

Marshall County Floodplain Ordinance

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SECTION 1.0 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE

- 1.1 **Statutory Authorization:** This floodplain ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 103F; Minnesota Rules, Parts 6120.5000 – 6120.6200; the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations, Parts 59 -78; and the planning and zoning enabling legislation in Minnesota Statutes, Chapters 394.
- 1.2 **Purpose:**
 - 1.21 This ordinance regulates development in the flood hazard areas of Marshall County. 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.
 - 1.22 This ordinance is adopted to maintain the community's eligibility in the National Flood Insurance Program.
 - 1.23 This ordinance is also intended to preserve the natural characteristics and functions of watercourses and floodplains in order to moderate flood and stormwater impacts, improve water quality, reduce soil erosion, protect aquatic and riparian habitat, provide recreational opportunities, provide aesthetic benefits and enhance community and economic development.

SECTION 2.0 GENERAL PROVISIONS

- 2.1 **Lands to Which Ordinance Applies:** This ordinance applies to all lands within the jurisdiction of Marshall County within the boundaries of the Floodway, Flood Fringe and General Floodplain Districts and further detailed in Sections 2.2 and 3.1.
 - 2.11 The Floodway, Flood Fringe or General Floodplain Districts are overlay districts superimposed on all existing zoning districts. The standards imposed in the overlay districts are in addition to any other requirements in this ordinance. In case of a conflict, the more restrictive standards will apply.
 - 2.12 Where a conflict exists between the floodplain limits illustrated on the official floodplain maps and actual field conditions, the base flood elevations shall be the governing factor in locating the outer boundaries of the 1-percent annual chance floodplain.
 - 2.13 The regulatory limits of the district boundaries shall be further extended outward based on the horizontal extension of the regulatory flood protection elevation (RFPE), defined in Section 2.6.
 - 2.14 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.
- 2.2 **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 Marshall County, Minnesota, and Incorporated Areas, and the Flood Insurance Rate Map Index for Marshall County, Minnesota, and Incorporated Areas, both dated March 23, 2021 and prepared by the Federal Emergency Management Agency. These materials are on file in the Marshall County Environmental Services Office at the Marshall County Courthouse, Warren, MN.
- 2.3 **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.
- 2.4 **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 Marshall County or its officers or employees for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.
- 2.5 **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.

- 2.6 **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.
- 2.611 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.
- 2.612 Base Flood – the flood having a one percent chance of being equaled or exceeded in any given year. “Base flood” is synonymous with the term “regional flood” used in Minnesota Rules, Part 6120.5000.
- 2.613 Base Flood Elevation (BFE) – The elevation of the base flood or one-percent annual chance flood. The term “base flood elevation” is used in the flood insurance study.
- 2.614 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.
- 2.615 Conditional Use – a specific type of structure or land use listed in the official control that may be allowed but only after an in-depth review procedure and with appropriate conditions or restrictions as provided in the official zoning controls or building codes and upon a finding that:
- (a) Certain conditions as detailed in the zoning ordinance exist, and
 - (b) The structure and/or land use conform to the comprehensive land use plan if one exists and are compatible with the existing neighborhood.
- 2.616 Critical Facilities – facilities necessary to a community’s public health and safety, those that store or produce highly volatile, toxic or water-reactive materials, and those that house occupants that may be insufficiently mobile to avoid loss of life or injury. Examples of critical facilities include hospitals, correctional facilities, schools, daycare facilities, nursing homes, fire and police stations, wastewater treatment facilities, public electric utilities, water plants, fuel storage facilities, and waste handling and storage facilities.
- 2.617 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.
- 2.618 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.
- 2.619 Farm Fence – An open type of fence of posts and horizontally run wire, further defined by Minnesota Statutes, Section 344.02, Subd. 1(a-d), and is not considered to be a structure under this ordinance. Fences that have the potential to obstruct flood flows, such as chain link fences and rigid walls, are regulated as structures under this ordinance.
- 2.620 Flood – a temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.
- 2.621 Flood Frequency – the frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.
- 2.622 Flood Fringe – the portion of the one-percent annual chance floodplain located outside of the floodway. Flood fringe is synonymous with the term “floodway fringe” used in the Flood Insurance Study.
- 2.623 Flood Insurance Rate Map – An official map on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).
- 2.624 Flood Insurance Study – The study referenced in Section 2.2, which is an examination, evaluation and determination of flood hazards, and if appropriate, corresponding surface elevations, or an examination, evaluation, and determination of mudslide (i.e. mudflow) and/or flood-related erosion hazards.
- 2.625 Flood Prone Area – any land susceptible to being inundated by water from any source.

- 2.626 Floodplain – the beds and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the base flood.
- 2.627 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.
- 2.628 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 base flood discharge.
- 2.629 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.
- 2.630 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.”
- 2.631 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.
- 2.632 Obstruction – any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory floodplain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.
- 2.633 Principal Use or Structure – all uses or structures that are not accessory uses or structures.
- 2.634 Reach – a hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.
- 2.635 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.”
- 2.636 Regulatory Flood Protection Elevation (RFPE) - an elevation not less than one foot above the elevation of the base flood plus any increases in flood elevation caused by encroachments on the floodplain that result from designation of a floodway. In Zone AO, the RFPE is established by adding 3 feet to the highest adjacent grade at the structure’s proposed location on the ground. In Zone AH, the RFPE is established by adding 1 foot to the depth number specified on the Flood Insurance Rate Map.
- 2.637 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.
- 2.638 Special Flood Hazard Area – a term used for flood insurance purposes, and synonymous with the term base flood or 1-percent annual chance floodplain.
- 2.639 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.

2.640 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, decks manufactured homes, recreational vehicles not considered travel ready as detailed in Section 10.22 of this ordinance and other similar items.

2.641 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.

2.642 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:

(a) 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, or

(b) 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.

2.643 Variance - means a modification of a specific permitted development standard required in an official control including this Ordinance to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a practical difficulty or unique circumstance as defined and elaborated upon in a community's respective planning and zoning enabling legislation.

2.7 **Detachments.** The Flood Insurance Rate Map panels adopted by reference into Section 2.2 above will include floodplain areas that lie inside the corporate boundaries of municipalities at the time of adoption of this ordinance. If any of these floodplain land areas are detached from a municipality and come under the jurisdiction of Marshall County after the date of adoption of this ordinance, the newly detached floodplain lands will be subject to the provisions of this ordinance immediately upon the date of detachment.

SECTION 3.0 ESTABLISHMENT OF FLOODPLAIN DISTRICTS

3.1 Districts:

3.11 Floodway District. Those areas within Zones AE delineated within floodway areas as shown on the Flood Insurance Rate Maps adopted in Section 2.2.

3.12 Flood Fringe District. Those areas within Zones AE, AO, or AH on the Flood Insurance Rate Maps adopted in Section 2.2, but located outside of the floodway.

3.13 General Floodplain District. Those areas within Zone A areas that do not have a floodway delineated as shown on the Flood Insurance Rate Maps adopted in Section 2.2.

3.2 **Applicability:** Where Floodway and Flood Fringe districts are delineated on the floodplain maps, the standards in Sections 5 or 6 will apply, depending on the location of a property. Locations where Floodway and Flood Fringe districts are not delineated on the floodplain maps are considered to fall within the General Floodplain district and the standards in Section 7.0 will apply.

SECTION 4.0 REQUIREMENTS FOR ALL FLOODPLAIN DISTRICTS

- 4.1 Permit Required. A permit must be obtained from the Zoning Administrator to verify if a development meets all applicable standards outlined in this ordinance prior to conducting the following activities:
 - 4.11 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.
 - 4.12 The construction of a dam or on-site septic system, or any fence not meeting the definition of a farm fence outlined in Section 2.6 of this ordinance.
 - 4.13 The change or extension of a nonconforming use.
 - 4.14 The repair of a structure that has been damaged by flood, fire, tornado, or any other source.
 - 4.15 The placement of fill, excavation of materials, or the storage of materials or equipment within the floodplain.
 - 4.16 Relocation or alteration of a watercourse (including stabilization projects or the construction of new or replacement culverts and bridges), unless a public waters work permit has been obtained from the Department of Natural Resources.
 - 4.17 Any other type of “development” as defined in this ordinance.
- 4.2 Minimum Development Standards. All new development must be:
 - 4.21 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;
 - 4.22 Constructed with materials and equipment resistant to flood damage;
 - 4.23 Constructed by methods and practices that minimize flood damage;
 - 4.24 Constructed with electrical, heating, ventilation, ductwork, 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;
 - 4.25 reasonably safe from flooding and consistent with the need to minimize flood damage within the flood-prone area;
 - 4.26 assured to provide adequate drainage to reduce exposure to flood hazards.
- 4.3 Floodplain developments must not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.
- 4.4 Materials that, in time of flooding, are buoyant, flammable, explosive, or could be injurious to human, animal, or plant life shall be stored at or above the flood protection elevation, floodproofed, or protected by structural measures consistent with the standards set forth herein. Furthermore, storage of materials likely to cause pollution of the waters, as defined in Minnesota Statutes, Section 115.01, if subject to flooding are prohibited unless adequate safeguards approved by the state water pollution control agency are provided.
- 4.5 Critical Facilities, as defined in Section 2.6, are to be located, so that the lowest floor is not less than two feet above the base flood elevation, or the 0.2% annual chance flood elevation, whichever is higher.

SECTION 5.0 FLOODWAY DISTRICT (FW)

- 5.1 **Permitted Uses:** The following uses, subject to the standards set forth in Section 5.2, are permitted uses if otherwise allowed in the underlying zoning district or any applicable overlay district:
 - 5.11 General farming, pasture, grazing, farm fences, outdoor plant nurseries, horticulture, forestry, sod farming, and wild crop harvesting.
 - 5.12 Loading areas, parking areas, streets, trails, airport landing strips, railroads, bridges, culverts, utility transmission lines and pipelines.

- 5.13 Open space uses, including but not limited to private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, trap and skeet ranges, hunting and fishing areas, and single or multiple purpose recreational trails.
 - 5.14 Residential yards, lawns, gardens, parking areas, and play areas, provided these uses do not include associated accessory structures.
 - 5.15 Grading or land alterations associated with stabilization projects.
- 5.2 **Standards for Floodway Permitted Uses.** In addition to the applicable standards outlined in Sections 4.2:
- 5.21 The use must have a low flood damage potential.
 - 5.22 The use must not involve structures.
 - 5.23 The use must not obstruct flood flows, or increase velocities, stages, or flood damages, as certified by a registered professional engineer.
 - 5.24 Development that will change the course, current or cross section of protected wetlands or public waters is required to obtain a public waters work permit in accordance with Minnesota Statutes, Section 103G.245 or a utility crossing license in accordance with Minnesota Statutes, Section 84.415, from the Department of Natural Resources, or demonstrate that no permit is required, before applying for a local permit.
 - 5.25 Any facility that will be 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 base flood.
- 5.3 **Conditional Uses:** The following uses may be allowed as conditional uses following the standards and procedures set forth in Section 11.4 of this ordinance and further subject to the standards set forth in Section 5.4, if otherwise allowed in the underlying zoning district.
- 5.31 Structures accessory to primary uses listed in 5.11 – 5.13 above and primary uses listed in 5.32 - 5.36 below.
 - 5.32 Grading, extraction, fill and storage of soil, sand, gravel, and other materials for purposes other than stabilization projects.
 - 5.33 Marinas, boat rentals, permanent docks, piers, wharves, water control structures, and navigational facilities.
 - 5.34 Storage yards for equipment, machinery, or materials.
 - 5.35 Fences that have the potential to obstruct flood flows.
 - 5.36 Levees or dikes intended to protect agricultural crops for a frequency flood event equal to or less than the 10-year frequency flood event.
- 5.4 **Standards for Floodway Conditional Uses.** In addition to the applicable standards outlined in Sections 4.2, 5.2 and 11.4:
- 5.41 Fill; Storage of Materials and Equipment:
 - (a) Fill, dredge spoil, and other similar materials deposited or stored in the floodplain must be protected from erosion by the use of mulches or similar materials, with permanent vegetative cover established as soon as possible. Permanent sand and gravel operations and similar uses must be covered by a long-term site development plan.
 - (b) Temporary placement of fill, other materials, or equipment that would cause an increase to the stage of the base flood may only be allowed if Marshall County has approved a plan that assures removal of the materials from the floodway based upon the flood warning time available.

(c) 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.

(d) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Governing Body.

5.42 Accessory Structures. Accessory structures, as identified in Section 5.31, may be permitted, provided that:

(a) Structures are not intended for human habitation;

(b) Structures will have a low flood damage potential;

(c) Structures will be constructed and placed so as to offer a minimal obstruction to the flow of flood waters;

(d) Structures must be elevated on fill or structurally dry floodproofed and watertight to the regulatory flood protection elevation. Certifications consistent with Section 11.22 shall be required.

(e) As an alternative, an accessory structure may be floodproofed in a way to accommodate internal flooding. To allow for the equalization of hydrostatic pressure, there shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one foot above grade. The openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding, have a net area of not less than one square inch for every square foot of enclosed area subject to flooding, and shall allow automatic entry and exit of floodwaters without human intervention. A floodproofing certification consistent with Section 11.22 shall be required.

5.43 A levee, dike or floodwall constructed in the floodway must not cause an increase to the base flood. The technical analysis must assume equal conveyance or storage loss on both sides of a stream.

SECTION 6.0 FLOOD FRINGE DISTRICT (FF)

6.1 **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 6.2. 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.

6.2 **Standards for Flood Fringe Permitted Uses.** In addition to the applicable standards outlined in Sections 4.2:

6.21 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 (RFPE). The finished fill elevation for structures must be no lower than one foot below the regulatory flood protection elevation (RFPE). Fill for residential structures must extend at the same elevation at least 15 feet beyond the outside limits of the structure. Elevations must be certified by a registered professional engineer, land surveyor or other qualified person designated by the community.

6.22 Accessory Structures. As an alternative to the fill requirements of section 6.21, any enclosed structures accessory to the uses identified in Section 6.1 must meet the following provisions:

(a) Accessory structures shall constitute a minimal investment not to exceed 576 square feet in size, and only be used for parking and storage.

(b) Accessory structures must allow for the equalization of hydrostatic pressure by accommodating for the inundation of floodwaters. There shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one foot above grade. The openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding, and shall allow automatic entry and exit of floodwaters without human intervention.

6.23 The cumulative placement of fill or similar material on a parcel must not exceed 1,000 cubic yards, unless the fill is specifically intended to elevate a structure in accordance with Section 6.21 of this ordinance.

- 6.24 All fill must be properly compacted and the slopes must be properly protected by the use of riprap, vegetative cover or other acceptable method.
 - 6.25 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 Marshall County.
 - 6.26 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 base flood.
 - 6.27 Manufactured homes and recreational vehicles must also meet the standards of Section 10 of this ordinance.
 - 6.28 Within an AO or AH zone, there must be adequate drainage paths around structures on slopes to guide floodwaters around and away from existing or proposed structures or additions.
- 6.3 **Conditional Uses:** The following uses may be allowed as conditional uses following the standards and procedures set forth in Section 11.4 of this ordinance and further subject to the standards set forth in Section 6.4, if otherwise allowed in the underlying zoning district(s).
- 6.31 Basements shall be subject to the following:
 - (a) The placement of floodproofed nonresidential basements below the regulatory flood protection elevation are allowed as a conditional use subject to the standards in Section 6.43 of this ordinance.
 - (b) Residential basement construction shall not be allowed below the regulatory flood protection elevation except as authorized in Section 6.45.
 - 6.32 The cumulative placement of more than 1,000 cubic yards of fill when the fill is not being used to elevate a structure in accordance with Section 6.21 of this ordinance.
 - 6.33 The use of methods other than fill to elevate structures above the regulatory flood protection elevation. This includes the use of: stilts, pilings, filled stem walls, or above-grade, internally flooded enclosed areas such as crawl spaces or tuck under garages, meeting the standards in Section 6.44.
 - 6.34 Within farmstead ring levee systems, as defined in (c) below, agricultural structures exceeding 576 square feet in size may be constructed with the lowest floor below the regulatory flood protection elevation provided the structure is internally wet floodproofed as outlined in the following floodproofing and administrative provisions:
 - (a) For the purposes of this Section, agricultural structures shall be defined as structures related to the growing of crops or raising of livestock. This definition of agricultural structures shall include barns, machine sheds, storage buildings, garages for the storage of farming machinery and equipment. This definition of agricultural structure does not include a principal or accessory structure to a residential, commercial, or other use not needed for the growing of crops or raising of livestock and shall specifically not include a structure used for human habitation or for parking of non-farming related vehicles for the human occupants of structures within the farmstead ring levee system.
 - (b) For the purposes of this Section, habitable space (room) is space in a structure used for living, sleeping, eating, or cooking. Bathrooms, toilet compartments, closets, halls, storage rooms, laundry or utility space and similar areas, are not considered habitable space. Further, no space within an agricultural structure constructed in accordance with this Section with a floor below the regulatory flood protection elevation shall be used as habitable space.
 - (c) Agricultural structures with the lowest floor below the regulatory flood protection elevation authorized by this Section must be located within the confines of a ring levee system meeting the following criteria:

- i. The ring levee system must have been constructed as part of a cost share program of a watershed district established pursuant to Minnesota Statute, Chapter 103D;
 - ii. A registered professional engineer or qualified watershed district staff person must certify that the farmstead ring levee system was constructed in accordance with the design criteria specified by the watershed district as a condition of state/local cost share funding; and
 - iii. The low point of the ring levee system must be at a minimum at least two (2) feet above the flood of record or one (1) foot above the 100-year flood level, whichever is the greater of the two. A registered professional engineer or land surveyor must establish the elevation of the low point of the ring levee system in a datum as specified by the county. A qualified hydrologist, watershed district staff person, or registered professional engineer must establish the 100-year flood elevation and flood of record elevation for the location of the farmstead ring levee system.
- (d) In addition to the permitting and administrative language in this ordinance, the following additional provisions apply to this Section:
- i. The application materials for the conditional use permit must clearly indicate the floodproofing classification that is being proposed and shall include a set of floodproofing plans and specifications prepared by a registered professional engineer or architect;
 - ii. The conditional use permit issued by the community must specify the floodproofing classification that is being authorized and the regulatory flood protection elevation for the site; and
 - iii. After construction of an agricultural structure authorized by this Section, the applicant shall be required to provide certification by a registered professional engineer or architect that the structure was constructed in accordance with the building/floodproofing specifications authorized by Section 6.34 of this Ordinance. Upon completion, the community must issue a certificate of zoning compliance prior to the use of the structure.
- (e) Structural Design:
- i. The structure must be designed to the FP-3/FP-4 Floodproofing Classification (W-4 spaces only) found in the 1995 version of the US Army Corps of Engineers' document titled "Flood Proofing Regulations," a copy of which is hereby adopted by reference and declared to be a part of this Ordinance. If there is a conflict of terms found in Flood Proofing Regulations and the definition of terms used in this Ordinance, the latter shall prevail;
 - ii. The design of the structure must include a minimum of two openings in the outside walls of the structure to allow for the equalization of hydrostatic flood forces on all spaces inside the outer walls of the structure. The automatic openings shall be placed on at least two sides of the structure and the bottom of all openings shall be placed no higher than one foot above the lowest adjacent grade of the structure. Opening a garage door during flooding is not considered an automatic opening and shall not meet the requirement for automatic openings. The sizing of the automatic openings shall be in accordance with a design certified by a registered professional engineer or architect. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters. In the design of the openings, the engineer or architect may consult the Federal Emergency Management Agency's publication entitled "Openings in Foundation Walls for Buildings in Special Flood Hazard Areas in accordance with the National Flood Insurance Program," a copy of which is hereby adopted by reference and declared to be a part of this ordinance; and
 - iii. Special care must be taken to make sure that all contents stored in the structure are placed in accordance with Chapter 11 of Flood Proofing Regulations." Specifically, the conditional use issued shall indicate those types of chemicals and similar contents for agricultural uses that are: 1) "extremely hazardous (Class XX)" and require prohibition from the floodplain; and 2) "sufficiently

hazardous (Class X) and, if stored in the structure, must be stored above the regulatory flood protection elevation.

- (f) The applicant shall be advised in writing that the internal (wet) floodproofing techniques authorized herein will not be credited for insurance rating purposes by the National Flood Insurance Program. Therefore, the lowest floor for flood insurance rating purposes will be the base or floor level of the internally flooded space. Should flood insurance be purchased, the premiums may be extremely expensive.
- (g) A document must be prepared and recorded that references the property in question such that it would appear in the chain of title and clearly states all of the conditions that have stipulated in the conditional use permit authorizing construction of a structure with the lowest floor below the regulatory flood protection elevation.

6.4 Standards for Flood Fringe Conditional Uses. In addition to the applicable standards outlined in Sections 4.2, 6.2 and 11.4:

- 6.41 The standards for permitted uses in the flood fringe, listed in Sections 6.24 through 6.28, apply to all conditional uses.
- 6.42 All areas of nonresidential structures, including basements, to be placed below the regulatory flood protection elevation must be structurally dry floodproofed, which requires making the structure watertight with the walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A floodproofing certification consistent with Section 11.22 shall be required.
- 6.43 The placement of more than 1,000 cubic yards of fill or other similar material on a parcel (other than for the purpose of elevating a structure to the regulatory flood protection elevation) must comply with an approved erosion/sedimentation control plan.
 - (a) The plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the base flood event.
 - (b) The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to Marshall County.
 - (c) The plan may incorporate alternative procedures for removal of the material from the floodplain if adequate flood warning time exists.
- 6.44 Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the regulatory flood protection elevation. The base or floor of an enclosed area shall be considered above-grade and not a structure's basement or lowest floor if: 1) the enclosed area is above-grade on at least one side of the structure; 2) it is designed to internally flood; and 3) it is used solely for parking of vehicles, building access or storage. These alternative elevation methods are subject to the following additional standards:
 - (a) Above-grade, fully enclosed areas such as crawl spaces or tuck under garages must be designed to internally flood and include a minimum of two openings on at least two sides of the structure. The bottom of all openings shall be no higher than one foot above grade, and have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding unless a registered professional engineer or architect certifies that a smaller net area would suffice.
 - (b) Floodproofing certifications consistent with Section 11.22 shall be required. The structure shall be subject to a deed-restricted nonconversion agreement with the issuance of any permit.
- 6.45 When the Federal Emergency Management Agency (FEMA) has issued a letter of map revision-fill (LOMR-F) for land elevated by fill to the one (1) percent chance flood elevation, the area elevated by fill remains in the regulatory floodplain and subject to the provisions of this chapter. A structure may be placed on the area elevated by fill with the lowest floor below the regulatory flood protection elevation, provided the structure meets the following provisions:

- (a) No floor level or portion of a structure that is below the regulatory flood protection elevation shall be used as habitable space or for storage of any property, materials, or equipment that might constitute a safety hazard when contacted by floodwaters.
- (b) For residential and nonresidential structures, the basement floor may be placed below the regulatory flood protection elevation subject to the following standards:
 - i. The top of the immediate floor above any basement area shall be placed at or above the regulatory flood protection elevation.
 - ii. Any area of the structure placed below the regulatory flood protection elevation shall meet the “reasonably safe from flooding” standards in the FEMA publication entitled “Ensuring That Structures Built on Fill In or Near Special Flood Hazard Areas Are Reasonably Safe From Flooding,” Technical Bulletin 10-01, a copy of which is hereby adopted by reference and made part of this chapter. In accordance with the provisions of this chapter, and specifically Section 10.46(g) the applicant shall submit documentation that the enclosed area below the regulatory flood protection elevation is designed and built in accordance with either the “Simplified Approach” or “Engineered Basement Option” found in FEMA Technical Bulletin 10-01, or shall be designed so that the structure is watertight with the 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.
 - iii. The finished fill elevation surrounding the structure shall be at or above the base flood elevation. Fill must be compacted with slopes protected by vegetative cover.

SECTION 7.0 GENERAL FLOODPLAIN DISTRICT (GF)

7.1 Permitted Uses:

- 7.11 The uses listed in Section 5.0 of this ordinance, Floodway District are allowed with a permit.
- 7.12 All other uses are subject to the floodway/flood fringe evaluation criteria specified in Section 7.2 below. Section 5.0 applies if the proposed use is determined to be in the Floodway District. Section 6.0 applies if the proposed use is determined to be in the Flood Fringe District.

7.2 Procedures for Determining Floodway Boundaries and Base Flood Elevations:

- 7.21 Requirements for Detailed Studies. Developments greater than 50 lots or 5 acres, or as requested by the zoning administrator, shall be subject to a detailed study to determine the regulatory flood protection elevation and the limits of the Floodway District. The determination of the floodway and flood fringe must be consistent with accepted hydrological and hydraulic engineering standards, and must include the following components, as applicable:
 - (a) Estimate the peak discharge of the base flood.
 - (b) Calculate the water surface profile of the base flood based upon a hydraulic analysis of the stream channel and overbank areas.
 - (c) Compute the floodway necessary to convey or store the base flood without increasing flood stages more than one-half (0.5) foot. A lesser stage increase than 0.5 foot is required if, as a result of the stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach must be assumed in computing floodway boundaries, unless development or geographic features warrant other analysis, as approved by the Department of Natural Resources.
- 7.22 Alternative Methods. For areas where a detailed study is not available or required, the base flood elevation must be determined using best available data. Until a floodway determination can be completed, the entire floodplain must be treated as floodway, with allowable activities restricted to those identified in Sections 5.1 and 5.3.
 - (a) Development allowed in floodways (e.g. bridges, culverts, grading, filling, stabilization projects) must not cumulatively increase flood stages more than one-half foot during a base flood event, as

determined by a professional engineer or by using accepted engineering practices approved by the Department of Natural Resources. A stage increase less than one-half foot must be used if increased flood damages would result.

- (b) Development prohibited in floodways (e.g. buildings) require a floodway/flood fringe determination to verify the development is within the flood fringe. The floodway/flood fringe determination must be done by a professional engineer or utilize other accepted engineering practices approved by the Department of Natural Resources. Any such proposal must assume a one-half foot stage increase for the purposes of determining the regulatory flood protection elevation to accommodate for future cumulative impacts.
- (c) For areas in and along lakes, wetlands, and other basins that are not affected by velocities, where the floodway has not been determined, an alternative to (a) and (b) is:
 - (1) All areas that are at or below the ordinary high water level as defined in Minnesota Statutes, Section 103G.005, Subd. 14 will be considered floodway, and all areas below the base flood elevation but above the ordinary high water level will be considered flood fringe, provided that within 25 feet of the ordinary high water level, or within the Shore Impact Zone as identified in the community's Shoreland ordinance, whichever distance is greater, land alterations shall be restricted to:
 - i. the minimum required to accommodate beach and access areas, and accessory structures as permitted, not to exceed a volume greater than 10 cubic yards; projects involving volumes exceeding 10 cubic yards require engineering analysis as provided in (a) and (b) above, whichever is applicable; and
 - ii. the minimum required to accommodate shoreline stabilization projects to correct an identified erosion problem as identified by a qualified resource agency.

7.23 The Zoning Administrator will review the submitted information and assess the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary. The assessment must include the cumulative effects of previous floodway encroachments. The Zoning Administrator may seek technical assistance from an engineer or other expert person, or agency, including the Department of Natural Resources.

7.24 Once the Floodway and Flood Fringe District boundaries have been determined, the Zoning Administrator must process the permit application consistent with the applicable provisions of Section 5.0 and 6.0 of this ordinance.

SECTION 8.0 SUBDIVISION STANDARDS

8.1 **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.

8.11 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.

8.12 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 base flood has been approved by Marshall County. 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.

8.13 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.

8.14 In the General Floodplain District, applicants must provide the information required in Section 7.2 of this ordinance to determine the base flood elevation, the Floodway and Flood Fringe District boundaries and the regulatory flood protection elevation for the subdivision site.

SECTION 9.0 UTILITIES, RAILROADS, ROADS, AND BRIDGES

- 9.1 **Utilities:** All utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the floodplain must be elevated to the regulatory flood protection elevation (RFPE) or located and constructed to minimize or eliminate flood damage.
- 9.2 **Public Transportation Facilities:** Railroad tracks, roads, and bridges to be located within the floodplain must comply with Sections 5.0 and 6.0 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.
- 9.3 **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, Part 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, Part 7080.2270, as amended.

SECTION 10.0 MANUFACTURED HOMES AND RECREATIONAL VEHICLES.

- 10.1 **Manufactured Homes:** Manufactured homes and manufactured home parks are subject to applicable standards for each floodplain district. In addition:
- 10.11 New and replacement manufactured homes must be elevated in compliance with Section 6 of this ordinance and must be securely anchored to a 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.
- 10.12 New manufactured home parks and expansions to existing manufactured home parks must meet the appropriate standards for subdivisions in Section 8 of this ordinance. New or replacement manufactured homes in existing manufactured home parks must meet the vehicular access requirements for subdivisions in Section 8.12 of this ordinance.
- 10.2 **Recreational Vehicles:** New recreational vehicle parks or campgrounds and expansions to existing recreational vehicle parks or campgrounds are prohibited in any floodplain district. Recreational vehicles placed in existing recreational vehicle parks, campgrounds or lots of record in the floodplain must either:
- 10.21 Meet the requirements for manufactured homes in Section 10.1, or
- 10.22 Be travel ready, meeting the following criteria:
- (a) The vehicle must have a current license required for highway use.
 - (b) 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.
 - (c) No permanent structural type additions may be attached to the vehicle.
 - (d) Accessory structures may be permitted in the Flood Fringe District, provided that they constitute a minimal investment, do not hinder the removal of the vehicle should flooding occur, and meet the standards outlined in Sections 4.2 and 6.22.

SECTION 11.0 ADMINISTRATION

- 11.1 **Duties:** A Zoning Administrator or other official must administer and enforce this ordinance.
- 11.2 **Permit Application Requirements:**

- 11.21 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:
- (a) A site plan showing all pertinent dimensions, existing or proposed buildings, structures, and significant natural features having an influence on the permit.
 - (b) Location of fill or storage of materials in relation to the stream channel.
 - (c) Copies of any required municipal, county, state or federal permits or approvals.
 - (d) Other relevant information requested by the Zoning Administrator as necessary to properly evaluate the permit application.
- 11.22 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 as being in compliance with applicable floodproofing standards in the State Building Code. Accessory structures designed in accordance with Section 6.22 of this ordinance are exempt from certification, provided sufficient assurances are documented. A registered professional engineer is required to certify that any development in established floodways must not cause any increase in flood elevations, and development in the general floodplain district will not cumulatively increase flood stages more than one-half foot, or less if increased damages would result.
- 11.23 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.
- 11.24 Recordkeeping of Certifications and As-Built Documentation. The Zoning Administrator must maintain records in perpetuity documenting:
- (a) all certifications referenced in Section 11.22 of this ordinance as applicable.
 - (b) Elevations complying with Section 6.21 of this ordinance. The Zoning Administrator must also maintain a record of the elevation to which structures and alterations to structures are constructed or floodproofed.
- 11.25 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).
- 11.26 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.

11.3 Variances:

- 11.31 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 5 of the General Zoning Ordinance.
- 11.32 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.
- 11.33 Additional Variance Criteria. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:

- (a) 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.
- (b) 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.
- (c) Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

11.34 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 flood level increases risks to life and property. Such notification must be maintained with a record of all variance actions.

11.35 General Considerations. The community may consider the following factors in granting variances and imposing conditions on variances and conditional uses in floodplains:

- (a) The potential danger to life and property due to increased flood heights or velocities caused by encroachments;
- (b) The danger that materials may be swept onto other lands or downstream to the injury of others;
- (c) The proposed water supply and sanitation systems, if any, and the ability of these systems to minimize the potential for disease, contamination and unsanitary conditions;
- (d) The susceptibility of any proposed use and its contents to flood damage and the effect of such damage on the individual owner;
- (e) The importance of the services to be provided by the proposed use to the community;
- (f) The requirements of the facility for a waterfront location;
- (g) The availability of viable alternative locations for the proposed use that are not subject to flooding;
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- (i) The relationship of the proposed use to the Comprehensive Land Use Plan and flood plain management program for the area;
- (j) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (k) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.

11.36 Submittal of Hearing Notices to the Department of Natural Resources. The Zoning Administrator must submit hearing notices for proposed variances to the Department of Natural Resources 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 area hydrologist.

11.37 Submittal of Final Decisions to the Department of Natural Resources. A copy of all decisions granting variances must be forwarded to the Department of Natural Resources within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective area hydrologist.

11.38 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.

11.4 Conditional Uses:

- 11.41 Administrative Review. An application for a conditional use permit under the provisions of this ordinance will be processed and reviewed in accordance with Section 7 of the General Zoning Ordinance.
- 11.42 Factors Used in Decision-Making. In passing upon conditional use applications, Marshall County must consider all relevant factors specified in other sections of this ordinance, and those factors identified in Section 11.35 of this ordinance.
- 11.43 Conditions Attached to Conditional Use Permits. In addition to the standards identified in Sections 5.4 and 6.4, Marshall County may attach such conditions to the granting of conditional use permits as it deems necessary to fulfill the purposes of this ordinance. Such conditions may include, but are not limited to, the following:
- (a) Limitations on period of use, occupancy, and operation.
 - (b) Imposition of operational controls, sureties, and deed restrictions.
 - (c) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.
- 11.44 Submittal of Hearing Notices to the Department of Natural Resources. The Zoning Administrator must submit hearing notices for proposed conditional uses to the Department of Natural Resources 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 area hydrologist.
- 11.45 Submittal of Final Decisions to the Department of Natural Resources. A copy of all decisions granting conditional uses must be forwarded to the Department of Natural Resources within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective area hydrologist.

SECTION 12.0 NONCONFORMITIES

- 12.1 **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 2.643(b) of this ordinance, are subject to the provisions below.
- 12.11 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 12.12 below. Expansion or enlargement of uses, structures or occupancies within the Floodway District is prohibited.
- 12.12 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 12.14 below.
- 12.13 If any nonconforming use, or any use of a nonconforming structure, is discontinued for more than one year, any future use of the premises must conform to this ordinance.
- 12.14 If any structure experiences a substantial improvement as defined in this ordinance, then the entire structure must meet the standards of Section 5.0 or 6.0 of this ordinance for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District, respectively. If the proposed development, including maintenance and repair during the previous 365 days, plus the costs of any previous alterations and additions since the first Flood Insurance Rate Map exceeds 50 percent of the market value of any nonconforming structure, the entire structure must meet the standards of Section 5.0 or 6.0 of this ordinance.
- 12.15 If any nonconformity is substantially damaged, as defined in 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 5.0 or 6.0 will apply depending upon whether the use or structure is in the Floodway or Flood Fringe, respectively.

- 12.16 If any nonconforming use or structure experiences a repetitive loss, as defined in Section 2.638 of this ordinance, it shall be considered substantially damaged and must not be reconstructed except in conformity with the provisions of this ordinance.

SECTION 13.0 VIOLATIONS AND PENALTIES

- 13.1 **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.
- 13.2 **Other Lawful Action:** Nothing in this ordinance restricts Marshall County 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.
- 13.3 **Enforcement:** Violations of the provisions of this ordinance will be investigated and resolved in accordance with the provisions of Section 9 of the General Zoning Ordinance. In responding to a suspected ordinance violation, Marshall County 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. Marshall County 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 14.0 AMENDMENTS

- 14.1 **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 Department of Natural Resources if it is determined that, through other measures, lands are adequately protected for the intended use.
- 14.2 **Required Approval:** All amendments to this ordinance must be submitted to and approved by the Department of Natural Resources prior to adoption.
- 14.3 **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 2.2 of this ordinance.

EFFECTIVE DATE: This ordinance shall be in full force and effect from and after its passage and approval and publication, as required by law and/or charter.

Adopted by the Marshall County Board

This 02 of March, 2021
(Day) (Month) (Year)

Attest: [Signature] County Board Chairperson

Attest: [Signature] County Auditor/Treasurer

Stamp with Community Seal:

