood plain ordinance 06.03.22 CLEAN.pdf](#)

4. Review and possible action on amendment to Rm-2 Multi-Family Residential Housing.

Documents:

[EGH Zoning Change Request 4-20-22.pdf](#)
[Rm-2 Multiple-Family Residential District.pdf](#)

5. Review and possible action on Ordinance to allow beekeeping.

Documents:

[Beekeeping Ordinance - draft 3.2.21.pdf](#)

6. Other Business

7. Adjournment

Any person who has a qualifying disability as defined by the Americans with Disabilities Act who requires that the meeting or materials for the meeting has to be in an accessible location or format must contact the Village Clerk, Sandee Policello, at 262-782-6700 or 13600 Juneau Boulevard by 3:00 PM Friday prior to the meeting so that any necessary arrangements can be made to accommodate your request.

NOTICE: It is possible that members of, and possibly a quorum of, other governmental bodies of the Village may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to in the above notice.

Village of Elm Grove Legislative Committee
Minutes

DRAFT

Call to Order

The meeting was called to order by the Chair at 5:34PM.

Roll Call:

Trustee John Domaszek (Chair) - absent
President Neil Palmer
Trustee George Haas
Committee Member Marlee Jansen
David DeAngelis, Village Manager
Thomas Harrigan, Village Zoning Administrator
Hector De La Mora, Village Attorney
Michelle Luedtke, Village Clerk/Deputy Treasurer

Selection of a Pro Tem Chair: **MOTION BY TRUSTEE HAAS, SECOND BY MEMBER JANSEN, TO APPOINT PRESIDENT PALMER CHAIR PRO TEM. ALL IN FAVOR. MOTION CARRIED.**

Review and act on meeting minutes dated 10/12/2021.

MOTION BY TRUSTEE HAAS, SECOND BY MEMBER JANSEN, TO ACCEPT THE MEETING MINUTES AS PRESENTED.

ALL WERE IN FAVOR. MOTION CARRIED.

Continue review and possible action on the DNR recommended Floodplain Zoning Ordinance.

Zoning Administrator Harrigan went over the proposed floodplain ordinance. Certain language in the current proposal will change us from a class 5 community to a class 8. He also gave an update on the timeline.

President Palmer asked if we can take out section 4. Zoning Administrator Harrigan confirmed. Palmer asked if everything else in the red line version does not seem to have a problem outside of the items that do not apply to us. Zoning Administrator Harrigan confirmed. Palmer asked when we can get a clean version for the board. Zoning Administrator Harrigan does not believe we can get this to the Board because it needs a class 2 notice. Manager De Angelis confirmed. This would go on the February Village Board meeting.

Trustee Haas indicated there are definitions and sections such as the campground section that need to be kept per the DNR and FEMA even if they do not have anything to do with the Village of Elm Grove specifically.

Zoning Administrator Harrigan brought up the Draft Floodplain email from Lou Ann Patellaro with suggested changes.

Village of Elm Grove Legislative Committee
Minutes

DRAFT

ITEM WILL BE REVIEWED BY ZONING ADMINISTRATOR HARRIGAN, A CLEAN VERSION WILL BE CREATED, AND THE CLEAN VERSION WILL BE BROUGHT BACK TO THE NEXT REGULARLY SCHEDULED LEGISLATIVE MEETING IN JANUARY. TO BE ON THE VILLAGE BOARD IN FEBRUARY.

Other Business – none.

Adjournment

There was no further business.

MOTION BY MEMBER HAAS, SECOND BY TRUSTEE JANSEN, TO ADJOURN THE MEETING.

ALL WERE IN FAVOR. MOTION CARRIED. MEETING ADJOURNED AT 5:52PM.

Minutes transcribed by: Michelle Luedtke

Minutes Approved on:

FLOODPLAIN ORDINANCE FOR VILLAGE OF ELM GROVE

Effective February , 2022

Yellow highlights are places where the ordinance needs to be filled in with community specific information

Date of Class 2 Notice posting:_____ (Requires a Class 2 Hearing Notice of Posting, Second/last date must be at least 7 days before hearing, see definition, Ch 985 Stats)

Date of Public Hearing: _____

Date of Adoption:_____

Date of Posting of Notice of Enacted Ordinance _____ (Requires posting a Class 1 Notice)

DRAFT

TABLE OF CONTENTS

1.0	STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE, TITLE AND GENERAL PROVISIONS	2
	1.1 Statutory Authorization	2
	1.2 Finding of Fact	2
	1.3 Statement of Purpose	2
	1.4 Title	2
	1.5 General Provisions	2
	(1) Areas to be Regulated	2
	(2) Official Maps and Revisions	2
	(3) Establishment of Districts	3
	(4) Locating Floodplain Boundaries	3
	(5) Removal of Lands from Floodplain	4
	(6) Compliance	4
	(7) Municipalities and State Agencies Regulated	5
	(8) Abrogation and Greater Restrictions	5
	(9) Interpretation	5
	(10) Warning and Disclaimer of Liability	5
	(11) Severability	5
	(12) Annexed Areas for Cities/Villages	5
2.0	GENERAL STANDARDS APPLICABLE TO ALL FLOODPLAIN	6
	2.1 Hydraulic and Hydrologic Analyses	6
	2.2 Watercourse Alterations	7
	2.3 Chapter 30, 31, Wis. Stats., Development	7
	2.4 Public or Private Campgrounds	7
3.0	FLOODWAY DISTRICT (FW)	8
	3.1 Applicability	8
	3.2 Permitted Uses	8
	3.3 Standards for Development	9
	3.4 Prohibited Uses	11
4.0	FLOODFRINGE DISTRICT (FF)	12
	4.1 Applicability	12
	4.2 Permitted Uses	12
	4.3 Standards for Development	12
5.0	OTHER FLOODPLAIN DISTRICT	15
	5.1 General Floodplain District (GFP)	15
	5.2 Flood Storage District	16
6.0	NONCONFORMING USES	17
	6.1 General	17
	6.2 Floodway District	20
	6.3 Floodfringe District	20
	6.4 Flood Storage Districts	21
7.0	ADMINISTRATION	21
	7.1 Zoning Administrator	21
	7.2 Zoning Agency	27
	7.3 Board of Adjustment/Appeals	27
	7.4 To Review Appeals of Permit Denials	29
	7.5 Floodproofing	30
	7.6 Public Information	31
8.0	AMENDMENTS	31
	8.1 General	32
	8.2 Procedures	32
9.0	ENFORCEMENT AND PENALTIES	32
10.0	DEFINITIONS	33

Article I
General Provisions

1.0 STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE, TITLE AND GENERAL PROVISIONS

1.1 STATUTORY AUTHORIZATION

This ordinance is adopted pursuant to the authorization in §§ 61.35 and 62.23, for villages, and the requirements in §§ 87.30, Wis. Stats.

1.2 FINDING OF FACT

Uncontrolled development and use of the floodplains and rivers of this municipality would impair the public health, safety, convenience, general welfare and tax base.

1.3 STATEMENT OF PURPOSE

To regulate development in flood hazard areas, the governing body does ordain the purpose of these rules is 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.

1.4 TITLE

This Chapter shall be known as the "Floodplain Zoning Ordinance for Village of Elm Grove, Wisconsin."

1.5 GENERAL PROVISIONS

(1) AREAS TO BE REGULATED

This Chapter regulates all areas of special flood hazard identified as zones A, AO, AH, A1-30, and AE on the Flood Insurance Rate Map. Additional areas identified on maps approved by the Department of Natural Resources (DNR) and local community may also be regulated under the provisions of this ordinance, where applicable.

(2) OFFICIAL MAPS & REVISIONS

Special Flood Hazard Areas (SFHA) are designated as zones A, A1-30, AE, AH,

52 and AO on the Flood Insurance Rate Maps (FIRMs) based on flood hazard
53 analyses summarized in the Flood Insurance Study (FIS) listed in subd. (a)
54 below. Additional flood hazard areas subject to regulation under this ordinance
55 are identified on maps based on studies approved by the DNR and listed in subd.
56 (b) below. These maps and revisions are on file in the office of the Zoning and
57 Planning Administrator, Village of Elm Grove.
58

59 (a) OFFICIAL MAPS : Based on Waukesha County Flood Insurance Study (FIS)
60 dated November 5, 2014:

- 61 1. Flood Insurance Rate Map (FIRM), panel numbers 55133C0236G and
62 55133C0237G;
- 63 2. Flood Insurance Study (FIS) for Village of Elm Grove, 55133CV001C,
64 55133CV002C, and 55133CV003C.

65 Prepared and approved by: The DNR and FEMA
66
67

68 (b) OFFICIAL MAPS: Based on other studies, any maps referenced in this
69 section must be approved by the DNR and be more restrictive than those
70 based on the FIS at the site of the proposed development.
71
72

- 73 1. Village of Elm Grove Flood Storage District Map, panel number 4 of 12,
74 dated November 5, 2014, prepared and approved by the DNR.
75
76

77 (3) ESTABLISHMENT OF FLOODPLAIN ZONING DISTRICTS

78 The flood hazard areas regulated by this ordinance are divided into districts as
79 follows:
80

81 (a) The Floodway District (FW), is the channel of a river or stream and those
82 portions of the floodplain adjoining the channel required to carry the regional
83 floodwaters, within AE Zones as shown on the FIRM, or within A Zones
84 shown on the FIRM when determined according to § 5.1(5).
85

86 (b) The Floodfringe District (FF) is that portion of a riverine special flood hazard
87 area outside the floodway within AE Zones on the FIRM, or, when floodway
88 limits have been determined according to § 5.1(5), within A Zones shown on
89 the FIRM.
90

91 (c) The General Floodplain District (GFP) is those riverine areas that may be
92 covered by floodwater during the regional flood in which a floodway boundary
93 has not been delineated on the FIRM and also includes shallow flooding
94 areas identified as AH and AO zones on the FIRM.
95

96 (d) The Flood Storage District (FSD) is that area of the floodplain where storage
97 of floodwaters is calculated to reduce the regional flood discharge.
98

99 (4) LOCATING FLOODPLAIN BOUNDARIES

100 Discrepancies between the exterior boundaries of zones A1-30, AE, AH, or A on
101 the official floodplain zoning map and actual field conditions may be resolved
102 using the criteria in subd (a) or (b) below. If a significant difference exists, the
103 map shall be amended according to § 8.0 *Amendments*. The Zoning
104 Administrator can rely on a boundary derived from a profile elevation to grant or
105 deny a land use permit, whether or not a map amendment is required. The

106 Zoning Administrator shall be responsible for documenting actual pre-
107 development field conditions and the basis upon which the district boundary was
108 determined. Disputes between the Zoning Administrator and an applicant over
109 the district boundary line shall be settled according to § 7.3(3) and the criteria in
110 (a) and (b) below. Where the flood profiles are based on established base flood
111 elevations from a FIRM, FEMA must approve any map amendment or revision
112 pursuant to § 8.0 *Amendments*.

113
114 (a) If flood profiles exist, the map scale and the profile elevations shall determine
115 the district boundary. The regional or base flood elevations shall govern if
116 there are any discrepancies.

117
118 (b) Where flood profiles do not exist, including any boundary of zone A, and AO
119 the location of the boundary shall be determined by the map scale.

120
121 (5) REMOVAL OF LANDS FROM FLOODPLAIN

122 (a) Compliance with the provisions of this ordinance shall not be grounds for
123 removing land from the floodplain unless it is filled at least two feet above the
124 regional or base flood elevation, the fill is contiguous to land outside the
125 floodplain, and the map is amended pursuant to § 8.0 *Amendments*.

126
127 (b) The delineation of any of the Floodplain Districts may be revised by the
128 Village where natural or man-made changes have occurred and/or where
129 more detailed studies have been conducted. However, prior to any such
130 change, approval must be obtained from the Wisconsin Department of
131 Natural Resources and Federal Emergency Management Agency. A
132 completed Letter of Map Revision is a record of this approval. The Floodplain
133 Administrator shall not sign a community acknowledgement form unless all
134 criteria set forth in the following paragraphs are met:

135
136 1. The land and/or land around the structure must be filled at least two
137 feet above the regional or base flood elevation;

138
139 2. The fill must be contiguous to land outside the floodplain; Applicant
140 shall obtain floodplain development permit before applying for a
141 LOMR or LOMR-F;

142
143 (c) Removal of lands from the floodplain may also occur by operation of
144 §87.30(1)(e), Wis. Stat. if a property owner has obtained a letter of map
145 amendment from the Federal Emergency Management Agency under 44
146 C.F.R. § 70.

147
148 (6) COMPLIANCE

149 (a) No structure or use within areas regulated by this ordinance shall hereafter be
150 located, erected, constructed, reconstructed, repaired, extended, converted,
151 enlarged, or altered without full compliance with the terms of these
152 regulations and all other applicable regulations that apply to uses within the
153 jurisdiction of these regulations.

154
155 (b) Failure to obtain a floodplain development permit shall be a violation of these
156 regulations and shall be punishable in accordance with § 9.0.

158 (c) Floodplain development permits issued on the basis of plans and applications
159 approved by the Floodplain Administrator authorize only the use, and
160 arrangement, set forth in such approved plans and applications, or
161 amendments thereto if approved by the Floodplain Administrator. Use,
162 arrangement, or construction contrary to that authorized shall be deemed a
163 violation of these regulations and punishable in accordance with § 9.0.
164

165 (7) MUNICIPALITIES AND STATE AGENCIES REGULATED

166 Unless specifically exempted by law, the Village of Elm Grove is required to
167 comply with this Chapter and obtain all necessary permits. State agencies are
168 required to comply if §§ 13.48(13), Wis. Stats., applies. The construction,
169 reconstruction, maintenance and repair of state highways and bridges by the
170 Wisconsin Department of Transportation is exempt when §§ 30.2022, Wis.
171 Stats., applies. Although exempt from a local zoning permit and permit fees,
172 DOT must provide sufficient project documentation and analysis to ensure that
173 the community is in compliance with Federal, State, and local floodplain
174 standards.
175

176 (8) ABROGATION AND GREATER RESTRICTIONS

177 (a) This ordinance Chapter supersedes all the provisions of any municipal zoning
178 ordinance enacted under §§ 61.35 for villages; or §§ 87.30, Wis. Stats., which
179 relate to floodplains. A more restrictive ordinance shall continue in full force
180 and effect to the extent of the greater restrictions, but not otherwise.
181

182 (a) This Chapter is not intended to repeal, abrogate or impair any existing deed
183 restrictions, covenants or easements. If this chapter imposes greater
184 restrictions, the provisions of this chapter shall prevail.
185

186 (9) INTERPRETATION

187 In their interpretation and application, the provisions of this Chapter are the
188 minimum requirements liberally construed in favor of the governing body and
189 are not a limitation on or repeal of any other powers granted by the Wisconsin
190 Statutes. If a provision of this Chapter, required by Ch. NR 116, Wis. Adm.
191 Code, is unclear, the provision shall be interpreted in light of the standards in
192 effect on the date of the adoption of this Chapter or in effect on the date of the
193 most recent text amendment to this Chapter.
194

195 (10) WARNING AND DISCLAIMER OF LIABILITY

196 The flood protection standards in this Chapter are based on engineering
197 experience and scientific research. Larger floods may occur, or the flood height
198 may be increased by man-made or natural causes. This Chapter does not imply
199 or guarantee that non-floodplain areas or permitted floodplain uses will be free
200 from flooding and flood damages. Nor does this chapter create liability on the
201 part of, or a cause of action against, the municipality or any officer or employee
202 thereof for any flood damage that may result from reliance on this Chapter.
203

204 (11) SEVERABILITY

205 Should any portion of this chapter be declared unconstitutional or invalid by a
206 court of competent jurisdiction, the remainder of this Chapter shall not be
207 affected.
208
209

210 Article II

211 **2.0 GENERAL STANDARDS APPLICABLE TO ALL FLOODPLAIN DISTRICTS**

212 The Village shall review all permit applications to determine whether proposed building
213 sites will be reasonably safe from flooding and assure that all necessary permits have
214 been received from those governmental agencies whose approval is required by federal
215 or state law.

216
217 (1) If a proposed building site is in a flood-prone area, all new construction and
218 substantial improvements shall:

219
220 (a) be designed and anchored to prevent flotation, collapse, or lateral movement of
221 the structure resulting from hydrodynamic and hydrostatic loads, including the
222 effects of buoyancy;

223
224 (b) be constructed with flood-resistant materials;

225
226 (c) be constructed by methods and practices that minimize flood damages; and

227
228 (d) be constructed with electrical, heating, ventilation, plumbing, and air conditioning
229 equipment and other service facilities that are designed and/or located so as to
230 prevent water from entering or accumulating within the components during
231 conditions of flooding.

232
233 (2) If a subdivision or other proposed new development is in a flood-prone area, the
234 community shall assure that:

235
236 (a) such proposed subdivision or other proposed new development is consistent with
237 the need to minimize flood damage within the flood-prone area;

238
239 (b) public utilities and facilities such as sewer, gas, electrical, and water systems are
240 located and constructed to minimize or eliminate flood damage; and

241
242 (c) adequate drainage is provided to reduce exposure to flood hazards.

243
244 All subdivision proposals shall include regional flood elevation and floodway data for any
245 development that meets the subdivision definition of this Chapter and all other
246 requirements in § 7.1(2).

247 248 **2.1 HYDRAULIC AND HYDROLOGIC ANALYSES**

249 (1) No floodplain development shall:

250
251 (a) Obstruct flow, defined as any development which physically blocks the
252 conveyance of floodwaters by itself or in conjunction with other development,
253 causing any increase in the regional flood height; or

254
255 (b) Cause any increase in the regional flood height due to floodplain storage area
256 lost.

257
258 (2) The Zoning Administrator shall deny permits if it is determined the proposed
259 development will obstruct flow or cause any increase in the regional flood height,
260 based on the officially adopted FIRM or other adopted map, unless the provisions of
261 Article 8.0 *Amendments* are met.

262 263 **2.2 WATERCOURSE ALTERATIONS**

264 No land use permit to alter or relocate a watercourse in a mapped floodplain shall be
265 issued until the local official has notified in writing all adjacent municipalities, the
266

267 Department and FEMA regional offices, and required the applicant to secure all
268 necessary state and federal permits. The standards of § 2.1 must be met and the flood
269 carrying capacity of any altered or relocated watercourse shall be maintained.
270

271 As soon as is practicable, but not later than six months after the date of the watercourse
272 alteration or relocation and pursuant to Chapter 8.0 *Amendments*, the Village shall apply
273 for a Letter of Map Revision (LOMR) from FEMA. Any such alterations must be
274 reviewed and approved by FEMA and the DNR through the LOMC process.
275

276 **2.3 CHAPTER 30, 31, WIS. STATS., DEVELOPMENT**

277 Development which requires a permit from the Department, under §§ 30 and 31, Wis.
278 Stats., such as docks, piers, wharves, bridges, culverts, dams and navigational aids,
279 may be allowed if the necessary permits are obtained and amendments to the floodplain
280 zoning ordinance are made according to § 8.0 *Amendments*.
281

282 **2.4 PUBLIC OR PRIVATE CAMPGROUNDS**

283 Public or private campgrounds are prohibited within the Village of Elm Grove.
284

285 Article III

286 **3.0 FLOODWAY DISTRICT (FW)**

287
288 **3.1 APPLICABILITY**

289 This article applies to all floodway areas on the floodplain zoning maps and those
290 identified pursuant to § 5.1(5).
291

292 **3.2 PERMITTED USES**

293 The following open-space uses are allowed in the Floodway District and the floodway
294 areas of the General Floodplain District, if:
295

- 296 • they are not prohibited by any other ordinance;
- 297 • they meet the standards in §§ 3.3 and 3.4; and
- 298 • all permits or certificates have been issued according to § 7.1.

299
300
301 (1) Nonstructural industrial and commercial uses, such as loading areas, parking areas
302 and airport landing strips.
303

304 (2) Nonstructural recreational uses, such as tennis courts, archery ranges, picnic
305 grounds, swimming areas, parks, wildlife and nature preserves, fishing areas and
306 hiking trails, subject to the fill limitations of § 3.3(4).
307

308 (3) Uses or structures accessory to open space uses or classified as historic structures
309 that comply with § 3.3 and 3.4.
310

311
312 (4) Functionally water-dependent uses, such as docks, piers or wharves, dams, flowage
313 areas, culverts, navigational aids and river crossings of transmission lines, and pipelines
314 that comply with §§ 30 and 31, Wis. Stats.
315

316 (5) Public utilities, streets and bridges that comply with § 3.3(3).
317

318 (6) Portable latrines that are removed prior to flooding and systems associated with
319 recreational areas that meet the applicable provisions of local ordinances and Ch.
320 SPS 383, Wis. Adm. Code.

321 (7) Public or private wells used to obtain potable water for recreational areas operated
322 by the Village and chs. NR 811 and NR 812, Wis. Adm. Code.
323
324

325
326 (8) Sanitary sewer or water supply lines to service existing or proposed development
327 located outside the floodway that complies with the regulations for the floodplain
328 area occupied.
329

330 **3.3 STANDARDS FOR DEVELOPMENTS IN THE FLOODWAY**

331 (1) GENERAL

332
333 (a) Any development in the floodway shall comply with § 2.0 and have a low flood
334 damage potential.
335

336 (b) Applicants shall provide an analysis calculating the effects of this proposal on
337 the regional flood height to determine the effects of the proposal according to §§
338 2.1 and 7.1(2)(c). The analysis must be completed by a registered professional
339 engineer in the state of Wisconsin.
340

341 (c) Any encroachment in the regulatory floodway is prohibited unless the data
342 submitted for subd. 3.3(1)(b) above demonstrates that the encroachment will
343 cause no increase in flood elevations in flood events up to the base flood at
344 any location or removes the encroached area from the regulatory floodway as
345 provided in § 1.5(5).
346

347 (2) STRUCTURES

348 Structures accessory to permanent open space uses, including utility and sanitary
349 facilities, classified as historic structures, or functionally dependent on a waterfront
350 location may be allowed by permit if the structures comply with the following criteria:

351 (a) The structures are not designed for human habitation, do not have a high flood
352 damage potential and are constructed to minimize flood damage;

353 (b) The structures shall either have the lowest floor elevated to or above the flood
354 protection elevation or shall meet all the following standards:

355 1. Have the lowest floor elevated to or above the regional flood elevation and
356 be dry floodproofed so that the structure is watertight with walls
357 substantially impermeable to the passage of water and completely dry to
358 the flood protection elevation without human intervention during flooding;
359

360 2. Have structural components capable of meeting all provisions of Section
361 3.3(2)(g) and;
362

363 3. Be certified by a registered professional engineer or architect, through the
364 use of a Federal Emergency Management Agency Floodproofing
365 Certificate, that the design and methods of construction are in accordance
366 with Section 3.3(2)(g).
367

368 (c) Must be anchored to resist flotation, collapse and lateral movement and to
369 prevent restricting bridge openings or other restricted sections of the stream or river;

370 (d) The structures must have all mechanical and utility equipment elevated to or
371 above the flood protection elevation; and

372 (e) Must not obstruct flow of flood waters or cause any increase in flood levels
373 during the occurrence of the regional flood.

374 (f) For a structure designed to allow the automatic entry of floodwaters below the
375 Regional Flood Elevation, the applicant shall submit a plan that meets§ 3.3(2)(a)
376 through 3.3(2)(e) and meets or exceeds the following standards:

377 1. The lowest floor must be elevated to or above the regional flood
378 elevation;

379 2. a minimum of two openings having a total net area of not less than one
380 square inch for every square foot of enclosed area subject to flooding;

381 3. the bottom of all openings shall be no higher than one foot above the
382 lowest adjacent grade; openings may be equipped with screens, louvers,
383 valves, or other coverings or devices provided that they permit the
384 automatic entry and exit of floodwaters, otherwise must remain open.

385 4. The use must be limited to parking, building access or limited storage.

386 (g) Certification: Whenever floodproofing measures are required, a registered
387 professional engineer or architect shall certify that the following floodproofing
388 measures will be utilized, where appropriate, and are adequate to withstand the
389 flood depths, pressures, velocities, impact and uplift forces and other factors
390 associated with the regional flood:

391 1. Reinforcement of floors and walls to resist rupture, collapse, or lateral
392 movement caused by water pressures or debris buildup;

393 2. Construction of wells, water supply systems and waste treatment systems
394 so as to prevent the entrance of flood waters in such systems and must be
395 in accordance with provisions in Sections 3.4(4) and 3.4(5);

396 3. Subsurface drainage systems to relieve external pressures on foundation
397 walls and basement floors;

398 4. Cutoff valves on sewer lines or the elimination of gravity flow basement
399 drains; and

400 5. Placement of utilities to or above the flood protection elevation.

401 (3) PUBLIC UTILITIES, STREETS AND BRIDGES

402 Public utilities, streets and bridges may be allowed by permit, if:

403

404 (a) Adequate floodproofing measures are provided to the flood protection elevation;
405 and

406 (b) Construction meets the development standards of §2.1.
407
408

409 (4) FILLS OR DEPOSITION OF MATERIALS

410 Fills or deposition of materials may be allowed by permit, if:
411

412 (a) The requirements of §2.1 are met;
413

414 (b) No material is deposited in navigable waters unless a permit is issued by the
415 Department pursuant to §§ 30, Wis. Stats., and a permit pursuant to § 404 of the
416 Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. § 1344
417 has been issued, if applicable, and all other requirements of this section have
418 been met;
419

420 (c) The fill or other materials will be protected against erosion by riprap, vegetative
421 cover, sheet piling or bulkheading; and
422

423 (a) The fill is not classified as a solid or hazardous material.
424

425 **3.4 PROHIBITED USES**

426 All uses not listed as permitted uses in § 3.2 are prohibited, including the following uses:
427

428 (1) Habitable structures, structures with high flood damage potential, or those not
429 associated with permanent open-space uses;
430

431 (2) Storing materials that are buoyant, flammable, explosive, injurious to property, water
432 quality, or human, animal, plant, fish or other aquatic life;
433

434 (3) Uses not in harmony with or detrimental to uses permitted in the adjoining districts;
435

436 (4) Any private sewage systems, except privately owned laterals connected to a public
437 sewerage system and portable latrines that are removed prior to flooding and
438 systems associated with recreational areas that meet the applicable provisions of
439 local ordinances and Ch. SPS 383, Wis. Adm. Code;
440

441 (5) Any public or private wells which are used to obtain potable water, except those for
442 recreational areas operated by the Village and Chs. NR 811 and NR 812, Wis. Adm.
443 Code;
444

445 (6) Any solid or hazardous waste disposal sites;
446

447 (7) Any wastewater treatment ponds or facilities, except those permitted under § NR
448 110.15(3)(b), Wis. Adm. Code; and
449

450 (8) Any sanitary sewer or water supply lines, except those to service existing or
451 proposed development located outside the floodway which complies with the
452 regulations for the floodplain area occupied.
453

454 Article IV

455 **4.0 FLOOD-FRIDGE DISTRICT (FF)**

456 **4.1 APPLICABILITY**

457 This section applies to all flood-fringe areas shown on the floodplain zoning maps and
458 those identified pursuant to § 5.1(5).
459

460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514

4.2 PERMITTED USES

Any structure, land use, or development is allowed in the Flood-Fringe District if the standards in § 4.3 are met, the use is not prohibited by this or any other ordinance or regulation and all permits or certificates specified in § 7.1 have been issued.

4.3 STANDARDS FOR DEVELOPMENT IN THE FLOODFRINGE

Section 2.0 shall apply in addition to the following requirements according to the use requested. Any existing structure in the floodfringe must meet the requirements of Article VI *Nonconforming Uses*;

(1) **RESIDENTIAL USES**

Any structure, including a manufactured home, which is to be newly constructed or moved into the floodfringe, shall meet or exceed the following standards. Any existing structure in the floodfringe must meet the requirements of Article VI *Nonconforming Uses*;

- (a) All new construction, including placement of manufactured homes, and substantial improvement of residential structures, shall have the lowest floor elevated to or above the flood protection elevation on fill. The fill around the structure shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure. No area may be removed from the floodfringe district unless it can be shown to meet § 1.5(5).
- (b) Notwithstanding § 4.3 (1)(a), a basement or crawlspace floor may be placed at the regional flood elevation if the basement or crawlspace is designed to make all portions of the structure below the flood protection elevation watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. No floor of any kind is allowed below the regional flood elevation;
- (c) Contiguous dryland access shall be provided from a structure to land outside of the floodplain, except as provided in subd. (d).
- (d) In developments where existing street or sewer line elevations make compliance with subd. (c) impractical, the municipality may permit new development and substantial improvements where roads are below the regional flood elevation, if:
 - 1. 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
 - 2. The municipality has a DNR-approved emergency evacuation plan that follows acceptable hazard mitigation planning guidelines.

(2) **ACCESSORY STRUCTURES OR USES**

In addition to § 2.0, new construction and substantial improvements of Accessory structures shall be constructed on fill with the lowest floor at or above the regional flood elevation.

(3) **COMMERCIAL USES**

In addition to § 2.0, any commercial structure which is erected, altered or moved into the floodfringe shall meet the requirements of § 4.3(1). Subject to the requirements

515 of § 4.3(5), storage yards, surface parking lots and other such uses may be placed at
516 lower elevations if an adequate warning system exists to protect life and property.
517

518 (4) MANUFACTURING AND INDUSTRIAL USES

519 In addition to § 2.0, any manufacturing or industrial structure which is erected,
520 altered or moved into the floodfringe shall have the lowest floor elevated to or above
521 the flood protection elevation or meet the floodproofing standards in s 7.5. Subject to
522 the requirements of § 4.3(5), storage yards, surface parking lots and other such uses
523 may be placed at lower elevations if an adequate warning system exists to protect
524 life and property.
525

526 (5) STORAGE OF MATERIALS

527 Materials that are buoyant, flammable, explosive, or injurious to property, water
528 quality or human, animal, plant, fish or aquatic life shall be stored at or above the
529 flood protection elevation or floodproofed in compliance with § 7.5. Adequate
530 measures shall be taken to ensure that such materials will not enter the water body
531 during flooding.
532

533 (6) PUBLIC UTILITIES, STREETS AND BRIDGES

534 All utilities, streets and bridges shall be designed to be compatible with
535 comprehensive floodplain development plans; and
536

537 (a) When failure of public utilities, streets and bridges would endanger public health
538 or safety, or where such facilities are deemed essential, construction or repair of
539 such facilities shall only be permitted if they are designed to comply with § 7.5.
540

541 (b) Minor roads or non-essential utilities may be constructed at lower elevations if
542 they are designed to withstand flood forces to the regional flood elevation.
543

544 (7) SEWAGE SYSTEMS

545 All sewage disposal systems shall be designed to minimize or eliminate infiltration of
546 flood water into the system, pursuant to § 7.5(3), to the flood protection elevation and
547 meet the provisions of all local ordinances and Ch. SPS 383, Wis. Adm. Code.
548

549 (8) WELLS

550 All wells shall be designed to minimize or eliminate infiltration of flood waters into the
551 system, pursuant to § 7.5(3), to the flood protection elevation and shall meet the
552 provisions of chs. NR 811 and NR 812, Wis. Adm. Code.
553

554 (9) SOLID WASTE DISPOSAL SITES

555 Disposal of solid or hazardous waste is prohibited in floodfringe areas.
556

557 (10) DEPOSITION OF MATERIALS

558 Any deposited material must meet all the provisions of this ordinance.
559

560 (11) MANUFACTURED HOMES

561 (a) Manufactured home parks are prohibited within the Village of Elm Grove.
562
563

564 (12) MOBILE RECREATIONAL VEHICLES

565 All mobile recreational vehicles must be compliant with the storage requirements in
566 §335-33 of the Village Code of Ordinances, and are not a permitted use within the
567 Village of Elm Grove.
568

569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622

5.0 OTHER FLOODPLAIN DISTRICTS

5.1 GENERAL FLOODPLAIN DISTRICT (GFP)

(1) APPLICABILITY

The provisions for the General Floodplain District shall apply to development in all floodplains mapped as A, AO, AH, and in AE zones within which a floodway is not delineated on the Flood Insurance Rate Maps identified in § 1.5(2)(a).

(2) FLOODWAY BOUNDARIES

For proposed development in zone A, or in zone AE within which a floodway is not delineated on the Flood Insurance Rate Map identified in § 1.5(2)(a), the boundaries of the regulatory floodway shall be determined pursuant to § 5.1(5). If the development is proposed to encroach upon the regulatory floodway, the development is subject to the standards of § 3.0. If the development is located entirely within the floodfringe, the development is subject to the standards of § 4.0.

(3) PERMITTED USES

Pursuant to § 5.1(5) it shall be determined whether the proposed use is located within the floodway or floodfringe. Those uses permitted in the Floodway (§ 3.2) and Floodfringe (§ 4.2) Districts are allowed within the General Floodplain District, according to the standards of § 5.1(4) provided that all permits or certificates required under §7.1 have been issued.

(4) STANDARDS FOR DEVELOPMENT IN THE GENERAL FLOODPLAIN DISTRICT

Section 3.0 applies to floodway areas, determined to pursuant to § 5.1(5); Article IV applies to floodfringe areas, determined to pursuant to § 5.1(5).

(a) New construction and substantial improvement of structures in zone AO shall have the lowest floor, including basement, elevated:

1. To or above the depth, in feet, as shown on the FIRM above the highest adjacent natural grade; or
2. If the depth is not specified on the FIRM, to or above two (2) feet above the highest adjacent natural grade.

(b) New Construction and substantial improvement of structures in zone AH shall have the lowest floor, including basement, elevated to or above the flood protection elevation.

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

(d) All development in zones AO and zone AH shall meet the requirements of § 4.0 applicable to floodfringe areas.

(5) DETERMINING FLOODWAY AND FLOODFRINGE LIMITS

Upon receiving an application for development within zone A, or within zone AE where a floodway has not been delineated on the Flood Insurance Rate Maps, the Zoning Administrator shall:

- (a) Require the applicant to submit two copies of an aerial photograph or a plan which

623 shows the proposed development with respect to the general floodplain district limits,
624 stream channel, and existing floodplain developments, along with a legal description of
625 the property, fill limits and elevations, building floor elevations and flood proofing
626 measures; and the flood zone as shown on the FIRM.

627
628 (b) Require the applicant to furnish any of the following information deemed necessary by
629 the Department to evaluate the effects of the proposal upon flood height and flood
630 flows, regional flood elevation and to determine floodway boundaries.

- 631
632 1. A Hydrologic and Hydraulic Study as specified in § 7.1(2)(c).
633
634 2. Plan (surface view) showing elevations or contours of the ground; pertinent
635 structure, fill or storage elevations; size, location and layout of all proposed and
636 existing structures on the site; location and elevations of streets, water supply, and
637 sanitary facilities; soil types and other pertinent information;
638
639 3. Specifications for building construction and materials, floodproofing, filling,
640 dredging, channel improvement, storage, water supply and sanitary facilities.
641

642 **5.2 FLOOD STORAGE DISTRICT**

643 The flood storage district delineates that portion of the floodplain where storage of
644 floodwaters has been taken into account and is relied upon to reduce the regional flood
645 discharge. The district protects the flood storage areas and assures that any development
646 in the storage areas will not decrease the effective flood storage capacity which would
647 cause higher flood elevations.
648

649 (1) APPLICABILITY

650 The provisions of this section apply to all areas within the Flood Storage District (FSD),
651 as shown on the official floodplain zoning maps.
652

653 (2) PERMITTED USES

654 Any use or development which occurs in a flood storage district must meet the
655 applicable requirements in § 4.3.
656

657 (3) STANDARDS FOR DEVELOPMENT IN FLOOD STORAGE DISTRICTS

658 (a) Development in a flood storage district shall not cause an increase equal or greater
659 than 0.00 of a foot in the height of the regional flood.
660

661 (b) No development shall be allowed which removes flood storage volume unless an
662 equal volume of storage as defined by the pre-development ground surface and
663 the regional flood elevation shall be provided in the immediate area of the
664 proposed development to compensate for the volume of storage which is lost,
665 (compensatory storage). Excavation below the groundwater table is not
666 considered to provide an equal volume of storage.
667

668 (c) If compensatory storage cannot be provided, the area may not be developed unless
669 the entire area zoned as flood storage district – on this waterway – is rezoned to
670 the floodfringe district. This must include a revision to the floodplain study and
671 map done for the waterway to revert to the higher regional flood discharge
672 calculated without floodplain storage, as per Article VIII *Amendments* of this
673 ordinance.
674

675 (d) No area may be removed from the flood storage district unless it can be shown that
676 the area has been filled to the flood protection elevation and is contiguous to other
677

678 lands lying outside of the floodplain.

679

680 **6.0 NONCONFORMING USES**

681

682

Article VI

683

Nonconforming Uses

684

6.1 Applicability and Continuance.

685

(1) APPLICABILITY

686

687

(a) The standards in this section shall apply to all uses and buildings that do not conform to the provisions contained within a floodplain zoning ordinance or with § 87.30, Wis. Stats. and §§ NR 116.12-14, Wis. Adm. Code and 44 C.F.R. 59-72., these standards shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the passage of this ordinance or any amendment thereto. A party asserting existence of a lawfully established nonconforming use or structure has the burden of proving that the use or structure was compliant with the floodplain zoning ordinance in effect at the time the use or structure was created.

696

697

(b) As permit applications are received for additions, modifications, or substantial improvements to nonconforming buildings in the floodplain, municipalities shall develop a list of those nonconforming buildings, their present equalized assessed value and a list of the costs of those activities associated with changes to those buildings.

702

703

(2) 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:

704

705

706

(a) No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this Chapter and all municipal ordinances. 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.

716

717

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.

721

722

(b) 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 and all municipal ordinances;

726

727

(c) The Village shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent;

728

729

730

731

- 732 (d) No modification or addition to any nonconforming structure or any structure with a
733 nonconforming use, which over the life of the structure would equal or exceed 50%
734 of its present equalized assessed value, shall be allowed unless the entire
735 structure is permanently changed to a conforming structure with a conforming use
736 in compliance with the applicable requirements of this ordinance. Contiguous dry
737 land access must be provided for residential and commercial uses in compliance
738 with § 4.3(1). The costs of elevating the lowest floor of a nonconforming building or
739 a building with a nonconforming use to the flood protection elevation are excluded
740 from the 50% provisions of this paragraph;
741
- 742 (e) No maintenance on a per event basis to any nonconforming structure or any
743 structure with a nonconforming use, the cost of which would equal or exceed 50%
744 of its present equalized assessed value, shall be allowed unless the entire
745 structure is permanently changed to a conforming structure with a conforming use
746 in compliance with the applicable requirements of this Chapter. Contiguous dry
747 land access must be provided for residential and commercial uses in compliance
748 with § 4.3(1). Maintenance to any nonconforming structure, which does not exceed
749 50% of its present equalized assessed value on a per event basis, does not count
750 against the cumulative calculations over the life of the structure for substantial
751 improvement calculations.
752
- 753 (f) If on a per event basis the total value of the work being done under (d) and (e)
754 equals or exceeds 50% of the present equalized assessed value the work shall not
755 be permitted unless the entire structure is permanently changed to a conforming
756 structure with a conforming use in compliance with the applicable requirements of
757 this ordinance. Contiguous dry land access must be provided for residential and
758 commercial uses in compliance with § 4.3(1).
759
- 760 (g) Except as provided in subd. (h), if any nonconforming structure or any structure
761 with a nonconforming use is destroyed or is substantially damaged, it cannot be
762 replaced, reconstructed or rebuilt unless the use and the structure meet the current
763 ordinance requirements. A structure is considered substantially damaged if the
764 total cost to restore the structure to its pre-damaged condition equals or exceeds
765 50% of the structure's present equalized assessed value.
766
- 767 (h) For nonconforming buildings that are substantially damaged or destroyed by a
768 non-flood disaster, the repair or reconstruction of any such nonconforming building
769 shall be permitted in order to restore it to the size and use in effect prior to the
770 damage event, provided that the following minimum requirements are met and all
771 required permits have been granted prior to the start of construction:
772

773 1. Residential Structures

- 774
- 775 a. Shall have the lowest floor, including basement, elevated to or above the
776 flood protection elevation using fill, pilings, columns, posts or perimeter walls.
777 Perimeter walls must meet the requirements of § 7.5(2).
778
- 779 b. Shall be anchored to prevent flotation, collapse, or lateral movement of the
780 structure resulting from hydrodynamic and hydrostatic loads, including the
781 effects of buoyancy and shall be constructed with methods and materials
782 resistant to flood damage.
783
- 784 c. Shall be constructed with electrical, heating, ventilation, plumbing and air
785 conditioning equipment and other service facilities that are designed and/or
786

787 elevated to a minimum of one foot above the Base Flood (Regional Flood) so
788 as to prevent water from entering or accumulating within the components
789 during conditions of flooding.

790
791 d. In A Zones, obtain, review and utilize any flood data available from a federal,
792 state or other source.

793
794 e. In AO Zones with no elevations specified, shall have the lowest floor,
795 including basement, meet the standards in § 5.1(4).

796
797 f. in AO Zones, shall have adequate drainage paths around structures on slopes
798 to guide floodwaters around and away from the structure.

799
800 2. Nonresidential Structures

801
802 a. Shall meet the requirements of §§ 6.1(2)(h)1a-f.

803
804 b. Shall either have the lowest floor, including basement, elevated to or above
805 the regional flood elevation; or, together with attendant utility and sanitary
806 facilities, shall meet the standards in §§ 7.5 (1) or (2).

807
808 c. In AO Zones with no elevations specified, shall have the lowest floor, including
809 basement, meet the standards in § 5.1(4).

810
811 (3) A nonconforming historic structure may be altered if the alteration will not preclude the
812 structure's continued designation as a historic structure, the alteration will comply with
813 § 3.3 (1), flood resistant materials are used, and construction practices and
814 floodproofing methods that comply with § 7.5 are used. Repair or rehabilitation of
815 historic structures shall be exempt from the development standards of § 6.1 (2)(h)1 if it
816 is determined that the proposed repair or rehabilitation will not preclude the structure's
817 continued designation as a historic structure and is the minimum necessary to
818 preserve the historic character and design of the structure.

819
820
821 **6.2 FLOODWAY DISTRICT**

822 (1) No modification or addition shall be allowed to any nonconforming structure or any
823 structure with a nonconforming use in the Floodway District, unless such modification or
824 addition:

825
826 (a) Has been granted a permit or variance which meets all ordinance requirements;

827
828 (b) Meets the requirements of § 6.1;

829
830 (c) Shall not increase the obstruction to flood flows or regional flood height;

831
832 (d) Any addition to the existing structure shall be elevated to or above the Flood
833 Protection Elevation, pursuant to § 7.5, by means other than the use of fill, to the
834 flood protection elevation; and

835
836 (e) If any part of the foundation below the flood protection elevation is enclosed, the
837 following standards shall apply:

838
839 1. The enclosed area shall be designed by a registered architect or engineer to

840 allow for the efficient entry and exit of flood waters without human intervention. A
841 minimum of two openings must be provided with a minimum net area of at least
842 one square inch for every one square foot of the enclosed area. The lowest part
843 of the opening can be no more than 12 inches above the adjacent grade;

844
845 2. The parts of the foundation located below the flood protection elevation must be
846 constructed of flood-resistant materials;

847
848 3. Mechanical and utility equipment must be elevated to or above the Flood
849 Protection Elevation; and

850
851 4. The use must be limited to parking, building access or limited storage.

852
853 (2) No new on-site sewage disposal system, or addition to an existing on-site sewage
854 disposal system, except where an addition has been ordered by a government agency
855 to correct a hazard to public health, shall be allowed in the Floodway District. Any
856 replacement, repair or maintenance of an existing on-site sewage disposal system in a
857 floodway area shall meet the applicable requirements of all municipal ordinances, §
858 7.5(3) and Ch. SPS 383, Wis. Adm. Code.

859
860 (3) No new well or modification to an existing well used to obtain potable water shall be
861 allowed in the Floodway District. Any replacement, repair or maintenance of an existing
862 well in the Floodway District shall meet the applicable requirements of all municipal
863 ordinances, § 7.5(3) and Chs. NR 811 and NR 812, Wis. Adm. Code.

864 865 **6.3 FLOODFRINGE DISTRICT**

866 (1) No modification or addition shall be allowed to any nonconforming structure or any
867 structure with a nonconforming use unless such modification or addition has been
868 granted a permit or variance by the municipality and meets the requirements of § 4.3
869 except where § 6.3(2) is applicable.

870
871 (2) Where compliance with the provisions of subd. (1) would result in unnecessary
872 hardship and only where the structure will not be used for human habitation or be
873 associated with a high flood damage potential, the Board of Appeals, using the
874 procedures established in § 7.3, may grant a variance from those provisions of subd.
875 (1) for modifications or additions using the criteria listed below. Modifications or
876 additions which are protected to elevations lower than the flood protection elevation
877 may be permitted if:

878
879 (a) No floor is allowed below the regional flood elevation for residential or
880 commercial structures;

881
882 (b) Human lives are not endangered;

883
884 (c) Public facilities, such as water or sewer, shall not be installed;

885
886 (d) Flood depths shall not exceed two feet;

887
888 (e) Flood velocities shall not exceed two feet per second; and

889
890 (f) The structure shall not be used for storage of materials as described in § 4.3(5).

891
892 (3) All new private sewage disposal systems, or addition to, replacement, repair or
893 maintenance of a private sewage disposal system shall meet all the applicable

895 provisions of all local ordinances, § 7.5 (3) and Ch. SPS 383, Wis. Adm. Code.

- 896
897 (4) All new wells, or addition to, replacement, repair or maintenance of a well shall meet
898 the applicable provisions of this ordinance, § 7.5 (3) and Chs. NR 811 and NR 812, Wis.
899 Adm. Code.

900
901 **6.4 FLOOD STORAGE DISTRICT**

902 No modifications or additions shall be allowed to any nonconforming structure in a flood
903 storage area unless the standards outlined in 5.2(3) are met.

904
905 Article VII
906 **Administration**

907 **7.0 PURPOSE**

908 Where the Zoning Administrator, plan commission or a board of appeals of the Village has
909 already been appointed to administer a zoning ordinance adopted under §§ 59.69, 59.692
910 or 62.23(7), Wis. Stats., those entities shall also administer this Chapter.

911
912 **7.1 ZONING ADMINISTRATOR**

913 (1) **DUTIES AND POWERS**

914 The Zoning Administrator is authorized to administer this Chapter and shall have the
915 following duties and powers:

- 916
917 (a) Advise applicants of the ordinance provisions, assist in preparing permit
918 applications and appeals, and assure that the regional flood elevation for the
919 proposed development is shown on all permit applications.
920
921 (b) Issue permits and inspect properties for compliance with provisions of this Chapter
922 and issue certificates of compliance where appropriate.
923
924 (c) Inspect and assess all damaged floodplain structures to determine if substantial
925 damage to the structures has occurred.
926
927 (d) Keep records of all official actions such as:
928
929 1. All permits issued, inspections made, and work approved;
930 2. Documentation of certified lowest floor and regional flood elevations;
931 3. Floodproofing certificates.
932 4. Water surface profiles, floodplain zoning maps and ordinances, nonconforming
933 uses and structures including changes, appeals, variances and amendments.
934 5. All substantial damage assessment reports for floodplain structures.
935 6. List of nonconforming structures and uses.
936
937 (e) Submit copies of the following items to the Department Regional office:
938
939 1. Within 10 days of the decision, a copy of any decisions on variances, appeals
940 for map or text interpretations, and map or text amendments;
941
942 2. Copies of case-by-case analyses and other required information.
943
944 3. Copies of substantial damage assessments performed and all related
945 correspondence concerning the assessments.
946
947 (f) Investigate, prepare reports, and report violations of this Chapter to the Elm Grove
948 Plan Commission and Village Attorney for prosecution. Copies of the reports shall
949

950 also be sent to the Department Regional office.

951
952 (g) Submit copies of amendments to the FEMA Regional office.

953
954 (2) LAND USE PERMIT

955 A land use permit shall be obtained from the Zoning Administrator before any
956 development; repair, modification or addition to an existing structure; or change in the
957 use of a building or structure, including sewer and water facilities, may be initiated.
958 Application to the Zoning Administrator shall include:

959
960 (a) GENERAL INFORMATION

- 961
962 1. Name and address of the applicant, property owner and contractor;
963
964 2. Legal description, proposed use, and whether it is new construction or a
965 modification;

966
967 (b) SITE DEVELOPMENT PLAN

968 A site plan drawn to scale shall be submitted with the permit application form and
969 shall contain:

- 970
971 1. Location, dimensions, area and elevation of the lot;
972
973 2. Location of the ordinary highwater mark of any abutting navigable waterways;
974
975 3. Location of any structures with distances measured from the lot lines and street
976 center lines;
977
978 4. Location of any existing or proposed on-site sewage systems or private water
979 supply systems;
980
981 5. Location and elevation of existing or future access roads;
982
983 6. Location of floodplain and floodway limits as determined from the official
984 floodplain zoning maps;
985
986 7. The elevation of the lowest floor of proposed buildings and any fill using the
987 vertical datum from the adopted study – either National Geodetic Vertical
988 Datum (NGVD) or North American Vertical Datum (NAVD);
989
990 8. Data sufficient to determine the regional flood elevation in NGVD or NAVD at
991 the location of the development and to determine whether or not the
992 requirements of §§ 3.0 or 4.0 are met; and
993
994 9. Data to determine if the proposed development will cause an obstruction to flow
995 or an increase in regional flood height or discharge according to § 2.1. This
996 may include any of the information noted in § 3.3(1).

997
998 (c) HYDRAULIC AND HYDROLOGIC STUDIES TO ANALYZE DEVELOPMENT

999 All hydraulic and hydrologic studies shall be completed under the direct supervision
1000 of a professional engineer registered in the State of Wisconsin. The study
1001 contractor shall be responsible for the technical adequacy of the study. All studies
1002 shall be reviewed and approved by the Department.

1003

- 1004 1. Zone A floodplains and in AE zones within which a floodway is not delineated:
1005 a. Hydrology
1006 i. The appropriate method shall be based on the standards in Ch. NR
1007 116.07(3), Wis. Admin. Code, *Hydrologic Analysis: Determination of*
1008 *Regional Flood Discharge*.
1009
1010 b. Hydraulic modeling
1011 The regional flood elevation shall be based on the standards in Ch. NR
1012 116.07(4), Wis. Admin. Code, *Hydraulic Analysis: Determination of*
1013 *Regional Flood Elevation* and the following:
1014
1015 i. Determination of the required limits of the hydraulic model shall be based
1016 on detailed study information for downstream structures (dam, bridge,
1017 culvert) to determine adequate starting WSEL for the study.
1018
1019 ii. Channel sections must be surveyed.
1020
1021 iii. Minimum four-foot contour data in the overbanks shall be used for the
1022 development of cross section overbank and floodplain mapping.
1023
1024 iv. A maximum distance of 500 feet between cross sections is allowed in
1025 developed areas with additional intermediate cross sections required at
1026 transitions in channel bottom slope including a survey of the channel at
1027 each location.
1028
1029 v. The most current version of HEC_RAS shall be used.
1030
1031 vi. A survey of bridge and culvert openings and the top of road is required
1032 at each structure.
1033
1034 vii. Additional cross sections are required at the downstream and upstream
1035 limits of the proposed development and any necessary intermediate
1036 locations based on the length of the reach if greater than 500 feet.
1037
1038 viii. Standard accepted engineering practices shall be used when assigning
1039 parameters for the base model such as flow, Manning's N values,
1040 expansion and contraction coefficients or effective flow limits. The base
1041 model shall be calibrated to past flooding data such as high water marks
1042 to determine the reasonableness of the model results. If no historical
1043 data is available, adequate justification shall be provided for any
1044 parameters outside standard accepted engineering practices.
1045
1046 ix. The model must extend past the upstream limit of the difference in the
1047 existing and proposed flood profiles in order to provide a tie-in to existing
1048 studies. The height difference between the proposed flood profile and the
1049 existing study profiles shall be no more than 0.00 feet.
1050
1051 c. Mapping
1052 A work map of the reach studied shall be provided, showing all cross-section
1053 locations, floodway/floodplain limits based on best available topographic
1054 data, geographic limits of the proposed development and whether the
1055 proposed development is located in the floodway.
1056
1057 i. If the proposed development is located outside of the floodway, then it is

1058 determined to have no impact on the regional flood elevation.

- 1059
1060 ii. If any part of the proposed development is in the floodway, it must be
1061 added to the base model to show the difference between existing and
1062 proposed conditions. The study must ensure that all coefficients remain
1063 the same as in the existing model, unless adequate justification based on
1064 standard accepted engineering practices is provided.

1065
1066 2. Zone AE Floodplains

1067 a. Hydrology

1068 If the proposed hydrology will change the existing study, the appropriate
1069 method to be used shall be based on Ch. NR 116.07(3), Wis. Admin. Code,
1070 *Hydrologic Analysis: Determination of Regional Flood Discharge*.

1071
1072 b. Hydraulic model

1073 The regional flood elevation shall be based on the standards in Ch. NR
1074 116.07(4), Wis. Admin. Code, *Hydraulic Analysis: Determination of*
1075 *Regional Flood Elevation* and the following:

1076
1077 i. Duplicate Effective Model

1078 The effective model shall be reproduced to ensure correct transference of
1079 the model data and to allow integration of the revised data to provide a
1080 continuous FIS model upstream and downstream of the revised reach. If
1081 data from the effective model is available, models shall be generated that
1082 duplicate the FIS profiles and the elevations shown in the Floodway Data
1083 Table in the FIS report to within 0.1 foot.

1084
1085 ii. Corrected Effective Model.

1086 The Corrected Effective Model shall not include any man-made physical
1087 changes since the effective model date but shall import the model into the
1088 most current version of HEC-RAS for Department review.

1089
1090 iii. Existing (Pre-Project Conditions) Model.

1091 The Existing Model shall be required to support conclusions about the
1092 actual impacts of the project associated with the Revised (Post-Project)
1093 Model or to establish more up-to-date models on which to base the
1094 Revised (Post-Project) Model.

1095
1096 iv. Revised (Post-Project Conditions) Model.

1097 The Revised (Post-Project Conditions) Model shall incorporate the
1098 Existing Model and any proposed changes to the topography caused by
1099 the proposed development. This model shall reflect proposed conditions.

1100
1101 v. All changes to the Duplicate Effective Model and subsequent models
1102 must be supported by certified topographic information, bridge plans,
1103 construction plans and survey notes.

1104
1105 vi. Changes to the hydraulic models shall be limited to the stream reach for
1106 which the revision is being requested. Cross sections upstream and
1107 downstream of the revised reach shall be identical to those in the
1108 effective model and result in water surface elevations and topwidths
1109 computed by the revised models matching those in the effective models
1110 upstream and downstream of the revised reach as required. The
1111 Effective Model shall not be truncated.

1112
1113
1114
1115
1116
1117
1118
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1160
1161
1162
1163
1164
1165

- c. Mapping
Maps and associated engineering data shall be submitted to the Department for review which 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.

(d) EXPIRATION

All permits issued under the authority of this Chapter shall expire no more than 180 days after issuance. The permit may be extended for a maximum of 180 days for good and sufficient cause. If the permitted work has not started within 180 days of the permit date, the development must comply with any regulation, including any revision to the FIRM or FIS, that took effect after the permit date.

(3) 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:

- (a) 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;
- (b) Application for such certificate shall be concurrent with the application for a permit;

- 1166 (c) If all Chapter provisions are met, the certificate of compliance shall be issued
1167 within 10 days after written notification that the permitted work is completed;
1168
- 1169 (d) The applicant shall submit a certification signed by a registered professional
1170 engineer, architect or land surveyor that the fill, lowest floor and floodproofing
1171 elevations are in compliance with the permit issued. Floodproofing measures also
1172 require certification by a registered professional engineer or architect that the
1173 requirements of § 7.5 are met.
1174
- 1175 (e) Where applicable pursuant to § 5.1(4), the applicant must submit a certification by
1176 a registered professional engineer or surveyor of the elevation of the bottom of the
1177 lowest horizontal structural member supporting the lowest floor (excluding pilings
1178 or columns), and an indication of whether the structure contains a basement.
1179
- 1180 (f) Where applicable pursuant to § 5.1(4), the applicant must submit certifications by a
1181 registered professional engineer or architect that the structural design and methods
1182 of construction meet accepted standards of practice as required by § 5.1(4).
1183
- 1184 (4) **OTHER PERMITS**
1185 Prior to obtaining a floodplain development permit the applicant must secure all
1186 necessary permits from federal, state, and local agencies, including but not limited to
1187 those required by the U.S. Army Corps of Engineers under § 404 of the Federal Water
1188 Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344.
1189

1190 **7.2 ZONING AGENCY**

- 1191 (1) The Elm Grove Plan Commission shall:
1192
- 1193 (a) Oversee the functions of the office of the Zoning Administrator; and
1194
- 1195 (b) Review and Advise the governing body on all proposed amendments to this
1196 Chapter, maps and text.
1197
- 1198 (c) Publish adequate notice pursuant to Ch. 985, Wis. Stats., specifying the date, time,
1199 place and subject of the public hearing.
1200
- 1201 (2) The Elm Grove Plan Commission shall not:
1202
- 1203 (a) Grant variances to the terms of the ordinance in place of action by the Elm Grove
1204 Board of Appeals; or
1205
- 1206 (b) Amend the text or zoning maps in place of official action by the Village Board.
1207

1208 **7.3 ELM GROVE BOARD OF APPEALS**

1209 The Elm Grove Board of Appeals, created under §§ 62.23(7)(e), Wis. Stats., for villages, is
1210 hereby authorized or shall be appointed to act for the purposes of this ordinance. The
1211 Board of Appeals shall exercise the powers conferred by Wisconsin Statutes and adopt
1212 rules for the conduct of business. The Zoning Administrator shall not be the secretary of the
1213 Board of Appeals.
1214

1215 (1) **POWERS AND DUTIES**

1216 The Elm Grove Board of Appeals shall:
1217

- 1218 (a) Appeals - Hear and decide appeals where it is alleged there is an error in any
1219 order, requirement, decision or determination made by an administrative official in
1220

1221
1222
1223
1224
1225
1226
1227
1228
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1270
1271
1272
1273
1274

the enforcement or administration of this Chapter;

- (b) Boundary Disputes - Hear and decide disputes concerning the district boundaries shown on the Official Floodplain Zoning Map; and
- (c) Variances - Hear and decide, upon appeal, variances from the standards of this Chapter.

(2) APPEALS TO THE BOARD OF APPEALS

- (a) Appeals to the Board of Appeals may be taken by any person aggrieved, or by any officer or department of the municipality 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 of Appeals, a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the Board of Appeals all records regarding the matter appealed.

(b) NOTICE AND HEARING FOR APPEALS INCLUDING VARIANCES

- 1. Notice - The Board of Appeals shall:
 - a. Fix a reasonable time for the hearing;
 - b. Publish adequate notice pursuant to Wisconsin Statutes, specifying the date, time, place and subject of the hearing; and
 - c. Assure that notice shall be mailed to the parties in interest and the Department Regional office at least 10 days in advance of the hearing.
- 2. Hearing - Any party may appear in person or by agent. The Board of Appeals shall:
 - a. Resolve boundary disputes according to § 7.3(3);
 - b. Decide variance applications according to § 7.3(4); and
 - c. Decide appeals of permit denials according to § 7.4.

(c) DECISION: The final decision regarding the appeal or variance application shall:

- 1. Be made within a reasonable time;
- 2. Be sent to the Department Regional office within 10 days of the decision;
- 3. Be a written determination signed by the Chairman or Secretary of the Board of Appeals;
- 4. State the specific facts which are the basis for the Board of Appeals' 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; and
- 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 of Appeals proceedings.

(3) BOUNDARY DISPUTES

- 1275 The following procedure shall be used by the Board of Appeals in hearing disputes
1276 concerning floodplain district boundaries:
1277
- 1278 (a) If a floodplain district boundary is established by approximate or detailed floodplain
1279 studies, the flood elevations or profiles shall prevail in locating the boundary.
1280
- 1281 (b) The person contesting the boundary location shall be given a reasonable
1282 opportunity to present arguments and technical evidence to the Board of Appeals;
1283 and
1284
- 1285 (c) If the boundary is incorrectly mapped, the Board should inform the Zoning
1286 Committee or the person contesting the boundary location to petition the
1287 governing body for a map amendment according to § 8.0 *Amendments*.
1288
- 1289 (4) VARIANCE
- 1290 (a) The Board of Appeals may, upon appeal, grant a variance from the standards of
1291 this Chapter if an applicant convincingly demonstrates that:
1292
- 1293 1. Literal enforcement of the Chapter will cause unnecessary hardship;
1294
- 1295 2. The hardship is due to adoption of the Floodplain Ordinance and unique
1296 property conditions, not common to adjacent lots or premises. In such case the
1297 ordinance or map must be amended;
1298
- 1299 3. The variance is not contrary to the public interest; and
1300
- 1301 4. The variance is consistent with the purpose of this Chapter in § 1.3.
1302
- 1303 (b) In addition to the criteria in subsection (a), to qualify for a variance under FEMA
1304 regulations, the Board of Appeals must find that the following criteria have been
1305 met:
1306
- 1307 1. The variance shall not cause any increase in the regional flood elevation;
1308
- 1309 2. The applicant has shown good and sufficient cause for issuance of the
1310 variance;
1311
- 1312 3. Failure to grant the variance would result in exceptional hardship;
1313
- 1314 4. Granting the variance will not result in additional threats to public safety,
1315 extraordinary expense, create a nuisance, cause fraud on or victimization of the
1316 public, or conflict with existing local laws or ordinances;
1317
- 1318 5. The variance granted is the minimum necessary, considering the flood hazard,
1319 to afford relief.
1320
- 1321 (c) A variance shall not:
1322
- 1323 1. Grant, extend or increase any use prohibited in the zoning district;
1324
- 1325 2. Be granted for a hardship based solely on an economic gain or loss;

1326
1327
1328
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379

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 § 8.0 *Amendments*; and
 6. Allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.
- (d) When a floodplain variance is granted the Board of Appeals shall notify the applicant in writing that it may increase risks to life and property and flood insurance premiums could increase up to \$25.00 per \$100.00 of coverage. A copy shall be maintained with the variance record.

7.4 TO REVIEW APPEALS OF PERMIT DENIALS

- (1) The Zoning Agency (§ 7.2) or Board of Appeals shall review all data related to the appeal. This data may include (where appropriate):
 - (a) Permit application data listed in §7.1(2);
 - (b) Floodway/floodfringe determination data in §5.1(5);
 - (c) Data listed in §3.3(1)(b) where the applicant has not submitted this information to the Zoning Administrator; and
 - (d) Other data submitted with the application or submitted to the Board with the appeal.
- (2) For appeals of all denied permits the Board shall:
 - (a) Follow the procedures of §7.3;
 - (b) Consider zoning agency recommendations; and
 - (c) Either uphold the denial or grant the appeal.
- (3) For appeals concerning increases in regional flood elevation the Board shall:
 - (a) 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 the requirements of §8.0 *Amendments*; and
 - (b) 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.

7.5 FLOODPROOFING STANDARDS

- (1) No permit or variance shall be issued for a non-residential 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 or above the flood protection elevation and submits a FEMA Floodproofing Certificate. Floodproofing is not an alternative to the development standards in §§ 2.0, 3.0, 4.0, 5.1, or 5.3.

1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1400
1401
1402
1403
1404
1405
1406
1407
1408
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1430
1431
1432
1433

- (2) For a structure designed to allow the entry of floodwaters, no permit or variance shall be issued until the applicant submits a plan either:
 - (a) Certified by a registered professional engineer or architect; or
 - (b) Meeting or exceeding 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.
- (3) Floodproofing measures shall be designed, as appropriate, to:
 - (a) Withstand flood pressures, depths, velocities, uplift and impact forces and other regional flood factors;
 - (b) Protect structures to the flood protection elevation;
 - (c) Anchor structures to foundations to resist flotation and lateral movement;
 - (d) Minimize or eliminate infiltration of flood waters;
 - (e) Minimize or eliminate discharges into flood waters;
 - (f) Placement of essential utilities to or above the flood protection elevation; and
 - (g) 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 two 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 to or above the Flood Protection Elevation; and
 - 4. The use of that enclosed area must be limited to parking, building access or limited storage.

7.6 PUBLIC INFORMATION

- (1) Place marks on structures to show the depth of inundation during the regional flood.
- (2) All maps, engineering data and regulations shall be available and widely distributed.

1434 (3) Real estate transfers should show what floodplain district any real property is in.
1435

1436 Article VIII
1437 Amendments

1438 **8.0 AMENDMENTS**

1439 Obstructions or increases may only be permitted if amendments are made to this Chapter,
1440 the official floodplain zoning maps, floodway lines and water surface profiles, in accordance
1441 with § 8.1.
1442

- 1443 (1) In AE Zones with a mapped floodway, no obstructions or increases shall be permitted
1444 unless the applicant receives a Conditional Letter of Map Revision from FEMA and
1445 amendments are made to this ordinance, the official floodplain zoning maps, floodway
1446 lines and water surface profiles, in accordance with § 8.1. Any such alterations must be
1447 reviewed and approved by FEMA and the DNR.
1448
- 1449 (2) In A Zones increases equal to or greater than 1.0 foot may only be permitted if the
1450 applicant receives a Conditional Letter of Map Revision from FEMA and amendments
1451 are made to this ordinance, the official floodplain maps, floodway lines, and water
1452 surface profiles, in accordance with § 8.1.
1453

1454 **8.1 GENERAL**

1455 The Village Board of Trustees shall change or supplement the floodplain zoning district
1456 boundaries and this Chapter in the manner outlined in § 8.2 below. Actions which require
1457 an amendment to the Chapter and/ or submittal of a Letter of Map Change (LOMC)
1458 include, but are not limited to, the following:
1459

- 1460 (1) Any fill or floodway encroachment that obstructs flow causing any increase in the
1461 regional flood height;
1462
- 1463 (2) Any change to the floodplain boundaries and/or watercourse alterations on the FIRM;
1464
- 1465 (3) Any changes to any other officially adopted floodplain maps listed in § 1.5 (2)(b);
1466
- 1467 (4) Any floodplain fill which raises the elevation of the filled area to a height at or above
1468 the flood protection elevation and is contiguous to land lying outside the floodplain;
1469
- 1470 (5) Correction of discrepancies between the water surface profiles and floodplain maps;
1471
- 1472 (6) Any upgrade to a floodplain zoning ordinance text required by § NR 116.05, Wis. Adm.
1473 Code, or otherwise required by law, or for changes by the municipality; and
1474
- 1475 (7) All channel relocations and changes to the maps to alter floodway lines or to remove
1476 an area from the floodway or the floodfringe that is based on a base flood elevation
1477 from a FIRM requires prior approval by FEMA.
1478

1479 **8.2 AMENDMENT PROCEDURES**

1480 Amendments to this Chapter may be made upon petition of any party according to the
1481 provisions of § 62.23, Wis. Stats., for villages. The petitions shall include all data required
1482 by § 5.1(5) and 7.1(2). The Land Use Permit shall not be issued until a Letter of Map
1483 Revision is issued by FEMA for the proposed changes.
1484

- 1485 (1) The proposed amendment shall be referred to the zoning agency for a public hearing
1486 and recommendation to the governing body. The amendment and notice of public
1487 hearing shall be submitted to the Department Regional office for review prior to the

1488 hearing. The amendment procedure shall comply with the provisions of § 62.23, Wis.
1489 Stats., for villages.

1490

1491 (2) No amendments shall become effective until reviewed and approved by the
1492 Department.

1493

1494 (3) All persons petitioning for a map amendment that obstructs flow causing any increase
1495 in the regional flood height, shall obtain flooding easements or other appropriate legal
1496 arrangements from all adversely affected property owners and notify local units of
1497 government before the amendment can be approved by the governing body.

1498

1499

Article IX

Enforcement and Penalties

1500

9.0 ENFORCEMENT AND PENALTIES

1502

Any violation of the provisions of this Chapter by any person shall be unlawful and shall be referred to the Municipal Attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to the Village of Elm Grove a penalty of not more than \$50.00 (fifty dollars), 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 the municipality, the state, or any citizen thereof pursuant to § 87.30, Wis. Stats.

1503

1504

1505

1506

1507

1508

1509

1510

Article X Definitions

1511

10.0 DEFINITIONS

1513

A. Unless specifically defined in the Village of Elm Grove Code of Ordinances, words and phrases in this Chapter shall have their common-law meaning and shall be applied in accordance with their common usage. Words used in the present tense include the future, the singular number includes the plural and the plural number includes the singular. The word "may" is permissive, "shall" is mandatory and is not discretionary. Definitions enumerated below in Subsection B shall apply only to such terms used in this Chapter and shall not apply to any other chapters within the Village of Elm Grove Code of Ordinances.

1514

1515

1516

1517

1518

1519

1520

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

1521

1522

1523

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.

1524

1525

1526

1527

2. AH ZONE – See “AREA OF SHALLOW FLOODING”.

1528

1529

3. AO ZONE – See “AREA OF SHALLOW FLOODING”.

1530

1531

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. An accessory structure shall not be used for human habitation.

1532

1533

5. ALTERATION – An enhancement, upgrade or substantial change or modification other than an addition or repair to a dwelling or to electrical, plumbing, heating, ventilating, air conditioning and other systems within a structure.

1534

1535

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

1540

1541

1542

- 1543 flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist,
1544 where the path of flooding is unpredictable, and where velocity flood may be evident. Such
1545 flooding is characterized by ponding or sheet flow.
1546
- 1547 7. **BASE FLOOD** – Means the flood having a one percent chance of being equaled or
1548 exceeded in any given year, as published by FEMA as part of a FIS and depicted on a
1549 FIRM.
1550
- 1551 8. **BASEMENT** – Any enclosed area of a building having its floor sub-grade on all sides.
1552
- 1553 9. **BUILDING** – See **STRUCTURE**.
1554
- 1555 10. **BULKHEAD LINE** – A geographic line along a reach of navigable water that has been
1556 adopted by a municipal ordinance and approved by the Department pursuant to s. 30.11,
1557 Stats., and which allows limited filling between this bulkhead line and the original ordinary
1558 highwater mark, except where such filling is prohibited by the floodway provisions of this
1559 ordinance.
1560
- 1561 11. **CAMPGROUND** – Any parcel of land which is designed, maintained, intended or used for
1562 the purpose of providing sites for nonpermanent overnight use by 4 or more camping units,
1563 or which is advertised or represented as a camping area.
1564
- 1565 12. **CAMPING UNIT** – Any portable device, no more than 400 square feet in area, used as a
1566 temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pick-
1567 up truck, or tent that is fully licensed, if required, and ready for highway use.
1568
- 1569 13. **CERTIFICATE OF COMPLIANCE** – A certification that the construction and the use of land
1570 or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of
1571 the provisions of this ordinance.
1572
- 1573 14. **CHANNEL** – A natural or artificial watercourse with definite bed and banks to confine and
1574 conduct normal flow of water.
1575
- 1576 15. **CRAWLWAYS** or **CRAWL SPACE** – An enclosed area below the first usable floor of a
1577 building, generally less than five feet in height, used for access to plumbing and electrical
1578 utilities.
1579
- 1580 16. **DECK** – An unenclosed exterior structure that has no roof or sides and has a permeable
1581 floor which allows the infiltration of precipitation.
1582
- 1583 17. **DEPARTMENT** – The Wisconsin Department of Natural Resources.
1584
- 1585 18. **DEVELOPMENT** – Any artificial change to improved or unimproved real estate, including,
1586 but not limited to, the construction of buildings, structures or accessory structures; the
1587 construction of additions or alterations to buildings, structures or accessory structures; the
1588 repair of any damaged structure or the improvement or renovation of any structure,
1589 regardless of percentage of damage or improvement; the placement of buildings or
1590 structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving,
1591 excavation or drilling operations; the storage, deposition or extraction of materials or
1592 equipment; and the installation, repair or removal of public or private sewage disposal
1593 systems or water supply facilities.
1594
- 1595 19. **DRYLAND ACCESS** – A vehicular access route which is above the regional flood elevation
1596 and which connects land located in the floodplain to land outside the floodplain, such as a
1597

- 1598 road with its surface above regional flood elevation and wide enough for wheeled rescue
1599 and relief vehicles.
1600
- 1601 20. ENCROACHMENT – Any fill, structure, equipment, use or development in the floodway.
1602
- 1603 21. FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) – The federal agency that
1604 administers the National Flood Insurance Program.
1605
- 1606 22. FLOOD INSURANCE RATE MAP (FIRM) – A map of a community on which the Federal
1607 Insurance Administration has delineated both the floodplain and the risk premium zones
1608 applicable to the community. This map can only be amended by the Federal Emergency
1609 Management Agency.
1610
- 1611 23. FLOOD or FLOODING – A general and temporary condition of partial or complete
1612 inundation of normally dry land areas caused by one of the following conditions:
1613
 - The overflow or rise of inland waters;
 - The rapid accumulation or runoff of surface waters from any source;
 - The inundation caused by waves or currents of water exceeding anticipated cyclical
1616 levels along the shore of Lake Michigan or Lake Superior; or
 - The sudden increase caused by an unusually high water level in a natural body of
1618 water, accompanied by a severe storm, or by an unanticipated force of nature, such
1619 as a seiche, or by some similarly unusual event.
1620
- 1621 24. FLOOD FREQUENCY – The probability of a flood occurrence which is determined from
1622 statistical analyses. The frequency of a particular flood event is usually expressed as
1623 occurring, on the average once in a specified number of years or as a percent (%) chance of
1624 occurring in any given year.
1625
- 1626 25. FLOOD-FRINGE – That portion of the floodplain outside of the floodway which is covered by
1627 flood waters during the regional flood and associated with standing water rather than flowing
1628 water.
1629
- 1630 26. FLOOD HAZARD BOUNDARY MAP – A map designating approximate flood hazard areas.
1631 Flood hazard areas are designated as unnumbered A-Zones and do not contain floodway
1632 lines or regional flood elevations. This map forms the basis for both the regulatory and
1633 insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a
1634 Flood Insurance Study and a Flood Insurance Rate Map.
1635
- 1636 27. FLOOD INSURANCE STUDY – A technical engineering examination, evaluation, and
1637 determination of the local flood hazard areas. It provides maps designating those areas
1638 affected by the regional flood and provides both flood insurance rate zones and base flood
1639 elevations and may provide floodway lines. The flood hazard areas are designated as
1640 numbered and unnumbered A-Zones. Flood Insurance Rate Maps, that accompany the
1641 Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of
1642 the National Flood Insurance Program.
1643
- 1644 28. FLOODPLAIN – Land which has been or may be covered by flood water during the regional
1645 flood. It includes the floodway and the floodfringe and may include other designated
1646 floodplain areas for regulatory purposes.
1647
- 1648 29. FLOODPLAIN ISLAND – A natural geologic land formation within the floodplain that is
1649 surrounded, but not covered, by floodwater during the regional flood.
1650
- 1651 30. FLOODPLAIN MANAGEMENT – Policy and procedures to ensure wise use of floodplains,

- 1652 including mapping and engineering, mitigation, education, and administration and
1653 enforcement of floodplain regulations.
1654
- 1655 31. FLOOD PROFILE – A graph or a longitudinal profile line showing the relationship of the
1656 water surface elevation of a flood event to locations of land surface elevations along a
1657 stream or river.
1658
- 1659 32. FLOODPROOFING – Any combination of structural provisions, changes or adjustments to
1660 properties and structures, water and sanitary facilities and contents of buildings subject to
1661 flooding, for the purpose of reducing or eliminating flood damage.
1662
- 1663 33. FLOOD PROTECTION ELEVATION – An elevation of two feet of freeboard above the
1664 Regional Flood Elevation. (Also see: FREEBOARD.)
1665
- 1666 34. FLOOD STORAGE – Those floodplain areas where storage of floodwaters has been taken
1667 into account during analysis in reducing the regional flood discharge.
1668
- 1669 35. FLOODWAY – The channel of a river or stream and those portions of the floodplain
1670 adjoining the channel required to carry the regional flood discharge.
1671
- 1672 36. FREEBOARD – A safety factor expressed in terms of a specified number of feet above a
1673 calculated flood level. Freeboard compensates for any factors that cause flood heights
1674 greater than those calculated, including ice jams, debris accumulation, wave action,
1675 obstruction of bridge openings and floodways, the effects of watershed urbanization, loss of
1676 flood storage areas due to development and aggregation of the river or stream bed.
1677
- 1678 37. HABITABLE STRUCTURE – Any structure or portion thereof used or designed for human
1679 habitation.
1680
- 1681 38. HEARING NOTICE – Publication or posting meeting the requirements of Ch. 985, Stats.
1682 For appeals, a Class 1 notice, published once at least one week (7 days) before the hearing,
1683 is required. For all zoning ordinances and amendments, a Class 2 notice, published twice,
1684 once each week consecutively, the last at least a week (7 days) before the hearing. Local
1685 ordinances or bylaws may require additional notice, exceeding these minimums.
1686
- 1687 39. HIGH FLOOD DAMAGE POTENTIAL – Damage that could result from flooding that includes
1688 any danger to life or health or any significant economic loss to a structure or building and its
1689 contents.
1690
- 1691 40. HIGHEST ADJACENT GRADE – The highest natural elevation of the ground surface prior to
1692 construction next to the proposed walls of a structure.
1693
- 1694 41. HISTORIC STRUCTURE – Any structure that is either:
1695
 - Listed individually in the National Register of Historic Places or preliminarily determined
1696 by the Secretary of the Interior as meeting the requirements for individual listing on the
1697 National Register;
 - Certified or preliminarily determined by the Secretary of the Interior as contributing to the
1698 historical significance of a registered historic district or a district preliminarily determined
1699 by the Secretary to qualify as a registered historic district;
 - Individually listed on a state inventory of historic places in states with historic
1700 preservation programs which have been approved by the Secretary of the Interior; or
 - Individually listed on a local inventory of historic places in communities with historic
1701 preservation programs that have been certified either by an approved state program, as
1702 determined by the Secretary of the Interior; or by the Secretary of the Interior in states
1703
1704
1705

- 1706 without approved programs.
1707
- 1708 42. INCREASE IN REGIONAL FLOOD HEIGHT – A calculated upward rise in the regional flood
1709 elevation greater than 0.00 foot, based on a comparison of existing conditions and proposed
1710 conditions which is directly attributable to development in the floodplain but not attributable
1711 to manipulation of mathematical variables such as roughness factors, expansion and
1712 contraction coefficients and discharge.
1713
- 1714 43. LAND USE – Any nonstructural use made of unimproved or improved real estate. (Also see
1715 DEVELOPMENT.)
1716
- 1717 44. LOWEST ADJACENT GRADE – Elevation of the lowest ground surface that touches any of
1718 the exterior walls of a building.
1719
- 1720 45. LOWEST FLOOR – The lowest floor of the lowest enclosed area (including basement).
1721
- 1722 46. MAINTENANCE – The act or process of ordinary upkeep and repairs, including
1723 redecorating, refinishing, nonstructural repairs, or the replacement of existing fixtures,
1724 systems or equipment with equivalent fixtures, systems or structures.
1725
- 1726 47. MANUFACTURED HOME – A structure transportable in one or more sections, which is built
1727 on a permanent chassis and is designed to be used with or without a permanent foundation
1728 when connected to required utilities. The term "manufactured home" includes a mobile
1729 home but does not include a "mobile recreational vehicle."
1730
- 1731 48. MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION – A parcel (or contiguous
1732 parcels) of land, divided into two or more manufactured home lots for rent or sale.
1733
- 1734 49. MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION, EXISTING – A parcel of land,
1735 divided into two or more manufactured home lots for rent or sale, on which the construction
1736 of facilities for servicing the lots is completed before the effective date of this ordinance. At
1737 a minimum, this would include the installation of utilities, the construction of streets and
1738 either final site grading or the pouring of concrete pads.
1739
- 1740 50. MOBILE/MANUFACTURED HOME PARK, EXPANSION TO EXISTING – The preparation
1741 of additional sites by the construction of facilities for servicing the lots on which the
1742 manufactured homes are to be affixed. This includes installation of utilities, construction of
1743 streets and either final site grading, or the pouring if concrete pads.
1744
- 1745 51. MOBILE RECREATIONAL VEHICLE – A vehicle which is built on a single chassis, 400
1746 square feet or less when measured at the largest horizontal projection, designed to be self-
1747 propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for
1748 highway use if registration is required and is designed primarily not for use as a permanent
1749 dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use.
1750 Manufactured homes that are towed or carried onto a parcel of land, but do not remain
1751 capable of being towed or carried, including park model homes, do not fall within the
1752 definition of "mobile recreational vehicles."
1753
- 1754 52. MODEL, CORRECTED EFFECTIVE – A hydraulic engineering model that corrects any
1755 errors that occur in the Duplicate Effective Model, adds any additional cross sections to the
1756 Duplicate Effective Model, or incorporates more detailed topographic information than that
1757 used in the current effective model.
1758

- 1759 53. MODEL, DUPLICATE EFFECTIVE – A copy of the hydraulic analysis used in the effective
1760 FIS and referred to as the effective model.
1761
- 1762 54. MODEL, EFFECTIVE – The hydraulic engineering model that was used to produce the
1763 current effective Flood Insurance Study.
1764
- 1765 55. MODEL, EXISTING (PRE-PROJECT) – A modification of the Duplicate Effective Model or
1766 Corrected Effective Model to reflect any man made modifications that have occurred within
1767 the floodplain since the date of the effective model but prior to the construction of the project
1768 for which the revision is being requested. If no modification has occurred since the date of
1769 the effective model, then this model would be identical to the Corrected Effective Model or
1770 Duplicate Effective Model.
1771
- 1772 56. MODEL, REVISED (POST-PROJECT) – A modification of the Existing or Pre-Project
1773 Conditions Model, Duplicate Effective Model or Corrected Effective Model to reflect revised
1774 or post-project conditions.
1775
- 1776 57. MUNICIPALITY or MUNICIPAL – The county, city or village governmental units enacting,
1777 administering and enforcing this zoning ordinance.
1778
- 1779 58. NAVD or NORTH AMERICAN VERTICAL DATUM – Elevations referenced to mean sea
1780 level datum, 1988 adjustment.
1781
- 1782 59. NGVD or NATIONAL GEODETIC VERTICAL DATUM – Elevations referenced to mean sea
1783 level datum, 1929 adjustment.
1784
- 1785 60. NEW CONSTRUCTION – Structures for which the start of construction commenced on or
1786 after the effective date of a floodplain zoning regulation adopted by this community and
1787 includes any subsequent improvements to such structures.
1788
- 1789 61. NON-FLOOD DISASTER – A fire or an ice storm, tornado, windstorm, mudslide or other
1790 destructive act of nature, but excludes a flood.
1791
- 1792 62. NONCONFORMING STRUCTURE – An existing lawful structure or building which is not in
1793 conformity with the dimensional or structural requirements of this ordinance for the area of
1794 the floodplain which it occupies. (For example, an existing residential structure in the
1795 floodfringe district is a conforming use. However, if the lowest floor is lower than the flood
1796 protection elevation, the structure is nonconforming.)
1797
- 1798 63. NONCONFORMING USE – An existing lawful use or accessory use of a structure or
1799 building which is not in conformity with the provisions of this ordinance for the area of the
1800 floodplain which it occupies. (Such as a residence in the floodway.)
1801
- 1802 64. OBSTRUCTION TO FLOW – Any development which blocks the conveyance of floodwaters
1803 such that this development alone or together with any future development will cause an
1804 increase in regional flood height.
1805
- 1806 65. OFFICIAL FLOODPLAIN ZONING MAP – That map, adopted and made part of this
1807 ordinance, as described in § 1.5(2), which has been approved by the Department and
1808 FEMA.
1809
- 1810 66. OPEN SPACE USE – Those uses having a relatively low flood damage potential and not
1811 involving structures.
1812

- 1813
1814 67. ORDINARY HIGHWATER MARK – The point on the bank or shore up to which the
1815 presence and action of surface water is so continuous as to leave a distinctive mark such as
1816 by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic
1817 vegetation, or other easily recognized characteristic.
1818
- 1819 68. PERSON – An individual, or group of individuals, corporation, partnership, association,
1820 municipality or state agency.
1821
- 1822 69. PRIVATE SEWAGE SYSTEM – A sewage treatment and disposal system serving one
1823 structure with a septic tank and soil absorption field located on the same parcel as the
1824 structure. It also means an alternative sewage system approved by the Department of
1825 Safety and Professional Services, including a substitute for the septic tank or soil absorption
1826 field, a holding tank, a system serving more than one structure or a system located on a
1827 different parcel than the structure.
1828
- 1829 70. PUBLIC UTILITIES – Those utilities using underground or overhead transmission lines such
1830 as electric, telephone and telegraph, and distribution and collection systems such as water,
1831 sanitary sewer and storm sewer.
1832
- 1833 71. REASONABLY SAFE FROM FLOODING – Means base flood waters will not inundate the
1834 land or damage structures to be removed from the floodplain and that any subsurface
1835 waters related to the base flood will not damage existing or proposed buildings.
1836
- 1837 72. REGIONAL FLOOD – A flood determined to be representative of large floods known to have
1838 occurred in Wisconsin. A regional flood is a flood with a one percent chance of being
1839 equaled or exceeded in any given year, and if depicted on the FIRM, the RFE is equivalent
1840 to the BFE.
1841
- 1842 73. START OF CONSTRUCTION – The date the building permit was issued, provided the
1843 actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or
1844 other improvement was within 180 days of the permit date. The actual start means either
1845 the first placement of permanent construction on a site, such as the pouring of slab or
1846 footings, the installation of piles, the construction of columns, or any work beyond initial
1847 excavation, or the placement of a manufactured home on a foundation. Permanent
1848 construction does not include land preparation, such as clearing, grading and filling, nor
1849 does it include the installation of streets and/or walkways, nor does it include excavation for
1850 a basement, footings, piers or foundations or the erection of temporary forms, nor does it
1851 include the installation on the property of accessory buildings, such as garages or sheds not
1852 occupied as dwelling units or not part of the main structure. For an alteration, the actual
1853 start of construction means the first alteration of any wall, ceiling, floor or other structural
1854 part of a building, whether or not that alteration affects the external dimensions of the
1855 building.
1856
- 1857 74. STRUCTURE – Any manmade object with form, shape and utility, either permanently or
1858 temporarily attached to, placed upon or set into the ground, stream bed or lake bed,
1859 including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges,
1860 dams and culverts.
1861
- 1862 75. SUBDIVISION – Has the meaning given in § 236.02(12), Wis. Stats.
1863
- 1864 76. SUBSTANTIAL DAMAGE – Damage of any origin sustained by a structure, whereby the
1865 cost of restoring the structure to its pre-damaged condition would equal or exceed 50
1866 percent of the equalized assessed value of the structure before the damage occurred.

- 1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
77. **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 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.
78. **UNNECESSARY HARDSHIP** – 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 the ordinance.
79. **VARIANCE** – An authorization by the board of adjustment or appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in the floodplain zoning ordinance.
80. **Village** means the Village of Elm Grove, Wisconsin.
81. **VIOLATION** – The failure of a structure or other development to be fully compliant with the floodplain zoning ordinance. 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.
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. A water surface profile of the regional flood is used in regulating floodplain areas.
84. **WELL** – means an excavation opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.
85. **ZONING ADMINISTRATOR** means the Zoning and Planning Administrator of the Village of Elm Grove, Wisconsin.

ELM GROVE HEIGHTS, LLC

5201 East Terrace Drive, Suite 300

Madison, Wisconsin 53718

April 20, 2022

Mr. David DeAngelis
Village Manager
Village of Elm Grove
13600 Juneau Blvd.
Elm Grove, WI 53122

Subject: Request to Modify Rm-2 Residential District and Age Restriction for the Elm Grove Heights, LLC Senior Living Community

Dear Mr. DeAngelis:

We are requesting your consideration to modify the age requirements in the Rm-2 zoning code from the current requirement that “all residents are over the age of 62 years as defined by 24 CFR 100.303, as amended from time to time,” to the following:

“... senior living dwellings in which at least one resident in each dwelling unit shall be over the age of 62 years of age and any additional members of the household in each dwelling unit shall be 55 years of age or older.”

Our reason for requesting this modification is so that we can better serve the seniors who are seeking senior housing as their living option.

Per the table below prepared by the United States Census Bureau as part of a recent Current Population Survey, for heterosexual married couples, over 77% of the wives are between one and nine years younger than their husband.

Age difference	Percentage of all married couples
Husband 20+ years older than wife	1.0
Husband 15–19 years older than wife	1.6
Husband 10–14 years older than wife	5.0
Husband 6–9 years older than wife	11.2
Husband 4–5 years older than wife	12.8
Husband 2–3 years older than wife	19.6
Husband and wife within 1–2 years	33.9
Wife 2–3 years older than husband	6.9
Wife 4–5 years older than husband	3.4
Wife 6–9 years older than husband	2.8
Wife 10–14 years older than husband	1.0
Wife 15–19 years older than husband	0.3
Wife 20+ years older than husband	0.4

So although Federal Fair Housing law allows senior living communities to house people over the age of 55 years, the current Rm-2 zoning age restriction has resulted in our rejection of many couples as the wife is younger than 62 years of age. This result has been very disappointing for many couples who are selling their homes and wish to remain in the community and for couples who are moving to area to be near their children and grandchildren.

One of the reasons for restricting the Rm-2 district to the age of 62 and older was a concern that parking at Elm Grove Heights would become an issue due to couples wishing to have two cars. This has not turned out to be the case. To date we have 38 signed leases of which 8 units will be occupied by couples. Of the 8 couples, none have two cars.

In addition, we have had no issues with cars parking on the entry drive and we have not received any complaints from the Emerald Woods Condo Association related to any traffic issues. We therefor believe that any change to the Rm-2 age restriction will not create a project specific issue at Elm Grove Heights.

Should the Village decide to modify the Rm-2 zoning district age limit, we will also need to amend the Declaration of Restrictive Covenants and the Development Agreement, both recorded on August 16, 2019, so that document agrees with the modified zoning district age limits.

As the residents in Elm Grove Heights age, fewer and fewer of the residents will keep their cars. Of the current 37 residents, 89% are over the age of 66 and only 11% are between the age of 62 and 65. In fact, 38% or the residents are already over 76 years of age. So within ten years we anticipate that at least 25% of the underground parking spaces will be vacant.

In conclusion we feel that this requested modification to the Rm-2 zoning district age restrictions will better serve the senior population which is seeking good quality senior living in Elm Grove and is in keeping with the overall intent of the zoning code within the Village.

Sincerely,

ELM GROVE HEIGHTS, LLC



By: Daniel Fitzgerald
Its: Managing Partner

§ 335-21.1. Rm-2 Multiple-Family Residential District. [Added 11-14-2018]

The Rm-2 Residential District contains multiple-family residential development for independent senior living dwellings in which all residents are over the age of 62 years as defined by 24 CFR 100.303, as amended from time to time.¹ Such independent senior living dwellings must be served by municipal sanitary sewers and municipal water.

A. Permitted principal uses.

(1) Multiple-family independent senior living dwellings with densities not to exceed 16 dwelling units per net acre.

(2) Essential services.

B. Permitted accessory uses. Accessory structures and uses customarily incident to the above uses, including private garages when located on the same lot and not involving the conduct of a business; provided, however, that no principal structure shall be erected unless a garage with a minimum of one parking space per dwelling unit is erected simultaneously with the principal structure; and carports shall not be permitted in such district. Each required indoor parking space shall be a minimum of 240 square feet in area. Every garage so erected for a two-family dwelling shall be directly connected with the main structure, either by common wall, portico, porch or similar connection, roofed over, said roof to be connected to the roof or walls of the main structure. The Plan Commission may allow the required garage for a multifamily development containing three or more dwelling units to be a detached structure.

C. Conditional uses.

(1) Utility substations.

(2) Multiple-family independent senior living dwellings as part of a Residential Planned Development Overlay District project under § 335-30. Densities of up to 38 dwelling units per net acre may potentially be granted subject to the adjustments provided for in § 335-30F(3) and (4).

(3) Home occupations.

1. 24CFR 100.303 (April 1, 2015) 62 or over housing. (a) The provisions regarding familial status in this part shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this section even though: (1) There are persons residing in such housing on September 13, 1988 who are under 62 years of age, provided that all new occupants are persons 62 years of age or older; (2) There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over; (3) There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing. (b) The following examples illustrate the application of paragraph (a) of this section: Example (1): John and Mary apply for housing at the Vista Heights apartment complex which is an elderly housing complex operated for persons 62 years of age or older. John is 62 years of age. Mary is 59 years of age. If Vista Heights wishes to retain its "62 or over" exemption it must refuse to rent to John and Mary because Mary is under 62 years of age. However, if Vista Heights does rent to John and Mary, it might qualify for the "55 or over" exemption in § 100.304. Example (2): The Blueberry Hill retirement community has 100 dwelling units. On September 13, 1988, 15 units were vacant and 35 units were occupied with at least one person who is under 62 years of age. The remaining 50 units were occupied by persons who were all 62 years of age or older. Blueberry Hill can qualify for the "62 or over" exemption as long as all units that were occupied after September 13, 1988 are occupied by persons who were 62 years of age or older. The people under 62 in the 35 units previously described need not be required to leave for Blueberry Hill to qualify for the "62 or over" exemption.

- (4) Driveways, patios, walkways or other hardscape constructed using a permeable surface to exceed the allowable percentage of maximum impervious surface area as defined within this chapter.
- D. Lot area and width.
- (1) Lots shall not be less than one acre (43,560 square feet) in area.
 - (2) Lots shall not be less than 120 feet in width at the front building line.
- E. Building height and area.
- (1) Height.
 - (a) The building height for principal structures (including any part thereof) shall not exceed 36 feet; provided, however, that the building height for a principal structure may be increased by one foot for every two feet added to all side yard and the rear setback requirements for the district in which the structure is located. A maximum of five feet of additional building height may be added under this subsection.
 - (b) For principal structures having exposed foundations on the side or rear yards, the vertical height at that location shall not exceed 46 feet; provided, however, that the vertical height at that location may be increased by one foot for every two feet added to all side and rear setback requirements of the district, up to a maximum of five feet of additional vertical height.
 - (c) The building height of accessory structures, other than garages, shall not exceed 10 feet.
 - (d) The building height of detached garages shall not exceed 24 feet.
 - (2) No multiple-family structure shall be less than 3,500 square feet in area, excluding the garage area.
 - (3) No dwelling unit shall contain less than 700 square feet in living area.
- F. Yards.
- (1) There shall be a minimum building setback of 25 feet from each abutting street right-of-way.
 - (2) There shall be a minimum side yard building setback of 20 feet.
 - (3) There shall be a rear yard building setback of not less than 25 feet.
- G. The maximum building footprint area shall be 30% of the lot area.
- H. The maximum impervious surface shall be 65% of the lot area.

- 39 (f) Hive - a (one) container in which a Colony resides.
- 40 (g) Honey Bee - all life stages of the common domestic honey bee, species *apis*
41 *mellifera*, bred for gentleness and non-swarming characteristics, and excludes any
42 known Africanized hybrids.
- 43 (h) Village of Elm Grove Beekeeping Information Card- Information card which is filed
44 with the Clerk's Office allowing the Village of Elm Grove to have all important
45 contact information related to permitting beekeeping in the Village of Elm Grove.

46 **Section (2) Village of Elm Grove Beekeeping Information Contact Card Required.**

- 47 (i) No person may engage in Beekeeping, or the maintenance of Colonies or
48 Hives, within the Village of Elm Grove without completing a Village of Elm
49 Grove Beekeeping Information Contact Card for the locations at which Hives
50 or Colonies are maintained, and a Village of Elm Grove Beekeeping
51 Information Contact Card shall be required for each location.

52 **Section (3) General Rules.**

- 53 (j) No person may keep Colonies or Hives in the Village of Elm Grove in any way
54 that causes a public nuisance, causes an unreasonable risk of physical harm to any
55 person or domestic animal, unreasonably interferes with normal activities of
56 persons or domestic animals, or unreasonably interferes with the normal use and
57 enjoyment of any private or public property. Compliance with all of the
58 requirements of this Section shall create a rebuttable presumption of compliance
59 with this subsection.
- 60 (k) No person may intentionally keep colonies or hives of bees other than Honey
61 Bees, except for wild bees that select their hive location naturally.
- 62 (l) All Colonies shall be kept in a well maintained Langstroth, Top Bar, or Warre,
63 which shall be maintained in sound and sanitary condition.

64 **Section (4) Location of Hives.**

- 65
- 66 (m) Hives shall not be located less than 20 feet, measured at the closest points, from
67 the boundary of the property on which the Hives are located and any other
68 property, unless the properties on either side of the boundary are owned by the
69 same individual or entity, or unless the then-current owner of the adjacent property
70 gives written permission for the hives to be nearer than 20 feet.

71 **Section (5) Maximum Numbers of Hives Allowed.**

72 No person shall keep more than the following numbers of Hives in the Village:

- 73 (n) Parcels one-quarter acre or less, two (2) Hives.
- 74 (o) Parcels larger than one-quarter acre but no larger than one-half acre, four (4)
75 Hives.

- 76 (p) Parcels larger than one-half acre but no larger than one acre, six (6) Hives.
- 77 (q) Parcels larger than one acre, eight (8) Hives.
- 78 (r) Regardless of parcel size, if all Hives are located at least 200 feet in any direction
79 from all boundary lines of the parcel on which the Hives are located, there shall be
80 no limit to the number of Hives.
- 81 (s) There is the exception for the rarely required additional temporary small hives such
82 as queen mating nucs or captured swarm hives that will be temporary until homed.

83 **Section (6) Aggressive Behavior.** The Beekeeper must use all practical skills to prevent
84 aggressive behavior.

85 **Section (7) Maintenance.** Beekeepers shall maintain all Hives and Beekeeping Equipment in a
86 good and sanitary condition, and shall observe at all times the best accepted practices
87 recognized within the beekeeping industry including assuring a constant supply of water.
88 Beekeepers shall ensure that no honey comb or other materials that might attract wildlife,
89 rodents or vermin are left open on the property. Upon removal from the Hive, all such
90 materials shall be promptly disposed of in a sealed container, or placed within a building or
91 other bee-proof enclosure.

92

93 **Section (8) Inspection.** The Village of Elm Grove reserves the right to inspect any
94 property that has a Village of Elm Grove Beekeeping Information Contact Card on file
95 with the Village of Elm Grove. The Village of Elm Grove reserves the right to ask for
96 assistance from experienced Beekeeping Owners to assist in the Inspection of Beekeeping
97 activity. Expenses of inspections shall be paid by Beekeeper if any violations of the
98 ordinance are found.

99 **Section (9) Violation and Penalties.**

- 100 (t) Conduct not in compliance with this Section is prohibited.
- 101 (u) Violation of the terms of this Section shall result in the revocation of the
102 Beekeeping at the location. Upon revocation, all Beekeeping at the location
103 shall cease, subject to the appeal to the Board of Trustees of the Village of
104 Elm Grove.
- 105 (v) Any person who keeps bees without a Village of Elm Grove Beekeeping
106 Information Contact Card on file with the Village of Elm Grove, which is
107 required by this Section shall be subject to general penalties as established by
108 the Board of Trustees of the Village of Elm Grove, and all Honey Bees,
109 Hives and Colonies belonging to the person or under the person's control
110 shall be removed from the Village or destroyed.
- 111 (w) Any person having a Village of Elm Grove Beekeeping Information Contact
112 Card on file with the Village of Elm Grove, required by this Section who
113 violates this Section shall, in addition to having his or her privilege revoked,
114 be subject to the penalties described in Section 9 of this Code, and in addition,

115 upon second and subsequent violations of this Section, all Hives and Colonies
116 belonging to or under the control of the Beekeeper shall be ordered removed
117 from the Village.

118 **Section (10) Compliance with laws.** All applicable laws, including applicable zoning
119 requirements, must be followed. In the event of a conflict between this Article and other
120 provisions of this Code or applicable zoning requirements or other laws, the more restrictive
121 shall apply. If any section, sentence, clause, phrase or portion of this ordinance is for any reason
122 held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be
123 deemed a separate, distinct and independent provision, and such holding shall not affect the
124 validity of the remainder of such ordinance.

125
126 Adopted this _____ day of January 2021 by the Board of Trustees of the Village of Elm Grove,
127 Waukesha County, Wisconsin:

128
129 _____
130 Neil H. Palmer, Village President

131
132
133 ATTEST:
134
135 _____
136 Michelle Luedtke
137 Village of Elm Grove Clerk
138 Waukesha County