



CITY OF BAYPORT

294 NORTH 3RD STREET
BAYPORT, MN 55003

PLANNING COMMISSION MEETING

City Hall - Council Chambers

May 22, 2023

6:00 p.m.

A. CALL TO ORDER

B. APPOINTMENT OF CHAIRPERSON AND VICE CHAIRPERSON

C. APPROVAL OF MINUTES

- December 19, 2022 regular meeting

D. PUBLIC HEARINGS

- Consider amendments to Appendix E - Floodplain Management of the Bayport City Code of Ordinances to be consistent with the National Flood Insurance Program
- Consider an amendment to Appendix A - Subdivisions of the Bayport City Code of Ordinances

E. OLD BUSINESS

F. NEW BUSINESS

G. GENERAL INFORMATION

- Commissioners Coleen Siegfried and Aaron Ochs have been reappointed by the City Council to serve another 3 year term through December 31, 2025

H. OPEN FORUM

I. ADJOURNMENT

**CITY OF BAYPORT
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
DECEMBER 19, 2022
6:00 P.M.**

CALL TO ORDER

Pursuant to due call and notice, Commissioner Kelly called the regular Bayport Planning Commission meeting of December 19, 2022 to order.

ROLL CALL

Commissioners Present: Elizabeth Kelly, Orin Kipp, Coleen Siegfried, Carl Bliss, and Aaron Ochs

City Staff Present: City Administrator Adam Bell, Assistant City Administrator/Planner Sara Taylor, Public Works Director Matt Kline, City Attorney Christina Benson, and City Council Liaison Michele Hanson

APPROVAL OF MINUTES

It was moved by Commissioner Kipp and seconded by Commissioner Bliss to approve the August 22, 2022 minutes. Motion carried 5-0.

PUBLIC HEARINGS

1. Consider an application submitted by Nathan Jespersen for setback and impervious coverage variances to allow an expansion of the existing substandard single-family home at 317 Lake Street South: Planner Taylor noted that the applicant purchased the property earlier this year, which consists of a 3-story single family house and attached garage. It is surrounded by residential uses on the north and south, River Park Marina on the west, and St. Croix River on the east. The property is zoned R-2 single family urban and is also located within the Lower St. Croix River Shoreland and Bluffland and Floodplain Management areas. The existing house is considered substandard because it does not meet the required 100 foot setback from the ordinary high water mark, 40 foot setback from slopes greater than 12%, or 20% maximum impervious coverage as required by city ordinance. Section 601.03 of the Lower St. Croix River Shoreland and Bluffland ordinance allows for certain exceptions to setbacks, but stipulates that subsequent expansion or alteration to existing substandard structures shall only be allowed laterally (parallel) or landward to the river and shall not include alterations to the roof line of the structure. To facilitate a proposed expansion to the north side of the structure to create a 1st floor entry into the existing home and an expansion of the 3rd floor to create additional living area, the applicant is requesting multiple variances.

Planner Taylor reviewed the history of the property, noting variances were granted in 2002 to allow for the house to be reconstructed and elevated on fill at the existing setback from the river. In this case, compliance with flood protection regulations were considered paramount over riverway setback regulations. However, these variances did not set precedent for allowing future expansion of the structure further into the setback, toward the river, or in roofline, as proposed by the applicant. Planner Taylor proceeded to review the specific details of the proposed north addition, which included removing the exterior stairwell to the 2nd floor and creating a new enclosed entry to the 1st floor of the house. She explained that the proposed addition is reasonable and will facilitate more practical and efficient accessibility. The addition will consist of a lateral expansion of the house, which is permitted by the ordinance and it will comply with required setbacks from the river and north side yard property line. Impervious coverage resulting from the addition will be mitigated elsewhere on the property and a raingarden will be installed to address stormwater drainage and infiltration, both of which will be an improvement over the existing conditions. Planner Taylor summarized the details of the east addition, which included extending the 3rd floor toward the river to meet the front building line of the 1st and 2nd floors to create additional living space. She explained that the proposed expansion is not necessary to make reasonable use of the house. Circumstances are not unique to this property to justify further encroachment of the structure toward the river or modification to the roofline, particularly when other opportunities exist to expand the house laterally or landward, as permitted by the ordinance. Architecturally, this home is already distinct in scale as a 3-story when compared to other surrounding 1 and 2-story homes. Further expansion of the 3rd floor and modification of the roofline would suggest further departure from the character of the neighborhood.

Planner Taylor indicated staff support for the north addition, but lack of support for the east addition based on the findings of fact outlined in the staff report. She summarized a review memo provided by the Department of Natural Resources (DNR) concurring with staff's recommendation on the variance requests.

Commissioner Kelly opened the public hearing. Nathan Jespersen, 317 Lake Street South, introduced himself as the applicant, accompanied by his architect Vince Meyer and outlined desired outcomes for the renovation project. His proposal attempts to achieve the lowest impact to the existing structure, with the highest return in additional living area, stating the desire is to work with the existing design as opposed to demolition and rebuilding a more expansive home. He also is seeking to achieve better overall design with the proposed project, inside and out. He plans to bring some continuity to the structure by adding a new entry, as well as expanding the 3rd floor to create three full bedrooms and an ensuite for the master bedroom. Finally, he summarized his approach as proactive and forward-looking, understanding there are rules and regulations created to protect and conserve the city, the land, and the river, and his desire is to work with the city and DNR towards a solution that adds both value to his home and the city. The applicant closed with presenting an alternative to his proposal, which would include demolition of the existing house and construction of a new home capitalizing on a lateral expansion as permitted by the ordinance. Planner Taylor noted that the applicant had not discussed or presented the alternative lateral expansion option with staff prior to tonight's meeting, leaving staff unable to provide direction to the Planning Commission on whether the alternative met the applicable ordinances for new construction and/or would be permitted.

It was moved by Commissioner Kelly and seconded by Commissioner Ochs to close the public hearing. Motion carried 5-0.

Attorney Benson reviewed state statute requirements the Planning Commission must use when considering a variance application. Discussion followed on the proposed additions and whether criteria was met to justify the granting of the variances. Overall, the consensus of the Planning Commission was consistent with staff's findings of fact and recommendation to approve the variances associated with the north 1st floor entry addition. However, the Planning Commission expressed a lack of consensus on whether the east addition met the variance criteria and differing levels of concern for the proposed hypothetical lateral expansion presented by the applicant. Commissioner Kelly questioned whether demolishing the existing house and rebuilding was a real possibility and financially feasible or just a consideration. The applicant responded that he would be willing and able to rebuild, if necessary. Discussion continued on the spirit and intent of the ordinance when applied to the east expansion and visual impact it would have when viewed from the river. Commissioner Kelly reiterated the statute criteria the Planning Commission must use to consider the variances, as well as DNR's position regarding further encroachment of the structure toward the river. Planner Taylor noted that the city has adopted the DNR's model ordinance to regulate development within the riverway and reiterated the importance of applying the same principles consistently to all properties.

It was moved by Commissioner Kelly and seconded by Commissioner Kipp to recommend the City Council approve variances to allow an expansion of the existing substandard single-family home at 317 Lake Street South by 157 square feet, for the purpose of creating an enclosed 1st floor entry on the north side of the house, subject to mitigation/removal of existing impervious surface resulting in no net increase above 23.6%. Approval is subject to findings of fact and conditions listed in the staff report and presented at this meeting. Motion carried 5-0.

It was moved by Commissioner Kelly and seconded by Commissioner Ochs to recommend the City Council deny variances to allow an expansion of the existing substandard single-family home at 317 Lake Street South for the purpose of extending the footprint and roofline of the 3rd floor to create additional living space, subject to findings of fact listed in the staff report and presented at this meeting. Upon roll call being taken thereon, the following voted via voice (nay voters indicated their support for the variance):

Elizabeth Kelly – aye
Coleen Siegfried – nay

Carl Bliss – aye
Aaron Ochs - nay

Orin Kipp – nay

OLD BUSINESS - None

NEW BUSINESS - None

GENERAL INFORMATION - None

OPEN FORUM – None

ADJOURNMENT

It was moved by Commissioner Kipp and seconded by Commissioner Siegfried to adjourn the meeting at 7:03 p.m. Motion carried 5-0.

City Administrator/Clerk



MEMORANDUM

DATE: May 19, 2023

TO: Planning Commission (May 22, 2023 meeting)
Matt Kline, City Administrator

FROM: Sara Taylor, Assistant City Administrator/Planner

SUBJECT: Public hearing to consider amendments to Appendix E - Floodplain Management of the Bayport City Code of Ordinances to be consistent with the National Flood Insurance Program

A. BACKGROUND

The Floodplain Management Ordinance is considered an overlay ordinance that is included as an appendix to the Bayport City Code. An overlay ordinance applies only to certain land parcels within the jurisdiction of the city. In this case, the Floodplain Management Ordinance overlay applies to land parcels located within the boundaries of the Floodway and Flood Fringe Districts of the St. Croix River, established by Federal Emergency Management Agency (FEMA), and administered by local communities and the Department of Natural Resources (DNR).

The purpose of this ordinance is to identify a reasonable method of analyzing flood hazards and to establish provisions to minimize potential loss of property and extraordinary public expenditures due to flooding. In order to participate in the National Flood Insurance Program (NFIP), which offers flood and federal disaster insurance to all property owners, the city is required to adopt a Floodplain Management Ordinance and subsequent amendments.

Because this ordinance often plays a part in planning/zoning applications that are considered by the Planning Commission, and relates to zoning, the Planning Commission is being asked to participate in the amendment process by holding a public hearing, and providing a recommendation on the amendments for City Council consideration. Notice of the Planning Commission's public hearing was published in the Stillwater Gazette on May 5, 2023.

The following informational items are attached:

- DNR conditional approval of amended Floodplain Management Ordinance dated May 19, 2023
- Draft amended Floodplain Management Ordinance

B. STAFF COMMENTS

A majority of the text included in the draft ordinance has been prepared by the DNR and is required to be adopted by the city in order to participate in and comply with the NFIP. Other amendments that have been incorporated are intended to eliminate confusing concepts, clarify permit requirements, assist with substantial damage or improvement determinations, and ensure consistency amongst state rules, federal regulations, and FEMA policy. A few sections of the ordinance are optional for communities to adopt, which are highlighted in blue text with comments noted in the draft ordinance. However, because these sections are intended to minimize public risk in the event of a flood and help clarify and provide guidance to staff on how to administer certain provisions, staff feels it would be beneficial for the city to adopt these sections. The existing Floodplain Management Ordinance can be viewed online via the city's website for reference.

C. RECOMMENDATION

Staff recommends approval of the Floodplain Management Ordinance as proposed by FEMA and approved by the DNR in order to comply and participate in the National Flood Insurance Program. The Planning Commission is asked to make a recommendation for City Council consideration. The City Council is anticipated to consider the ordinance at the June 5, 2023 regular meeting.

May 19, 2023

City of Bayport
The Honorable Michele Hanson
294 N Third Street
Bayport, MN 55003

CONDITIONAL STATE APPROVAL OF FLOODPLAIN ORDINANCE & REQUIRED NEXT STEPS

Dear Mayor Hanson,

On behalf of the Department of Natural Resources (DNR), I am writing to conditionally approve the City of Bayport's draft floodplain management ordinance.

We received the most recent version of the City's draft floodplain management ordinance via email on May 18, 2023 from Assistant City Administrator/City Planner Sara Taylor. The ordinance is being amended to update the City's floodplain ordinance consistent with the newest model floodplain ordinance.

In accordance with Minnesota Statutes, Section 103F.121, we find that the City's draft floodplain management ordinance substantially complies with the state floodplain management rules (Minnesota Rules, parts 6120.5000 to 6120.6200) and, to the best of our knowledge, with the floodplain management standards of the Federal Emergency Management Agency, and hereby conditionally approve it.

We will provide final approval of the county's draft ordinance once the DNR has received one (1) copy each of the following:

- ***the adopted ordinance (signed and stamped with the community seal),***
- ***the affidavit of publication, and***
- ***the completed "Ordinance Certification Checklist" (enclosed).***

Please forward these documents via email to Ceil Strauss, the DNR's State NFIP Coordinator in St. Paul, at ceil.strauss@state.mn.us. Upon receipt and verification, we will send a final approval letter. Ms. Strauss will then transmit the ordinance and final approval letter to our contacts at FEMA's Chicago Regional Office. Be advised that any future amendments to this ordinance or change in the designation of flood prone areas require prior DNR approval. In addition, you are required to send copies of hearing notices and final decisions pertaining to floodplain variances, conditional uses, and ordinance amendments to this agency. Please email these notices to Ceil Strauss. Should you have any questions on this ordinance or related matters, please contact Ms. Strauss via email or at (651) 259-5713.

While our office in St. Paul will continue to be the main contact for the ordinance update, your DNR Area Hydrologist will continue to be your main contact for day-to-day assistance with administering your floodplain

management ordinance and questions about other DNR water-related programs and permits. Your Area Hydrologist is Dan Scollan, who can be contacted at (651) 259-5732 or daniel.scollan@state.mn.us.

The DNR greatly appreciates your community's cooperation and initiative in providing for the reduction of flood damages through the adoption and administration of this ordinance.

Sincerely,



Jennifer Skillcox
Land Use Unit Supervisor

Enclosures: Ordinance Processing Checklist

c: Sara Taylor, Assistant City Administrator/City Planner, City of Bayport
Dan Scollan, DNR Area Hydrologist
Dan Lais, DNR EWR Regional Manager
Megan Moore, DNR EWR District Manager
Ceil Strauss, DNR NFIP Coordinator



Minnesota Model Floodplain Ordinance

This model ordinance has been developed to be consistent with Minnesota Statutes, Chapter 103F, Minnesota Rules, parts 6120.500 – 6120.6200; 44 CFR § 59 to 78; Federal Emergency Management Agency (FEMA) technical bulletins and policies; as well as other state agency statutes and rules. Ordinance provisions may differ slightly from the wording in law due to inconsistencies or for ease of administration. The model also contains administrative language not in rule to help clarify procedures for the purposes of ordinance administration. Where applicable, the most restrictive standards have been incorporated into this ordinance.

This model includes the three primary types of floodplain districts: Floodway, Flood Fringe, and General Floodplain. As presented, it incorporates ordinance provisions for a community that has all three districts present on their Flood Insurance Rate Maps. Local communities are encouraged to work with DNR to tailor the language based on the flood districts present in the community.

Blue bold text in the “Ordinance Language” column indicates optional standards. In most cases, these are recommended higher standards that provide better protection than the minimum state/federal standards, as well as alternative approaches that allow for easier administration.

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SECTION 1.0 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE

- 1.1 **Statutory Authorization.** This floodplain ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 103F; Minnesota Rules, parts 6120.5000 – 6120.6200; the rules and regulations of the National Flood Insurance Program (NFIP) in 44 CFR § 59 to 78; and the planning and zoning enabling legislation in Minnesota Statutes, Chapter 462.
- 1.2 **Purpose**
 - 1.21 This ordinance regulates development in the flood hazard areas of the City of Bayport. These flood hazard areas are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. It is the purpose of this ordinance to promote the public health, safety, and general welfare by minimizing these losses and disruptions.
 - 1.22 This ordinance is adopted in the public interest to promote sound land use practices, and floodplains are a land resource to be developed in a manner which will result in minimum loss of life and threat to health, and reduction of private and public economic loss caused by flooding.
 - 1.23 This ordinance is adopted to maintain eligibility in the National Flood Insurance Program.
 - 1.24 This ordinance is also intended to preserve the natural characteristics and functions of watercourses and floodplains in order to moderate flood and stormwater impacts, improve water quality, reduce soil erosion, protect aquatic and riparian habitat, provide recreational opportunities, provide aesthetic benefits and enhance community and economic development.
- 1.3 **Abrogation and Greater Restrictions.** It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or other private agreements. The standards in this ordinance takes precedence over any less restrictive, conflicting local laws, ordinances, or codes. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.
- 1.4 **Warning and Disclaimer of Liability.** This ordinance does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. Not all flood risk is mapped. Larger floods do occur and the flood height may be increased by man-made or natural causes, such as ice jams or bridge openings restricted by debris. This ordinance does not create liability on the part of the City of Bayport or its officers or employees for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.
- 1.5 **Severability.** If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.

SECTION 2.0 DEFINITIONS

- 2.1 **Definitions.** Unless specifically defined, words or phrases used in this ordinance must be interpreted according to common usage and so as to give this ordinance its most reasonable application.
 - Accessory Structure. A structure, as defined in this ordinance, that is on the same parcel of property as, and is incidental to, the principal structure or use; an accessory structure specifically excludes structures used for human habitation.
 - Base Flood. The flood having a one-percent chance of being equaled or exceeded in any given year. “Base flood” is synonymous with the term “regional flood” used in Minnesota Rules, part 6120.5000.
 - Base Flood Elevation (BFE). The elevation of the base flood, regional flood, or one-percent annual chance flood. The term “base flood elevation” is used in the flood insurance study.
 - Basement. Any area of a structure, including crawl spaces, having its floor subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.
 - Building. See *Structure*.
 - Channel. A natural or artificial depression of perceptible extent, with definite bed and banks to confine and conduct flowing water either continuously or periodically.

Conditional Use. A land use or development that would not be appropriate generally, but may be allowed with appropriate restrictions upon a finding that certain conditions as detailed in the zoning ordinance exist, the use or development conforms to the comprehensive land use plan of the community, and the use is compatible with the existing neighborhood.

Critical Facilities. Buildings and structures that contain essential facilities and services necessary for emergency response and recovery, or that pose a substantial risk to the public in the event of failure, disruption of function, or damage by flooding. Specifically, this includes facilities identified as Flood Design Class 4 in *ASCE 24-14, Flood Resistant Design and Construction*, as amended. Examples include health care facilities, facilities required for emergency response, power generating stations, communications towers, or electrical substations.

Commented [ST1]: Intended to ensure critical/essential facilities are constructed at protection elevations to avoid risk to the public in the event of a flood.

Development. Any man-made change to improved or unimproved real estate, including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

Equal Degree of Encroachment. A method of determining the location of floodway boundaries so that floodplain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.

FEMA. Federal Emergency Management Agency.

Flood. A temporary rise in the stream flow or water surface elevation from any source that results in the inundation of normally dry land areas.

Flood Fringe. The portion of the one-percent annual chance floodplain located outside of the floodway.

Flood Insurance Rate Map (FIRM). An official map on which the Federal Insurance Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study (FIS). The study referenced in Section 3.2, which is an examination, evaluation and determination of flood hazards, and if appropriate, corresponding surface elevations, or an examination, evaluation, and determination of mudslide (i.e. mudflow) and/or flood-related erosion hazards.

Floodplain. The beds, channel and the areas adjoining a wetland, lake or watercourse, or other source which have been or hereafter may be inundated by the base flood.

Floodproofing. A combination of structural and non-structural additions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.

Floodway. The bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining floodplain which must be reserved to carry or store the base flood discharge without cumulatively increasing the water surface elevation more than one-half foot.

General Floodplain. Those floodplains designated on the Flood Insurance Rate Maps referenced in Section 3.2, but that do not have a delineated floodway.

Light Duty Truck. Any motor vehicle that has all three of the following:

- A. 8,500 pounds Gross Vehicle Weight Rating or less;
- B. vehicle curb weight of 6,000 pounds or less; and
- C. basic vehicle frontal area less than 45 square feet.

Lowest Floor. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR § 60.3.

Manufactured Home. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include the term "recreational vehicle."

New Construction. Structures for which the start of construction commenced on or after the effective date of an adopted floodplain management regulation, and includes any subsequent improvements to such structures.

Principal Structure. The main building or other structure on a lot that is utilized for the property's principal use.

Reach. A hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.

Recreational Vehicle. A vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. Those vehicles not meeting this definition shall be considered a structure for the purposes of this ordinance. For the purposes of this ordinance, the term recreational vehicle is synonymous with the term "travel trailer/travel vehicle."

Regulatory Flood Protection Elevation (RFPE). An elevation that is one foot above the elevation of the base flood plus any increases in the water surface elevation caused by encroachments on the floodplain that result from designation of a floodway. These increases in water surface elevations are typically identified in the Floodway Data Tables, found in the Flood Insurance Study.

Repetitive Loss. Flood related damages sustained by a structure on two separate occasions during a ten year period for which the cost of repairs at the time of each such flood event on the average equals or exceeds 25% of the market value of the structure before the damage occurred.

Commented [ST2]: Clarifies what constitutes a repetitive loss for insurance purposes.

Stage Increase. Any increase in the water surface elevation during the one-percent annual chance flood caused by encroachments on the floodplain.

Start of Construction. Includes substantial improvement, and means the date the permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure. A roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. Recreational vehicles not considered travel ready, as detailed in Section 10.2, shall also be considered a structure for the purposes of this ordinance.

Subdivision. Land that has been divided for the purpose of sale, rent, or lease, including planned unit developments.

Substantial Damage. Damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure." For the purpose of this ordinance, "historic structure" is defined in 44 CFR § 59.1.

Variance. "Variance" means the same as that defined in 44 CFR § 59.1 and Minnesota Statutes, Section 462.357, Subd. 6(2).

Watercourse. A channel in which a flow of water occurs either continuously or intermittently in a definitive direction. The term applies to either natural or artificially constructed channels.

SECTION 3.0 JURISDICTION AND DISTRICTS

- 3.1 **Lands to Which Ordinance Applies.** This ordinance applies to all lands within the jurisdiction of the City of Bayport within the boundaries of the Floodway, Flood Fringe and General Floodplain Districts.
- 3.11 The Floodway, Flood Fringe or General Floodplain Districts are overlay districts. The standards imposed in the overlay districts are in addition to any other requirements. In case of a conflict, the more restrictive standards will apply.
- 3.12 Where a conflict exists between the floodplain limits illustrated on the official floodplain maps and actual field conditions (as illustrated in Figure 1), the Base Flood Elevation (BFE) shall be the governing factor in locating the outer boundaries of the one-percent annual chance floodplain.

Figure 1: The mapped floodplain may not always align with on-the-ground contour elevations.



- 3.13 Persons contesting the location of the district boundaries will be given a reasonable opportunity to present their case to the Planning Commission and to submit technical evidence.
- 3.2 **Incorporation of Maps by Reference.** The following maps together with all attached material are hereby adopted by reference and declared to be a part of the official zoning map and this ordinance. The attached material includes the Flood Insurance Study for Washington County, Minnesota, and Incorporated Areas, and the Flood Insurance Rate map panels enumerated below, all dated February 3, 2010, and prepared by the Federal Emergency Management Agency. These materials are on file at City Hall: 27163C0268E, 27163C0269E, 27163C0356E, 27163C0357E.
- 3.3 **Districts**
- 3.31 **Floodway District.** Those areas within Zone AE as shown on the Flood Insurance Rate Maps referenced in Section 3.2 that are below an elevation of 679.5' NGVD 29 where the St. Croix River is the flooding source.
- 3.32 **Flood Fringe District.** Those areas within Zone AE as shown on the Flood Insurance Rate Maps referenced in Section 3.2 that are below the one-percent annual chance flood elevation, but above an elevation of 679.5' NGVD 29 where the St. Croix River is the flooding source.
- 3.33 Reserved for General Floodplain District.
- 3.4 **Annexations.** The Flood Insurance Rate Map panels referenced in Section 3.2 may include floodplain areas that lie outside of the corporate boundaries of the City of Bayport at the time of adoption of this ordinance. If any of these floodplain land areas are annexed into the City of Bayport after the date of adoption of this ordinance, the newly annexed floodplain lands will be subject to the provisions of this ordinance immediately upon the date of annexation. Annexations into panels not referenced in Section 3.2 require ordinance amendment in accordance with Section 14.0.

SECTION 4.0 REQUIREMENTS FOR ALL FLOODPLAIN DISTRICTS

- 4.1 **Permit Required.** A permit must be obtained from the Zoning Administrator to verify compliance with all applicable standards outlined in this ordinance prior to the following uses or activities:
- 4.11 The erection, addition, modification, rehabilitation, repair, or alteration of any building, structure, or portion thereof. Normal maintenance requires a permit to determine if such work, either separately or in conjunction with other planned work, constitutes a substantial improvement, as specified in Section 12.13.
 - 4.12 The construction of a fence, pool, deck, or placement of anything that may cause a potential obstruction.
 - 4.13 The change or expansion of a nonconforming use.
 - 4.14 The repair of a structure that has been damaged by flood, fire, tornado, or any other source.
 - 4.15 The placement of fill, excavation, utilities, on-site sewage treatment systems, or other service facilities.
 - 4.16 The storage of materials or equipment, in conformance with Section 4.32.
 - 4.17 Relocation or alteration of a watercourse (including stabilization projects or the construction of new or replacement dams, culverts and bridges). A local permit is not required if a public waters work permit has been obtained from the Department of Natural Resources, unless a significant area above the ordinary high water level is also to be disturbed.
 - 4.18 Any other type of “development,” as defined in Section 2.0 of this ordinance.
- 4.2 **No Permit Required.** Certain uses or activities may be exempt from obtaining a permit, such as planting a garden, farming, or other obviously insignificant activities such as putting up a mailbox or flagpole. The continuation of existing uses, when the associated activities do not encroach further on the regulatory floodplain or trigger associated standards in this ordinance, do not require a permit.
- 4.3 **Minimum Development Standards**
- 4.31 All development must:
 - A. Be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 - B. Be constructed with materials and equipment resistant to flood damage;
 - C. Be constructed by methods and practices that minimize flood damage;
 - D. Be constructed with heating, ventilation, duct work, and air conditioning equipment and other service facilities elevated at least up to the Regulatory Flood Protection Elevation (RFPE). Water, sewage, electrical, and other utility lines below the RFPE shall be constructed so as to prevent water from entering or accumulating within them during conditions of flooding;
 - E. Be reasonably safe from flooding and consistent with the need to minimize flood damage;
 - F. Be assured to provide adequate drainage to reduce exposure to flood hazards;
 - G. Not be detrimental to uses in adjoining areas; and
 - H. Not adversely affect the efficiency or restrict the flood carrying capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.
 - 4.32 Materials that, in time of flooding, are buoyant, flammable, explosive, or could be injurious to human, animal, or plant life shall be stored at or above the Regulatory Flood Protection Elevation (RFPE), floodproofed, or protected by other measures as approved by the Zoning Administrator. Storage of materials likely to cause pollution of the waters, such as sewage; sand; rock; wrecked and discarded equipment; dredged spoil; municipal, agricultural or industrial waste; and other wastes as further defined in Minnesota Statutes, section 115.01, are prohibited unless adequate safeguards approved by the Minnesota Pollution Control Agency are provided. For projects not requiring approvals by the Minnesota Pollution Control Agency, adequate safeguards must be approved by the Zoning Administrator prior to issuance of a permit.
 - 4.33 **Critical facilities shall be located so that the lowest floor is not less than two feet above the Base Flood Elevation (BFE), or the 0.2% annual chance flood elevation, whichever is higher.**

Commented [ST3]: Intended to expand on definition to ensure critical/essential facilities are constructed at protection elevations to avoid risk to the public in the event of a flood.

Table 1. Summary of Permitting Requirements for Structures

Structure Type	Floodway	Flood Fringe	Standards*
Accessory Structures – on fill	Only specific uses and types allowed – with CUP	Allowed with Permit	6.21.A, via 6.23.D(2)
Accessory Structures – Alt. Elevation Methods	Only specific uses and types allowed – with CUP	Allowed with Permit	6.22.B, via 6.23.D(3)
Accessory Structures – Wet Floodproofing	Only specific uses and types allowed – with CUP	Allowed with Permit	6.23.D(1)
Accessory Structures – Dry (watertight) Floodproofing	Only specific uses and types allowed – with CUP	Allowed with Permit	6.22.C, via 6.23.D(4)
Residential – on fill	Not allowed	Allowed with Permit	6.21.A
Residential – Alt. Elevation Methods	Not allowed	Allowed with CUP	6.22.B, via 6.41
Residential – Dry (watertight) Floodproofing and/or Basement Construction below RFPE	Not allowed	Not allowed	N/A
Non-Residential – on fill	Not allowed	Allowed with Permit	6.21.A, via 6.22.A
Non-Residential – Alt. Elevation Methods	Not allowed	Allowed with Permit	6.22.B
Non-Residential – Dry (watertight) Floodproofing and/or Basement Construction below RFPE	Not allowed	Allowed with Permit	6.22.C

*Note - many of these standards are cross-referenced to avoid duplication

SECTION 5.0 FLOODWAY DISTRICT

- 5.1 Permitted Uses in Floodway.** Development allowed in the floodway district is limited to that which has low flood damage potential and will not obstruct flood flows, increase velocities, or increase the water surface elevations of the one-percent annual chance flood. The following uses and activities may be allowed with a permit, subject to the standards in Section 5.2:
- 5.11 Agricultural uses, recreational uses, parking lots, loading areas, airport landing strips, water control structures, navigational facilities, as well as public open space uses.
 - 5.12 Roads, railroads, trails, bridges, and culverts.
 - 5.13 Public utility facilities and water-oriented industries which must be in or adjacent to watercourses.
 - 5.14 Grading, filling, land alterations, and shoreline stabilization projects.
 - 5.15 No structures, as defined in Section 2.0, are allowed in the Floodway District, except structures accessory to the uses detailed in Sections 5.11, 5.31, and 5.32 which require a CUP under Section 5.33.
- 5.2 Standards for Permitted Uses in Floodway.** In addition to the applicable standards detailed in Section 4.0:
- 5.21 The applicant must demonstrate that the development will not result in any of the following during the one-percent annual chance flood: cause a stage increase of 0.00 feet or greater, obstruct flood flows, or increase velocities. This shall be demonstrated through hydrologic and hydraulic analysis performed by a professional engineer, or using other standard engineering practices (e.g. projects that restore the site to the previous cross-sectional area). This is commonly documented through a “no-rise certification.”
 - 5.22 Any development that would result in a stage increases greater than 0.00 feet may only be allowed with a permit if the applicant has applied for and received approval for a Conditional Letter of Map Revision (CLOMR) in accordance with 44 CFR § 65.12. Map revisions must follow the procedures in Sections 11.15 and 14.0.
 - 5.23 Any development resulting in decreases to the water surface elevation of the base flood identified in the Flood Insurance Study requires a Letter of Map Revision (LOMR) following the procedures in Sections 11.15 and 14.0.
 - 5.24 Any development in the beds of public waters that will change the course, current or cross section is required to obtain a public waters work permit in accordance with Minnesota Statutes, section 103G.245 or a utility crossing license in accordance with Minnesota Statutes, section 84.415, from the Department of Natural Resources, or demonstrate that no permit is required, before applying for a local permit.

5.25 **Fill** and other land alteration activities must offer minimal obstruction to the flow of flood waters, and be protected from erosion and sediment entering surface waters by the use of vegetative cover, riprap or other methods as soon as possible.

Commented [ST4]: Additional language intended to prevent fill/sediment from entering the river.

5.3 **Conditional Uses in Floodway.** The following uses and activities may be permitted as conditional uses, subject to the standards detailed in Sections 5.4:

5.31 Commercial extractive uses, and storage and stockpiling yards.

5.32 Marinas, boat storage, and boat launching ramps.

5.33 **Structures** accessory to uses detailed in Sections 5.11, 5.31, and 5.32.

Commented [ST5]: Intended to ensure construction and placement of accessory structures (storage, equipment) offer minimal obstruction to flow of flood water.

5.4 **Standards for Conditional Uses in Floodway.** In addition to the applicable standards detailed in Sections 4.0, 5.2 and 11.2:

5.41 Extractive uses and storage of materials require the completion of a site development and restoration plan, to be approved by the City of Bayport.

5.42 **Accessory Structures.** Structures accessory to the uses detailed in Sections 5.11, 5.31, and 5.32 must be constructed and placed so as to offer a minimal obstruction to the flow of flood waters, and are subject to the standards in Section 6.23 of this ordinance.

Commented [ST6]: Intended to support 5.33.

SECTION 6.0 FLOOD FRINGE DISTRICT

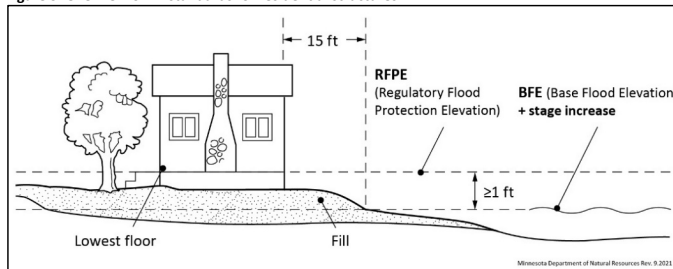
6.1 **Permitted Uses in Flood Fringe.** Any uses or activities allowed in any applicable underlying zoning districts may be allowed with a permit, subject to the standards set forth in Sections 6.2.

6.2 **Standards for Permitted Uses in Flood Fringe.** In addition to the applicable standards detailed in Section 4.0:

6.21 Residential Structures.

A. Elevation on Fill. Structures to be erected, constructed, reconstructed, altered, or moved on fill within the Flood Fringe District shall be placed so that the lowest floor, as defined in Section 2.0 of this ordinance, is elevated at or above the Regulatory Flood Protection Elevation (RFPE). The finished fill elevation shall be at or above the elevation associated with the base flood plus any stage increases that result from designation of a floodway. Fill must extend at the same elevation at least 15 feet beyond the outside limits of the structure. Elevations must be certified by a registered professional engineer, land surveyor or other qualified person designated by the Zoning Administrator. These elevation methods shall only be allowed where the natural ground is less than two feet below the base flood elevation. Elevation methods alternative to these fill standards are subject to a Conditional Use Permit, as provided in Section 6.31 of this ordinance (Figure 3).

Figure 3: Overview of fill standards for residential structures.

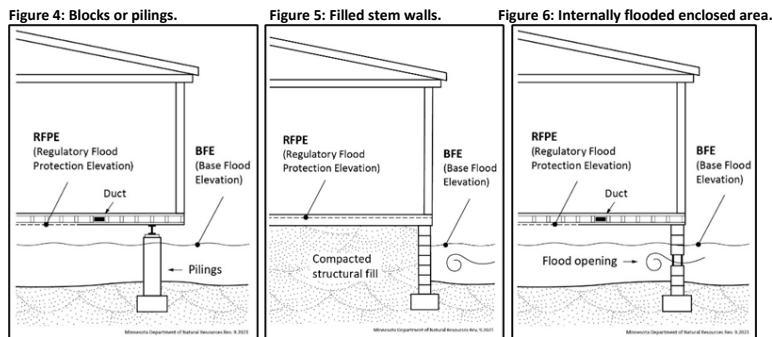


6.22 Nonresidential Principal Structures. Nonresidential principal structures must meet one of the following construction methods:

A. Elevation on Fill. Structures may be elevated on fill, meeting the standards in Section 6.21.A of this ordinance. Fill for nonresidential structures is not required to be extended 15 feet beyond the outside limits of the structure.

B. Alternative Elevation Methods. Structures may have their lowest floor elevated above the Regulatory Flood Protection Elevation (RFPE) using methods alternative to the fill standards in Section 6.21.A of this ordinance.

Such methods include the use of blocks, pilings (Figure 4), filled stem walls (Figure 5), or internally-flooded enclosed areas (Figure 6) such as crawl spaces, attached garages, or tuck under garages.



Designs accommodating for internally-flooded enclosed areas must be certified by a registered professional engineer or architect, or meet or exceed the standards detailed in *FEMA Technical Bulletin 1*, as amended, as well as the following standards:

- (1) The floor of the enclosed area must be at or above the exterior grade on at least one side of the structure.
 - (2) To allow for the equalization of hydrostatic pressure, there shall be a minimum of two openings below the base flood elevation on at least two sides of the structure. The bottom of all openings shall be no higher than one foot above grade. The openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding, have a net area of not less than one square inch for every square foot of enclosed area subject to flooding, and shall allow automatic entry and exit of floodwaters without human intervention.
 - (3) Internally flooded enclosed areas shall only be used for the parking of vehicles, building access, or storage. Bathrooms and toilet rooms shall not be allowed. Such areas shall be subject to a deed-restricted non-conversion agreement as well as periodic inspections with the issuance of any permit.
- C. Dry Floodproofing. Structures having watertight enclosed basements or spaces below the Regulatory Flood Protection Elevation (RFPE) must meet the following standards:
- (1) Walls must be substantially impermeable to the passage of water, with structural components having the capacity of resisting hydrostatic and hydrodynamic loads and effects of buoyancy, at least up to the Regulatory Flood Protection Elevation (RFPE);
 - (2) Must meet the standards of FEMA Technical Bulletin 3, as amended; and
 - (3) A registered professional engineer or architect shall be required to certify that the design and methods of construction meet the standards detailed in this Section.

6.23 Accessory Structures. All accessory structures must meet the following standards:

- A. Structures shall not be designed or used for human habitation.
- B. Structures will have a low flood damage potential.
- C. Structures with fewer than two rigid walls, such as carports, gazebos, and picnic pavilions, may be located at an elevation below the Regulatory Flood Protection Elevation.
- D. Structures with two or more rigid walls, must meet one of the following construction methods:
 - (1) Wet Floodproofing. Structures may be floodproofed in a way to accommodate internal flooding. Such structures shall constitute a minimal investment not to exceed 576 square feet in size, one-story in height, and shall only be used for parking and storage. To allow for the equalization of hydrostatic pressure, there shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one foot above grade. The openings shall have a minimum net area of not less

Commented [ST7]: Intended to allow for a standard size 2-car garage (24'x24'). Current ordinance limits size to 500 sq. ft.

than one square inch for every square foot of enclosed area subject to flooding, and shall allow automatic entry and exit of floodwaters without human intervention.

- (2) Elevation on Fill. Structures may be elevated on fill, meeting the standards in Section 6.21.A of this ordinance. Fill is not required to be extended 15 feet beyond the outside limits of the structure.
- (3) Alternative Elevation Methods. Structures may have their lowest floor elevated above the Regulatory Flood Protection Elevation (RFPE) through methods alternative to the fill standards in Section 6.23.D(2), meeting the standards in Section 6.22.B of this ordinance.
- (4) Dry Floodproofing. Structures may be dry-floodproofed, or watertight, meeting the standards in Section 6.22.C of this ordinance.

6.24 **Fill.** The cumulative placement of fill or other materials for any purpose, up to 1,000 cubic yards, is permitted. Additional fill over 1,000 cubic yards is only permitted if the fill is specifically intended to elevate a structure in accordance with Section 6.21 or 6.22.A of this ordinance, or for a transportation project in accordance with Section 9.1. Fill over 1,000 cubic yards for purposes other than these purposes requires a conditional use permit as provided in Section 6.32. Materials must be protected from erosion, discharge, and sediment entering surface waters by the use of vegetative cover or other methods as soon as possible.

Commented [ST8]: Intended to minimize/regulate placement of fill for reasons other than elevating structures for flood protection, such as to prevent obstruction to flow of flood water or erosion of sediment/fill into the river.

6.25 All new principal structures must provide for vehicular access no lower than one foot below the Base Flood Elevation (BFE), unless a flood warning/emergency evacuation plan has been approved by the City of Bayport.

6.26 Any facilities used by employees or the general public must be designed with a flood warning system acceptable to the City of Bayport that provides adequate time for evacuation, or be designed to ensure that within the area inundated during the base flood event, the depth (in feet) multiplied by the velocity (in feet per second) is less than four.

6.27 Manufactured homes and recreational vehicles must meet the standards of Section 10 of this ordinance.

6.3 **Conditional Uses in Flood Fringe.** The following uses and activities may be permitted as conditional uses, subject to the standards in Sections 6.4:

6.31 Alternative Elevation Methods – Residential Structures. Residential structures with their lowest floor elevated above the Regulatory Flood Protection Elevation (RFPE) using methods alternative to the fill requirements in Section 6.21.

6.32 **Fill.** The cumulative placement of more than 1,000 cubic yards of fill or other materials, when the fill is not being used to elevate a structure or for a transportation project.

Commented [ST9]: Intended to support 6.24.

6.4 **Standards for Conditional Uses in Flood Fringe.** In addition to the applicable standards detailed in Sections 4.0, 6.2 and 11.2:

6.41 All residential structures with lowest floors elevated through alternative elevation methods must meet the standards for nonresidential structures in Section 6.22.A or B of this ordinance.

6.42 **The placement of more than 1,000 cubic yards of fill or other materials (other than for the purpose of elevating a structure or for a transportation project) must comply with a site development and restoration plan approved by the Zoning Administrator. The plan must detail the anticipated topographic alterations and identify actions to be taken to mitigate environmental impacts, particularly erosion.**

Commented [ST10]: Intended to support 6.24.

SECTION 7.0 RESERVED FOR GENERAL FLOODPLAIN DISTRICT

SECTION 8.0 SUBDIVISION STANDARDS

8.1 **Subdivisions.** All subdivided land must meet the following requirements. Manufactured home parks and recreational vehicle parks or campgrounds are considered subdivisions under this ordinance.

8.11 All lots within floodplain districts must be suitable for a building site outside of the Floodway District.

8.12 Subdivision of lands within the floodplain districts may not be approved if the cost of providing governmental services would impose an unreasonable economic burden on the City of Bayport.

8.13 All subdivisions must have vehicular access both to the subdivision and to the individual building sites no lower than two feet below the Regulatory Flood Protection Elevation (RFPE), unless a flood warning/emergency evacuation plan has been approved by the City of Bayport.

- 8.14 The Floodway and Flood Fringe District boundaries, the Regulatory Flood Protection Elevation (RFPE) and the required elevation of all access roads must be clearly identified on all required subdivision drawings and platting documents.

SECTION 9.0 RAILROADS, ROADS, BRIDGES, AND PUBLIC AND PRIVATE UTILITIES AND SERVICE FACILITIES

- 9.1 **Public Transportation Facilities.** Railroad tracks, roads, and bridges must be elevated to the Regulatory Flood Protection Elevation (RFPE) where such facilities are essential to the orderly functioning of the area, or where failure or interruption would result in danger to public health or safety. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety. All public transportation facilities should be designed to minimize increases in flood elevations.
- 9.2 **Public Utilities.** All utilities such as gas, electrical, sewer, and water supply systems to be located in the floodplain must be elevated and/or floodproofed to the Regulatory Flood Protection Elevation (RFPE), be located and constructed to minimize or eliminate flood damage, and be designed to eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters. All public utilities should be designed to minimize increases in flood elevations. New solid waste management facilities, as defined in Minnesota Rules, part 7035.0300, are prohibited in the one-percent annual chance floodplain. Water supply systems are subject to the provisions in Minnesota Rules, part 4725.4350.
- 9.3 **Private On-site Water Supply, Individual Sewage Treatment Systems, and other Service Facilities.** Private facilities shall be subject to applicable provisions detailed in Section 9.2. In addition, new or replacement on-site sewage treatment systems are to be located to avoid impairment to them or contamination from them during times of flooding, shall not be located in a designated floodway, and are subject to the provisions in Minnesota Rules, parts 7080.2270.

SECTION 10.0 MANUFACTURED HOMES AND RECREATIONAL VEHICLES

- 10.1 **Manufactured Homes.** Manufactured homes and manufactured home parks are subject to applicable standards for each floodplain district. In addition:
- 10.11 New and replacement manufactured homes must be placed and elevated in compliance with Section 6.0 of this ordinance and must be securely anchored to a system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
- 10.12 New manufactured home parks and expansions to existing manufactured home parks must meet the appropriate standards for subdivisions in Section 8.0 of this ordinance.
- 10.2 **Recreational Vehicles.** New recreational vehicle parks or campgrounds and expansions to existing recreational vehicle parks or campgrounds are prohibited in any floodplain district. Recreational vehicles placed on lots of record in the floodplain must be travel ready, meeting the following criteria:
- A. The vehicle must be fully licensed.
 - B. The vehicle must be ready for highway use, meaning on wheels or the internal jacking system, attached to the site only by quick disconnect type utilities.
 - C. No permanent structural type additions may be attached to the vehicle.
 - D. Accessory structures may be permitted in the Flood Fringe District, provided they do not hinder the removal of the vehicle should flooding occur, and meet the standards outlined in Sections 4.0 and 6.23.

SECTION 11.0 ADMINISTRATION

- 11.1 **Duties.** A Zoning Administrator or other official must administer and enforce this ordinance.
- 11.11 **Permit Application Requirements.** Permit applications must be submitted to the Zoning Administrator. The permit application must include the following, as applicable:
- A. A site plan showing all existing or proposed buildings, structures, service facilities, potential obstructions, and pertinent design features having an influence on the permit.
 - B. Location and detail of grading, fill, or storage of materials.
 - C. Copies of any required local, state or federal permits or approvals.

D. Other relevant information requested by the Zoning Administrator as necessary to properly evaluate the permit application.

11.12 Recordkeeping. The Zoning Administrator must maintain applicable records in perpetuity documenting:

- A. All certifications for dry floodproofing and alternative elevation methods, where applicable.
- B. Analysis of no-rise in the Floodway District, as detailed in Section 5.21, and encroachment analysis ensuring no more than one-half foot of rise in the General Floodplain District, as detailed in Sections 7.22 and 7.31.
- C. Final elevations, as applicable, detailing the elevation to which structures and improvements to structures are constructed or floodproofed. Elevations shall be determined by an engineer, architect, surveyor or other qualified individual, as approved by the Zoning Administrator.
- D. Substantial damage and substantial improvement determinations, as detailed in Section 12.13, including the cost of improvements, repairs, and market value.
- E. All variance actions, including justification for their issuance, and must report such variances as requested by the Federal Emergency Management Agency.

11.13 Certificate of Zoning Compliance for a New, Altered, or Nonconforming Use. No building, land or structure may be occupied or used in any manner until a certificate of zoning compliance has been issued by the Zoning Administrator stating that the finished fill and building floor elevations or other flood protection measures are in compliance with the requirements of this ordinance.

11.14 Notifications for Watercourse Alterations. Before authorizing any alteration or relocation of a river or stream, the Zoning Administrator must notify adjacent communities. If the applicant has applied for a permit to work in public waters in accordance with Minnesota Statutes, section 103G.245, this will suffice as adequate notice. A copy of the notification must also be submitted to FEMA.

11.15 Notification to FEMA When Physical Changes Increase or Decrease Base Flood Elevations. Where physical changes affecting flooding conditions may increase or decrease the water surface elevation of the base flood, the City of Bayport must notify FEMA of the changes in order to obtain a Letter of Map Revision (LOMR), by submitting a copy of the relevant technical or scientific data as soon as practicable, but no later than six months after the date such supporting information becomes available.

11.2 Conditional Uses and Variances

11.21 Process.

- A. An application for a conditional use permit will be processed and reviewed in accordance with the provisions of this ordinance.
- B. An application for a variance to the provisions of this ordinance will be processed and reviewed in accordance with Minnesota Statutes, section 462.357, Subd. 6(2) and this ordinance.

11.22 Adherence to State Floodplain Management Standards. Variances must be consistent with the general purpose of these standards and the intent of applicable provisions in state and federal law. Though variances may be used to modify permissible methods of flood protection, no variance shall permit a lesser degree of flood protection than the Regulatory Flood Protection Elevation (RFPE).

11.23 Additional Variance Criteria. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:

- A. Variances must not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances from the provisions of this chapter may only be issued by a community upon:
 - (1) A showing of good and sufficient cause;
 - (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant;and

(3) 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 existing local laws or ordinances.

C. Variances from the provisions in this ordinance may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

11.24 Flood Insurance Notice. The Zoning Administrator must notify the applicant for a variance in writing that:

- A. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
- B. Such construction below the base flood level increases risks to life and property. Such notification must be maintained with a record of all variance actions.

11.25 Considerations for Approval. The City of Bayport must consider all relevant factors specified in other sections of this ordinance in granting variances and conditional use permits, including the following:

- A. The potential danger to life and property due to increased flood heights or velocities caused by encroachments.
- B. The danger that materials may be swept onto other lands or downstream to the injury of others.
- C. The safety of access to the property in times of flood for ordinary and emergency vehicles.
- D. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- E. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- F. The importance of the services provided by the proposed facility to the community.
- G. The requirements of the facility for a waterfront location.
- H. The availability of alternative locations not subject to flooding for the proposed use.
- I. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- J. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
- K. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.

11.26 Conditions of Approval. The City of Bayport may attach such conditions to the granting of variances and conditional use permits as it deems necessary to fulfill the purposes of this ordinance. Such conditions may include, but are not limited to, the following:

- A. Limitations on period of use, occupancy, and operation.
- B. Imposition of operational controls, sureties, and deed restrictions.
- C. The prevention of soil erosion or other possible pollution of public waters, both during and after construction.
- D. Other conditions as deemed appropriate by the Zoning Administrator, Planning Commission, or City Council.

11.3 Notifications to the Department of Natural Resources

11.31 All notices of public hearings to consider variances or conditional uses under this ordinance must be sent via electronic mail to the Department of Natural Resources respective area hydrologist at least ten (10) days before the hearings. Notices of hearings to consider subdivisions/plats must include copies of the subdivision/plat.

11.32 A copy of all decisions granting variances and conditional uses under this ordinance must be sent via electronic mail to the Department of Natural Resources respective area hydrologist within ten (10) days of final action.

SECTION 12.0 NONCONFORMITIES

- 12.1 **Continuance of Nonconformities.** A use, structure, or occupancy of land which was lawful before the passage or amendment of this ordinance, but which is not in conformity with the provisions of this ordinance, may be continued subject to the following conditions:
- 12.11 Within the floodway and general floodplain districts (when a site has been determined to be located in the floodway following the procedures in Section 7.3, or when the floodway has not been delineated), expansion or enlargement of uses or structures is prohibited.
 - 12.12 Within all districts, any addition, modification, rehabilitation, repair, or alteration shall be in conformance with the provisions of this ordinance, shall not increase the flood damage potential or increase the degree of obstruction to flood flows, and where applicable, must be protected to the Regulatory Flood Protection Elevation (RFPE).
 - 12.13 If any nonconforming structure is determined to be substantially damaged or substantially improved based on the procedures in Section 12.2, it may not be reconstructed except in conformity with the provisions of this ordinance.
 - 12.14 If any nonconforming use, or any use of a nonconforming structure, is discontinued for more than one year, any future use of the premises must conform to this ordinance.
- 12.2 **Substantial Improvement and Substantial Damage Determinations.** Prior to issuing any permits for additions, modifications, rehabilitations, repairs, alterations, or maintenance to nonconforming structures, the Zoning Administrator is required to determine if such work constitutes substantial improvement or repair of a substantially damaged structure. A determination must be made in accordance with the following procedures:
- 12.21 Estimate the market value of the structure. In cases where the property has sustained damage, the market value of the structure shall be the market value before the damage occurred and before any restoration or repairs are made.
 - 12.22 Estimate the cost of the project. The property owner shall accommodate for inspection, and furnish other documentation needed by the zoning administrator to evaluate costs.
 - A. Improvement costs shall be comprised of the market rate of all materials and labor, as well as the costs of all ordinary maintenance and upkeep carried out over the past one year.
 - B. Costs to repair damages shall be comprised of the market rate of all materials and labor required to restore a building to its pre-damaged condition regardless of the work proposed, as well as associated improvement costs if structure is being restored beyond its pre-damaged condition.
 - 12.23 Compare the cost of the project and/or repairs to the estimated market value of the structure, and determine whether the proposed work constitutes substantial improvement or repair of a substantially damaged structure, as defined in Section 2.0 of this ordinance.
 - A. For the purposes of determining whether the proposed work would constitute substantial improvement, the evaluation shall also include all rehabilitations, additions, or other improvements completed since the community has adopted floodplain standards impacting this structure.
 - B. If any nonconforming structure experiences a repetitive loss, as defined in Section 2.0 of this ordinance, it shall be considered substantially damaged and must not be reconstructed except in conformity with the provisions of this ordinance.
 - 12.24 Based on this determination, the zoning administrator shall prepare a determination letter and notify the property owner accordingly. Structures determined to be substantially damaged or substantially improved may not be reconstructed except in conformity with the provisions of this ordinance.

Commented [ST11]: Intended to clarify evaluation process for substantial damage/improvement determination and repetitive loss classification.

SECTION 13.0 VIOLATIONS AND PENALTIES

- 13.1 **Uses in Violation of the Ordinance.** Every structure, fill, deposit, or other use placed or maintained in the floodplain in violation of this ordinance shall be considered a public nuisance.
- 13.2 **Civil Remedies.** The creation of a public nuisance may be enjoined and the maintenance of a public nuisance under this ordinance may be abated by an action brought by the City of Bayport or the Department of Natural Resources.

13.3 **Enforcement.** Violations of the provisions of this ordinance constitutes a misdemeanor and is punishable as defined by law. The Zoning Administrator may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance. The City of Bayport must act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

SECTION 14.0 AMENDMENTS

14.1 **Ordinance Amendments.** Any revisions to the floodplain maps by the Federal Emergency Management Agency or annexations of new map panels require an ordinance amendment to update the map references in Section 3.2 of this ordinance.

14.2 **Required Approval.** All amendments to this ordinance must be submitted to the Department of Natural Resources for review and approval prior to adoption, for compliance with state and federal rules and requirements. The floodplain ordinance shall not be considered valid until approved.

EFFECTIVE DATE: This ordinance shall be in full force and effect from and after its passage and approval and publication.



MEMORANDUM

DATE: May 18, 2023

TO: Planning Commission (May 22, 2023 meeting)

FROM: Sara Taylor, Assistant City Administrator/Planner
Matt Kline, City Administrator

SUBJECT: Public hearing to consider an amendment to Appendix A - Subdivisions of the Bayport City Code of Ordinances

A. BACKGROUND

A subdivision is the division and development of land and the Subdivision Ordinance defines general provisions for regulating a change in land use and ensuring compliance with the city's Comprehensive Plan. The Subdivision Ordinance outlines specific design and performance standards for such items as lot/block layout, streets, alleys, easements, utilities, stormwater, and tree preservation. The ordinance also requires financial security from the developer to ensure compliance with the approved subdivision plat in the form of an escrow(s), letter of credit, or performance bond.

Because this ordinance often plays a part in planning/zoning applications that are considered by the Planning Commission, and relates to zoning, the Planning Commission is being asked to participate in the amendment process by holding a public hearing, and providing a recommendation on the amendments for City Council consideration. Notice of the Planning Commission's public hearing was published in the Stillwater Gazette on May 12, 2023. A draft of the proposed ordinance amendment is attached for reference.

B. STAFF COMMENTS

Since approval of their concept annexation and development plan by the city on February 27, 2023, staff has been working with the developer Sovereign Land Services LLC and GreenHalo Builds on their submittal for preliminary plat. The Subdivision Ordinance specifically lists requirements for financial security as a percentage of the total costs for the development, as estimated by the city. In preparing materials for submittal, the developer specifically questioned the 150 percent requirement in regards to an escrow or letter of credit, as opposed to 125 percent, which is the most common amount secured for a proposed development through a lender. Since then, staff has reviewed other city's ordinances and have confirmed that the 125 percent requirement is most common and adequate to cover development costs. Staff has also determined that a performance bond is no longer a suitable option for financial security, due to difficulty with the city actually being able to collect fees in case of default by the developer. As a result, staff is proposing to amend the escrow and letter of credit financial security to reflect 125 percent and eliminate the option of a performance bond.

C. RECOMMENDATION

Staff recommends approval of an amendment to Appendix A – Subdivisions related to financial security, as proposed. The Planning Commission is asked to make a recommendation for City Council consideration. The City Council is anticipated to consider the ordinance at the June 5, 2023 regular meeting.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA
AMENDING APPENDIX A – SUBDIVISIONS OF THE BAYPORT CITY CODE OF ORDINANCES

THE CITY COUNCIL OF THE CITY OF BAYPORT DOES HEREBY ORDAIN:

Section 1. Appendix A - Subdivisions is hereby amended as follows:

Note: Proposed deletions are indicated in ~~strikethrough~~ and additions/comments are indicated in red text.

SECTION 11. - FINANCIAL SECURITY

The development agreement provided in section 10-6 requires the developer to provide a financial security. The city shall determine the appropriate type of financial security which shall be one or a combination of the following forms.

Sec. 11-1. - Escrow deposit.

An escrow deposit in cash shall be made to the city in the sum equal to ~~150~~ **125** percent of the total cost as estimated by the city including the cost of planning, engineer, inspection, legal and administrative costs and aerial photo cost recovery incurred by the city, of all of the improvements to be furnished and installed by the developer pursuant to the development agreement.

1. The city shall be entitled to reimburse itself out of said deposit for any cost and expense incurred by the city for processing of the subdivision, inspections, completion of work in a case of default of the developer under said agreement, and for any damages sustained by the city on account of any breach thereof. Upon completion of the work and termination of any liability to the city of the developer under said contract, the balance remaining in deposit shall be refunded to the developer.
2. Immediately upon completion of said work, the city shall submit to the developer an itemized bill in detail, setting forth the actual cost of inspection by the city; said bill shall be paid prior to the acceptance of said work by the city.

In the event that the cash escrow is reduced below ~~150~~ **125** percent of cost of work to be completed, the city may stop work on the subdivision until the escrow deposit is replenished to the amount of ~~150~~ **125** percent of the cost of the remaining development work.

Sec. 11-2. - Letter of credit.

The developer may furnish the city with a letter of credit from a financial institution providing authorization and security to the city that it may draw on the developer's account, amounts not to exceed the required financial security. The required financial security shall be the sum equal to ~~150~~ **125** percent of the total cost as estimated by the city engineer, including the cost of inspection by the city, of all of the improvements to be furnished and installed by the developer pursuant to the development agreement. The letter of credit shall be irrevocable, and shall provide for 30 days notice to the city and approval by the city of any change, amendment, or termination. The letter of credit shall be accepted as a financial security only after review and approval by the city attorney and the city council.

In the event that the letter of credit is reduced below ~~150~~ **125** percent of cost of work to be completed, the city may stop work on the subdivision until the letter of credit is replenished to the amount of ~~150~~ **125** percent of the cost of the remaining development work.

~~Sec. 11-3. - Performance bond.~~

~~The subdivider may furnish a performance and payment bond with corporate surety, in a penal sum~~

~~equal to 125 percent of the total cost, as estimated by the city engineer, of all the improvements to be furnished and installed by the subdivider pursuant to the subdivider agreement. The total cost shall include costs for the inspection by the city engineer. The bond shall be approved as to form by the city attorney and filed with the city administrator.~~

Section 2. This ordinance shall be in full force and effect from and after its passage and publication according to law. Passed by the Bayport City Council this 5th day of June 2023.

ATTEST:

Matt Kline, City Administrator

Michele Hanson, Mayor