

## **PLANNING COMMISSION REPORT**

### **Regular Agenda -- Public Hearing Item**

#### **ITEM NO. 6: TEXT AMENDMENT TO CHAPTER 20 DEVELOPMENT CODE GENERAL & ADDITIONAL STANDARDS FOR RESIDENTIAL & NON-RESIDENTIAL CONSTRUCTION (SDM/SMS/AMB)**

**TA-11-23-09:** Consider a Text Amendment to Article 12- Floodplain Regulations to review General and Additional Standards for Residential and Non-Residential Construction. *Initiated by Planning Commission on 10/26/09.*

**RECOMMENDATION:** Staff recommends approval of the revised text for Section 20-1204(e) [and the minor revision to Sections 20-1203 (d)(2), 20-1204 (e)(2)(i)(a), 20-1204 (e)(3)(i)(a)(1), 20-1204 (h)(4)(i) and 20-1204 (h)(4)(ii) to add *or professional engineer*] and forwarding of the proposed text amendments to Chapter 20, Article 12 to the City Commission for approval and adoption.

**Reason for Request:** The Planning Commission initiated this amendment on October 26, 2009 after recognizing a need to modify the threshold for compliance with the floodplain regulations on sites that were developed under previous standards.

#### **RELEVANT GOLDEN FACTOR:**

- Conformance with the Comprehensive Land Use Plan is the relevant factor that applies to this request. Adoption of new regulatory tools, one of which is zoning regulations, is an implementation step in Chapter 13 of HORIZON 2020, the City/County Comprehensive Land Use Plan.

#### **PUBLIC COMMENT RECEIVED PRIOR TO PRINTING**

- No written comments received to date.
- Staff has conferred with State Division of Water Resources floodplain program administrators regarding the proposed changes.

#### **OVERVIEW OF PROPOSED AMENDMENT**

Earlier this year, Staff identified a code standard that appears unreasonable for property owners desiring to make minor modifications to structures located in the floodplain. The City's floodplain regulations require that the impervious surface cover shall not exceed 60% of the property if non-residential construction occurs and 30% if residential construction occurs. These coverage limits have only been in the code since 2003. The regulations contain no language that links the requirement to any threshold for development or differentiates between minor projects and major projects. While this standard is valuable for new construction and for instances where major physical modifications are made to a structure or property, it can arguably be unreasonable for nonconforming properties, which are required to comply or seek a variance for minor projects.

The following scenario illustrates the issue. Assume a large retail strip center was constructed under former codes and received all of the necessary floodplain permits required at that time for the construction of the building and site improvements. The property has over 60% impervious surface coverage within the floodplain portions of the site. A tenant finish to remodel one of the existing suites is then requested. The property would be required to either reduce the impervious surface coverage or seek a variance to waive the standard for a very minor construction project. Both options may be unreasonable given the scope of work at the property.

Staff believes there should be a threshold established, similar to how the code addresses nonconforming uses and structures that have no floodplain on the property, so that a reduction in impervious surface cover is only required for new construction or substantial improvements as defined by the code.

In October, the following language was presented to initiate the concept of the change needed. Since initiation staff has reviewed the definitions provided in Article 12 and offers revised text that reflects model code terms and uses the term *New Construction* rather than *New Development* in Section 1204(e). The subsequent review has insured compliance with the City's storm water standards and the criteria related to the City's participation in the Community Rating System, as well as review by the State Division of Water Resources to insure compliance with model codes.

PC Initiated Text:

(1) **Additional Standards for Non-Residential Construction**

- (i) Any proposed New Development or Development or that qualifies as a Substantial-Improvement of any non-residential Structures shall meet either of the following standards:
  - a. The Lowest Floor, including Basement, elevated a minimum of one (1) foot above the Base Flood Elevation. A licensed land surveyor shall certify the elevation of the Lowest Floor. Such certifications shall be provided to the Floodplain Administrator as set forth in Section 20-1203(c)(7); or
  - b. Together with attendant utility and sanitary facilities, the Structure must be Floodproofed so that the portion of the Structure below the Base Flood Elevation 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 effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied.
- (ii) Any proposed New Development or Development that qualifies as a Substantial-Improvement of any non-residential Structures shall meet the requirement that Impervious Surface cover shall be no more than 60% of the property within the Floodplain Overlay District.

## CONFORMANCE WITH *HORIZON 2020*

*Horizon 2020* contains several goals and policies that support appropriate site planning methods and efficient development. Through goal setting sessions, both the Planning Commission and City Commission have indicated that the code should be more efficient where appropriate to encourage redevelopment of infill sites. Establishing thresholds for full compliance with relatively new floodplain standards is one way to reach some of these goals.

## CRITERIA FOR REVIEW & DECISION-MAKING

Section 20-1302(f) provides review and decision-making criteria on proposed text amendments. It states that review bodies shall consider at least the following factors:

- 1) **Whether the proposed text amendment corrects an error or inconsistency in the Development Code or meets the challenge of a changing condition.**

**Staff Response:** The proposed amendment addresses an inconsistency in how the current floodplain regulations treat developed property and how other articles of the Development Code treat properties developed under previous codes. Establishing a threshold for compliance with these additional standards will allow minor development projects to proceed without undue financial hardship or time delays.

- 2) **Whether the proposed text amendment is consistent with the Comprehensive Plan and the stated purpose of this Development Code (Sec. 20-104).**

**Staff Response:** As discussed above, the comprehensive plan does not specifically address the amendment. The amendment helps to carry out the plan's goal of using zoning standards to create compatible neighborhoods and efficient development processes.

**PROPOSED LANGUAGE:** Staff is providing an amendment that substitutes the term *New Construction* for *Development* to clarify that the additional standards identified in 20-1204(e)(2) & (3) apply only to newly constructed structures or substantial improvements to existing structures and not to minor development projects. Staff has also made minor formatting changes for readability, including substitution of *shall* for *must*, which results in consistent text throughout the section.

In response to a preliminary review by the Kansas Department of Agriculture, Division of Water Resources (DWR), Staff has been directed to make two additional changes that are necessary for compliance with the City's participation in the National Flood Insurance Program (NFIP), including alignment with the current State Model Floodplain Ordinance.

Previously, language in 20-1204 (e)(3)(i) stated that non-residential structures could be floodproofed below base flood elevation (BFE). The Model Code now changes that standard and it has been included in this amendment. If floodproofing is the method utilized to meet the requirements of this section, non-residential structures must be floodproofed one foot above BFE.

Secondly, Sections 20-1203 (d)(2), 20-1204 (e)(2)(i)(a), 20-1204 (e)(3)(i)(a)(1), 20-1204 (h)(4)(i) and 20-1204 (h)(4)(ii) have been changed to reflect that a *licensed professional engineer* can certify elevation information in addition to a licensed land surveyor. This change will be included in the Incorporation by Reference Ordinance, but is not shown in this staff report for brevity.

Text to be deleted is shown with ~~strikeout~~ and proposed text is shown in ***bold italic underlined font***.

## 20-1204

### (e) **General Development Standards**

The following standards apply to any and all **Development** that is proposed within the **Floodplain Overlay District**.

- (1) All **Development** shall comply with the following standards:
  - (i) Fill shall not be placed in the Setback areas except at approved Access points;
  - (ii) **Structures** must be designed and constructed with adequate anchorage to prevent flotation, collapse, or lateral movement of the **Structure** resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  - (iii) **Structures** must be designed and constructed with materials resistant to **Flood** damage using methods and practices that minimize **Flood** damages;
  - (iv) All electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities must be designed and/or located to prevent water from entering or accumulating within the mechanical components during conditions of **Flooding**;
  - (v) New or replacement water supply systems and/or sanitary sewage systems must be designed to eliminate infiltration of **Flood** waters into the systems and discharges from the systems into **Flood** waters, and on-site waste disposal systems must be located so as to avoid impairment or contamination;
  - (vi) All public utilities and facilities, such as sewer, gas, electrical, and water systems must be located and constructed to eliminate **Flood** damage;
  - (vii) Fully enclosed areas below the **Lowest Floor** that are used solely for Parking of vehicles, Building Access, or storage in an area other than a **Basement** and that are subject to **Flooding** must be designed to automatically equalize hydrostatic **Flood** forces on exterior walls by allowing for the entry and exit of **Flood** waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect to meet or exceed the following minimum criteria:
    - a. 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; and,
    - b. The bottom of all openings shall be no 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.

(viii) Storage of Material and Equipment;

- a. The storage or processing of materials within the [Floodplain Overlay District](#) area that are in time of [Flooding](#) buoyant, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited; and
- b. Storage of other material or equipment may be allowed if not subject to major damage by Floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a [Flood](#) warning.

(2) **Additional Standards for Residential Construction**

- (i) ~~Proposed [Development](#) or [Substantial Improvement](#) of any residential [Structures](#), including [Mobile Homes](#) or Manufactured Homes, shall have the [Lowest Floor](#) elevated a minimum of two (2) feet above the [Base Flood Elevation](#). A licensed land surveyor shall provide written certification of the [Lowest Floor](#) elevation to the [Floodplain](#) Administrator as set out in Section 20-1203(c)(7).~~
- (ii) ~~Impervious Surface cover shall be no more than (30%) of the property within the [Floodplain Overlay District](#).~~
- (i) **Proposed [New Construction](#) or [Substantial-Improvement](#) of any residential [Structures](#), including [Mobile Homes](#) or Manufactured Homes, shall comply with the following:**
  - a. **The [Lowest Floor](#) shall be elevated a minimum of two (2) feet above the [Base Flood Elevation](#). A licensed land surveyor or licensed professional engineer shall provide written certification of the [Lowest Floor](#) elevation to the [Floodplain](#) Administrator as set out in Section 20-1203(c)(7).**
  - b. **For the portion of a property within the [Floodplain Overlay District](#), the maximum impervious surface coverage shall not exceed 30%.**
- (ii) Fill on individual Lots shall meet the following requirements:
  - a. No fill dirt shall be placed closer than five (5) feet to perimeter Lot Line(s) of the property;
  - b. No fill dirt shall be placed greater than 20 feet from the [Structure](#);
  - c. Fill dirt shall be placed on a Lot so that it does not exceed a 3:1 slope; and
  - d. Where additional elevation over the Height that can be achieved from a 3:1 slope is needed to meet the requirements of this Article, the additional elevation shall be met through the use of vertical walls and the construction of non-residential areas, such as garages, crawl spaces with gravel floors, or similar structurally sound designs, as part of the residential [Structure](#).

(3) **Additional Standards for Non-Residential Construction**

- (i) ~~Any proposed **Development** or **Substantial-Improvement** of any non-residential **Structures** shall meet either of the following standards:~~
- ~~a. The **Lowest Floor**, including **Basement**, elevated a minimum of one (1) foot above the **Base Flood Elevation**. A licensed land surveyor shall certify the elevation of the **Lowest Floor**. Such certifications shall be provided to the **Floodplain** Administrator as set forth in Section 20-1203(c)(7); or~~
  - ~~b. Together with attendant utility and sanitary facilities, the **Structure** must be Floodproofed so that the portion of the **Structure** below the **Base Flood Elevation** 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 effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied.~~
- (ii) ~~Impervious Surface cover shall be no more than 60% of the property within the **Floodplain Overlay District**.~~
- (i) **Any proposed **New Construction** or **Substantial-Improvement** of any non-residential **Structures** shall meet the following standards:**
- a. **Either of the following:**
    - 1. **The **Lowest Floor**, including **Basement**, shall be elevated a minimum of one (1) foot above the **Base Flood Elevation**. A licensed land surveyor or licensed professional engineer shall certify the elevation of the **Lowest Floor**. Such certifications shall be provided to the **Floodplain Administrator** as set forth in Section 20-1203(c)(7); or**
    - 2. **Together with attendant utility and sanitary facilities, the **Structure** shall be **Floodproofed** to at least one foot above the **Base Flood Elevation**. The portion of the **Structure** below this level is to be watertight with 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. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied.**
  - b. **For the portion of a property within the **Floodplain Overlay District**, the maximum impervious surface coverage shall not exceed 60%.**