

City of Fayetteville Staff Review Form

2022-0038

Legistar File ID

2/15/2022

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Chris Brown

1/15/2022

ENGINEERING (621)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of revisions to Chapter 156, 166 and 168 of the Unified Development Code to address incorrect references, clarify existing impervious area and remove an ambiguous clause from the flood damage prevention code.

Budget Impact:

Account Number	Fund
Project Number	Project Title
Budgeted Item? <u> No </u>	Current Budget \$ -
	Funds Obligated \$ -
	Current Balance \$ -
Does item have a cost? <u> No </u>	Item Cost \$ -
Budget Adjustment Attached? <u> No </u>	Budget Adjustment \$ -
	Remaining Budget \$ -

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF FEBRUARY 15, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Chris Brown, Public Works Director
Jonathan Curth, Development Services Director

FROM: Alan Pugh, Staff Engineer

DATE: January 13, 2022

SUBJECT: **Approval of revisions to Chapter 156, 166 and 168 of the Unified Development Code to address incorrect references, clarify existing impervious area and remove an ambiguous clause from the flood damage prevention code.**

RECOMMENDATION:

Staff recommends approval of revisions to Chapter 156, 166 and 168 of the Unified Development Code to address incorrect references, clarify existing impervious area and remove an ambiguous clause from the flood damage prevention code.

BACKGROUND:

The City Council approved many changes to the Unified Development Code in June of 2021. These revisions addressed many of the stormwater issues associated with the Residential Single Family and Duplex exemption from stormwater requirements as that had become a predominant infill development pattern over the last several years.

DISCUSSION:

Subsequent to the revisions in June, a few minor clarifications as well as incorrect references were discovered. These are listed in more detail below:

- Chapter 156.03: Revise the references to the Flood Damage Prevention code to the appropriate sections and move the Streamside Protection Zone procedures under the flood damage prevention section.
- Chapter 166.02: Clarify the date that existing impervious must be present to be counted as existing impervious in the stormwater calculations and what portions of a development must be treated by the Green Stormwater Practices.
- Chapter 168.07: Remove redundant references to the appeal process, reference the current variance and appeals sections of the code and remove a now ambiguous clause regarding areas outside the special flood hazard area. This clause was applicable to Zone

A areas but is no longer applicable to those areas and appears overly broad and in conflict with other portions of code such as streamside protection.

- Chapter 168.10: Allow for the installation of a small accessory structure without the need for additional flood analysis in keeping with the streamside protection provisions.

These items were forwarded to City Council from the January 10, 2022 Planning Commission Meeting. The meeting information is attached for reference.

BUDGET/STAFF IMPACT:

None

Attachments:

Redlined code amendments
Planning Commission Report

CHAPTER 156: VARIANCES

156.03 (C)(7) Flood Damage Prevention Code

- (7) *Flood Damage Prevention Code.* The Planning Commission shall hear and decide requests for variances from the requirement of this ordinance.
- (a) In passing upon such applications, the Planning Commission shall consider all technical evaluations, all relevant factors, and standards specified in other sections of this ordinance.
 - (b) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed in the National Register of Historic Places, without regard to the procedures identified in the remainder of this ordinance. Variances may only be issued for such repair, or rehabilitation if strict enforcement of the ordinance would preclude the structure's continued designation as a historic structure, and the variance is the minimum necessary to preserve the historic character and design of the structure.
 - (c) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot ½ acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items ~~(1) through (11) of~~ listed in §168.035(BA)(4) have been fully considered. As the lot size increases beyond half acre, the technical justification required for issuing the variance increases.
 - (d) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
 - (e) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (f) Floodplain variances shall only be issued if:
 - (i) There are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property, which do not apply generally to other property in the same flood zone;
 - (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 a 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 the other provisions of the *Code of Fayetteville*.
 - (g) Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the provisions of §168.035(BA)(4) are ~~satisfied~~ considered and that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
 - (h) Upon consideration of the factors in this section, and the purpose of this ordinance, the Planning Commission may impose conditions to the granting of floodplain variances as it deems necessary to further the purpose of this ordinance.
 - (i) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the regulatory flood

elevation surcharge and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. A copy of the notice shall be recorded by the floodplain administrator in the office of the Washington County Clerk and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

(i) Streamside Protection Zones.

(ia) Undue Hardship. If the provisions of the Streamside Protection Zones Ordinance are shown by the owner or developer to cause undue hardship as strictly applied to the owner or developer's property because of its unique characteristics, the Planning Commission may grant a variance on a permanent or temporary basis from such provision so that substantial justice may be done and the public interest protected, provided that the variance will not have the effect of nullifying the intent and purpose of the Streamside Protection regulations.

(bii) Consideration of Alternative Measures. The applicant for the variance shall establish that a reasonable rezoning by the City Council or variance request from the Board of Adjustment will not sufficiently alleviate the claimed undue hardship caused by the Streamside Protection regulations.

(eiii) Conditions and Safeguards. In granting any variance, the Planning Commission may prescribe appropriate conditions and safeguards to substantially secure the objectives and purpose for the regulations so varied and to mitigate any detrimental effects the variance may cause. The Planning Commission should consider the Streamside Protection Best Management Practices Manual and any mitigation recommendations from the City Engineer.

(8) *Outdoor Lighting Plan.*

(a) *Undue Hardship.* So that substantial justice may be done and the public interest secured, a developer may petition the Planning Commission for a variance from the requirements of Chapter 176: Outdoor Lighting, by showing that their strict application would cause undue hardship as applied to the proposed development; provided that such variance shall not have the effect of nullifying the intent and purpose of the chapter.

(b) *Conditions.* In granting variances, the Planning Commission may impose such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied.

(9) *Bicycle rack variance.* The Planning Commission may modify the design standards or the requirement for a bicycle rack.

~~(10) Streamside Protection Zones.~~

~~(a) Undue Hardship. If the provisions of the Streamside Protection Ordinance are shown by the owner or developer to cause undue hardship as strictly applied to the owner or developer's property because of its unique characteristics, the Planning Commission may grant a variance on a permanent or temporary basis from such provision so that substantial justice may be done and the public interest protected, provided that the variance will not have the effect of nullifying the intent and purpose of the Streamside Protection regulations.~~

~~(b) Consideration of Alternative Measures. The applicant for the variance shall establish that a reasonable rezoning by the City Council or variance request from the Board of Adjustment will not sufficiently alleviate the claimed undue hardship caused by the Streamside Protection regulations.~~

~~(c) Conditions and Safeguards. In granting any variance, the Planning Commission may prescribe appropriate conditions and safeguards to substantially secure the objectives and purpose for the~~

~~regulations so varied and to mitigate any detrimental effects the variance may cause. The Planning Commission should consider the Streamside Protection Best Management Practices Manual and any mitigation recommendations from the City Engineer.~~

(Ord. No. 4714, 6-21-05; Ord. No. 4930, 10-3-06; Ord. No. 5296, 12-15-09; Ord. No. 5372, 12-7-10; Ord. No. 5390, 3-1-11; Ord. No. 5680, 4-15-14; Ord. No. 5814 , §§1, 2, 10-6-15)

CHAPTER 166: DEVELOPMENT

Sections:

166.02 Development Review Process

(E) *Building Permits.*

- (1) Before a building permit is issued the developer shall:
 - (a) Dedication of Right-of-Way. Dedicate right-of-way in compliance with the city's Master Street Plan, and in compliance with the requirements for on or off-site improvements.
 - (b) Dedicate all easements necessary to serve the development as required by the utility providers and the city. This may be completed by easement plat or separate easement document(s), with approval of the Planning Division.
 - (c) Comply with all applicable zoning and development codes.
 - (d) In addition, for small site improvement plans, large site improvement plans and large scale developments, the developer shall:
 - (i) Obtain approval from the appropriate governing body.
 - (ii) On and Off-Site Improvements. Construct or guarantee required on- and off-site improvements in accordance with UDC Chapter 158.
 - (iii) Complete applicable conditions of approval.
- (2) In addition to §166.02(E), before a building permit is issued for site that creates between 1,201 and 10,000 square feet of new impervious area, where a corresponding subdivision of land is not proposed, the developer shall complete, and receive approval of, appropriate grading and drainage documentation demonstrating compliance with UDC Chapters 169 and 170 as well as the current City Drainage Criteria Manual per the table below. Impervious areas will be considered as existing only if they are in place ~~prior to on the effective date of this ordinance~~ March 3, 2021 which corresponds with the City of Fayetteville 2021 imagery.

Required Mitigation Measures and Documentation by Development Threshold			
Development Threshold	City-wide Standard	Grading and Drainage/ Stormwater Documentation	Water Quality, Flood, and Tree Mitigation Measures

Level 1	< or = 1,200 sf of IA	Exempt from Grading and Drainage provisions except for those still associated with the Building Permit process such as HHOD	Exempt
Level 2	1,201— 6,000 sf of IA	<ul style="list-style-type: none"> Completed Green Stormwater Practice (GSP) Worksheet, demonstrating Runoff Reduction via Better Site Design. GSP Operation & Maintenance (O & M) Agreement to ensure the long-term functionality of these practices. 	<ul style="list-style-type: none"> 2 or more measures from Step 1 of Table 2 that Reduce Runoff via Better Site Design 1 or more Green Stormwater Practices (GSPs) measures from Step 2 of Table 2 as required to treat 100% of the developed portion proposed additional impervious and gravel areas of the site.
Level 3	6,001— 10,000 sf of IA	Same as Level 2.	<ul style="list-style-type: none"> Same as Level 2. As needed GSP measures from Step 3 to further reduce runoff, <u>referred to as extended detention</u> Abbreviated Tree Preservation Plan

CHAPTER 168: FLOOD DAMAGE PREVENTION CODE

168.07 Permit Procedures

- (A) Application for a floodplain development permit shall be presented to the Floodplain Administrator electronically and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard.
- (B) The documentation required with each application for a floodplain development permit, and the specific provisions of this Code applicable to the proposed development, are dependent upon the type of development proposed and the risk zone of the proposed development site. Section 168.10(A) contains standards for all developments in all risk zones. Section 168.11 contains standards for specific development types in specific risk zones.
- (C) ~~The decision of the Floodplain Administrator to approve or deny issuance of a floodplain development permit is subject to appeal to the designated Appeal Board. Within Fayetteville, Arkansas the designated Appeal Board is the City Council.~~

(Ord. No. 5141, 5-6-08; Ord. No. 6446 , §10(Exh. E), 6-15-21)

168.08 Variances

Applicants may submit petitions for variances per the requirements of ~~§156.03(C)(6)~~ the variances chapter of the Unified Development Code

(Ord. No. 5141, 5-6-08)

168.09 Appeals from Staff Interpretations and Actions

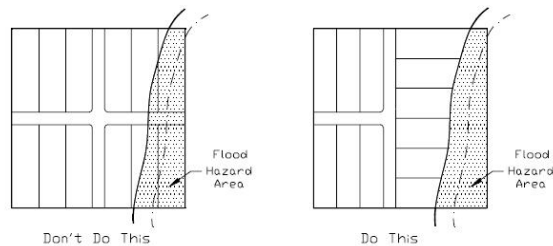
Applicants may appeal decisions of the Floodplain Administrator per the requirements of ~~§155.06(C)(1)~~ the appeals chapter of the Unified Development Code.

(Ord. No. 5141, 5-6-08)

168.10 Provisions for Flood Hazard Reduction

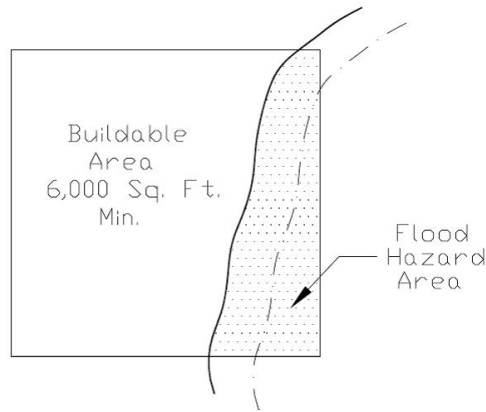
(T) Standards for Subdivisions: Applications for preliminary, final, and/or concurrent plat approval shall:

- (1) Identify the special flood hazards areas, including delineation of floodways and the elevation of the base flood.
- (2) All final plats shall provide the elevation of proposed structure(s) and pad(s). If the site is filled above the base flood, the final pad elevation shall be verified by a registered professional engineer, or surveyor, and provided to the Floodplain Administrator.



- (3) To the extent practicable, lot boundaries shall be made to coincide with natural and pre-existing man-made drainage ways within subdivisions to avoid the creation of lots that can be built upon in only by altering such drainage ways. (See illustration: Figure 3.)

Any lot platted so that a portion of the lot lies in a special flood hazard area shall contain a minimum of 6,000 square feet of buildable area, including setbacks, outside the special flood hazard area, or if it contains less than 6,000 square feet of buildable area, it shall be platted to contain a minimum of 1 acre. Any lot platted so that the entire lot lies in a special flood hazard area shall contain a minimum of 1 acre. (See illustration: Figure 4.)



(4) For subdivisions partially located in special flood hazard areas, minimum lot area requirements may be waived by the director to allow the platting of lots to be clustered outside the special flood hazard area, the density permitted for the zoning district to be averaged over the entire parcel, provided a permanent conservation easement is granted to the city, a land trust, or the property owners association to ensure that the area of special flood hazard will remain undeveloped.

~~(5) In any area that is located outside a special flood hazard area, but where a stream is located, no building or fill may be located within a distance of the stream bank equal to two and one-half (2½) the width of the stream measured from top of bank to top of bank, or 25 feet on each side, whichever is greater.~~

~~(65)~~ In all areas designated as a Zone A on the FIRM where a detailed study has not been completed to specify the floodway and base flood elevations, no development shall be located within the Zone A area.

(a) Provided, the applicant may choose, if not required by other provisions of this chapter, to provide a detailed hydrologic and hydraulic study which delineates the floodway, one hundred (100) year floodplain boundary, and base flood elevations. At such time as a study is approved by FEMA, the applicant shall meet all requirements for areas designated with floodway, one hundred (100) year floodplain, and base flood elevations.

(b) If, for some reason, the property owner believes the FIRM to be inaccurate, a letter of map amendment may be submitted to FEMA by the applicant. If the boundaries of the floodplain are approved and amended by FEMA, setbacks will be enforced pursuant to the amendment.

(U) Any new construction, addition or other development may be approved in a special flood hazard area only if:

(1) The applicant has provided a detailed hydrologic and hydraulic study performed by a professional engineer licensed in the state of Arkansas which delineates the floodway, 1% annual chance (100-year) floodplain boundary, and base flood elevations and demonstrates through a hydrologic and hydraulic analysis, that the development will not increase flood flows (0.0 cubic feet per second), flood heights (0.00 feet) or flood channel velocities (0.0 feet per second) on the subject property or any property upstream or downstream, and

(2) The proposed development does not increase flood damage to off-site properties during the occurrence of the regulatory flood (1% annual chance/100-year) or any flood of more frequent occurrence, and

(3) The proposed development provides compensatory storage for any measurable loss of flood storage capacity.

(3)(4) Provided that this shall not apply for a single accessory structure per lot placed on existing grade (no proposed fill material), without a foundation and no larger than 150 square feet, including storage sheds, playground equipment, gazebos, etc...that is not located within a regulatory floodway and constructed in compliance with the remainder of this code.

(V) Any structure, including but not limited to new structures, additions and substantial improvement, constructed on property fully or partially within the special flood hazard area (SFHA) shall meet the elevation or floodproofing requirements within [§168.11](#) as applicable, even if the structure itself is located outside the SFHA.



TO: City of Fayetteville Planning Commission

FROM: City Engineering Division

MEETING DATE: January 10, 2022 **Updated with PC hearing results from 1/10/2022**

SUBJECT: **ADM-2021-000076 Administrative Item (Amend UDC 156, 166, 168: Development Standards):** Submitted by the City of Fayetteville Engineering Division for revisions to Chapter 156, 166 and 168 of the Unified Development Code to address incorrect references, clarify existing impervious area and remove an ambiguous clause from the flood damage prevention code.

RECOMMENDATION:

The City of Fayetteville Engineering Division recommends forwarding the proposed code change to the City Council with a recommendation for approval.

RECOMMENDED MOTION: *“I move to forward ADM-2021-000076 to the City Council with a recommendation for approval.”*

BACKGROUND:

The City Council approved many changes to the Unified Development Code in June of 2021. These revisions addressed many of the stormwater issues associated with the Residential Single Family and Duplex exemption from stormwater requirements as that had become a predominant infill development pattern over the last several years.

DISCUSSION:

Subsequent to the revisions in June, a few minor clarifications as well as incorrect references were discovered. These are listed in more detail below:

- Chapter 156.03: Revise the references to the Flood Damage Prevention code to the appropriate sections and move the Streamside Protection Zone procedures under the flood damage prevention section.
- Chapter 166.02: Clarify the date that existing impervious must be present to be counted as existing impervious in the stormwater calculation and what areas must be directed to the new green stormwater practices.
- Chapter 168.07: Remove redundant references to the appeal process, reference the current variance and appeals sections of the code and remove a now ambiguous clause regarding areas outside the special flood hazard area. This clause was applicable to Zone A areas but is no longer applicable to those areas and appears overly broad and in conflict with other portions of code such as streamside protection. This also includes the

exemption of small sheds from the flood study requirement and clarification that the concern is with channel velocities rather than channel and overbank velocities.

BUDGET/STAFF IMPACT:

None

Planning Commission Action:	<input type="checkbox"/> Approved	<input checked="" type="checkbox"/> Forwarded	<input type="checkbox"/> Denied
Meeting Date: <u>January 10, 2022</u>		With a recommendation of approval	
Motion: Sparkman			
Second: Belden			
Vote: 8-0-0			

BUDGET/STAFF IMPACT:

N/A

Attachments:

Redlined code amendments