

**COUNCIL ACTION FORM**

**SUBJECT: TEXT AMENDMENT TO ADOPT SECTION 9.7 (3) REGARDING  
CONDITIONAL USES, VARIANCES, AND APPEALS IN THE FLOOD PLAIN**

**BACKGROUND:**

On May 10, 2016, the City Council adopted changes to the flood plain regulations (Chapter 9 of the Ames Municipal Code) as part of the enactment of the Environmentally Sensitive Overlay that changed the development approval process within the floodway. The changes to the ordinance were quite extensive resulting in the repeal of the entire existing code language and replacing it with the new Chapter 9. Unfortunately, Section 9.7 (3), addressing Conditional Uses, Appeals, and Variances, was inadvertently left out of the final published ordinance. No changes were made to that section and it should have remained in the newly adopted ordinance for Chapter 9.

Section 9.7 (3) is important in that it describes the process and factors for the Zoning Board of Adjustment to consider when granting a Conditional Use, Variance, or Appeal for the administration of the entire flood plain. It would be appropriate to add the language back into the ordinance.

The missing text is included in Attachment 1.

**ALTERNATIVES:**

1. The City Council can waive the rules and adopt on final reading an ordinance that will add Section 9.7(3) to Chapter 9 Flood Plain Zoning Regulations.

*This option would reinstate language that was inadvertently left out of the recent ordinance changes made by the City Council.*

2. Direct staff to provide additional information prior to approving the ordinance.

**MANAGER'S RECOMMENDED ACTION:**

The recent overhaul of Chapter 9 made several substantive changes in the process and administration of development in the regulated Flood Plain. Allowed uses in the Floodway and Floodway Fringe were changed and certain uses in the Floodway now require a Major Site Development Plan approved by the City Council.

It should be emphasized that none of the changes made on May 10, 2016 impacted Section 9.7 (3). However, it was discovered recently that this section was missing from the ordinance. **It is important that the City Council reinstate the language as quickly as possible to satisfy Iowa Department of Natural Resources, which oversees Ames's participation in the National Flood Insurance Program. Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1 to waive the rules and adopt on final reading the proposed Section 9.7 (3) to Chapter 9 of the Ames Municipal Code.**

## **ATTACHMENT 1: PRIOR LANGUAGE THAT WILL BE REINSERTED INTO SECTION 9.7 (3)**

### **(3) Conditional Uses, Appeals, and Variances.**

(a) Appointment and Duties of Zoning Board of Adjustment. The Zoning Board of Adjustment shall hear and decide

- (i) Requests for Conditional Uses upon which the Board is authorized to pass under this Ordinance;
- (ii) Appeals, and
- (iii) Requests for Variances to the provisions of this Ordinance; and
- (iv) All other actions which are required of the Board.

(b) Conditional Uses. Requests for Conditional Uses shall be submitted to the Administrator, who shall forward such to the Zoning Board of Adjustment for consideration. Such requests shall include information ordinarily submitted with applications as well as any additional information deemed necessary by the Zoning Board of Adjustment.

(c) Appeals. Where it is alleged there is any error in any order, requirement, decision, or determination made by Administrator in the enforcement of this Ordinance, the aggrieved party may appeal such action. Applications for Appeals shall be submitted to the Administrator, who shall forward such to the Zoning Board of Adjustment for consideration. Such applications shall include information ordinarily submitted with applications as well as any additional information deemed necessary by the Zoning Board of Adjustment. The notice of appeal shall be submitted to the Administrator and shall set forth the specific reason for the appeal. The Administrator shall transmit to the Zoning Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

(d) Variances. Requests for Variances shall be submitted to the Administrator who shall forward such to the Zoning Board of Adjustment. Such requests shall include information ordinarily submitted with applications as well as any additional information deemed necessary by the Zoning Board of Adjustment. The Zoning Board of Adjustment may authorize upon request in specific cases such variances from the terms of this ordinance as will not be contrary to the public interest, where owing to special conditions a strict enforcement of the provisions of this ordinance will result in unnecessary hardship. Variances granted must meet the following applicable standards:

- (i) No variance shall be granted for any development within the Floodway Overlay District which would result in any increase in the base flood elevation. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.
- (ii) Variances shall only be granted upon (a) a showing of good and sufficient cause, (b) a determination that failure to grant the variance would result in an unnecessary hardship to the applicant, and (c) a determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense; create nuisances, or cause fraud on or victimization of the public.
- (iii) Variance shall only be granted upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (iv) In cases where the variance involves a lower level of flood protection for buildings than what is ordinarily required by this Ordinance, the applicant shall be notified in writing over the signature of the Administrator that (a) the issuance of a variance will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and (b) such construction increases risks to life and property.
- (v) All variances granted shall have the concurrence or approval of the Department of Natural Resources.

(e) Hearings and Decisions of the Zoning Board of Adjustment.

(i) Hearings. Upon the filing with the Zoning Board of Adjustment of a request for a Conditional Use, an Appeal, or a request for a Variance, the Board shall hold a public hearing. The Board shall fix a reasonable time and publish notice of the hearing. At the hearing, any party may appear in person or by agent or attorney and present written or oral evidence. The Board may require the appellant or applicant to provide such information as is reasonably deemed necessary and may request the technical assistance and/or evaluation of a professional engineer or other expert person or agency, including the Department of Natural Resources.

(ii) Decisions. The Board shall arrive at a decision on a Conditional Use, Appeal, or Variance within a reasonable time. In passing upon an Appeal, the Board may, so long as such action is in conformity with the provisions of this ordinance, reverse or affirm, wholly or in part, or modify the order, requirement, decision, or determination appealed from, and it shall make its decision, in writing, setting forth the findings of fact and the reasons for its decision. In granting a Conditional Use or Variance the Board shall consider such factors as contained in this section and all other relevant sections of this ordinance and may prescribe such conditions as described below.

a. Factors Upon Which the Decision of the Board Shall be Based. In passing upon requests for Conditional Uses or Variances, the Zoning Board shall consider all relevant factors specified in other sections of this ordinance and:

1. The danger to life and property due to increased flood heights or velocities caused by encroachments.
2. The danger that materials may be swept onto other lands or downstream to the injury of others.
3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.
4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
5. The importance of the services provided by the proposed facility to the community.
6. The requirements of the facility for a flood plain location.
7. The availability of alternative locations not subject to flooding for the proposed use.
8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
9. The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
10. The safety of access to the property in times of flood for ordinary and emergency vehicles.
11. The expected heights, velocity, duration, rate of rise and sediment transport of the flood water expected at the site.
12. Such other factors which are relevant to the purpose of this ordinance.

b. Conditions attached to Conditional Uses or Variances. Upon consideration of the factors listed above, the Board may attach such conditions to the granting of Conditional Uses or Variances as it deems necessary to further the purpose of this ordinance. Such conditions may include, but are not limited to:

1. Modification of waste disposal and water supply facilities.
2. Limitation on period of use and operation.
3. Imposition of operational controls, sureties, and deed restrictions.
4. Requirements for construction of channel modification, dikes, levees, and other protective measures, provided such are approved by the

Department of Natural Resources and are deemed the only practical alternative to achieving the purpose of this ordinance.

5. Floodproofing measures. Floodproofing measures shall be designed consistent with the flood protection elevation for the particular area, flood velocities, durations, rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the regulatory flood. The Zoning Board of Adjustment shall require that the applicant submit a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area. Such floodproofing measures may include, but are not necessarily limited to the following:

- a) Anchorage to resist flotation and lateral movement.
- b) Installation of watertight doors, bulkheads, and shutters, or similar methods of construction.
- c) Reinforcement of walls to resist water pressure.
- d) Use of paints, membranes, or mortars to reduce seepage of water through walls.
- e) Addition of mass or weight to structures to resist flotation.
- f) Installation of pumps to lower water levels in structures.
- g) Construction of water supply and waste treatment systems so as to prevent the entrance of flood waters.
- h) Pumping facilities or comparable practices for subsurface drainage systems for building to relieve external foundation wall and basement flood pressures.
- i) Construction to resist rupture or collapse caused by water pressure or floating debris.
- j) Installation of valves or controls on sanitary and storm drains which will permit the drains to be closed to prevent backup of sewage and storm waters into the buildings or structures.
- k) Location of all electrical equipment, circuits and installed electrical appliances in a manner which will assure they are not subject to flooding.

c. Appeals to the Court. Any person or persons, jointly or severally, aggrieved by any decision of the Zoning Board of Adjustment may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the Zoning Board.

**ORDINANCE NO.**

**AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY REPEALING CHAPTER 9 SECTION 9.7 AND ENACTING A NEW CHAPTER 9 SECTION 9.7, FOR THE PURPOSE OF FLOOD PLAIN ZONING REGULATIONS; REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; PROVIDING A PENALTY AND ESTABLISHING AN EFFECTIVE DATE.**

**BE IT ENACTED**, by the City Council for the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended by repealing and enacting a new Chapter 9 Section 9.7 as follows:

**Sec. 9.7. ADMINISTRATION.**

(1) Appointment, Duties and Responsibilities of Flood Plain Administrator

(a) The Flood Plain Administrator (the Administrator) shall be the Director of the Department of Planning and Housing or his/her designee and shall administer and enforce this chapter and will herein be referred to as the Administrator.

(b) Duties and responsibilities of the Administrator shall include, but not necessarily be limited to, the following:

(i) Review all flood plain development permit applications to insure that the provisions of this chapter will be satisfied.

(ii) Review all flood plain development permit applications to insure that all necessary permits have been obtained from Federal, state or local governmental agencies.

(iii) Record and maintain a record of:

- a. the elevation (in relation to the appropriate vertical datum) of the lowest habitable floor of all new or substantially improved buildings or
- b. the elevation to which new or substantially improved structures have been floodproofed.

(iv) Notify adjacent communities and/or counties and the Department of Natural Resources prior to any proposed alteration or relocation of a watercourse and submit evidence of such notifications to the Federal Insurance Administrator.

(v) Keep a record of all permits, appeals, variances and such other transactions and correspondence pertaining to the administration of this ordinance.

(vi) Submit to the Federal Insurance Administrator any required report concerning the community's participation in the National Flood Insurance Program.

(vii) Notify the Federal Insurance Administration of any annexations or Modifications to the community's boundaries.

(viii) Review subdivision proposals to insure such proposals are consistent with the purpose of this ordinance and advise the City Council of potential conflicts.

(2) Flood Plain Development Permit.

(a) Permit Required. A Flood Plain Development Permit issued by the Administrator shall be secured prior to initiation of any flood plain development. Development is defined in Section 9.11

(b) Application for Permit. Application for a Flood Plain Development Permit shall be made on forms supplied by the Administrator and shall include the following information:

(i) Description of the work to be covered by the permit for which application is to be made.

(ii) Description of the land on which the proposed work is to be done (i.e., lot,

block, tract, street address, or similar description) that will readily identify and locate the work to be done.

(iii) Identification of the use or occupancy for which the proposed work is intended.

(iv) The base flood elevation (BFE).

(v) Elevation of the lowest floor (including basement) of buildings or of the level to which a building is to be floodproofed.

(vi) For buildings being improved or rebuilt, the estimated cost of improvements and market value of the building prior to the improvements.

(vii) Such other information as the Administrator deems reasonably necessary for the purpose of this ordinance.

(viii) The required fee, as determined by the City Council, for any new construction, substantial improvement, or any development on any parcel which contains a portion of the Floodway.

(c) Action for Permit Application. The Administrator shall, within a reasonable time, make a determination as to whether the proposed flood plain development meets the applicable provisions and standards of this ordinance and shall approve or disapprove the application. For disapprovals, the applicant shall be informed, in writing, of the specific reasons therefore. The Administrator shall not issue permits for developments which need a Conditional Use Permit or Variance except as approved by the Zoning Board of Adjustment or which need a Major Site Development Plan except as approved by the City Council.

(d) Construction and Use to be as Provided in Application and Plans. Flood Plain Development Permits issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications and no other use, arrangement or construction. Any use, arrangement or construction other than that which is authorized shall be deemed a violation of this Ordinance and shall be punishable as provided in Section 9.9.

(e) The applicant shall be required to submit certification by a professional engineer or land surveyor, as appropriate, licensed in the State of Iowa, that the finished fill, building floor elevations, floodproofing, or other flood protection measures were accomplished in compliance with the provisions of this Ordinance, prior to the use or occupancy of any structure.

(3) Conditional Uses, Appeals, and Variances.

(a) Appointment and Duties of Zoning Board of Adjustment. The Zoning Board of Adjustment shall hear and decide

(i) Requests for Conditional Uses upon which the Board is authorized to pass under this Ordinance;

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(ii) Variances shall only be granted upon (a) a showing of good and sufficient cause, (b) a determination that failure to grant the variance would result in an unnecessary hardship to the applicant, and (c) a determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense; create nuisances, or cause fraud on or victimization of the public.

(iii) Variance shall only be granted upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(iv) In cases where the variance involves a lower level of flood protection for buildings than what is ordinarily required by this Ordinance, the applicant shall be notified in writing over the signature of the Administrator that (a) the issuance of a variance will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and (b) such construction increases risks to life and property.

(v) All variances granted shall have the concurrence or approval of the Department of Natural Resources.

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(ii) Decisions. The Board shall arrive at a decision on a Conditional Use, Appeal, or Variance within a reasonable time. In passing upon an Appeal, the Board may, so long as such action is in conformity with the provisions of this ordinance, reverse or affirm, wholly or in part, or modify the order, requirement, decision, or determination appealed from, and it shall make its decision, in writing, setting forth the findings of fact and the reasons for its decision. In granting a Conditional Use or Variance the Board shall consider such factors as contained in this section and all other relevant sections of this ordinance and may prescribe such conditions as described below.

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for the proposed use.

7. The availability of alternative locations not subject to flooding
8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
9. The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
10. The safety of access to the property in times of flood for ordinary and emergency vehicles.
11. The expected heights, velocity, duration, rate of rise and sediment transport of the flood water expected at the site.
12. Such other factors which are relevant to the purpose of this ordinance.

b. Conditions attached to Conditional Uses or Variances. Upon consideration of the factors listed above, the Board may attach such conditions to the granting of Conditional Uses or Variances as it deems necessary to further the purpose of this ordinance. Such conditions may include, but are not limited to:

1. Modification of waste disposal and water supply facilities.
2. Limitation on period of use and operation.
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- d) Use of paints, membranes, or mortars to reduce seepage of water through walls.
- e) Addition of mass or weight to structures to resist flotation.
- f) Installation of pumps to lower water levels in structures.
- g) Construction of water supply and waste treatment systems so as to prevent the entrance of flood waters.
- h) Pumping facilities or comparable practices for subsurface drainage systems for building to relieve external foundation wall and basement flood pressures.
- i) Construction to resist rupture or collapse caused by water pressure or floating debris.
- j) Installation of valves or controls on sanitary and storm drains which will permit the drains to be closed to prevent backup of sewage and storm waters into the buildings or structures.
- k) Location of all electrical equipment, circuits and



installed electrical appliances in a manner which will assure they are not subject to flooding.  
(Ord. No. 4087, 09-27-11)

c. Appeals to the Court. Any person or persons, jointly or severally, aggrieved by any decision of the Zoning Board of Adjustment may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the Zoning Board.”

Section Two. Violation of the provisions of this ordinance shall constitute a municipal infraction punishable as set out by law.

Section Three. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

Section Four. This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Diane R. Voss, City Clerk

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Ann H. Campbell, Mayor