

SECTION 170

Special and Overlay Districts

170.01 General Purpose

Special and Overlay Districts recognize the presence of special community characteristics that traditional zoning districts do not adequately address. Special Districts provide for base districts that allow multiple land uses and flexible development, with the requirement that a specific plan for the area be submitted by applicants. Overlay Districts are used in combination with base districts to modify or expand base district regulations. Overlay Districts are adapted to special needs of different parts of the City of Glenwood.

The Overlay Districts are designed to achieve the following objectives:

- a. To recognize special conditions in specific parts of the City which require specific regulation.
- b. To provide flexibility in development and to encourage innovative design through comprehensively planned projects.

170.10 MU MIXED USE DISTRICT

170.101 Purpose

The MU Mixed Use District is intended to accommodate projects which combine several compatible land uses into an integrated development. The MU District may also be used to pre-designate parts of the city which are appropriate for a mixture of residential, commercial, office, and accessory uses. The District permits mixing residential areas with workplaces and services. Development in the MU District must accommodate transportation systems, pedestrian and bicycle movement, and surrounding environments.

170.102 Permitted Uses

Each ordinance establishing an MU District establishes the use types permitted within its boundaries.

170.103 Site Development Regulations

- a. The minimum area of any MU District is one acre.
- b. Prior to the issuance of any building permits or other authorization, all projects in the MU District shall receive approval by the City Council, following a recommendation by the Planning Commission. This approval may be granted for a specific plan for the development of an MU District in lieu of a plan for individual projects, provided that any subsequent developments are consistent with the specific plan.
- c. Applications for approval must contain at a minimum the following information:
 1. A detailed site map, including:
 - (a) a boundary survey
 - (b) site dimensions
 - (c) contour lines at no greater than five foot intervals
 - (d) adjacent public rights of way, transportation routes, and pedestrian or bicycle systems
 - (e) description of adjacent land uses
 - (f) utility service to the site and easements through the site
 - (g) description of other site features, including drainage, soils, or other considerations that may affect development.
 2. A development plan, including:
 - (a) a site layout, including the location of proposed buildings, parking, open

- space, and other facilities
 - (b) location, capacity, and conceptual design of parking facilities
 - (c) description of the use of individual buildings
 - (d) description of all use types to be included in the project or area, and maximum floor area devoted to each general use
 - (e) maximum height of buildings
 - (f) schematic location and design of open space on the site, including a landscaping plan
 - (g) vehicular and pedestrian circulation plan, including relationship to external transportation systems
 - (h) schematic building elevations and sections if required to describe the project
 - (i) grading plans
 - (j) proposed sewer and utility improvements
 - (k) location, sizes, and types of all proposed signage.
3. Specific proposed development regulations for the project, including:
- (a) the specific use types permitted within the proposed district
 - (b) maximum floor area ratios
 - (c) front, side, and rear yard setbacks
 - (d) maximum height
 - (e) maximum building and impervious coverage
 - (f) design standards applicable to the project.
4. A traffic impact analysis, if required by the City.

170.104 Adoption of District

- a. The Planning Commission and City Council shall review and evaluate each Mixed Use District application. The City may impose reasonable conditions, as deemed necessary to ensure that a Mixed Use Development shall be compatible with adjacent land uses, will not overburden public services and facilities and will not be detrimental to public health, safety and welfare.

- b. The Planning Commission, after proper notice, shall hold a public hearing and act upon each application.
- c. The Planning Commission may recommend amendments to MU district applications.
- d. The recommendation of the Planning Commission shall be transmitted to the City Council for final action.
- e. The City Council, after proper notice, shall hold a public hearing and act upon any Ordinance establishing a MU Mixed Use District. Proper notice shall mean the same notice established for any other zoning amendment.
- f. An Ordinance adopting a Mixed Use District shall require a favorable simple majority of the City Council for approval.
- g. Upon approval by the City Council, the Development Plan shall become a part of the Ordinance creating or amending the MU District. All approved plans shall be filed with the City Clerk.

170.105 Amendments

The Zoning Administrator is authorized at his/her discretion to approve amendments to an approved development plan, provided that:

- a. A written request is filed with the Zoning Administrator, along with information specifying the exact nature of the proposed amendment.
- b. The amendment is consistent with the provisions of this section.
- c. The amendment does not alter the approved site regulations of the development plan and does not materially alter other aspects of the plan, including traffic circulation, mixture of use types, and physical design.
- d. Any amendment not conforming to these provisions shall be submitted to the Planning Commission and City Council for action.

170.20 PD PLANNED UNIT DEVELOPMENT DISTRICT

170.201 Purpose

The PD Planned Development Overlay District is intended to provide flexibility in the design of planned projects; to permit innovation in project design that incorporates open space and other amenities; and to insure compatibility of developments with the surrounding urban environment. Planned developments often involve groupings of buildings or sites that are designed as an integrated unit on land under unified control or ownership at the time of grant of development permission. The requirements of a PD run with the land regardless of the subsequent sale or conveyance of property. The PD District may be used in combination with any base district specified in this Ordinance. The PD District, which is adopted by the City Council with the recommendation of the Planning Commission, assures specific development standards for each designated project.

170.202 Permitted Uses

Uses permitted in a PD Overlay District are those permitted in the underlying base district. A PD also may be combined with an MU Mixed Use District to allow a combination of use types not anticipated by conventional base districts.

170.203 Objectives of Planned Development Districts

In evaluating applications for PD Planned Development Overlay Districts, the Planning Commission and City Council shall consider the following general objectives.

a. Residential PD Districts

Residential PD Districts should be designed to produce more usable open space, provide better recreation opportunities, enhance pedestrian scale, protect or create neighborhood amenities and environmental features, and produce more attractive neighborhoods than those produced by conventional development techniques.

b. Commercial PD Districts

Commercial PD Districts should be designed to produce more attractive and functional clusters and commercial centers than the strip development that is frequently produced by the application of conventional zoning regulations. Techniques encouraged by PD Districts include consolidated access, shared parking, consistent architectural quality, improved pedestrian and trail access to commercial facilities, public space, and integrated landscaping and signage programs.

c. Industrial PD Districts

Industrial PD Districts should promote the establishment of industrial parks and to encourage groups of industrial buildings with integrated site design and architectural and landscaping themes.

d. PD Districts in Sensitive Contexts

PD Districts may be utilized to provide a high level of detail and define the requirements of project approval for developments proposed within settings that are so sensitive that normal zoning requirements, including landscaping and buffering requirements, do not provide sufficient protection for neighboring properties.

170.204 Site Development Regulations

Site Development Regulations are developed individually for each Planned Development District, but must comply with the minimum or maximum standards established for the base district, with the following exceptions:

- a. Lot area and lot width are not restricted, provided that the maximum density allowed for each base district is not exceeded.
- b. Maximum building coverage shall be the smaller of the allowed building coverage in the base district, or 60 percent.
- c. Setback requirements may be varied according to the specific Planned Development plan.

170.205 Access to Public Streets

Each PD District must abut a public street for at least 100 feet and gain access from that street.

170.206 Application Process

a. Development Plan

The application for a Planned Development District shall include a Development Plan containing the following information:

b. Application Requirements

An application for approval must contain at a minimum the following information:

- 1. A detailed site map, including:
 - (a) a boundary survey
 - (b) site dimensions
 - (c) contour lines at no greater than two foot intervals
 - (d) adjacent public rights of way, transportation routes, and pedestrian or bicycle systems
 - (e) description of adjacent land uses

- (f) utility service to the site and easements through the site
 - (g) description of other site features, including drainage, soils, or other considerations that may affect development.
2. A development plan, including:
- (a) A land use plan designating specific uses for the site and establishing site development regulations, including setback, height, building coverage, impervious coverage, density, and floor area ratio requirements.
 - (b) a site layout, including the location of proposed buildings, parking, open space, and other facilities
 - (c) location, capacity, and conceptual design of parking facilities
 - (d) description of the use of individual buildings
 - (e) schematic architectural plans and elevations sufficient to indicate a building height, bulk, materials, and general architectural design.
 - (f) a site development and landscaping plan, showing building locations, or building envelopes; site improvements; public or common open spaces; community facilities; significant visual features; and typical landscape plans.
 - (g) vehicular and pedestrian circulation plan, including relationship to external transportation systems
 - (h) schematic building elevations and sections if required to describe the project
 - (i) grading plans
 - (j) proposed sewer and utility improvements
 - (k) location, sizes, and types of all proposed signage.
3. A statistical summary of the project, including gross site area, net site area, number of housing units by type, gross floor area of other uses, total amount of parking, and building and impervious surface percentages.

170.207 Adoption of District

- a. The Planning Commission and City Council shall review and evaluate each Planned Unit Development application. The City may impose reasonable conditions, as deemed necessary to ensure that a PD shall be compatible with adjacent land uses, will not overburden public services and facilities and will not be detrimental to public health, safety and welfare.
- b. The Planning Commission, after proper notice, shall hold a public hearing and act upon each

application.

- c. The Planning Commission may recommend amendments to PD district applications.
- d. The recommendation of the Planning Commission shall be transmitted to the City Council for final action.
- e. The City Council, after proper notice, shall hold a public hearing and act upon any Ordinance establishing a PD Planned Unit Development Overlay District. Proper notice shall mean the same notice established for any other zoning amendment.
- f. An Ordinance adopting a Planned Development Overlay Zoning District shall require a favorable simple majority of the City Council for approval.
- g. Upon approval by the City Council, the Development Plan shall become a part of the Ordinance creating or amending the PD District. All approved plans shall be filed with the City Clerk.

170.208 Amendment Procedure

Major amendments to the Development Plan must be approved according to the same procedure set forth in Section 170.207.

170.209 Building Permits

The City shall not issue a building permit, certificate of occupancy, or other permit for a building, structure, or use within a PD District unless it is in compliance with the approved Development Plan or any approved amendments.

170.210 Termination of PD District

If no substantial development has taken place in a Planned Development District for three years following approval of the District, the Planning Commission shall reconsider the zoning of the property and may, on its own motion, initiate an application for rezoning the property.

170.30 NC HISTORIC NEIGHBORHOOD CONSERVATION OVERLAY DISTRICT

170.301 Purpose

The NC Historic Neighborhood Conservation Overlay District enables the adoption of special performance and development standards in combination with site development regulations of a base district for areas of special historical or architectural significance within the City of Glenwood. The District recognizes the importance of historically and architecturally significant districts to the character of Glenwood and provides for their conservation.

170.302 Application and Use

The NC Overlay District provides an opportunity to establish and apply special development controls and standards for areas in Glenwood with special physical or design characteristics. Examples of these standards may include but not be limited to:

- a. Variations or substitutions of development regulations, including revised minimum and maximum setbacks, lot sizes, heights, and other regulations, based on the unique characteristics of the neighborhood.
- b. Requirements for building design, materials, features, and orientations.
- c. Special requirements or permissions for signage.
- d. Limitations on maximum size and scale of buildings.
- e. Limitations on location of parking, driveways, and other features that have an impact on the fabric of a traditional neighborhood.

170.303 Procedure for Adoption

a. Proposal

The creation of an NC Overlay District may be initiated by the Planning Commission, the City Council, or by petition of the owner or owners of 51% of the property area within the proposed district.

b. Requirements for Application

An application for the creation of an NC Overlay District must include:

1. A statement describing the proposed district's special historical or architectural characteristics and stating the reasons for proposal of the district
2. A map indicating the boundaries of the proposed NC Overlay District, specifying the base district(s) included within these boundaries.
3. An inventory of the buildings or historically important sites located within the boundaries of the proposed district.

4. Supplemental site development regulations, design criteria, and performance standards that apply to the proposed district.

170.304 Adoption of District

- a. The Planning Commission, and City Council shall review and evaluate each NC Overlay District application.
- b. The Planning Commission, after proper notice, shall hold public hearings and act upon each application.
- c. The Planning Commission may recommend amendments to NC district applications.
- d. The recommendation of the Planning Commission shall be transmitted to the City Council for final action.
- e. The City Council, after proper notice, shall hold a public hearing and act upon any Ordinance establishing an NC Historic Overlay District.
- f. The Ordinance adopting the NC District shall include a statement of purpose, a description of district boundaries, and a list of supplemental site development regulations and performance standards.
- g. An Ordinance adopting an NC Overlay District shall require a favorable vote of a simple majority of the City Council for approval.
- h. Upon approval by the City Council, each NC Overlay District shall be shown on the Zoning Map, identified sequentially by order of enactment and referenced to the enacting Ordinance.
- i. Any protest against an NC Overlay District shall be made and filed as provided by the Code of Iowa, and amendments thereto.

170.305 Building Permits

Building or other development permits issued by the City in an NC District shall be consistent with the adopted NC District Ordinance and shall follow all procedures for review that are established by the City.

170.40 RC CONSERVATION DEVELOPMENT OVERLAY DISTRICT

170.401 Purpose

The RC Conservation Development Overlay District is intended to require development design standards and techniques in sensitive environmental areas in and around Glenwood that preserve unique landforms and the character of land. Glenwood's location in the Loess Hills produces special environments, which include the rolling hills north of the city. The techniques of the RC district require that the natural landforms determine the design and character of new residential development in these sensitive areas. Areas of environmental sensitivity and potential application of the RC Overlay District are established in the city's comprehensive development plan.

170.402 Process

Subdivisions in an RC Overlay district generally follow the approval procedures outlined in Section 179, establishing the process for preliminary and final plat approval. Projects which do not require subdivision follow approval procedures appropriate to the specific project, including conditional use permits, zoning amendments, site plan review, or other applicable measures. The requirements and standards included in this section are in addition to those established procedures.

170.403 Permitted Land Uses

Land uses permitted in an RC District are the same as those permitted in the underlying base district.

170.404 Permitted Yield

Developments in RC Overlay districts are permitted the same density on developable area as would be allowed to conventional residential development in the underlying zoning district. Yield in housing units (Y) is calculated by the formula:

$$Y = \frac{.90(TA - UA)}{SA}$$

where:

TA = Total parcel area

UA = Undevelopable areas, defined as the sum of wetlands designated by the National Wetlands Survey, Water of the United States, slopes exceeding 20%, floodways, and soils subject to slumping, as indicated on the medium intensity maps contained in the county soil survey published by the USDA Soil Conservation Service, is subtracted from the total parcel area.

.90 = an allowance for the typical percentage of land available after deducting the area of public streets and right-of-ways serving a low-density residential development.

SA = Minimum site area per unit required by the underlying zoning district.

170.405 Minimum Percentage of Open Space

- a. The minimum percentage of land that shall be designated as permanent open space, not to be further subdivided, and protected through a conservation easement held by the City of Glenwood, Mills County, or by a recognized land trust or conservancy, shall be a minimum of 35% of the Net Developable Area, defined as .90(TA-UA)
- b. The above areas shall generally be designated as undivided open space, to facilitate easement monitoring and enforcement, and to promote appropriate management by a single entity according to approved land management standards.
- c. All undivided open space and any lot capable of further subdivision shall be restricted from further subdivision through a permanent conservation easement, in a form acceptable to the City and duly recorded in the Mills County Recorders Office.
- d. The required open space may be used, without restriction, for underground drainage fields for individual or community septic systems, and for "spray fields" for spray irrigation purposed in a "land treatment" sewage disposal system. However, "mound" systems protruding above grade and aerated sewage treatment ponds shall be limited to no more than ten percent of the required minimum open space.
- e. Stormwater management ponds or basins may be included as part of the minimum required open space, as may land within the rights-of-way for underground pipelines. However, land within the rights-of-way of high tension power lines shall not be included as comprising part of the minimum required open space.

170.406 Conservation Areas as Open Space

- a. The location of open space shall be consistent with the policies contained in the City of Glenwood's Comprehensive Development Plan, and with the recommendations contained in this section and the following section ("Evaluation Criteria").
- b. Open space shall be comprised of two types of land; "Primary Conservation Areas" and "Secondary Conservation Areas." All lands within both Primary and Secondary Conservation Areas shall be protected by a permanent conservation easement prohibiting future development, and setting other standards safeguarding the site's special resources from negative changes.
 - 1. Primary Conservation Areas. This category consists of wetlands designated by the National Wetlands Survey, Water of the United States, slopes exceeding 20%, floodways, and soils subject to slumping, as indicated on the medium intensity maps contained in the county soil survey published by the USDA Soil Conservation Service.
 - 2. Secondary Conservation Areas. Secondary Conservation Areas comprise at least 35 percent of the Net Developable Area and shall be designated and permanently protected. Full density credit shall be allowed for land in this category that would otherwise be buildable under local, state, and federal regulations, so that their development potential is not reduced by this designation. Such density credit may be applied to other unconstrained parts of the site. Secondary Conservation Areas are determined by specific project design and typically include all or some of the following kinds of resources:

- (a) A 100-foot deep greenway buffer along all waterbodies and watercourses,

and a 50-foot greenway buffer alongside wetlands soils classified as "very poorly drained" in the medium intensity county soil survey of the USDA Natural Resources Conservation Service. These areas must be conserved as Secondary Conservation Areas but are considered as Developable Areas for the purpose of calculating yield.

- (b) 100-year floodplains.
- (c) woodlands, individual specimen trees, or small stands of significant trees
- (d) aquifer recharge areas and areas with highly permeable ("excessively drained") soil
- (e) significant wildlife habitat areas
- (f) Class I and Class II farmlands
- (g) historic, archaeological or cultural features listed (or eligible to be listed) on the National Register of Historic Places.
- (h) slopes in excess of 15%
- (i) ridgelines and view corridors
- (j) land with soils that do not support residential development.

170.407 Location Standards for Open Space

a. Access to Residential Lots

Undivided open space shall be directly accessible to the largest practicable number of lots within a conservation subdivision. To achieve this, the majority of house lots should abut undivided open space in order to provide direct views and access. Safe and convenient pedestrian access to the open space from all lots not adjoining the open space shall be provided (except in the case of farmland, or other resource areas vulnerable to trampling damage or human disturbance). Where the undivided open space is designated as separate, noncontiguous parcels, no parcel shall consist of less than three (3) acres in area nor have a length-to-width ratio in excess of 4:1, except such areas that are specifically designed as village greens, ballfields, upland buffers to wetlands, waterbodies or watercourses, or trail links.

b. Interconnection of Open Spaces

Protected open spaces in each new subdivision are encouraged to adjoin each other, ultimately forming an interconnected network of Primary and Secondary Conservation Areas across the county. The only elements of the network that would necessarily be open to the public are those lands that have been required to be dedicated for public use and typically configured in a linear fashion as an element of Glenwood's long-range open space network through the Comprehensive Development Plan.

170.408 Special Processes for Conservation Developments

The review and approval process for subdivisions in the RC Overlay District is the same as that for conventional subdivisions, as set forth in Section 178. Additional provisions and approval processes are set forth in this section.

a. Existing Features Plan

1. Plans analyzing each site's special features are required for all proposed subdivisions. The Existing Features Plan shall include at a minimum (1) a contour map based at least upon topographical maps published by the U.S. Geological Survey; (2) the location of severely constraining elements such as steep slopes (over 25%), wetlands, watercourses, intermittent streams and 100 year floodplains, and all rights-of-way and easements; (3) soil boundaries as shown on USDA Natural Resources Conservation Service medium-intensity maps; and (4) the location of significant features such as woodlands, treelines, open fields or meadows, scenic views into or out from property, watershed divides and drainage ways, fences or stone walls, rock outcrops, and existing structures, roads, tracks and trails.

2. The Existing Features Plan shall identify both Primary Conservation Areas and Secondary Conservation Areas, as described in Section 170.406.b.1 and 170.406.b.2 of this ordinance. The Existing Features Plan shall form the basis for the Conceptual Preliminary Plan, which shall show the tentative location of houses, streets, lot lines, and greenway lands in new subdivisions, according to the four-step design process described below.

b. Conceptual Preliminary Plan

A sketch plan or a Conceptual Preliminary Plan shall be submitted for all proposed subdivisions to the Building Official before submission of a formal preliminary plat application. A Conceptual Preliminary Plan presents a conceptual layout for greenway and open lands, house sites, and street alignments. Each Conceptual Preliminary Plan shall follow a four-step design process, as described below. Applicants shall be prepared to demonstrate to the City Planner that these four design steps were followed in the preparation of the plan.

1. *Step One: Designating the Open Space.* During the first step, all potential conservation areas (both primary and secondary as defined above) are identified, using the Existing Features Plan.

2. *Step Two: Location of House Sites.* During the second step, potential house sites are located. Subdivision applicants shall identify tentative house sites on the Conceptual Preliminary Plan and proposed house sites on the detailed Final Plan. House sites should generally be located not closer than 100 feet from Primary Conservation Areas, but may be situated within 50 feet of Secondary Conservation Areas, in order to enjoy views of the latter without negatively affecting the former.

3. *Step Three: Street and Lot Layout.* The third step consists of aligning proposed streets to provide vehicular access to each house in the most reasonable and economical way. When lots and access streets are laid out, they shall be located in a way that avoids or at least

minimizes adverse impacts on both the Primary and Secondary Conservation Areas. To the greatest extent practicable, wetland crossings and streets traversing existing slopes over 15% shall be strongly discouraged. Street connections shall generally be encouraged to minimize the number of new cul-de-sacs to be maintained by the city and to facilitate easy access to and from homes in different parts of the property (and on adjoining parcels). Where cul-de-sacs are necessary, those serving six or fewer homes may be designed with "hammerheads" facilitating three-point turns.

4. *StepFour: Lot Lines.* The fourth step is to draw in the lot line (where applicable). These are generally drawn midway between house locations and may include L-shaped "flag lots" meeting the City's minimum standards for the same.

5. *Review and Comments.* The Building Official and City Engineer shall return written comments on the Conceptual Preliminary Plan to the applicant within 30 days of submittal. These comments should recommend to be made prior to submittal of a Preliminary Plat application.

170.409 Ownership and Maintenance of Common Open Space

Developments in the RC Overlay District shall provide for ownership and maintenance of common open space. Common open space within a development shall be owned, administered, and maintained by any of the following methods, either individually or in combination, and subject to approval by the City.

a. Offer of Dedication

The City of Glenwood or Mills County shall have the first and last offer of dedication of undivided open space in the event said land is to be conveyed. Dedication shall take the form of a fee simple ownership. The City or other public agency may, but shall not be required to accept undivided open space provided: (1) such land is accessible to the residents of the city/county; (2) there is no cost of acquisition other than any costs incidental to the transfer of ownership such as title insurance; and (3) the city/county agrees to and has access to maintain such lands. Alternatively, a public agency may accept an easement, subject to the above conditions.

b. Homeowners Association

The undivided open space and associated facilities may be held in common ownership by a homeowners' association. The association shall be formed and operated under the following provisions:

1. The developer shall provide a description of the association, including its bylaws and methods for maintaining the open space.

2. The association shall be organized by the developer and shall be operated with financial assistance from the developer, before the sale of any lots within the development.

3. Membership in the association is automatic (mandatory) for all purchasers of homes therein and their successors. The conditions and timing of transferring control of the

association from developer to homeowners shall be identified.

4. The association shall be responsible for maintenance of insurance and taxes on undivided open space, enforceable by liens placed by the city/county on the association. The association may place liens on the homes or houselots of its members who fail to pay their association dues in a timely manner. Such liens may require the imposition of penalty interest charges.

5. The members of the association shall share equitably the costs of maintaining and developing such undivided open space. Shares shall be defined within the association bylaws.

6. In the event of a proposed transfer, within the methods here permitted, of undivided open space land by the homeowners' association, or of the assumption of maintenance of undivided open space land by a public agency, notice of such action shall be given to all property owners within the development.

7. The homeowners' association may lease open space lands to any other qualified person, or corporation, for operation and maintenance of open space lands.

c. Condominiums

The undivided open space and associated facilities may be controlled through the use of condominium agreements. Such agreements shall be in conformance with the state statute. All undivided open space land shall be held as a "common element."

d. Transfer of Easements to a Private Conservation Organization.

An owner may transfer easements to a private, nonprofit organization, among whose purposes it is to conserve open space and /or natural resources, provided that:

1. The organization is acceptable to the City, and is a bona fide conservation organization with perpetual existence;

2. The conveyance contains appropriate provisions for proper reverter or retransfer in the event that the organization becomes unwilling or unable to continue carrying out its functions; and

3. A maintenance agreement acceptable to the commission is entered into by the developer and the organization.

170.410 Maintenance Standards

a. Financial Responsibility

The ultimate owner of the open space (typically a homeowners' association) shall be responsible for raising all monies required for operations, maintenance, or physical improvements to the open space through annual dues, special assessments, etc. The homeowners' association shall be authorized under its bylaws to place liens on the property

of residents who fall delinquent in payment of such dues or assessments.

b. Maintenance Enforcement

1. In the event that the association or any successor organization shall, at any time after establishment of a development containing undivided open space, fail to maintain the undivided open space in reasonable order and condition in accordance with the development plan, the City may serve written notice upon the owner of record, setting forth the manner in which the owner of record has failed to maintain the undivided open space in reasonable condition.
2. Failure to adequately maintain the undivided open space in reasonable order and condition constitutes a violation of this ordinance.
3. Should any bill or bills for maintenance of undivided open space by the City or County be unpaid, a late fee of fifteen percent shall be added to such bills and a lien shall be filed against the premises in the same manner as other municipal claims.

170.411 Evaluation Criteria

In evaluating the layout of lots and open space, the following criteria will be considered by the Planning Commission and City Council as indicating design appropriate to the site's natural, historic, and cultural features, and meeting the purposed of this ordinance:

- a. Protection of floodplains, wetlands, and steep slopes from clearing, grading, filling, or construction except as may be approved for essential infrastructure or active or passive recreation amenities.
- b. Preservation and maintenance of woodlands, existing fields, pastures, meadows, and orchards, and sufficient buffer areas to minimize conflicts between residential and agricultural uses.
- c. Maintenance of buffers at least 100 feet in depth adjacent to wetlands and surface waters, including creeks, streams, springs, lakes and ponds.
- d. Design around existing treelines between fields or meadows, and minimal impacts on large woodlands (greater than five acres), especially those containing many mature trees or a significant wildlife habitat.
- e. Maintenance of scenic views.
- f. Avoidance of new construction on prominent hilltops or ridges, by taking advantage of lower topographic features.
- g. Protection of wildlife habitat areas of species listed as endangered, threatened, or of special concern by the U.S. Environmental Protection Agency.
- h. Design around and preserves sites of historic, archaeological, or cultural value, including stone walls, barn foundations, cellar holes, earthworks, and burial grounds.

- i. Protection of rural character and improves public safety and vehicular carrying capacity by avoiding development fronting directly onto existing public roads.
- j. Landscaping of common areas if appropriate.
- k. Provision of active or passive recreational areas in suitable locations that offer convenient access by residents and adequate screening from nearby houselots.
- l. Inclusion of a pedestrian circulation system providing access between properties, activities, or special features within the neighborhood open space system. All roadside footpaths should connect with off-road trails.
- m. Provision of open space that is reasonably contiguous, avoiding fragmented open spaces.

170.500 FP FLOODPLAIN/ FLOODWAY OVERLAY DISTRICT

170.501 Purpose

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize losses to property by applying the provisions of this ordinance to:

1. Restrict or prohibit uses which are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities.
2. Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction.
3. Protect individuals from buying lands which are unsuitable for intended purposes because of flood hazard.
4. Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program when identified by the Federal Insurance Administration as a flood prone community.

170.502 Floodplain and Floodway Overlay Districts: Findings Of Fact

a Flood Losses Resulting from Periodic Inundation

Flood hazard areas of the City of Glenwood, Iowa, are subject to inundation which results in loss of life or 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, all of which adversely affect the public health, safety and general welfare.

1. General Causes of These Flood Losses

These flood losses are caused by (a) the cumulative effect of obstruction in floodways causing increases in flood heights and velocities, (b) the occupancy of flood areas by uses vulnerable to floods or hazardous to other which are inadequately elevated or otherwise protected from flood damages.

2. Methods Used to Analyze Flood Hazards

This ordinance uses a reasonable method of analyzing flood hazards which consists of a series of interrelated steps.

- a) Selection of a base flood which is based upon engineering calculations which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated and the depth of inundation. The base flood selected for this ordinance is representative of large floods which are reasonably characteristic of what can be expected to occur on the particular streams subject to this ordinance. It is in the general order of a flood which could be expected to have a one (1 %) percent chance of occurrence in any one year, as delineated by applicable Flood Insurance Studies and the Federal Emergency Management Administration's Flood Insurance Rate Maps and Flood Boundary and Floodway Map, or any

subsequent effective Flood Insurance Studies, Rate Maps, and Flood Boundary and Floodway Maps issued after the effective date of this ordinance and adopted by the City of Glenwood.

b) Calculation of water surface profiles based upon a hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the base flood.

c) Computation of the floodway required to convey this flood without increasing flood heights more than 1 foot at any point.

d) Delineation of floodway encroachment lines within which no obstruction is permitted which would cause any increase in flood height.

e) Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines but which still is subject to inundation by the base flood.

b. Land to Which Ordinance Applies

This ordinance shall apply to all lands within the jurisdiction of the City of Glenwood identified on the Flood Insurance Rate map (FIRM) as numbered and unnumbered A zone and/or within the Overlay Districts FP and FW established in this ordinance. In all areas covered by this ordinance, no development shall be permitted except upon a permit to develop granted by the City Council or its duly designated representative under such safeguards and restrictions as the City Council may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community as contained in the City Code.

c. Enforcement Officer

The Zoning Administrator of the City of Glenwood is hereby designated as the City Council's duly designated Enforcement Officer under this ordinance.

d. Rules for Interpretation of District Boundaries

The boundaries of the floodway and floodway fringe overlay districts shall be determined by scaling distances on the official zoning map. Where interpretation is needed to the exact location of the boundaries of the districts as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the Enforcement Officer shall make the necessary interpretation. The base flood elevation for the point in question shall be the governing factor in locating the district boundary on the land. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

e. Compliance

No development located within known flood hazard areas of the community shall be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

f. Abrogation and Greater Restrictions

It is not intended by this ordinance to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this ordinance imposes greater restrictions, the provision of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

g. Interpretation

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the City of Glenwood and shall not be deemed a limitation or repeal of any other powers granted by state statute.

h. Warning and Disclaimer of Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside floodway and floodway fringe district boundaries or land uses permitted within such districts will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Glenwood or any officer or employee thereof for any flood damages that may result from reliance on this ordinance or any administrative decision lawfully made thereunder.

i. Severability

If any section, clause, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

j. Application for Appeal

Where a request for a permit to develop is denied by the Zoning Administrator, the applicant may apply for such permit or variance directly to the Board of Adjustment. Procedures for appeals to the Board of Adjustment shall proceed as set forth by Section 177.08 of this Ordinance.

170.503 Floodplain and Floodway Permits and Administration

a. Permit Required

No person, firm, or corporation shall initiate any development or substantial improvement or cause the same to be done without first obtaining a separate permit for development as defined in this section.

b. Administration

1. The Zoning Administrator is hereby appointed to administer and implement the provisions of this ordinance.

2. Duties of the Zoning Administrator shall include, but not be limited to:

- a) Review of all development permits to assure that sites are reasonable, safe from flooding and that the permit requirements of this ordinance have been satisfied.
- b) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or Local Governmental agencies from which prior approval is required.
- c) Notify adjacent communities and the Department of Natural Resources prior to any alteration or relocation of a watercourse, and shall submit evidence of such notification to the Federal Insurance Administration when participating in the National Flood Insurance Program.
- d) Notify the Department of Natural Resources of any proposed construction and development activity in floodplain areas, and/or upon land situated within the Floodplain/Floodway Overlay Zoning District.
- e) When floodproofing is utilized for a particular structure, the Zoning Administrator shall be presented certification from a registered professional engineer or architect.

c. Application for Permit

To obtain a permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every such application shall:

1. Identify and describe the work to be covered by the permit.
2. Describe the land on which the proposed work is to be done by lot, block, tract and house and street address, or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use or occupancy for which the proposed work is intended.
4. Be accompanied by detailed plans for the proposed construction.
5. Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.
6. Give such other information as reasonably may be required by the Zoning Administrator or City Engineer.

170.504 Establishment of Zoning Districts

The mapped flood plain area within the jurisdiction of this ordinance are hereby divided into the two following districts: A Floodway Overlay District (FW) and a Floodplain Overlay District (FP) as identified in the official Flood Plain Study. Within these districts, all uses not meeting the standards of this ordinance and those standards of the underlying zoning district shall be prohibited. These zones shall be consistent with the numbered and unnumbered A Zones as identified on the official FIRM when identified in the Flood Insurance Study provided by the

Federal Insurance Administration.

170.505 Standards for Floodway Overlay District and Floodplain Overlay District

a. No permit for development shall be granted for new construction, substantial improvement or other improvements including the placement of manufactured homes within the identified flood plain unless the conditions of this section are satisfied.

b. All areas identified as unnumbered A Zones by the Federal Insurance Administration are subject to inundation of the 100-year flood; however, the water surface elevation was not provided. The unnumbered A Zones shall be subject to all development provisions of this ordinance. If Flood Insurance Study Data is not available, the community shall utilize any base flood elevation data currently available within its area of jurisdiction. Further, in cases of proposed development within unnumbered "A" zones, the developer's engineer shall be required to conduct the necessary studies to determine the 100 year flood elevation and its extent in relation to such development.

c. New construction, subdivision proposals, substantial improvement, prefabricated buildings, placement of manufactured homes and other development shall require:

1. Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads including the effect of buoyancy.

2. New or replacement water supply systems and/or sanitary sewage systems designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination.

3. Construction with materials resistant to flood damage, utilizing methods and practices that minimize flood damages, and with electrical, heating, ventilation that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

4. All utility and sanitary facilities be elevated or floodproofed one foot above the regulatory flood elevation. Such floodproofing is permitted only for non-residential properties.

5. That until a floodway has been designated, no development including landfill, may be permitted within the identified flood plain unless the applicant for the land use has demonstrated that the proposed use, when combined with all other existing and reasonably anticipated uses, will not increase the water surface elevation of the 100-year flood more than one (1') foot on the average cross-section of the reach in which the development or landfill is located as shown in the official flood plain study incorporated by reference herein.

6. Storage of Materials and Equipment

a) The storage or processing of materials that are buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.

b) Storage of other materials or equipment may be allowed if not subject to major damage by

floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

7. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, be required to assure that:

- a) All such proposals are consistent with the need to minimize flood damage.
- b) All public utilities and facilities, such as sewer, gas, electrical and water systems are located, elevated and constructed to minimize or eliminate flood damage.
- c) Adequate drainage is provided so as to reduce exposure to flood hazards.
- d) Proposals for development (including proposals for manufactured home parks and subdivisions) of five (5) acres or fifty (50) lots, whichever is less, include within such proposals the regulatory flood elevation.

170.506 Floodplain Overlay District: Regulations

a. Permitted Uses

Any use permitted in the underlying base district shall be permitted in the Floodplain Overlay District. No use shall be permitted in the district unless the standards of this section are met.

b. Standards for the Floodplain Overlay District

- 1. Any new construction or substantial improvements of residential structures shall have the lowest floor, including basement elevated one foot above the base flood elevation.
- 2. Any new construction or substantial improvements of non-residential structures shall have the lowest floor, including basement, elevated one foot above the base flood elevation, or, together with attendant utility and sanitary facilities, shall be floodproofed so that below such a level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydro-dynamic loads and effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Enforcement Official. Such floodproofing is permitted only for non-residential properties.
- 3. All new construction and substantial improvements that fully enclosed areas below the lowest floor that are subject to flooding shall be designated to automatically equalize hydro-static flood forces or exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by the registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be not higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.



PETERS
LAW FIRM,
P.C.

October 17, 2003

To Whom It May Concern

233 PEARL STREET
P.O. BOX 1078
COUNCIL BLUFFS,
IOWA 51502-1078
712-328-3157
FAX: 712-328-9092

Re: Opinion for the Floodplain Overlay District Regulations; §170.506 of Unified
Land Development Ordinance

GLENWOOD OFFICE
10 NORTH WALNUT
P.O. BOX 189
GLENWOOD, IA 51534
712-527-4877
FAX: 712-527-3418

To Whom It May Concern:

As city attorney for Glenwood, I am requested to offer my opinion concerning the
following.

NEOLA OFFICE
401 FRONT STREET
P.O. BOX 282
NEOLA, IA 51559
712-485-2265

Issue

Which requirements of §170.506 of the Unified Land Development Ordinance apply
to the construction of a garage. For purposes of this opinion, it is presumed garage means
that which is either attached or detached to a residential structure.

*AMES A. CAMPBELL
*JANIS M. GRAY
*JAMES A. THOMAS
*LEW. DITMARS
SCOTT H. PETERS
JOHN M. McHALE*
JACOB J. PETERS*
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JON E. HEISTERKAMP*
JOHN M. FRENCH*
MATTHEW G. WOODS
JOHN C. RASMUSSEN*
JOHN D. KWAPNIOSKI*
JENNIFER K. SEWELL*

*Also Admitted in NE

Applicable Law

Section 170.506 entitled "Floodplain Overlay District: Regulations", provides in
pertinent part as follows:

"a. Permitted Uses. Any use permitted in the underlying base district shall
be permitted in the Floodplain Overlay District. No use shall be permitted
in the district unless the standards of this section are met.

b. Standards for the Floodplain Overlay District.

(1) Any new construction or substantial improvements of non-
residential structures shall have the lowest floor, including basement,
elevated one foot above the base flood elevation.

(2) Any new construction or substantial improvements of non-
residential structures shall have the lowest floor, including basement,
elevated one foot above the base flood elevation, or, together with attendant
utility and sanitary facilities, shall be floodproofed so that below such a level
the structure is watertight with walls substantially impermeable to the
passage of water and with structural components having the capability of
resisting hydrostatic and hydro-dynamic loads and effect of buoyancy. A
registered professional engineer or architect shall certify that the standards

of this subsection are satisfied. Such certification shall be provided to the Enforcement Official. Such floodproofing is permitted only for non-residential properties.

(3) All new construction and substantial improvements that fully enclosed areas below the lowest floor are subject to flooding shall be designated to automatically equalize hydro-static flood forces or exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by the registered professional engineer or architect or meet or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall not be higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters."

Analysis

If a garage is deemed a "residential structure" then subsection (b)(1) of section 170.506 applies and the property owner must elevate the floor one foot above base foot elevation. If a garage is considered a "non-residential structure", then subsection (b)(2) of section 170.506 applies, and the property owner is then provided with the choice of either elevating the garage one foot above the base flood level elevation, or, floodproof in accord with subsection (b)(2).

Unfortunately, the Unified Land Development Ordinance does not define either "residential structures" or "non-residential structures". A "garage" is defined as an "accessory building or portion of a main building used primarily for storage of motor vehicles". *See Section 166.10(1)*. A "housing unit or dwelling unit" is defined as "a building or a portion of a building arranged for and intended for occupancy as an independent living facility for one family, including permanent provisions for cooking. *See Section 166.11(3)*. "Accessory structure" is defined as "a structure which is incidental to and customarily associated with a specific principal use or building on the same site." *See Section 166.04(2)*. Likewise, "accessory use" is defined as "a use which is incidental to and customarily associated with a specific principal use on the same site." *See Section 166.04(3)*.

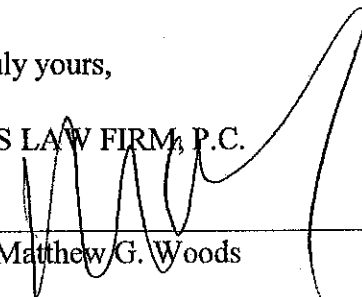
Clearly, a garage is an "accessory structure" to a residential structure. Based upon the definitions provided in the Unified Land Development Ordinance as set forth above, a garage, as an accessory to a residential structure, should be deemed as a "residential structure" as regards the necessary floodproofing requirements set forth in §170.506. Because it is my conclusion that a garage is a residential structure for purposes of §170.506,

and as a matter of uniformity and fairness, the distinction between the garage being either "attached" or "detached" should not be made. Thus, any garage, other than a commercial garage, should be subject to the standards of §170.506(b)(1), rather than 170.506(b)(2) of the Unified Land Development Ordinance. Subsection (b)(3) is applicable in all instances.

Very truly yours,

PETERS LAW FIRM, P.C.

By


Matthew G. Woods

MGW:hdr

4. Within AH zones, adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

5. Manufactured Homes

a) All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with local building codes or FEMA guidelines. In the event that over-the-top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:

(i) Over -the-top ties shall be provided at each of the four corners of the manufactured home with two additional ties per side at intermediate locations, and manufactured homes less than 50 feet long requiring one additional tie per side.

(ii) Frame ties shall be provided at each corner of the home with five additional ties per side at intermediate points, and manufactured homes less than 50 feet long requiring four additional ties per side.

(iii) All components of the anchoring system shall be capable of carrying a force of 4800 lbs.

(iv) Any additions to manufactured homes shall be similarly anchored.

b) All manufactured homes to be placed within Zones AL-30, AH and AE on the community's FIRM shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of the Uniform Building Code.

c. AO Zones: Special Regulations

Located within the areas of special flood hazard are areas designated as AO Zones. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. Therefore, the following provisions apply with AO Zones:

1. All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as 1 foot above the depth number specified in feet on the community's FIRM.

2. All new construction and substantial improvements of nonresidential structures shall:

a) Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as 1 foot above the depth number specified in feet on the community's FIRM; or

b) Together with attendant utility and sanitary facilities be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effect of buoyancy. Such certification shall be provided to the official as set forth in Section 170.503.

c) Adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

170.507 Floodway Overlay Districts

a. Permitted Uses

Only uses having a low flood-damage potential and not obstructing flood flows shall be permitted within the Floodway District to the extent that they are not prohibited by any other ordinance and provided that they do not require structures fill or storage of materials or equipment. No use shall increase the flood levels of the base flood elevation. These uses are subject to the standards of Sections 170.506 and other applicable sections.

1. Agricultural uses such as general farming, pasture, nurseries, forestry.
2. Accessory residential uses such as lawns, gardens, parking and play areas.
3. Nonresidential areas such as loading areas, parking, and airport landing strips.
4. Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves. New placement of residential structures including manufactured homes is prohibited within the identified floodway (FW) area.
5. In Zone A unnumbered, obtain, review and reasonably utilize any floodway data available through Federal, State or Local sources in meeting the standards of this section.

170.508 Request For Variances From District Requirements

- a. The Board of Adjustment, as established by the City of Glenwood, shall hear and decide appeal and requests for variances from the requirements of this ordinance.
- b. The Board of Adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Zoning Administrator in the enforcement or administration of this ordinance.
- c. Any person aggrieved by the decision of the Board of Adjustment or any taxpayer may appeal such decision to the District Court as provided by the Code of Iowa.
- d. In passing upon such applications, the Board of Adjustment shall consider all technical evaluation, all relevant factors, standards specified in other sections of this ordinance, and:
 1. The danger that materials may be swept onto other lands to the injury of others.

2. The danger of life and property due to flooding or erosion damage.
3. The susceptibility of proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
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 of alternative locations, not subject to flooding or erosion damage, for the proposed use.
7. The compatibility of the proposed use with existing and anticipated development.
8. The relationship of the proposed use to the comprehensive plan and flood plain management program for that area.
9. The safety of access to the property in time of flood for ordinance and emergency vehicles.
10. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effect of wave action, if applicable, expected at the site.
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.

e. Conditions for Variance

1. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level providing terms 2. through 6. below have been fully considered. As the lot size increases beyond the one-half acre, the technical jurisdiction required for issuing the variance increases.
2. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.
3. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. In addition to the criteria for variances set forth in Section 177.09 of this Ordinance, variances shall only be issued 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 the 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.

6. Any applicant to whom a variance is granted shall be given a written notice that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

170.509 Zoning Regulations For Nonconforming Uses

a. Continuance of Nonconforming Uses

A structure or the use of a structure or premises which was lawful before the passage or amendment of the ordinance but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions:

1. No such use or substantial improvement of that use shall be expended, changed, enlarged, or altered in a way which increases its nonconformity.
2. If such use is discontinued for twelve (12) consecutive months, any future use of the building premises shall conform to this ordinance. The Water Department shall notify the Building Inspector in writing of instances of nonconforming uses where utility services have been discontinued for a period of twelve (12) months.
3. Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue a nonconforming uses.

b. Replacement of Residential Uses

If any residential nonconforming use of structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred within those areas identified as floodway (FW). This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

c. Replacement of Non-Residential Uses

If any non-residential nonconforming use of structure is destroyed by any means, including flood, it should not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of this ordinance. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

170.510 Definitions

Unless specifically defined below, words or phases used in this ordinance shall be interpreted so

as to give them the same meaning as they have in common usage and so as to give this ordinance its most reasonable application.

Actuarial Rates. Or "risk premium rates" are those rates established by the Federal Insurance Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with 42 U.S.C. 4014 and the accepted actuarial principles. Actuarial rates include provisions for operating costs and allowances.

Appeal. A request for a review of the Zoning Administrator's interpretation of any provision of this ordinance or a request for a variance.

Area of Shallow Flooding. A designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard. The land in the flood plain within a community subject to one percent or greater chance of flooding in any given year.

Base Flood Elevation. Elevation indicated in the official flood plain study as the elevation of the 100-year flood.

Base Flood Protection Elevation. An elevation one foot higher than the water surface elevation of the base flood.

Channel. A natural or artificial watercourse of perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow, thus, is that water which is flowing within the limits of a defined channel.

Community. Any state or area or political subdivision thereof which has authority to adopt and enforce flood plain management regulations for the area within its jurisdiction.

Development. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Existing Construction (For the purposes of determining rates) structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRM's effective before that date. "Existing Construction" may also be referred to as "existing structures".

Flood or Flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from (1) the overflow of inland or tidal waters; (2) the unusual and rapid accumulation of runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM). An official map of a community, on which the Flood Insurance Study has delineated the Flood Hazard Boundaries and the zones establishing insurance rates applicable to the community.

Flood Insurance Study. The official report provided by the Federal Emergency Management

Agency. The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.

Flood Plain Management. The operation of an overall program of corrective and preventative measures for reducing flood damage, including but not limited to, emergency preparedness plan, flood control works, and flood plain management regulations.

Flood Protection System. Those physical structural works constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard". Such a system typically includes levees or dikes. These specialized modifying works are those constructed in conformance with sound engineering standards.

Floodproofing. Any combination of structural and non-structural additions, changes, or adjustments to structures, including utility and sanitary facilities, which would preclude the entry of water. Structural components shall have the capability of resisting hydrostatic and hydrodynamic loads and effect of buoyancy.

Floodplain (FP). That area of the flood plain, outside of the floodway, that on an average is likely to be flooded once every 100 years (i.e. that has a one percent chance of flood occurrence in any one year.)

Floodway (FW). The channel of a river or other watercourse and the adjacent portion of the flood plain that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot at any point assuming equal conveyance reduction outside the channel from the two sides of the flood plain.

Freeboard. A factor of safety usually expressed in feet above a flood level for purposes of flood plain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the heights calculated for a selected size flood and floodway conditions, such as wave action, clogged bridge openings, and the hydrological effect of urbanization of the watershed.

Highest Adjacent Grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Lowest Floor. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable 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 this ordinance.

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 connected to the required utilities. For flood plain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

Manufactured Home Park or Subdivision. A parcel (or contiguous parcels) of land divided into two

or more manufactured home lots for rent or sale.

New Construction. Structures for which the "start of construction or substantial improvement" is commenced on or after the effective date of the FIRM.

100-Year Flood. The base flood having a one percent chance of annual occurrence.

Overlay District. A district which acts in conjunction with the underlying zoning district or districts.

Start of Construction. For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. Law 97-348) includes substantial improvement, and means the date the building permit was issued, providing the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start or other improvement was within 180 days of the permit date. The actual start means 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 street and/or walkways, nor does it include excavation for a basement, footings, or foundations or the erection of temporary forms, nor does it include the installation of the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Structure. A walled and roofed building that is principally above ground, as well as a manufactured home, and a gas or liquid storage tank that is principally above ground.

Substantial Improvement. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions, or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Variance. A grant of relief to a person from the requirements of this ordinance which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.



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July 19, 2005

Glenwood City Hall
ATTN: Blake Mayberry
107 South Locust
Glenwood, IA. 51534

Re: Floodplain Reconstruction Regulations

Dear Blake:

You have asked for my interpretation of §170.509 of the Unified Land Development Ordinance. Specifically, you are concerned with the subsections (b) and (c) of §170.509. Subsection (c) reads as follows:

"Replacement of Non-Residential Uses. If any non-residential nonconforming use of a structure is destroyed by any means, including flood, it should not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of this ordinance. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places."

Subsection (b) is similarly worded but applies to residential structures.

1. To What Does the 50% Limitation Apply and How is the Structure Valued? The 50% limitation applies only to the value of the "structure" as is defined by §170.510. We can not take into account the value of the lot or other structures on the property when imposing this ordinance. In determining the market value of the structure prior to the damage which destroyed it, there is no guidance provided by the ordinance. As a result, the pre-existing valuation provided by the Assessor's office should be used as the basic guide to determining pre-damage value as such valuation is an independent, third party valuation and avoids any allegation that the City is using bias in determining pre-damage value. The Assessor's valuation should be used unless the City and the property owner of the structure mutually agree to an alternate valuation. The use of a valuation other than the Assessor's should be used only in rare instances and under extraordinary circumstances. The burden should be on the property owner to demonstrate a valuation which differs from the Assessor's valuation.

2. What Costs are Included In Determining the Value of the Reconstruction? Under §170.509, the "cost" of the reconstruction is to be considered in applying the limitations imposed by the ordinance. The term "cost" is not defined

in the regulations. Because this ordinance regulates property rights, a strict reading of the statute is appropriate. See Business Ventures, Inc. V. Iowa City, 234 N.W.2d 376 Iowa (1975); Buchholz v. Bremer County, 199 N.W.2d 73 Iowa (1972) As a result, it is my opinion that the cost should be calculated only as money actually expended for the actual reconstruction. Therefore, volunteer labor should not be considered in the cost of reconstruction. Nor should architect or engineer fees be considered in the cost of reconstruction. Only the money expended for the actual reconstruction should be taken into account. To do otherwise puts the City in the position of arbitrarily deciding the value of labor and other services performed which are not directly attributable to the reconstruction, itself. The goal of the City is to treat all persons uniformly and objectively, and to attempt to avoid subjective input. It is important to note that the limitations provided in §170.509 is simply a cost limitation, rather than a limitation based upon the market value of the structure after reconstruction has occurred. Because the limitation relates simply to cost, only the actual money expenditures made should be considered.

Because actual costs expended will be almost impossible for the City to accurately monitor, reliance must be placed on the property owner to accurately report the costs expended. It should be the policy of the City that when a person or entity makes an application for a permit for construction or reconstruction, that such person or entity be notified of a requirement that, at the end of reconstruction, such person or entity be required to provide an affidavit setting forth the total cost expended on the reconstruction project. This affidavit should be kept on file by the City to demonstrate compliance with the ordinance.

I also want to point out that under a strict and plain reading of the ordinance, the limitations as to the cost which may be expended by the property owner *only apply* to structures which are actually “destroyed”. The term “destroyed” is not defined by the ordinance and a commonly accepted meaning of the term should therefore be applied. Thus, under the current wording of the ordinance, unless the structure is destroyed, the limitations imposed by §170.509 do not apply. In other words, §170.509 does not appear to regulate or limit renovations of existing structures that have not been destroyed. If it is the City’s intent to regulate the same, the wording of the ordinance will have to be changed.

3. How Does the City Factor in the Cost of Complying with Existing Codes and Regulations? Any reconstruction which occurs as a result of primarily attempting to comply with existing governmental regulations should not be considered against the market value of the structure. The exception provided by the ordinance applies only to the “cost of any alteration to comply” with existing governmental regulations. Therefore, it is my conclusion that the exception should be made only if the primary purpose of the reconstruction is simply to comply with the existing regulations. In all other instances, the exception should not apply. For all reconstruction which occurs primarily as a renovation project, and even though it may include bringing the structure within existing regulations, should be

considered in determining if the cost was more than 50% of the market value of the structure.

Very truly yours,

PETERS LAW FIRM, P.C.

By


Matthew G. Woods

MGW: jkw