To: Board of Appeals

From: Kara Homan, AICP, Principal Planner

Date: June 13, 2012

RE: Variance Request for 701 Paris St

OVERVIEW

Property Address: 701 Paris Street

Property Owner: Steven Krueger

Applicant: Paul Jensen & Karla Lauden, 423 Fourth St, Neenah, WI.

Property Zoning: R-1 – Single-Family Residential District; Also In Overlay Floodfringe (FF) District

Surrounding Zoning: R-1 – Single Family Residential District; Overlay Flood Fringe (FF) District to East, West, and South.

Variance Requested: Section 13-3-20(a)(1) of the City of Menasha Code or ordinances states, that for residential structures in the flood fringe district "the fill shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure." The applicant is requesting that the required fill area be reduced from 15 feet to 8 feet so as to be able to match the sidewalk grade at the property line.

Reason for Variance: To allow Mr. Jensen & Ms. Lauden to construct a new single-family dwelling at 701 Paris St on a lot 50 feet in width in the flood fringe district (see attached preliminary site plan).

REGULATIONS FOR GRANTING A VARIANCE

Per Section 13-1-153(d), the Board of Appeals must find the following five items to be true prior to granting a variance:

1) Hardship to the Property Owner due to Physiographical Considerations
2) Unique Property Conditions

3) Not an Exclusive Desire to Increase Property Value or Income
4) Will Not be Detrimental to the Neighborhood
5) Will not Undermine the Spirit of the Zoning Code

Please see the enclosed copy of the municipal code for more detailed information on each of these items; the entire text of each item is also included in the discussion below.

In addition to the five items above, per Section 13-3-20(A)(1) (attached), the WDNR may authorize other floodproofing measures if the elevations of existing streets or sewer lines makes compliance impractical and the Board of Appeals grants a variance.

ANALYSIS OF VARIANCE REQUEST

Below is staff's analysis of each of the five required items per Section 13-1-153(d), as well as the one required item per Section 13-3-20(A)(1) as they pertain to the variance requested by Mr. Jensen & Ms. Lauden.

1. ***Hardship to the Property Owner due to Physiographical Considerations***

   SEC 13-1-153(D)1: "Denial of variation may result in hardship to the property owner due to physiographical consideration. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that the Zoning Code should be changed."

   ANALYSIS: The subject property is situated several inches below the 100 year flood elevation (see attached floodplain survey), which subjects the site to the City's Floodplain Zoning Ordinance (Sec. 13-3). The existing elevation of Paris St. and De Pere St. and their adjacent sidewalks is also below the flood elevation.

   In staff's opinion, the location of the property in the floodplain, coupled with the narrow width of the lot (discussed in item #2 below), constitutes a unique physiographic condition that do not apply uniformly to all properties in either the R-1 single-family district nor the flood fringe district.

2. ***Unique Property Conditions***

   SEC 13-1-153(D)2: The conditions upon which a petition for a variation is based are unique to the property for which variation is being sought and that such

variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.

ANALYSIS: The property is currently a vacant single-family dwelling which, according to utility records, has been vacant for at least 12 consecutive months. This constitutes loss of legal nonconforming status per Section 13-3-25(b)(2) of the Floodplain Ordinance, which states:

> *"If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this ordinance."*

In addition to the non-conformities of the existing structure, it is also in serious disrepair and would require significant investment to bring it back up to livable standards (see attached property pictures). These investments could easily be significant enough to set it above the maximum value of lifetime improvements of 50% equalized assessed value allowed for in section 13-3-25(b)(4) (attached).

Thus, it is staff's opinion that a unique property condition exists with the parcel and its existing structure due to the low elevation of the site and situation in the 100-year flood plain due to the reasons mentioned above.

Should the site be cleared, as proposed, a unique property conditions still exist due to the narrow width of the lot fronting onto Paris Street. The Lot is 50 feet wide, which is below the 60 foot minimum that is required of new lots created in the city. Although this is still a legal-conforming width per the provisions in the municipal code pertaining to non-conforming lots (Sec 13-1-43), with the additional 15 foot perimeter required around the structure per Floodplain Zoning, the buildable footprint would be severely restricted to such an extent that it would be nearly impossible to build an adequate home on such a footprint. For example, with a 50 foot lot, minus 15' x 2 for the 1 foot fill area, plus an additional 2' x 2 for grading to match the sidewalk and structure, only 16 feet of remaining width would be left for the buildable width.

It is staff's opinion that the even if the parcel is vacant, the narrow nature of the lot, coupled with the additional fill requirements constitutes a unique property condition that would prevent the use and enjoyment of the property for single family purposes enjoyed by other properties in similarly zoned properties should the requested variance not be granted.

3. Not an Exclusive Desire to Increase Property Value or Income

SEC 13-1-153(D)3: The purpose of the variation is not based exclusively upon a desire to increase the value or income potential of the property.

ANALYSIS: Per the applicants response (attached), the primary reason for requesting the variance is to allow for the legal construction of a new single-family home that will be occupied by the applicant. There are no plans to derive income from the property.

Although the proposed new structure will ultimately be valued higher than the existing structure, this is a secondary benefit to the city, but is in no way an exclusive reason for the variance request.

4. ***Will Not be Detrimental to the Neighborhood***
   SEC 13-1-153(D)4: The granting of the variation will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.

   ANALYSIS: The proposed new structure will not be detrimental to the neighborhood, as it will be replacing a structure in disrepair with one that will be of higher property value. In addition, the proposed new structure will not be so significant as to raise the regional flood elevation beyond current levels.

5. ***Will not Undermine the Spirit of the Zoning Code***
   SEC 13-1-153(D)5: The proposed variation will not undermine the spirit and general and specific purposes of the Zoning Code.

   ANALYSIS: The proposed new structure will comply with all predominant setbacks as required by the R-1 Single-Family District, and thus will not undermine the spirit of the Zoning Code.

6. ***The elevations of existing streets or sewer lines makes compliance impractical (Floodplain specific)***
   13-3-20(A)(1): *the Department (WDNR) may authorize other floodproofing measures if the elevations of existing streets or sewer lines makes compliance impractical <u>and</u> the Board of Appeals grants a variance*

   ANALYSIS: The existing elevation of the street and sidewalks is below the regional flood elevation (see attached floodplain survey). Given the narrow nature of the lot, it would be impractical to provide a 15 foot perimeter around the proposed structure, while still providing additional room to match the grade at sidewalk and the grade of the new structure, without limiting the width of the structure so significantly so as to prohibit construction of a livable house. Per Sec 13-3-20(a)(4), the City may permit development where road access is below the regional flood elevation , given that Winnebago County has a Hazard

Mitigation Plan that is approved by Wisconsin Emergency Management. Thus, it is in staff's opinion that the requested variance accommodates adequate floodproofing measures that ensure the safety of future residents of the site.

Ultimately, it is the Wisconsin DNR's decision whether to authorize the reduced fill perimeter. Please see the attached email from Dick Koch, DNR regarding the WDNR's review and appeals process.

STAFF RECOMMENDATION

Staff recommends the variance, as requested, be approved by the Board of Appeals. Per the analysis presented above, staff deems that all requirements for granting a variance have been satisfied, pending any written or verbal comment from the Wisconsin DNR which should be considered as additional evidence if received.

City of Menasha

SPECIAL ZONING APPROVAL

Owner Steven Krueger Case or Plan No. _____

Address 701 Paris St (property) 943 Clovis Ave Fee $350.00 pd. Receipt #2440 722-0799

Applicant (if different than Owner) Paul Jensen · Karla Larden

Address 423 Fourth St Neenah, WI. 54956

Zoning R1 + Floodfringe Parcel Number(s) 5-00343-00

PLEASE INDICATE WHICH REQUEST IS BEING MADE

- ☐ Rezoning
- ☐ Special Use
- ☐ Flood Plain Map Amendment
- ☒ Appeal or Variance
- ☐ PUD Plan Approval
- ☐ Comprehensive Plan Amendment

Description of Request: To Allow building in the Flood Fringe through reduction of required 1' perimeter of fill from 15' to 8' per Sec 13-3-20(a)(1)

(If applicable)

Formal Hearing June 25, 2012, 10am

Informal Hearing _____

Notice Mailed (Post Crescent) Run 6/15

Notice Mailed (to DNR) 6/13/2012

Notice Mailed (Neighbors, Plan Commission + CDD) 6/13/2012

Action Taken: _____ 20____

☐ APPROVED ☐ DENIED

Conditions (if any): _____

Owner/Agent _____ Signature

City of Menasha
Variance Application Questionnaire

Applicant: Paul Jensen - Karla Landon **Site Address:** 701 Paris St.

Menasha Ordinance 13-1-53(d) provides that the Board of Appeals shall evaluate a variance request based on the foregoing criteria. Before granting such a request, the Board must find that all of the criteria enumerated apply to the variance requested. Please address each statement; use additional sheets if necessary.

Describe the hardship to the property owner that would result if the variance were not granted and the exceptional, extraordinary, or unusual circumstance or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district:

If the Variance were not Granted we could not purchase the property. The property Varies in how many inches it is below the flood plain Approx 2" in some spots and 10" in another. There are many houses near 701 Paris St that are in the flood fringe like 701 Paris St. And others of more recent Construction that are actually in the flood plain. The 701 Paris ST house is questionable regarding occupancy. we would Take the house down and Build Anew In a nut Shell, if the Variance is not Granted, The City has to bear The Burden of what is probably, ~~another~~ another Albatross around its neck

Explain why the conditions upon which the petition for the variance is based are unique to the property and necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity:

The Conditions are that in different areas on the lot The Elevation is below the flood plain the lot and house upon it are probably lowering the Value of the other houses near it.

Provide evidence demonstrating that the purpose of the variance is not based exclusively upon a desire to increase the value or income potential of the property:

The increase in Value has little to do with why we want To own this Property. we would like to build our house there and Spend, at least my Remaining days There. We have no plans on Deriving income from the property. We like the View of the water and the near by boat launch

Describe how the granting of the variance will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located:

Granting the Variance will be an Asset not a detriment property Values will go up. Tax Revenue for the City goes up and we get a nice place to live. The placement of the Home will be within the guidelines the City has laid out.
I Can See nothing detrimental to the public welfare and nothing injurious to other peoples property.
I only See the Granting of the Variance as the fate that opens up improvements in the Neighborhood

Explain why the proposed variance will not undermine the spirit and general or specific purposes of the zoning code:

The Code will not be undermined by allowing what appears to be the norm, for a lot of Homes near 701 Paris St. Strict adherence to the Code will art benefit the City. Flexability I Suspect will Satisfy and benefit all parties involved another plus is the sense of Community it will build. Good Deeds and Cooperation have a way of becoming Common Knowledge.
X one additional Comment: Community Development finds the request to be reasonable and the DNR Does as well.

Please submit a site plan showing an accurate depiction of the property and any other relevant or required documents.

I certify that all information provided is to the best of my knowledge accurate and true.

Property Owner: _____ (AGENT) **Date:** 5-27-12
Signature

_____ (owner) 6-6-12

June 11, 2012

Steve Krueger
943 Clovis Ave.
Menasha, WI 54952

Paul Jensen
423 Fourth Street
Neenah, WI 54956

Dear Applicant:

Zoning procedures require issuing a denial of your building request in order to initiate a variance. This letter constitutes a formal denial of your request to build a new single family dwelling at 701 Paris Street. Absent a variance, this action would result in a violation of Section 13-3-20(a)(1)of the City of Menasha Code of Ordinances. This section requires that fill one foot or more above the regional flood elevation extend at least 15 feet beyond the limits of the structure.

You have complied with other requirements of the zoning variance procedures and a public hearing has been scheduled before the Board of Appeals. A copy of the public hearing notice is enclosed.

If you have questions about the proceedings, please contact me.

Sincerely,

Gregory M. Keil
Community Development Director

C: City Attorney/Human Resource Director Pamela Captain
City Clerk Deborah Galeazzi
Principal Planner Kara Homan

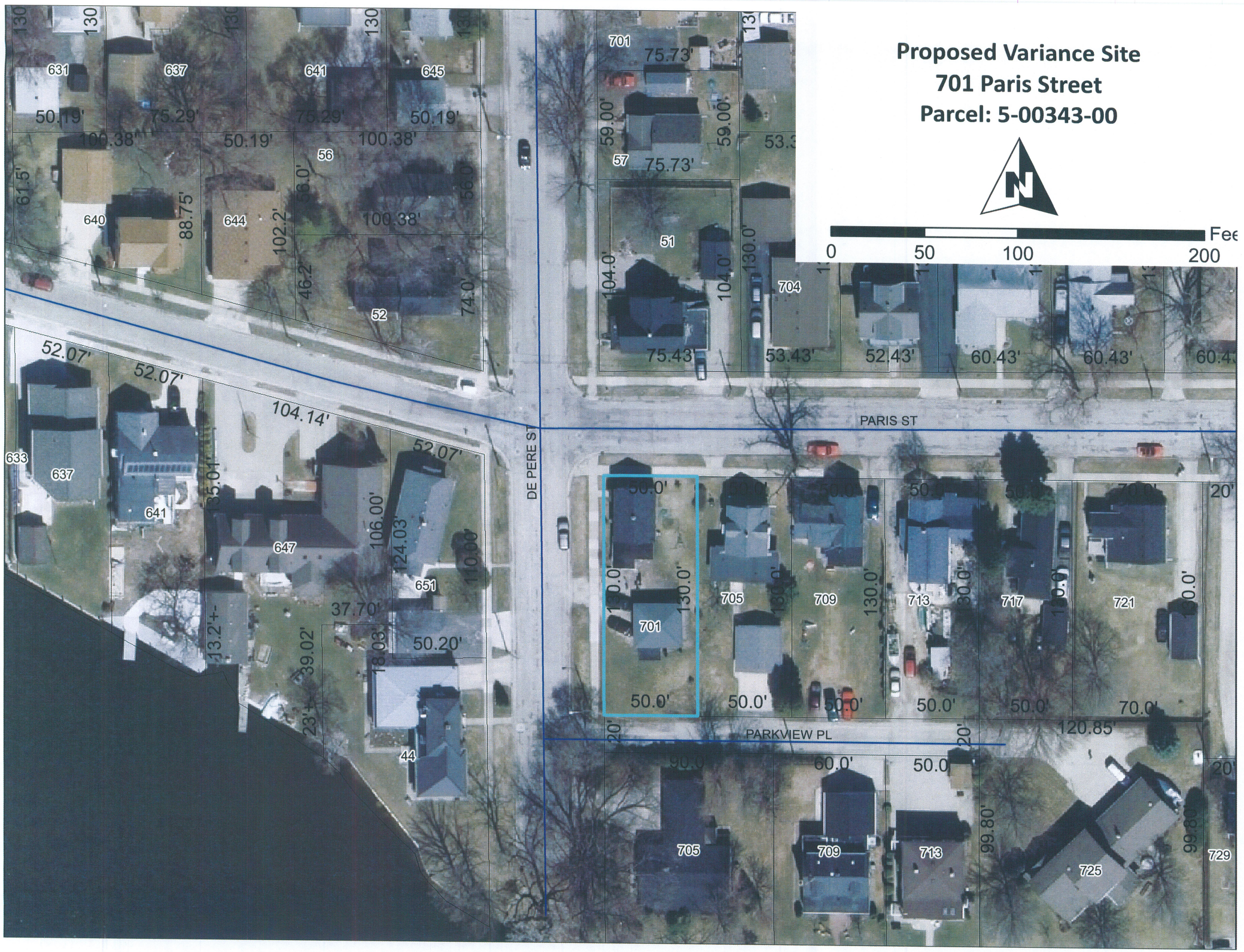
City of Menasha
Board of Appeals
Public Hearing

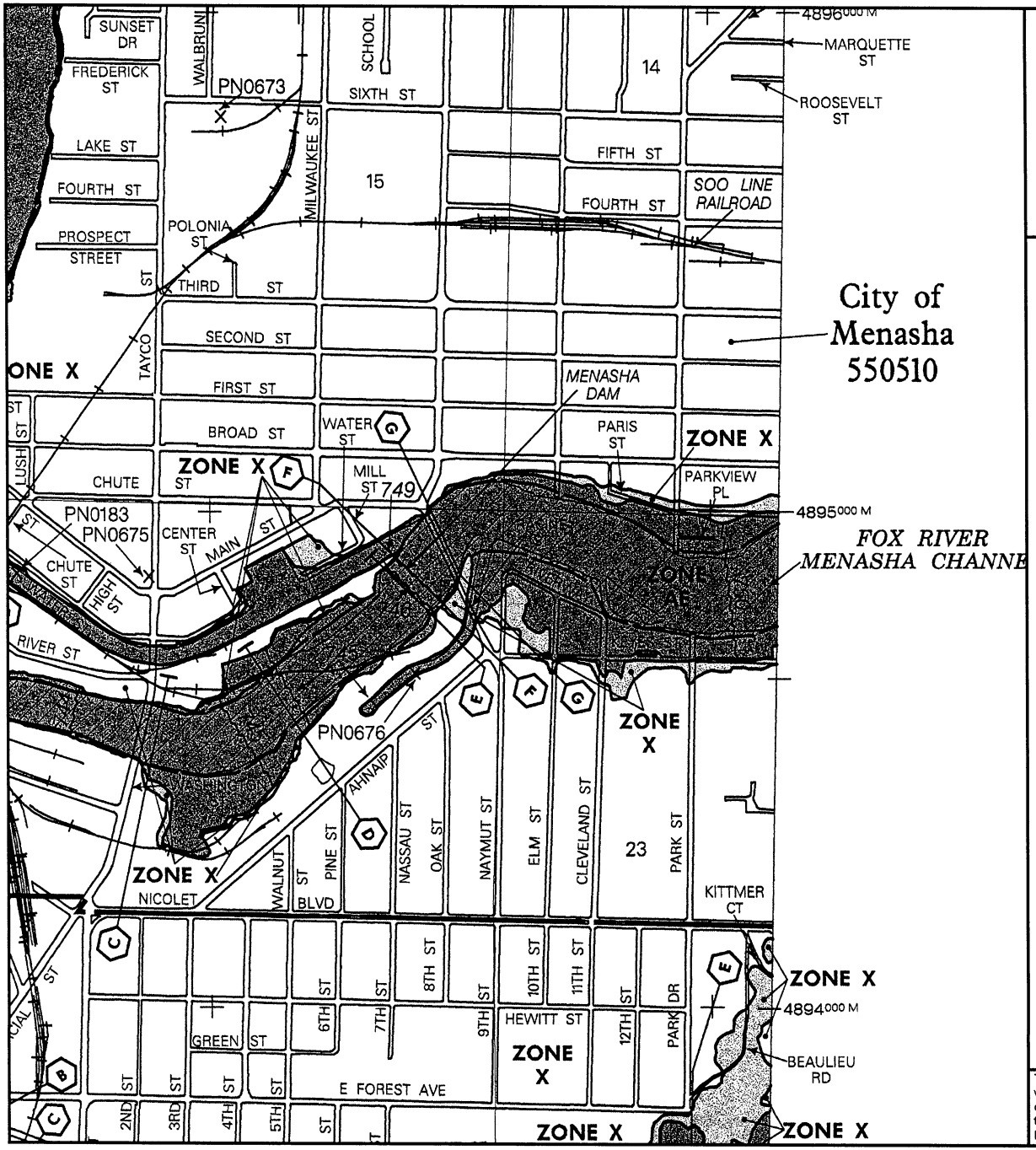
A Public Hearing will be held by the Board of Appeals on Monday, June 25, 2012 at 10:00AM in the City Hall Council Chambers located at 140 Main Street, Menasha, WI on the appeal of Steve Krueger and Paul Jensen for the property at 701 Paris Street.

The applicant is requesting to construct a new single family dwelling at 701 Paris Street . Absent a variance, this action would result in the violation of Section 13-3-20(a)(1) of the City of Menasha Code of Ordinances. This section requires that fill one foot or more above the regional flood elevation extend at least 15 feet beyond the limits of the structure. The applicant is requesting that the required fill area be reduced from 15' to 8' so as to be able to match the sidewalk grade at the property line.

All interested persons objecting to or supporting the granting of this appeal are invited to appear or submit written comments for the board's consideration.

Run: June 15, 2012


Proposed Variance Site
701 Paris Street
Parcel: 5-00343-00
N
0
50
100
200
Fee
PARIS ST
DE PERE ST
PARKVIEW PL
631
637
641
645
640
644
56
52
701
57
51
704
633
647
651
44
705
709
713
717
721
725
729
75.73'
75.29'
50.19'
100.38'
61.5'
88.75'
102.2'
46.2'
74.0'
59.00'
104.0'
130.0'
75.43'
53.43'
52.43'
60.43'
52.07'
104.14'
35.01'
106.00'
124.03'
110.00'
37.70'
50.20'
13.2'+-
39.02'
18.03'
23'+-
50.0'
70.0'
120.85'
60.0'
99.80'
20'



MAP SCALE 1" = 1000'

500 0 1000 2000 FEET

PANEL 0105 E

FIRM

FLOOD INSURANCE RATE MAP

WINNEBAGO COUNTY, WISCONSIN

AND INCORPORATED AREAS

PANEL 105 OF 365

(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
MENASHA, CITY OF	550510	0105	E
NEENAH, CITY OF	550509	0105	E
WINNEBAGO COUNTY	560537	0105	E

Notice to User: The **Map Number** shown below should be used when placing map orders; the **Community Number** shown above should be used on insurance applications for the subject community.

MAP NUMBER
55139C0105E

EFFECTIVE DATE
MARCH 17, 2003

Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov

FLOOD PLAIN SURVEY

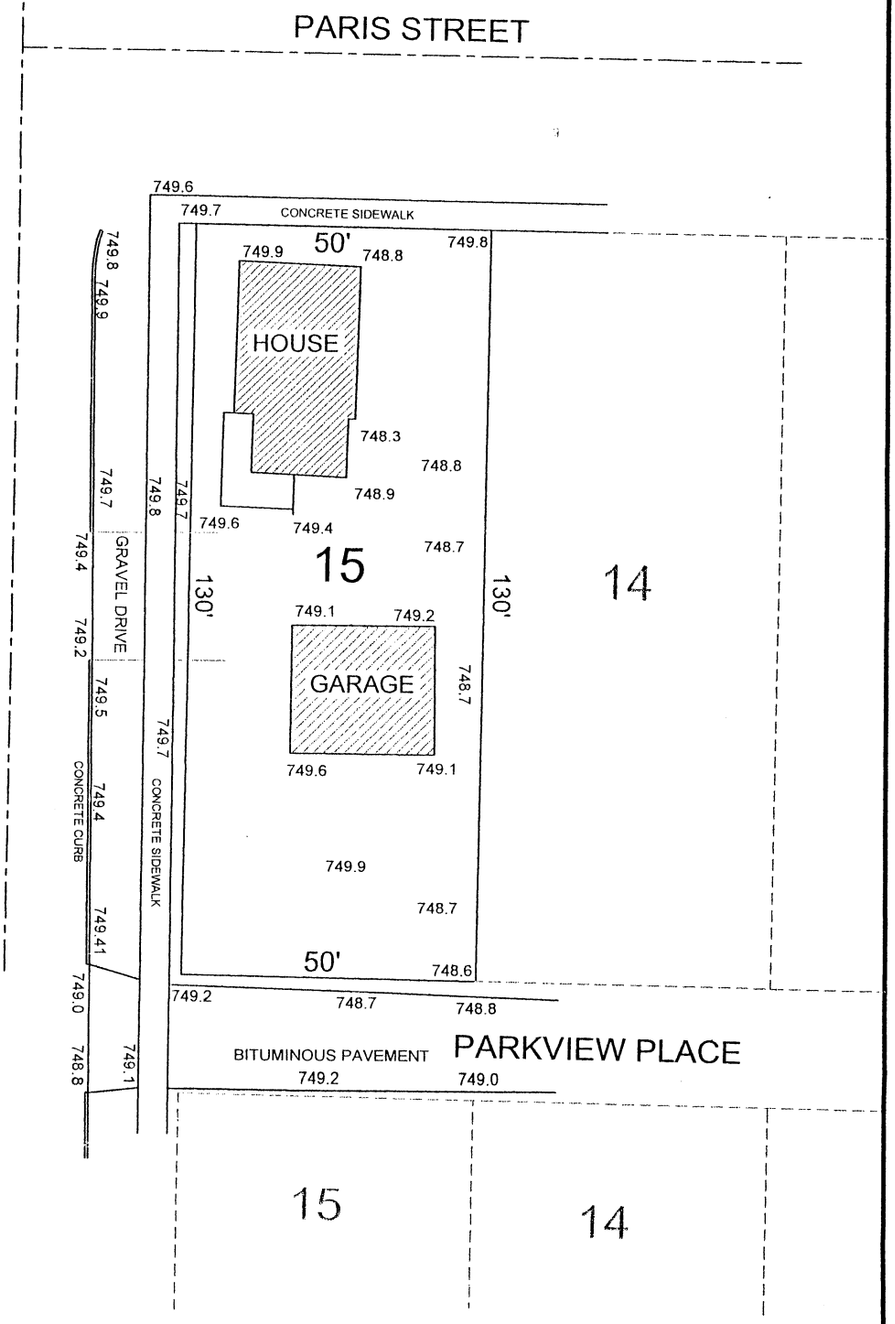
OF

A PART OF LOT 15 OF BLOCK 48 IN THE ADDITION TO THE VILLAGE OF MENASHA, FIFTH WARD, CITY OF MENASHA, WINNEBAGO COUNTY, WISCONSIN

SURVEY FOR: PAUL JENSEN
423 FOURTH STREET
NEENAH, WI 54956

FLOOD ELEVATION = 750.0
ALL ELEVATIONS
REFERENCED TO NAVD 88

FEMA INFORMATION
ZONE AE
MAP NUMBER 55139C0105E
EFFECTIVE DATE 3-17-2003
PANEL 0105 E
NUMBER 550510
CITY OF MENASHA



WISCONSIN
LAWRENCE C. KRIESCHER
S-1599
LARSEN, WISC.
LAND SURVEYOR

SURVEYOR'S CERTIFICATE:

I, LAWRENCE C. KRIESCHER, WISCONSIN REGISTERED LAND SURVEYOR, HEREBY CERTIFY THAT I HAVE SURVEYED THE ABOVE MAP AND IS A TRUE AND ACCURATE REPRESENTATION THEREOF TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DATED THIS 18TH DAY OF May 2012

Lawrence C. Kriescher

WISCONSIN REGISTERED LAND SURVEYOR S-1599
LAWRENCE C. KRIESCHER

90 60 30 0

NOTEBOOK: 14 PAGE: 45

L. C. KRIESCHER & ASSOCIATES LLC.
140 W. MAIN STREET P.O. BOX 14
WINNECONNE, WI 54986
920-582-0133

BOUNDARY SURVEY
&
LAND SURVEY

PROJECT NO. 2012-05-01

FILE NO. JENSEN.DWG

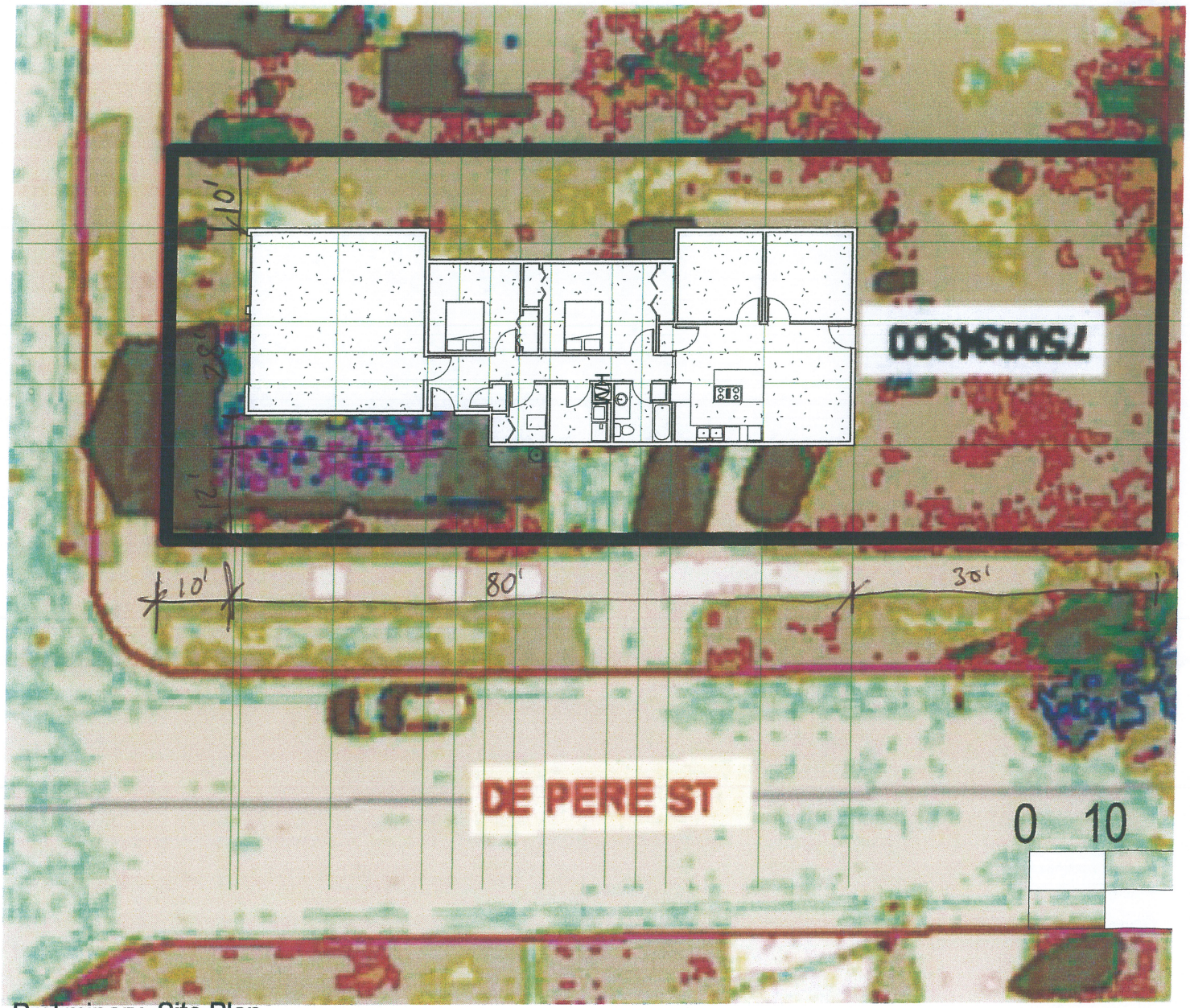
DWG. NO. L-425

701 PARIS ST, *facing south*

Facing north

Facing East

FOOT PRINT 28' x 80'



1 Preliminary Site Plan
1" = 20'-0"

Kara Homan

From: Koch, Richard J - DNR [Richard.Koch@Wisconsin.gov]
Sent: Thursday, June 07, 2012 7:38 AM
To: Kara Homan
Cc: Koch, Richard J - DNR; Winkler, Miles A - DNR
Subject: RE: Menasha Floodplain Variance

Kara

Just to summarize our conversation concerning the variance process.

Once the application is filed and the hearing date set the Department is to be notified and sent all material concerning the project. (we should receive this notice at least 10 days prior to the hearing)

If we object to the project we would appear either in person or in writing to the board on our reasons for objection. Once the Board renders it's decision we would review it and determine if the Department would appeal that decision to circuit court.

I hope this answers your questions.

Dick Koch

From: Kara Homan [mailto:khoman@ci.menasha.wi.us]
Sent: Wednesday, June 06, 2012 11:48 AM
To: Koch, Richard J - DNR
Subject: Menasha Floodplain Variance

Hi Dick—

Greg Keil indicated that he has been working with you on a proposed new house @ 701 Paris street. We have received our variance application and I am currently processing it.

I wanted to touch base with you to confirm a few things and make sure I have my ducks in a row. Greg also indicated you are taking a hiatus until January, so I wanted to know when your last day would be and who the new contact is.

Sincerely,

Kara Homan, AICP, Principal Planner
Community Development Department
City of Menasha | 140 Main St | Menasha, WI 54952
☎ 920.967.3652 | 🖷 920.967.5272
✉ khoman@ci.menasha.wi.us | 🌎 www.cityofmenasha-wi.gov
http://www.linkedin.com/in/karahoman

As a local governmental entity, the City of Menasha is subject to Wisconsin statutes relating to open records. Any e-mail received by anyone at the City of Menasha, as well as any e-mail sent by someone from the City of Menasha are subject to these laws. Unless otherwise exempted from the Open Records

land or water to be affected. The application shall contain the following information:

(1) Name and address of applicant and all abutting and opposite property owners of record.

(2) Statement that the applicant is the owner or the authorized agent of the owner of the property.

(3) Address and description of the property.

(4) A site plan showing an accurate depiction of the property.

(5) Additional information required by the City Plan Commission, City Engineer, Board of Zoning Appeals or Zoning Administrator.

(6) Fee receipt in the amount of Two Hundred Twenty-five Dollars ($225.00).

(c) **PUBLIC HEARING OF APPLICATION.** The Board of Appeals shall conduct at least one (1) public hearing on the proposed variation. Notice of such hearing shall be given not more than thirty (30) days and not less than ten (10) days before the hearing in one (1) or more of the newspapers in general circulation in the City of Menasha, and shall give due notice to the parties in interest, the Zoning Administrator and the City Plan Commission. At the hearing the appellant or applicant may appear in person, by agent or by attorney. The Board shall thereafter reach its decision within thirty (30) days after the final hearing and shall transmit a written copy of its decision to the appellant or applicant, Zoning Administrator and Plan Commission.

(d) **ACTION OF THE BOARD OF APPEALS.** For the Board to grant a variance, it must find that:

(1) Denial of variation may result in hardship to the property owner due to physiographical consideration. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that the Zoning Code should be changed.

(2) The conditions upon which a petition for a variation is based are unique to the property for which variation is being sought and that such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.

(3) The purpose of the variation is not based exclusively upon a desire to increase the value or income potential of the property.

(4) The granting of the variation will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.

(5) The proposed variation will not undermine the spirit and general and specific purposes of the Zoning Code.

(e) **CONDITIONS.** The Board of Appeals may impose such conditions and restrictions upon the premises benefitted by a variance as may be necessary to comply with the standards established in this Section.

SEC. 13-1-154 REVIEW BY COURT OF RECORD.

Any person or persons aggrieved by any decision of the Board of Appeals may present to a court of record a petition, duly verified, setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the offices of the Board.

Sec. 13-3-17 FLOODFRINGE DISTRICT (FF)

Sec. 13-3-18 APPLICABILITY

This section applies to all floodfringe areas shown on the floodplain zoning maps and those identified pursuant to Sec. 13-3-22(d).

Sec. 13-3-19 PERMITTED USES

Any structure, land use, or development is allowed in the floodfringe district if the standards in Sec. 13-3-20 are met, the use is not prohibited by this or any other ordinance or regulation and all permits or certificates specified in Sec. 13-3-30 have been issued.

Sec. 13-3-20 STANDARDS FOR DEVELOPMENT IN FLOODFRINGE AREAS

Sec. 13-3-8 shall apply in addition to the following requirements according to the use requested.

(a) RESIDENTIAL USES

Any habitable structure, including a manufactured home, which is to be erected, constructed, reconstructed, altered, or moved into the floodfringe area, shall meet or exceed the following standards;

(1) The elevation of the lowest floor, excluding the basement or crawlway, shall be at or above the flood protection elevation on fill. The fill shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure. The Department may authorize other floodproofing measures if the elevations of existing streets or sewer lines makes compliance impractical and the Board of Adjustment/Appeals grants a variance;

(2) The basement or crawlway floor may be placed at the regional flood elevation if it is floodproofed to the flood protection elevation. No basement or crawlway floor is allowed below the regional flood elevation;

(3) Contiguous dryland access shall be provided from a structure to land outside of the floodplain, except as provided in par. (4).

(4) In developments where existing street or sewer line elevations make compliance with par. (3) impractical, the municipality may permit new development and substantial improvements where access roads are at or below the regional flood elevation, if:

a. The municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or

b. The municipality has a natural disaster plan approved by Wisconsin Emergency Management and the Department.

(b) ACCESSORY STRUCTURES OR USES

The flood storage district delineates that portion of the floodplain where storage of floodwaters has been taken into account and is relied upon to reduce the regional flood discharge. The district protects the flood storage areas and assures that any development in the storage areas will not decrease the effective flood storage capacity which would cause higher flood elevations.

(a) APPLICABILITY

The provisions of this section apply to all areas within the Flood Storage District (FSD), as shown on the official floodplain zoning maps.

(b) PERMITTED USES

Any use or development which occurs in a flood storage district must meet the applicable requirements in Sec. 13-3-20.

(c) STANDARDS FOR DEVELOPMENT IN FLOOD STORAGE DISTRICTS

(1) Development in a flood storage district shall not cause an increase equal or greater than 0.01 of a foot in the height of the regional flood.

(2) No development shall be allowed which removes flood storage volume unless an equal volume of storage as defined by the pre-development ground surface and the regional flood elevation shall be provided in the immediate area of the proposed development to compensate for the volume of storage which is lost, (compensatory storage). Excavation below the groundwater table is not considered to provide an equal volume of storage.

(3) If compensatory storage cannot be provided, the area may not be developed unless the entire area zoned as flood storage district – on this waterway – is rezoned to the floodfringe district. This must include a revision to the floodplain study and map done for the waterway to revert to the higher regional flood discharge calculated without flood plain storage, as per Sec. 13-3-37 of this ordinance.

(4) No area may be removed from the flood storage district unless it can be shown that the area has been filled to the flood protection elevation and is contiguous to other lands lying outside of the floodplain.

Sec. 13-3-24 NONCONFORMING USES

Sec. 13-3-25 GENERAL

(a) APPLICABILITY

If these standards conform with s. 59.69(10), Stats., for counties or s. 62.23(7)(h), Stats., for cities and villages, they shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the passage of this ordinance or any amendment thereto.

(b) The existing lawful use of a structure or its accessory use which is not in conformity with the provisions of this ordinance may continue subject to the following conditions:

(1) No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this ordinance. The words "modification" and "addition" include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Ordinary maintenance repairs are not considered an extension, modification or addition; these include painting, decorating, paneling and the replacement of doors, windows and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Ordinary maintenance repairs do not include any costs associated with the repair of a damaged structure.

The construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition. The roof of the structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure.

(2) If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this ordinance;

(3) The municipality shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent;

(4) No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with Sec. 13-3-20(a). The costs of elevating a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50% provisions of this paragraph;

(5) 1. Except as provided in subd. 2., if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the current ordinance requirements. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition exceeds 50% of the structure's present equalized assessed value.

2. For nonconforming buildings that are damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building may be permitted in order to restore it after the nonflood disaster, provided that the nonconforming building will meet all of the minimum requirements under 44 CFR Part 60, or under the regulations promulgated thereunder.

(6) A nonconforming historic structure may be altered if the alteration will not preclude the structures continued designation as a historic structure, the alteration will comply with Sec. 13-3-15 (a), flood resistant materials are used, and construction practices