

Permit Process for Floodplain Development

A Checklist for Review, Approval, and Oversight of Floodplain Development Projects

A Floodplain Development Permit is required for any development activity in the regulated floodplain. This includes any man-made change to improved or unimproved real estate, including but not limited to the construction, reconstruction, renovation, repair, expansion, or alteration of buildings, accessory structures, or other structures; the placement of manufactured homes; mining; dredging; streets and other paving; docks; utilities; filling, grading, and excavation; drilling operations; storage of equipment or materials; and formation of manufactured home, recreational vehicle, or trailer parks.

Each municipality is responsible for enforcing floodplain development standards for all floodplain development within the jurisdiction, except for that undertaken by the state or federal agencies. (Report concerns about state or federal projects to the NYS Department of Environmental Conservation.) A floodplain development permit is required for projects undertaken by another municipality, county, school district, or public improvement district. Municipal projects must comply with floodplain development standards, though the municipality need not issue themselves a permit. Permits from other agencies do not preclude the need for a municipal floodplain permit.

DONE or N/A

_____ Check the Flood Insurance Rate Map (flood hazard map) to determine if the proposed project is in the Special Flood Hazard Area / 100-year floodplain. This is the **regulated floodplain** within which a floodplain development permit is required.

- No.** If the project is not located in the regulated floodplain, evaluate the potential flood hazard. Projects located near the mapped floodplain boundary, in the 500-year floodplain, near streams, and in drainage areas do not require a floodplain development permit, but may warrant flood protection measures. Make appropriate recommendations.
- Yes.** If the project is in the regulated floodplain, a floodplain development permit is required.

_____ Applicant signs **Section 1** and provides project information in **Section 2** of the permit application. Floodplain administrator reviews for completeness and accuracy.

_____ Floodplain administrator completes and signs **Section 3, Floodplain Determination**, of the application. If the Base Flood Elevation is available (in the Flood Insurance Study or from a reliable source), the required flood protection level is two feet above this level. If the Base Flood Elevation is not available, the flood protection level should be at least three feet above the highest adjacent grade or two feet above the historic flood depth at the site, whichever is higher. It may be necessary to consult a separate Flood Boundary and Floodway Map to determine if the proposed development is in the regulatory floodway.

_____ **Determine the applicable floodplain development requirements** for the proposed project at the proposed location. Resources include: Floodplain Fact Sheets (available at www.stcplanning.org), Local Law for Flood Damage Prevention, NYS Building/Residential Code, etc. Provide the applicant with copies of the relevant fact sheets.

_____ Municipal floodplain administrator completes **Section 4, Additional Information Required**, of the permit application. Review the list of documentation and check all items that will be needed to evaluate compliance with floodplain development standards. A site plan and development plans/specifications are required for all projects. Topographic information is needed if any grading or fill will occur. An elevation certificate or floodproofing certificate is required for any new or substantially improved building. If there is potential for damage to other properties (such as stream bank erosion or increased flood velocities), the applicant should provide a technical analysis by a licensed professional engineer demonstrating that such damage would not occur. Copy the application (with the completed list of required information) for the applicant and advise that site preparation and other development should not be initiated until the information is provided and the permit application is approved.

_____ When the project plans and other information are received, the floodplain administrator reviews them for completeness and compliance. If it is unclear whether the project will be safe from flood damage,

professional certification may be requested (such as for equipment or building materials located below the flood protection level). Technical assistance is available from the NYS Department of Environmental Conservation. The local floodplain administrator determines if all applicable standards are met and completes and signs the determination in **Section 5, Permit Determination**, of the permit application.

- Yes.** If the proposed project meets all applicable requirements, a Development Permit may be issued. Conditions may be attached, as appropriate.
- No.** If the proposed project does not conform to standards, the application is denied. The floodplain administrator must provide a written summary of deficiencies and how they could be rectified. The applicant may then revise and resubmit the application or may request a hearing from the Zoning Board of Appeals. This hearing may be to appeal the determination (if the applicant alleges an error in any requirement, decision, or determination) or to request a variance from the requirements for floodplain development.

If a variance is requested, review the **Variance Procedure** section of the Local Law for Flood Damage Prevention (see also *Floodplain Facts #13: Floodplain Variances* at www.stcplanning.org). The applicant must provide a written justification for the variance request. The Appeals Board must consider specified factors and confirm that required conditions are met prior to granting a variance. The *Floodplain Variance Findings & Decision* form (available at www.stcplanning.org) provides a format for documenting findings, the determination, and any conditions of approval. Following the Appeals Board hearing and decision, complete the **Appeals** information in Section 5 of the permit application. For some variances, the municipality must send a letter to the applicant notifying them of potentially high flood insurance costs and increased risks to life and property. Because floodplain development requirements are included in the NYS Building and Residential Codes, the applicant may also need to apply to the NYS Department of State for a variance from the NYS codes.

Construction may begin after a development permit is issued or, if a variance was approved, after the applicant demonstrates that any variance conditions have been met.

Site inspections are required during construction to demonstrate compliance. If deficiencies are noted, provide a written statement. A stop work order can be issued if necessary. Document inspections in **Section 7, Compliance Action**, of the floodplain development permit.

When the project is complete, the applicant must provide any certifications needed to document compliance. This may include: as-built Elevation Certificate, as-built Floodproofing Certificate, certification of flood resistant design, "no-rise" certification, certification of soil compaction, non-conversion agreement, etc. The floodplain administrator reviews this information for completeness, accuracy, and compliance. Complete **Section 6, As-Built Elevations and Certifications**, of the floodplain development permit.

If the project has complied with all local law requirements or with all variance conditions, a **Certificate of Compliance** may be issued. Complete Section 8 of the permit application.

The municipality must save sufficient documentation to demonstrate local enforcement of floodplain development standards (as required for participation in the National Flood Insurance Program). This includes: completed floodplain development permit application, elevation certificate, other certifications, project information that relates to floodplain requirements, any required notices, and other pertinent information. If a variance was requested, the record of this action should include: written request, Appeals Board findings, final determination, and written notice to applicant (if required). If a Letter of Map Change (amendment or revision) has been issued by FEMA, this should be saved for future reference.

Resources:

- o **NYS Department of Environmental Conservation** provides technical assistance with municipal floodplain management programs, including review of floodplain development proposals. Call the NYS DEC Horseheads Office at (607) 739-0809.
- o **Southern Tier Central Regional Planning and Development Board** has developed fact sheets and forms to assist with regulation of floodplain development. These and other flood risk information are available at <http://www.stcplanning.org> (select Program Areas for a dropdown menu, choose Flood Mitigation, then select Floodplain Development Standards from menu on left).