

RESOLUTION NO. 16,741

RESOLUTION OUTLINING SUGGESTED CRITERIA FOR USE BY THE CEDAR FALLS BOARD OF ADJUSTMENT WHEN CONSIDERING APPROVAL OF VARIANCES OR SPECIAL EXCEPTIONS TO FLOODPLAIN ZONING REGULATIONS IN THE FLOODWAY DISTRICT.

WHEREAS, the City Council of the City of Cedar Falls, Iowa, adopted on Monday, December 14, 2009 new floodplain zoning regulations. These regulations are intended to control development within the Cedar Falls floodway and floodplain districts as identified on the adopted National Flood Insurance Program (NFIP) maps.

WHEREAS, the Cedar Falls Board of Adjustment is the sole authority legally authorized by law to grant special exceptions and variances to zoning regulations.

WHEREAS, the City Council does not wish or desire to in any way preempt that unilateral and autonomous authority of the Board of Adjustment to rule on all requests from Cedar Falls property owners for variances or special exceptions.

WHEREAS, the City Council wishes to convey thoughts regarding the underlying purpose of floodplain regulations and the legislative intent relative to the crafting of language, administration, interpretation and enforcement of said regulations.

WHEREAS, the City Council of the City of Cedar Falls, Iowa, deems it appropriate to convey to the Cedar Falls Board of Adjustment the following suggestions which may be considered when reviewing requests for variances or special exceptions, within the floodway zoning district:

The Cedar Falls Zoning Ordinance must be adopted to strictly prohibit new building and reconstruction when a structure is damaged more than fifty percent (50%) in the floodway, if the City is to be eligible to participate in the National Flood Insurance Program (NFIP). This restriction can only be altered on a case-by-case basis by action of the Board of Adjustment in the form of a variance or special exception permit.

Historically, the Board of Adjustment has generally approved special exception permits for reconstruction or expansion of existing residential dwellings within the floodway, subject to the new or improved structure being established on the existing building footprint along with proper building elevation. On occasion some allowance has been provided for expansion of the footprint into the "flood shadow", if the expansion does not any additional impediment to flood flows.

The Cedar Falls City Council believes based on input from interested property owners following the flood of 2008 and while developing updated floodplain regulations that the fifty percent (50%) rule should be applied strictly when dealing with structures that have deteriorated due to maintenance neglect or where the residential use has been discontinued for a period of more than one year. In cases where the residential structure has been damaged more than fifty percent (50%) due to natural disaster or a cause outside of an owner's control such as a fire, tornado, flood, war, riot or act of God the human and financial hardship should be given significant weight, as a consideration that justifies approval of a variance or special exception to the fifty percent (50%) rule.

It is recognized and supported that variances and special exceptions be issued only in rare circumstances where they meet specific legal tests and only when the approval reduces the potential for damage to other properties and it reduces the impediment of flood flows. If the Board of Adjustment were to see fit to grant a special exception or variance to the fifty percent (50%) rule the following criteria should be considered as conditions for granting such a request:

1. The damage to the residential structure is caused by natural disaster or an event outside of an owners control such as a structure fire, tornado, flood, war, riot or act of God.
2. The new structure must be constructed on the existing building footprint unless relocation or reorientation of the footprint, of equal size, significantly reduces flood flow impediments, lessens flood impacts on properties within the floodplain and allows for the construction of a safer structure.
3. The new structure must be elevated on engineered piers to ensure that flood flows are not obstructed and that the new structure significantly reduces existing flood flow obstructions and increases overall floodplain storage capacity.
4. The new structure may expand the footprint size by up to twenty-five percent (25%) to accommodate the elevation of electrical, mechanical and storage areas displaced by the use of piers, only if the expansion occurs in the "flood shadow".
5. The new structure must be elevated one foot above the estimated five hundred year (500-year or 0.2% probability flood) flood elevation.
6. The new building must comply with all requirements of the International Building Code, as it relates to construction in a floodway (examples include: elevation of al electrical, ventilation, plumbing and mechanical equipment).
7. The new building must limit enclosures or storage areas under the structure and comply with all NFIP requirements for openings, anchoring and use of flood-resistant materials.

8. The property owner agree to sign a standardized non-conversion agreement with the Board of Adjustment, promising not to improve, finish, or otherwise convert the any area below the regulatory flood elevation (500-year or 0.2% probability flood) and grant to the Board of Adjustment the right to allow the Zoning Administrator to inspect any enclosed area obstructing flood flows and authorize the Board of Adjustment to order removal of the improvements, if they are deemed to have violated the agreement or inhibit flood flows. Said agreement shall be filed with the Black Hawk County Recorder by the Board of Adjustment to ensure that future owners of the property are aware of the variance and it's limitations.
9. Reconstruction of a damaged structure must begin within six months of the time of damage exclusive of the time needed to secure a variance or special exception, unless special circumstances outside of the control of the property owners warrants a longer period of time authorized by the Board of Adjustment.
10. If variances or special exceptions to the fifty percent (50%) rule are approved by the Board of Adjustment it is asked that the Board consider developing a listing of conditions and criteria under which the petition is granted so that others seeking variances or special exceptions on similar properties can use the criteria to guide their decision-making.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CEDAR FALLS, IOWA, that the above criteria be submitted to the Cedar Falls Board of Adjustment for their thoughtful use and consideration.

ADOPTED this 14<sup>th</sup> day of December 2009.

ATTEST:

Gary L. Hesse  
Gary L. Hesse, MMC, City Clerk

Jon T. Crews  
Jon T. Crews, Mayor