

SECTION 1360.01 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE

Subd. 1. Statutory Authorization: The legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and Chapter 462 delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the City Council of Deephaven, Minnesota, does ordain as follows.

- (a) Purpose:
 - (1) This ordinance regulates development in the flood hazard areas of the City of Deephaven. These flood hazard areas are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. It is the purpose of this ordinance to promote the public health, safety, and general welfare by minimizing these losses and disruptions.
 - (2) National Flood Insurance Program Compliance. This ordinance is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 -78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.

SECTION 1360.02 GENERAL PROVISIONS

Subd. 1. How to Use This Ordinance: This ordinance adopts the floodplain maps applicable to the City of Deephaven and includes three floodplain districts: Floodway, Flood Fringe, and General Floodplain.

- (a) Where Floodway and Flood Fringe districts are delineated on the floodplain maps, the standards in Sections 4 or 5 will apply, depending on the location of a property.
- (b) Locations where Floodway and Flood Fringe districts are not delineated on the floodplain maps are considered to fall within the General Floodplain district. Within the General Floodplain district, the Floodway District standards in Section 4 apply unless the floodway boundary is determined, according to the process outlined in Section 6. Once the floodway boundary is determined, the Flood Fringe District standards in Section 5 may apply outside the floodway.

Subd. 2. Lands to Which Ordinance Applies: This ordinance applies to all lands within the jurisdiction of Deephaven shown on the Official Zoning Map and/or the attachments to the map as being located within the boundaries of the Floodway, Flood Fringe, or General Floodplain Districts.

Subd. 3. Incorporation of Maps by Reference: The following maps together with all attached material are hereby adopted by reference and declared to be a part of the Official

Zoning Map and this ordinance. The attached material includes the Flood Insurance Study for Hennepin County, Minnesota, and Incorporated Areas, dated November 4, 2016 and the Flood Insurance Rate Map panels enumerated below, dated November 4, 2016, all prepared by the Federal Emergency Management Agency. These materials are on file in the City Clerk's office.

Effective Flood Insurance Rate Map panels:

27053C0309F

27053C0316F

27053C0317F

Subd. 4. Regulatory Flood Protection Elevation: The regulatory flood protection elevation (RFPE) is an elevation no lower than one foot above the elevation of the regional flood.

Subd. 5. Interpretation: The boundaries of the zoning districts are determined by scaling distances on the Flood Insurance Rate Map.

- (a) Where a conflict exists between the floodplain limits illustrated on the official zoning map and actual field conditions, the flood elevations shall be the governing factor. The Zoning Administrator must interpret the boundary location based on the ground elevations that existed on the site on the date of the first National Flood Insurance Program map showing the area within the regulatory floodplain, and other available technical data.
- (b) Persons contesting the location of the district boundaries will be given a reasonable opportunity to present their case to the Board of Adjustment and to submit technical evidence.

Subd. 6. Abrogation and Greater Restrictions: It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or other private agreements. However, where this ordinance imposes greater restrictions, the provisions of this ordinance prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

Subd. 7. Warning and Disclaimer of Liability: This ordinance does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. This ordinance does not create liability on the part of the City of Deephaven or its officers or employees for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

Subd.8. Severability: If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.

Subd.9. Definitions: Unless specifically defined below, words or phrases used in this ordinance must be interpreted according to common usage and so as to give this ordinance its most reasonable application.

- (a) Accessory Use or Structure – a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
- (b) Basement – any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.

- (c) Development – any manmade change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.
- (d) Equal Degree of Encroachment – a method of determining the location of floodway boundaries so that floodplain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.
- (e) Flood Fringe – the portion of the Special Flood Hazard Area (one percent annual chance flood) located outside of the floodway. Flood fringe is synonymous with the term “floodway fringe” used in the Flood Insurance Study for Hennepin County, Minnesota.
- (f) Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.
- (g) Flood Prone Area – any land susceptible to being inundated by water from any source (see “Flood”).
- (h) Floodplain – the beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.
- (i) Floodproofing – a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.
- (j) Floodway – the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining floodplain which are reasonably required to carry or store the regional flood discharge.
- (k) Lowest Floor – the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 Code of Federal Regulations, Part 60.3.
- (l) Manufactured Home – a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include the term “recreational vehicle.”
- (m) New Construction - Structures, including additions and improvements, and placement of manufactured homes, for which the start of construction commenced on or after the effective date of this ordinance.

- (n) One Hundred Year Floodplain – lands inundated by the “Regional Flood” (see definition).
- (o) Recreational Vehicle – a vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this ordinance, the term recreational vehicle is synonymous with the term “travel trailer/travel vehicle.”
- (p) Regional Flood – a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 1% chance or 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in a flood insurance study.
- (q) Regulatory Flood Protection Elevation (RFPE) - an elevation not less than one foot above the elevation of the regional flood.
- (r) Repetitive Loss: Flood related damages sustained by a structure on two separate occasions during a ten year period for which the cost of repairs at the time of each such flood event on the average equals or exceeds 25% of the market value of the structure before the damage occurred.
- (s) Special Flood Hazard Area – a term used for flood insurance purposes synonymous with “One Hundred Year Floodplain.”
- (t) Start of Construction – includes substantial improvement, and means the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement that occurred before the permit’s expiration date. The actual start is either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- (u) Structure - anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, recreational vehicles not meeting the

exemption criteria specified in Section 1360.09(2)(b) of this ordinance and other similar items.

- (v) Substantial Damage - means damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- (w) Substantial Improvement - within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:
 - (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
 - (2) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure." For the purpose of this ordinance, "historic structure" is as defined in 44 Code of Federal Regulations, Part 59.1.

Subd.10. Annexations: The Flood Insurance Rate Map panels adopted by reference into Section 1360.02(3) above may include floodplain areas that lie outside of the corporate boundaries of the City of Deephaven at the time of adoption of this ordinance. If any of these floodplain land areas are annexed into the City of Deephaven after the date of adoption of this ordinance, the newly annexed floodplain lands will be subject to the provisions of this ordinance immediately upon the date of annexation.

SECTION 1360.03 ESTABLISHMENT OF ZONING DISTRICTS

Subd. 1. Districts:

- (a) Floodway District. The Floodway District includes those areas within Zones AE that have a floodway delineated as shown on the Flood Insurance Rate Map adopted in Section 1360.02(3), as well as portions of other lakes, wetlands, and basins within Zones AE (that do not have a floodway delineated) that are located at or below the ordinary high water level as defined in Minnesota Statutes, Section 103G.005, subdivision 14.
- (b) Flood Fringe District. The Flood Fringe District includes areas within Zones AE that have a floodway delineated on the Flood Insurance Rate Map adopted in Section

1360.02(3), but are located outside of the floodway. For lakes, wetlands and other basins within Zones AE that do not have a floodway delineated, the Flood Fringe District also includes those areas below the 1% annual chance (100-year) flood elevation but above the ordinary high water level as defined in Minnesota Statutes, Section 103G.005, subdivision 14.

(c) RESERVED FOR GENERAL FLOODPLAIN DISTRICT.

Subd.2. Applicability: Within the floodplain districts established in this ordinance, the use, size, type and location of development must comply with the terms of this ordinance and other applicable regulations. In no cases shall floodplain development adversely affect the efficiency or unduly restrict the capacity of the channels or floodways of any tributaries to the main stream, drainage ditches, or any other drainage facilities or systems. All uses not listed as permitted uses in Sections 1360.04, 1360.05 and 1360.06 are prohibited.

SECTION 1360.04 FLOODWAY DISTRICT (FW)

Subd.1. Permitted Uses: The following uses, subject to the standards set forth in Subd. 2, are permitted uses if otherwise allowed in the underlying zoning district or any applicable overlay district:

- (a) Open space uses, including but not limited to picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, hunting and fishing areas.
- (b) Residential lawns, gardens.
- (c) Railroads, streets, bridges, utility transmission lines and pipelines, provided that the Department of Natural Resources' Area Hydrologist is notified at least ten days prior to issuance of any permit.

Subd.2. Standards for Floodway Permitted Uses:

- (a) The use must have a low flood damage potential.
- (b) The use must not obstruct flood flows or cause any increase in flood elevations and must not involve structures, obstructions, or storage of materials or equipment.

SECTION 1360.05 FLOOD FRINGE DISTRICT (FF)

Subd.1. Permitted Uses: Permitted uses are those uses of land or structures allowed in the underlying zoning district(s) that comply with the standards in Sections 1360.05(2). If no pre-existing, underlying zoning districts exist, then any residential or nonresidential structure or use of a structure or land is a permitted use provided it does not constitute a public nuisance.

Subd. 2. Standards for Flood Fringe Permitted Uses:

- (a) All structures, including accessory structures, must be elevated on fill so that the lowest floor, as defined, is at or above the regulatory flood protection elevation. The finished fill elevation for structures must be no lower than one foot below the regulatory flood protection elevation and the fill must extend at the same elevation at least 15 feet beyond the outside limits of the structure.
- (b) Accessory Structures. As an alternative to the fill requirements of section 1360.05(2)(a), structures accessory to the uses identified in Section 1360.05(1) may be permitted to be internally/wet floodproofed to the FP3 or FP4 floodproofing classifications in the State Building Code, provided that:
 - (1) the accessory structure constitutes a minimal investment, does not exceed 576 square feet in size, and is only used for parking and storage.

- (2) All portions of floodproofed accessory structures below the Regulatory Flood Protection Elevation must be: (i) adequately anchored to prevent flotation, collapse or lateral movement and designed to equalize hydrostatic flood forces on exterior walls, (ii) be constructed with materials resistant to flood damage, and (iii) must have all service utilities be water-tight or elevated to above the regulatory flood protection elevation
- (3) Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following criteria:
 - (i) To allow for the equalization of hydrostatic pressure, there must be a minimum of two “automatic” openings in the outside walls of the structure, with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and
 - (ii) There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.

- (c) The storage of any materials or equipment must be elevated on fill to the regulatory flood protection elevation.
- (d) All service utilities, including ductwork, must be elevated or water-tight to prevent infiltration of floodwaters.
- (e) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
- (f) All fill must be properly compacted and the slopes must be properly protected by the use of riprap, vegetative cover or other acceptable method.
- (g) All new principal structures must have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation, or must have a flood warning /emergency evacuation plan acceptable to the City Council.
- (h) Accessory uses such as yards, railroad tracks, and parking lots may be at an elevation lower than the regulatory flood protection elevation. However, any facilities used by employees or the general public must be designed with a flood warning system that provides adequate time for evacuation if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional (1% chance) flood.
- (i) Interference with normal manufacturing/industrial plant operations must be minimized, especially along streams having protracted flood durations. In considering permit applications, due consideration must be given to the needs of industries with operations that require a floodplain location.
- (j) Manufactured homes and recreational vehicles must meet the standards of Section 1360.09 of this ordinance.

SECTION 1360.06 RESERVED FOR GENERAL FLOODPLAIN DISTRICT

SECTION 1360.07 LAND DEVELOPMENT STANDARDS

Subd.1. Subdivisions: No land may be subdivided which is unsuitable for reasons of flooding or inadequate drainage, water supply or sewage treatment facilities. Manufactured home parks and recreational vehicle parks or campgrounds are considered subdivisions under this ordinance.

- (a) All lots within the floodplain districts must be able to contain a building site outside of the Floodway District at or above the regulatory flood protection elevation.
- (b) All subdivisions must have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation,

unless a flood warning emergency plan for the safe evacuation of all vehicles and people during the regional (1% chance) flood has been approved by the City Council. The plan must be prepared by a registered engineer or other qualified individual, and must demonstrate that adequate time and personnel exist to carry out the evacuation.

- (c) For all subdivisions in the floodplain, the Floodway and Flood Fringe District boundaries, the regulatory flood protection elevation and the required elevation of all access roads must be clearly labeled on all required subdivision drawings and platting documents.
- (d) In the General Floodplain District, applicants must provide the information required in Section 1360.06(2) of this ordinance to determine the regional flood elevation, the Floodway and Flood Fringe District boundaries and the regulatory flood protection elevation for the subdivision site.
- (e) If a subdivision proposal or other proposed new development is in a flood prone area, any such proposal must be reviewed to assure that:
 - (1) All such proposals are consistent with the need to minimize flood damage within the flood prone area,
 - (2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and
 - (3) Adequate drainage is provided to reduce exposure of flood hazard.

Subd. 3. Building Sites. If a proposed building site is in a flood prone area, all new construction and substantial improvements (including the placement of manufactured homes) must be:

- (a) Designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (b) Constructed with materials and utility equipment resistant to flood damage;
- (c) Constructed by methods and practices that minimize flood damage; and
- (d) Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

SECTION 1360.08 PUBLIC UTILITIES, RAILROADS, ROADS, AND BRIDGES

Subd. 1. Public Utilities: All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the floodplain must be floodproofed in accordance with the State Building Code or elevated to the regulatory flood protection elevation.

Subd. 2. Public Transportation Facilities: Railroad tracks, roads, and bridges to be located within the floodplain must comply with Sections 1360.04 and 1360.05 of this ordinance. These transportation facilities must be elevated to the regulatory flood protection elevation where failure or interruption of these facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

Subd. 3. On-site Water Supply and Sewage Treatment Systems: Where public utilities are not provided: 1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems and are subject to the provisions in Minnesota Rules Chapter 4725.4350, as amended; and 2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, they must not be subject to impairment or contamination during times of flooding, and are subject to the provisions in Minnesota Rules Chapter 7080.2270, as amended.

SECTION 1360.09 MANUFACTURED HOMES, MANUFACTURED HOME PARKS, AND RECREATIONAL VEHICLES.

Subd. 1. Manufactured Homes: New manufactured home parks and expansions to existing manufactured home parks are prohibited in any floodplain district. For existing manufactured home parks or lots of record, the following requirements apply:

If allowed in the Flood Fringe District, placement or replacement of manufactured home units is subject to the requirements of Section 1360.05 of this ordinance and the following standards.

- (a) New and replacement manufactured homes must be elevated in compliance with Section 5 of this ordinance and must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.
- (b) New or replacement manufactured homes in existing manufactured home parks must meet the vehicular access requirements for subdivisions in Section 7.22.

Subd. 2. Recreational Vehicles: New recreational vehicle parks or campgrounds and expansions to existing recreational vehicle parks or campgrounds are prohibited in any floodplain district. Placement of recreational vehicles in existing recreational vehicle parks or campgrounds in the floodplain must meet the exemption criteria below or be treated as new structures meeting the requirements of this ordinance.

(a) Recreational vehicles are exempt from the provisions of this ordinance if they are placed in any of the following areas and meet the criteria listed in Section 1360.09(2)(b):

(1) Individual lots or parcels of record.

(2) Existing commercial recreational vehicle parks or campgrounds.

(3) Existing condominium-type associations.

(b) Criteria for Exempt Recreational Vehicles:

(1) The vehicle must have a current license required for highway use.

(2) The vehicle must be highway ready, meaning on wheels or the internal jacking system, attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks.

(3) No permanent structural type additions may be attached to the vehicle.

(4) The vehicle and associated use must be permissible in any pre-existing, underlying zoning district.

SECTION 1360.10ADMINISTRATION

Subd. 1. Zoning Administrator: A Zoning Administrator or other official designated by the City Council must administer and enforce this ordinance.

Subd. 2. Permit Requirements:

- (a) Permit Required. A permit must be obtained from the Zoning Administrator prior to conducting the following activities:
- (1) The erection, addition, modification, rehabilitation, or alteration of any building, structure, or portion thereof. Normal maintenance and repair also requires a permit if such work, separately or in conjunction with other planned work, constitutes a substantial improvement as defined in this ordinance.
 - (2) The use or change of use of a building, structure, or land.
 - (3) The construction of a dam, fence, or on-site septic system, although a permit is not required for a farm fence as defined in this ordinance.
 - (4) The change or extension of a nonconforming use.
 - (5) The repair of a structure that has been damaged by flood, fire, tornado, or any other source.
 - (6) The placement of fill, excavation of materials, or the storage of materials or equipment within the floodplain.
 - (7) Relocation or alteration of a watercourse (including new or replacement culverts and bridges), unless a public waters work permit has been applied for.
 - (8) Any other type of “development” as defined in this ordinance.
- (b) Application for Permit. Permit applications must be submitted to the Zoning Administrator on forms provided by the Zoning Administrator. The permit application must include the following as applicable:
- (1) A site plan showing all pertinent dimensions, existing or proposed buildings, structures, and significant natural features having an influence on the permit.
 - (2) Location of fill or storage of materials in relation to the stream channel.
 - (3) Copies of any required municipal, county, state or federal permits or approvals.
 - (4) Other relevant information requested by the Zoning Administrator as necessary to properly evaluate the permit application.

- (c) Certificate of Zoning Compliance for a New, Altered, or Nonconforming Use. No building, land or structure may be occupied or used in any manner until a certificate of zoning compliance has been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this ordinance.
- (d) Certification. The applicant is required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this ordinance. Floodproofing measures must be certified by a registered professional engineer or registered architect.
- (e) Record of First Floor Elevation. The Zoning Administrator must maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the floodplain. The Zoning Administrator must also maintain a record of the elevation to which structures and alterations or additions to structures are floodproofed.
- (f) Notifications for Watercourse Alterations. Before authorizing any alteration or relocation of a river or stream, the Zoning Administrator must notify adjacent communities. If the applicant has applied for a permit to work in public waters pursuant to Minnesota Statutes, Section 103G.245, this will suffice as adequate notice. A copy of the notification must also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).
- (g) Notification to FEMA When Physical Changes Increase or Decrease Base Flood Elevations. As soon as is practicable, but not later than six months after the date such supporting information becomes available, the Zoning Administrator must notify the Chicago Regional Office of FEMA of the changes by submitting a copy of the relevant technical or scientific data.

Subd. 3. Variances:

- (a) Variance Applications. An application for a variance to the provisions of this ordinance will be processed and reviewed in accordance with applicable state statutes and Section 1315 of the zoning ordinance.
- (b) Adherence to State Floodplain Management Standards. A variance must not allow a use that is not allowed in that district, permit a lower degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law.
- (c) Additional Variance Criteria. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:

- (1) Variances must not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
 - (2) Variances may only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - (3) Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (d) Flood Insurance Notice. The Zoning Administrator must notify the applicant for a variance that: 1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and 2) Such construction below the base or regional flood level increases risks to life and property. Such notification must be maintained with a record of all variance actions.
- (f) Submittal of Hearing Notices to the Department of Natural Resources (DNR). The Zoning Administrator must submit hearing notices for proposed variances to the DNR sufficiently in advance to provide at least ten days' notice of the hearing. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.
- (g) Submittal of Final Decisions to the DNR. A copy of all decisions granting variances must be forwarded to the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.
- (h) Record-Keeping. The Zoning Administrator must maintain a record of all variance actions, including justification for their issuance, and must report such variances in an annual or biennial report to the Administrator of the National Flood Insurance Program, when requested by the Federal Emergency Management Agency.

Subd. 4. Conditional Uses:

- (a) Administrative Review. An application for a conditional use permit under the provisions of this ordinance will be processed and reviewed in accordance with Section(s) 1320 of the zoning ordinance.
- (b) Submittal of Hearing Notices to the Department of Natural Resources (DNR). The Zoning Administrator must submit hearing notices for proposed conditional uses to the DNR sufficiently in advance to provide at least ten days' notice of the hearing.

The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

- (c) Submittal of Final Decisions to the DNR. A copy of all decisions granting conditional uses must be forwarded to the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

SECTION 1360.11 NONCONFORMITIES

Subd. 1. Continuance of Nonconformities: A use, structure, or occupancy of land which was lawful before the passage or amendment of this ordinance but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions. Historic structures, as defined in Section 1360.02(9)(w)(2) of this ordinance, are subject to the provisions of Sections 1360.11(1)(a) – 1360.11(1)(e) of this ordinance.

- (a) A nonconforming use, structure, or occupancy must not be expanded, changed, enlarged, or altered in a way that increases its flood damage potential or degree of obstruction to flood flows except as provided in 1360.11(b) below. Expansion or enlargement of uses, structures or occupancies within the Floodway District is prohibited.
- (b) Any addition or structural alteration to a nonconforming structure or nonconforming use that would result in increasing its flood damage potential must be protected to the regulatory flood protection elevation in accordance with any of the elevation on fill or floodproofing techniques (i.e., FP1 thru FP4 floodproofing classifications) allowable in the State Building Code, except as further restricted in 1360.11(c) and 1360.11(d) below.
- (c) If any nonconformity is substantially damaged, as defined in Section 1360.02(9)(v) of this ordinance, it may not be reconstructed except in conformity with the provisions of this ordinance. The applicable provisions for establishing new uses or new structures in Sections 1360.04 or 1360.05 will apply depending upon whether the use or structure is in the Floodway or Flood Fringe, respectively.
- (d) If any nonconforming use or structure experiences a repetitive loss, as defined in Section 1360.02(9)(r) of this ordinance, it must not be reconstructed except in conformity with the provisions of this ordinance.
- (e) Any substantial improvement, as defined in Section 1360.02(9)(w) of this ordinance, to a nonconforming structure requires that the existing structure and any additions must meet the requirements of Section 1360.04 or 1360.05 of this ordinance for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District.

SECTION 1360.12 PENALTIES AND ENFORCEMENT

Subd. 1. Violation Constitutes a Misdemeanor: Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) constitute a misdemeanor and will be punishable as defined by law.

Subd. 2. Other Lawful Action: Nothing in this ordinance restricts the City of Deephaven from taking such other lawful action as is necessary to prevent or remedy any violation. If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses will constitute an additional violation of this ordinance and will be prosecuted accordingly.

Subd. 3. Enforcement: Violations of the provisions of this ordinance will be investigated and resolved in accordance with the provisions of Section 220 of the code of ordinances. In responding to a suspected ordinance violation, the Zoning Administrator and City Council may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The City of Deephaven must act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

SECTION 1360.13 AMENDMENTS

Subd. 1. Floodplain Designation – Restrictions on Removal: The floodplain designation on the Official Zoning Map must not be removed from floodplain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regulatory flood protection elevation and is contiguous to lands outside the floodplain. Special exceptions to this rule may be permitted by the Commissioner of the Department of Natural Resources (DNR) if the Commissioner determines that, through other measures, lands are adequately protected for the intended use.

Subd. 2. Amendments Require DNR Approval: All amendments to this ordinance must be submitted to and approved by the Commissioner of the Department of Natural Resources (DNR) prior to adoption. The Commissioner must approve the amendment prior to community approval.

Subd. 3. Map Revisions Require Ordinance Amendments. The floodplain district regulations must be amended to incorporate any revisions by the Federal Emergency Management Agency to the floodplain maps adopted in Section 1360.02(3) of this ordinance.