

CHAPTER 2.11 FLOODPLAIN DEVELOPMENT PERMIT

Section 2.11.10 - BACKGROUND

To participate in the National Flood Insurance Program (NFIP), a community must adopt and enforce a Floodplain management ordinance that regulates Development in the Floodplain. This Floodplain management ordinance is housed primarily in Chapter 4.5 - Floodplain Provisions, but is in part addressed in other chapters of this Code. One of the basic Federal requirements for regulating Development in the Floodplain is a requirement for a Floodplain Development Permit before construction or other Development begins within any Special Flood Hazard Area (100-yr. Floodplain). In this context, the term "Development" is defined in Section 1.6.40 of Chapter 1.6 - Definitions. This chapter contains provisions for the Federally required Floodplain Development Permit and is consistent with the National Flood Insurance Program (NFIP) regulations.

Section 2.11.20 - PURPOSES

Procedures and standards for the review of Floodplain Development Permits are established in this Chapter for the following purposes:

- a.** Protect human life, health and property;
- b.** Minimize damage to public facilities and utilities such as water purification and sewage treatment plants, water and gas mains, electric, telephone and sewer lines, streets and bridges located in Floodplains;
- c.** Help maintain a stable tax base by providing for the sound use and Development of flood-prone areas;
- d.** Minimize expenditure of public money for costly flood control projects;
- e.** Minimize the need for rescue and emergency services associated with flooding and generally undertaken at the expense of the general public;
- f.** Minimize unnecessary disruption of commerce, access and public service during times of flood;
- g.** Facilitate the notification of potential buyers that property is in an Special Flood Hazard Area;

- h. Compel those who occupy property within the Special Flood Hazard Area to assume responsibility for their actions; and
- i. Manage the alteration of Special Flood Hazard Areas, stream channels and shorelines to minimize the impact of Development on the natural and beneficial functions of the Floodplain.

Section 2.11.30 - APPLICABILITY

Unless exempt per Section 2.11.40, below, approval of a Floodplain Development Permit is required prior to initiating Development activities in any Special Flood Hazard Areas (SFHAs) established through Section 4.5.20.01.b. As defined in Section 1.6.40, Development means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, fencing, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials located within a Special Flood Hazard Area.

2.11.40 - EXEMPTIONS

The following types of Development are exempt from the Floodplain Development Permit process, if they are allowed by other applicable provisions in this Code. These activities may be prohibited by the provisions of Chapter 4.5 - Floodplain Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, Chapter 4.13 - Riparian Corridor and Wetland Provisions, or Chapter 4.14 - Landslide Hazard and Hillside Development Provisions; or other restrictions may apply.

- a. **Placement of Fill in Residential Zones** - Within the Floodway Fringe, placement of fill in the RS-1, RS-3.5, RS-5, RS-6, RS-9, RS-9U, RS-12, RS-12U, RS-20 and MUR Zones, provided it is consistent with other applicable provisions of this Code and provided all of the following are met:
 - 1. The fill is used solely for the purpose of constructing a sandbox, a raised gardening bed, or other similar landscape feature;
 - 2. There are no undeveloped portions of the site that are outside the Floodway Fringe that can accommodate the items described in "a.1," above;
 - 3. The fill does not occupy an area that is greater than 10 percent of the minimum lot size of the corresponding zone or 10 percent of the area of the subject lot that is within the Floodway Fringe, whichever is less; and

4. The average depth of the fill does not exceed six in. over the area described in "a.3," above;
- b. Construction of Fences and Walls** - Installation, expansion, reconstruction, and replacement of fences and/or walls within the Floodway Fringe, provided the velocity of the flood waters where the fence or wall is proposed is less than 5 ft. per second, as documented in the Flood Insurance Study for Benton County and Incorporated Areas, dated June 2, 2011. Fencing and walls installed, expanded, reconstructed, and/or replaced in areas where the flood water velocity is greater than 5 ft. per second shall obtain a Floodplain Development Permit and shall comply with Section 4.5.110.12. If no Floodplain study is available to confirm the velocity of flood water flow, either the flood water velocity shall be determined consistent with Section 4.5.50.03.p to confirm whether the proposed fence and/or wall is exempt from obtaining a Floodplain Development Permit, or the flood water velocity shall be assumed to be greater than 5 ft. per second, and the fence and/or wall shall obtain a Floodplain Development Permit and be constructed consistent with the provisions in Section 4.5.110.12;
- c.** Maintenance, repair, and/or replacement of existing infrastructure facilities, provided the facilities:
 1. Are in-kind maintenance, repair, and/or replacement; and
 2. Will not result in an increase in Base Flood Elevation;
- d.** Maintenance, minor repair, and/or improvement of existing structures, provided these activities do not:
 1. Result in an increase in size or intensity of use;
 2. Constitute repair of Substantial Damage; or
 3. Constitute a Substantial Improvement;
- e.** Public agency placement of signs, markers, aids, etc.;
- f.** Customary dredging associated with routine channel maintenance to maintain existing channel capacity, provided it is consistent with State and Federal laws and permits;
- g.** Removal of vegetation activities, provided they are consistent with Section 4.5.80.03.a; and

- h. Landscape maintenance activities, provided they are consistent with Section 4.5.80.03.b.

Section 2.11.50 - PROCEDURES

2.11.50.01 - Application Requirements

An application for a Floodplain Development Permit shall be made on forms provided by the Floodplain Administrator or designee and shall include the following information, where applicable. When the Floodplain Administrator or designee deems any requirement below unnecessary for proper evaluation of a proposed application, it may be waived. For example, the waiving of some of the application requirements below can occur to address projects that are small or less complex in nature. However, the Floodplain Administrator or designee shall ensure that enough information is submitted to properly evaluate a proposed application's adherence to the applicable criteria.

- a. Location and description of the subject property(ies), including all of the following, as relevant: street address; tax assessor map and tax lot number; parcel number; written description of the boundaries of the proposal; and one set of assessor's maps of the subject site and surrounding area, with the subject site outlined in red;
- b. Signed consent by the subject property's owner(s) and/or the owner's legal representative(s). If a legal representative is used as a signatory, written proof of ability to be a signatory shall be furnished to the City. The owner's name(s) and address(es), and the applicant's name, address, and signature shall also be provided;
- c. Three copies of a narrative, on 8.5 by 11 in. sheets, describing how the application meets the review criteria in Section 2.11.50.04, below, and three copies of the supporting graphics at an 8.5 by 11 in. size. The Floodplain Administrator or designee may request additional copies of the narrative and/or graphics for routing purposes, if needed. Related names/numbers must be legible on the graphics. The Floodplain Administrator or designee may also require some or all graphics at a 24 by 36-in. size if, for legibility purposes, such a size would be helpful;
- d. Three sets of full-scaled black line or blueprint drawings of the site plan graphic(s) on sheet size of at least 11 in. by 17 in. suitable for photocopy reproduction. Site plan(s) and other graphics shall be drawn to scale and

shall contain a sheet title, date, north arrow, and legend placed in the same location on each sheet and show:

1. Information required by Sections 4.5.50.02, 4.5.50.03, and 4.5.50.04, as applicable;
 2. Information required by Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Floodplain Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, Chapter 4.13 - Riparian Corridor and Wetland Provisions, and Chapter 4.14 - Landslide Hazard and Hillside Development Provisions, as applicable; and
 3. Any other information relevant to the proposal;
- e. Adequate information for the Floodplain Administrator or designee to assess whether or not a Substantial Improvement is proposed or Substantial Damage has occurred. See Floodplain Administrator or designee for specific requirements and procedures for these determinations; and
- f. An electronic version of these documents (both text and graphics, as applicable). The applicant shall coordinate with the City regarding compatible electronic formats, to the greatest extent practicable. Any data submitted to substantiate Base Flood elevation(s), flood Depth Number(s), 0.2-ft. Floodway boundaries, or 100-year Floodway Fringe boundaries shall be compatible with the City's GIS system.

2.11.50.02 - Acceptance of Application

Per ORS 227, the Floodplain Administrator or designee shall review the Floodplain Development Permit application for compliance with the application requirements in Section 2.11.50.01, above. If the application is incomplete, the Administrator or designee shall notify the applicant and state what information is needed to make the application complete. Unless the Floodplain Administrator or designee determines that additional time is warranted, the applicant shall have a maximum of 10 days from this notification to submit additional materials.

2.11.50.03 - Staff Evaluation

The application and any comments that have been received shall be reviewed to ensure consistency with the review criteria in Section 2.11.50.04, below.

2.11.50.04 - Review Criteria

Requests for approval of a Floodplain Development Permit shall be reviewed by the Floodplain Administrator or designee to ensure:

- a.** Consistency with the standards from Sections 4.5.80, 4.5.90, and 4.5.100, as applicable;
- b.** New Development and subdivisions shall have public utilities and facilities such as sewer, gas, electric and water systems located and constructed to minimize flood damage;
- c.** On-site waste disposal systems shall be located and constructed to avoid functional impairment, or contamination from them during flooding;
- d.** Subdivisions shall have adequate drainage provided to reduce exposure to flood hazards. In AO and AH Federal Flood Zones, stormwater management shall be provided to guide floodwater around and away from all proposed and existing structures. This criteria shall be considered to be met if the proposed stormwater management is consistent with the provisions of the Building Code, Chapter 4.0 - Improvements Requirement with Development, and the provisions addressed in "e," below;
- e.** Consistency with other applicable standards of this Code; the standards of all acknowledged City Facility Master Plans; the adopted City Design Criteria Manual; the adopted Oregon Structural Specialty Code; the adopted International Fire Code; the adopted City Standard Construction Specifications; the adopted City Erosion Prevention and Sediment Control Ordinance; the adopted City Off-street Parking Standards; and any other applicable policies and standards adopted by the City Council; and
- f.** Preservation and/or protection of Significant Natural Features is achieved, consistent with Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Floodplain Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, Chapter 4.13 - Riparian Corridor and Wetland Provisions, and Chapter 4.14 - Landslide Hazard and Hillside Development Provisions.

2.11.50.05 - Action on Application

Based on the review criteria above, the Floodplain Administrator or designee shall review the proposed Development and either approve, conditionally approve, or deny the application. Floodplain Development Permits are processed like Building Permits, using a Ministerial Development process.

2.11.50.06 - Mandatory Conditions of Approval

The following Conditions of Approval are mandatory and shall be imposed on every approved Floodplain Development Permit:

- a. Required As-built Certification During Construction** - For all new construction and Substantial Improvements, the permit holder shall provide to the Floodplain Administrator or designee an as-built certification of the floor elevation or flood-proofing elevation immediately after the Lowest Floor or flood-proofing is placed and prior to further vertical construction. Any deficiencies identified by the Floodplain Administrator or designee shall be corrected by the permit holder immediately and prior to work proceeding. Failure to submit certification or failure to make the corrections shall be cause for the Floodplain Administrator or designee or the Building Official to issue a stop-work order for the project.
- b. Required Documentation Prior to Issuance of Certificate of Occupancy**
 1. In addition to the requirements of the Building Codes pertaining to Certificate of Occupancy, prior to the final inspection the owner or authorized agent shall submit the following documentation to the Floodplain Administrator or designee and the documentation shall be prepared and sealed by a registered surveyor or engineer:
 - a) For elevated buildings and structures in Special Flood Hazard Areas (all A Federal Flood Zones), the as-built elevation of the Lowest Floor, including basement, or where no Base Flood Elevation is available the height above Highest Adjacent Grade of the Lowest Floor;
 - b) For buildings and structures that have been floodproofed, the elevation to which the building or structure was floodproofed.
 2. Failure to submit certification or failure to correct violations shall be cause for the Floodplain Administrator or designee or the Building

Official to withhold a Certificate of Occupancy until such deficiencies are corrected.

2.11.50.07 - Permit

The Floodplain Administrator or designee shall provide the applicant with a permit that includes a written statement of the decision, a reference to the findings leading to it, any Conditions of Approval, and the appeal period deadline. The permit shall also be mailed to any persons who request such a decision. The permit and all applicable information shall be available in the Community Development Department.

2.11.50.08 - Permanent Retention of Development Applications

The Floodplain Administrator or designee shall maintain both paper and electronic permanent records of all Floodplain Development Permits.

2.11.50.09 - Appeals

- a. The decision of the Floodplain Administrator or designee may be appealed to the Land Development Hearings Board in accordance with Chapter 2.19 - Appeals.
- b. **Appeal Review Criteria** - An appeal of a decision made by either the Floodplain Administrator or designee or the Land Development Hearings Board shall be reviewed against the criteria set forth in Section 2.11.50.04. In acting on an appeal, the hearing body shall make specific findings in response to each of the appeal review criteria.

2.11.50.10 - Effective Date

Unless an appeal has been filed, the decision of the Floodplain Administrator or designee shall become effective 12 days after the permit is signed.

2.11.50.11 - Effective Period of Approval

- a. A Floodplain Development Permit shall expire 180 days after the permit is effective per Section 2.11.50.10, unless:
 - 1. Start of Construction for the permitted activity has occurred and thereafter is pursued to completion; or

2. An extension consistent with Building Permit extension procedures is granted by the Floodplain Administrator or designee, in cases where Start of Construction has not yet occurred. However, the granting of such extension shall also require the Floodplain Administrator or designee to review the Floodplain Development Permit activity(ies) relative to the applicable Code requirements to ensure that the Floodplain Development Permit is still consistent with Code provisions. If the Floodplain Administrator or designee finds that the Floodplain Development Permit is still consistent with the applicable Code requirements, then the extension may be granted by the Floodplain Administrator or designee. If the Floodplain Administrator or designee finds that the Floodplain Development Permit is no longer consistent with the applicable Code requirements, then the Floodplain Administrator or designee shall deny the extension request.
- b.** Commencement of work includes Start of Construction, when the permitted work requires a Building Permit.

2.11.60 - VARIANCES

An application filed for a Floodplain Development Permit Variance shall comply with the following:

2.11.60.01 - Limited Scope of Variance Applications

- a.** Variances are limited to the following:
1. Altering the required elevation standard for new construction and Substantial Improvements on a lot less than or equal to one-half acre, provided the lot is contiguous to and surrounded by lots with existing structures constructed below the Base Flood Elevation;
 2. Allowing a Water Dependent use, provided structures or other Development are protected by methods that minimize flood damages during the Base Flood and create no additional threats to public safety;
 3. Reconstructing, rehabilitating, or restoring a Designated Historic Resource upon a determination that the proposed restoration, rehabilitation, or restoration will not preclude the structure's continued designation as a Designated Historic Resource and the Variance is

the minimum necessary to preserve the historic character and design of the structure; or

4. Allowing a lesser degree of floodproofing than watertight or dry-floodproofing for nonresidential buildings in very limited circumstances, where it can be determined that such action will have low damage potential and otherwise comply with Building Codes.
- b. Variance requests that exceed the limited scope described above in “a,” above, shall be made through the Planned Development process in Chapter 2.5 - Planned Development.

2.11.60.02 - Variance Application Requirements

When the Floodplain Administrator or designee deems any requirement below unnecessary for proper evaluation of a proposed application, it may be waived.

An application for a Floodplain Development Permit Variance shall include:

- a. The items listed above in Sections 2.11.50.01 and an application submittal fee equal to that of a Major Lot Development Option application submittal fee;
- b. Narrative explaining the basis for the Variance request and how the request still meets the purposes in Section 2.11.20 and 4.5.10; and
- c. Other narrative and technical information sufficient to demonstrate compliance with the review criteria in Section 2.11.60.06. The applicant shall also provide narrative and technical information sufficient to demonstrate compliance with the review criteria in Section 2.11.50.04 which can still be met, despite the Floodplain Development Permit Variance request.

2.11.60.03 - Acceptance of Variance Application

An application for a Floodplain Development Permit Variance shall be accepted and reviewed in accordance with the procedures in Section 2.12.30.02.b, except that public notice distance shall be in accordance with Section 2.11.60.04, below.

2.11.60.04 - Public Notice for a Variance Application

The public notice for a Floodplain Development Permit Variance shall be issued in accordance with the provisions in Section 2.0.50.04, except that the public notice

distance shall be 300 ft., as required for the land use applications in Section 2.0.50.04.c.2.

2.11.60.05 - Staff Evaluation

The Floodplain Administrator or designee shall prepare a report that evaluates whether or not the proposal qualifies as a Floodplain Development Permit Variance per Section 2.11.60.01, includes the required application materials per Section 2.11.60.02, meets the purposes in Sections 2.11.20 and 4.5.10, and complies with the review criteria in Section 2.11.60.06. The Floodplain Administrator or designee shall also evaluate the proposed Floodplain Development Permit Variance with respect to the review criteria in Section 2.11.50.04, to see how many of the criteria can still be met. The report shall include a recommendation for approval or denial and, if needed, a list of conditions for the Land Development Hearings Board to consider if an approval is granted.

2.11.60.06 - Review Criteria for a Variance Application

In reviewing requests for the approval of a Floodplain Development Permit Variance, the Land Development Hearings Board shall consider the purposes of this Chapter, the purposes in Section 4.5.10, the Variance thresholds contained in Section 2.11.60.01, the base Floodplain Development Permit review criteria in Section 2.11.50.04, standards specified in other sections of this chapter and Chapter 4.5 - Floodplain Provisions, all technical evaluations, and the criteria in "a," through "d," below. All of the criteria in "a," through "d," below, shall be met. In addition, all of the review criteria in Section 2.11.50.04 shall be met, with the exception of specific aspects of the criteria that cannot be met because of the nature of the Floodplain Development Permit Variance request. It is the applicant's burden to show that the Variance is warranted and meets said criteria.

- a.** Variances shall not be issued within a designated Floodway if any increase in flood levels during the Base Flood discharge would result.¹
- b.** Variances shall only be issued upon a determination that the Variance is the minimum necessary, considering the flood hazard, to afford relief.

¹There are unique circumstances under which the Floodplain Administrator or designee may allow a rise in Base Flood Elevation in the Floodway - see Sections 4.5.50.04 and 4.5.80.05. However, these exceptions are granted via the provisions of those two Code sections and not through the Variance provisions of this chapter.

- c.** Variances shall only be issued upon a:
1. Showing of good and sufficient cause;
 2. Determination that failure to grant the Variance would result in exceptional hardship to the applicant;
 3. Determination that the granting of the Variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, or creation of nuisances; and
 4. Determination that the granting of the Variance will not cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- d.** Variances shall consider the following additional factors:
1. The danger that materials may be swept onto other lands to the injury of others as a result of approving the Variance request;
 2. The potential to endanger life and property due to flooding or erosion damage caused by approval of the Variance request;
 3. The susceptibility of the proposed facility and its contents to flood damage, and the effect of such damage on the individual owner and adjacent properties;
 4. The importance of the services provided by the proposed facility to the community;
 5. The necessity to the facility of a waterfront location, where applicable;
 6. The availability and viability of alternate locations for the proposed use that are not subject to flooding or erosion damage;
 7. The compatibility of the proposed use with existing and anticipated Development. This criteria shall be considered to be met if the proposed application meets the review criteria in Section 2.11.50.04.e;
 8. The relationship of the proposed use to the Floodplain management program for that area;

9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters, and the effects of wave action, if applicable, expected at the site; and
11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

2.11.60.07 - Action on Variance Application

The Land Development Hearings Board shall conduct a public hearing in accordance with Chapter 2.0 - Public Hearings. Following the close of the public hearing, the Board shall approve, conditionally approve, or deny the Floodplain Development Permit Variance. The Board's decision shall include findings that specify how the application has or has not complied with the review criteria in Section 2.11.60.06. The Board's decision shall also include findings that specify the extent to which the application has or has not complied with the original Floodplain Development Permit review criteria in Section 2.11.50.04.

2.11.60.08 - Notice of Disposition

The Floodplain Administrator or designee shall provide the applicant with a Notice of Disposition in accordance with Chapter 2.0 - Public Hearings that includes a written statement of the Land Development Hearings Board's decision, a reference to findings leading to it, any Conditions of Approval, and the appeal period deadline.

If a Variance is granted to allow the construction of a building below the Base Flood level, the property owner shall be put on notice along with the written decision that the permitted building will have its Lowest Floor below the Base Flood Elevation or flood depth, and that the cost of flood insurance likely will be commensurate with the increased flood damage risk.

A Notice of Disposition shall also be mailed to persons who presented oral or written testimony at the public hearing.

2.11.60.09 - Permanent Retention of Variance Applications

The Floodplain Administrator or designee shall maintain a permanent record of all Floodplain Development Permit Variances, and report any Variances to the Federal Emergency Management Agency upon request.

2.11.60.10 - Appeals

The decision of the Land Development Hearings Board may be appealed in accordance with Chapter 2.19 - Appeals.

2.11.60.11 - Effective Date

Unless an appeal has been filed, the decision of the hearing authority shall become effective 12 days after the Notice of Disposition is signed.

2.11.60.12 - Effective Period of Approval

- a. A Floodplain Development Permit Variance shall expire 180 days after issuance unless:
 1. Start of Construction for the permitted activity has occurred and thereafter is pursued to completion;
 2. An extension consistent with Building Permit extension procedures is granted by the Floodplain Administrator or designee, in cases where Start of Construction has not yet occurred. However, the granting of such extension shall also require the Floodplain Administrator or designee to review the Floodplain Development Permit Variance activity(ies) relative to the applicable Code requirements to ensure that the scope of the Variance activities has not deviated further from Code provisions as a result of any subsequent Land Development Code Text Amendment(s). If the Floodplain Administrator or designee finds that the Floodplain Development Permit Variance has not deviated further from the applicable Code requirements, then the extension may be granted by the Floodplain Administrator or designee. If the Floodplain Administrator or designee finds that the Floodplain Development Permit Variance does indeed vary further from applicable Code requirements, then the Floodplain Administrator or designee shall deny the extension request.

- b.** Commencement of work includes Start of Construction, when the permitted work requires a Building Permit.

