



# **CITY OF BAYPORT**

294 NORTH 3<sup>RD</sup> STREET  
BAYPORT, MN 55003

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## **PLANNING COMMISSION MEETING**

**City Hall - Council Chambers**

**November 16, 2009 – 6:00 p.m.**

### **A. CALL TO ORDER**

### **B. APPROVAL OF MINUTES**

- **September 21, 2009 regular meeting**

### **C. PUBLIC HEARINGS**

- **Public hearing to consider amendments to the city's Floodplain Management Ordinance, to be consistent with the National Flood Insurance Program (NFIP), including adoption of the effective Flood Insurance Rate Map (FIRM)**

### **D. OLD BUSINESS**

### **E. NEW BUSINESS**

### **F. GENERAL INFORMATION**

### **G. OPEN FORUM**

### **H. ADJOURNMENT**

**CITY OF BAYPORT  
PLANNING COMMISSION MEETING MINUTES  
CITY COUNCIL CHAMBERS  
SEPTEMBER 21, 2009  
6:00 P.M.**

**CALL TO ORDER**

Pursuant to due call and notice thereof, Vice Chairperson Goldston called the regular Bayport Planning Commission meeting of September 21, 2009, to order at 6:00 p.m.

**ROLL CALL**

Commissioners Present: Dan Goldston, Pam Hoye, David Levy, and Jennifer Schneider

Commissioners Absent: Tom Mabie

City Staff Present: City Administrator Mike McGuire, Assistant City Administrator/Planner Sara Taylor and City Council Liaison Judy Seeberger

**APPROVAL OF MINUTES**

It was moved by Commissioner Schneider and seconded by Commissioner Levy to approve the June 15, 2009 meeting minutes as presented. Motion carried.

**PUBLIC HEARINGS**

Public hearing to consider a request for variances to replace and expand the front steps, landing, and covered entryway to the house located at 494 6<sup>th</sup> Street North: Assistant Administrator/Planner Taylor reviewed a variance application from Deb and Rick Parent that would allow repairs and modifications to their existing front entryway. A variance is needed to allow the new entry side yard setback to remain at 9' and the front yard setback at 13' 5". It was noted the current entryway setbacks do not comply with the required setback of 20' for a corner lot. The new entryway would expand the entry, allowing for safer ingress and egress and eliminate ice buildup. It would add approximately 32" to the landing and extend the roof of the entry over the steps and landing. Staff believes the variance meets the criteria of a hardship and recommended approval. Notice of the public hearing was published in the Stillwater Gazette and mailed to property owners within 350 feet of the subject property. Staff received one positive comment from a neighbor, supporting the new entry.

Vice Chairperson Goldston opened the public hearing, and no public comment was heard.

It was moved by Commissioner Schneider and seconded by Commissioner Hoye to close the public hearing.

It was moved by Commissioner Levy and seconded by Commissioner Schneider to recommend to the City Council to approve variances to replace and expand the front steps, landing, and covered entryway to the house located at 494 6<sup>th</sup> Street North, with a north side yard setback of 9' and a front yard setback of 13'5". Motion carried.

**OLD BUSINESS** – None

**NEW BUSINESS** – None

**GENERAL INFORMATION**

Planning Commission member term expiration: The terms of Commissioners Goldston and Levy expire December 31, 2010, and staff has requested confirmation as to the commissioners' desire to extend their service on the Planning Commission. To date, Commissioner Goldston has indicated he would like to be considered for another term.

**OPEN FORUM**

Administrator McGuire noted this would be his last Planning Commission meeting and thanked the commissioners for their volunteer service to the City of Bayport. The commissioners thanked Administrator McGuire for his leadership during his employment with the city.

**ADJOURN**

It was moved by Commissioner Goldston and seconded by Commissioner Hoye to adjourn the meeting at 6:07 p.m. Motion carried.

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# M E M O R A N D U M

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**DATE:** November 9, 2009

**TO:** Planning Commission (November 16<sup>th</sup> meeting)  
Mitch Berg, City Administrator

**FROM:** Sara Taylor, Assistant Administrator/Planner

**SUBJECT:** Public hearing to consider amendments to the city's Floodplain Management Ordinance, to be consistent with the National Flood Insurance Program (NFIP), including adoption of the effective Flood Insurance Rate Map (FIRM)

## 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 is defined as an ordinance that applies to only certain land parcels within the jurisdiction of the city. In this case, the Floodplain Management Ordinance overlay applies to land parcels within the city, that are located within the boundaries of the Floodway and Flood Fringe Districts of the St. Croix River, established by Federal Emergency Management Agency (FEMA).

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, which benefits all property owners within the city by making flood insurance and federal disaster insurance available, the city is required to adopt this 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 November 5, 2009.

The following informational items are attached:

- background information on the adoption of floodplain management regulations
- draft Floodplain Management Ordinance
- Flood Insurance Rate Map (FIRM) - Larger copies are available for viewing at City Hall

## B. *STAFF COMMENTS*

A majority of the text included in the draft ordinance has been prepared by FEMA and is required to be adopted by the city in order to participate in and comply with the National Flood Insurance Program (NFIP). However, there are a few sections of the draft ordinance that are included in the state model ordinance but considered to be optional for communities, which are indicated in **bold underline** in the attached draft ordinance. Staff has reviewed the optional text amendments and feels that it would be beneficial for the city to adopt these sections, as most of

this same text is included in the current ordinance, which was adopted in 1994. FEMA has also prepared revisions to the Flood Insurance Rate Maps (FIRM), which identify the land parcels that are subject to this overlay ordinance, based on their elevation and location in relation to the St. Croix River.

It is important to note that FEMA has been working on these amendments for several years, including completing a Flood Insurance Study (which is available for viewing at City Hall), as well as holding public input meetings. Because no significant changes have been incorporated into the amendments, staff is comfortable with moving forward in the process of adopting the new floodplain ordinance and effective maps. Due to the revised numbering of the ordinance, it should be noted that the current ordinance will be repealed in its entirety and replaced with the new ordinance.

**C. *RECOMMENDATION***

Staff recommends approval of the Floodplain Management Ordinance and effective Flood Insurance Rate Maps, including the optional amendments, as proposed by FEMA and/or the state, 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 will consider the request at its meeting on December 7, 2009.

# Adoption of Flood Insurance Rate Maps By Participating Communities

The National Flood Insurance Program (NFIP) was established with the passage of the National Flood Insurance Act of 1968. The NFIP is a Federal program enabling property owners in participating communities to purchase insurance as a protection against flood losses in exchange for State and community floodplain management regulations that reduce future flood damages. Over 20,000 communities participate in the Program.

This brochure addresses several questions about adopting the Flood Insurance Rate Map by communities. As a participating community in the NFIP, your community is responsible for making sure that its floodplain management regulations meet or exceed the minimum requirements of the NFIP. By law, the Department of Homeland Security's Federal Emergency Management Agency (FEMA) cannot offer flood insurance in communities that do not have regulations that meet or exceed these minimum requirements. These regulations can be found in **Title 44 of the Code of Federal Regulations (44 CFR) Section 60.3**. You can also find them in model ordinances developed by most States and by FEMA Regional Offices.

The basis of your community's floodplain management regulations is the flood hazard data provided to the community by FEMA. FEMA identifies flood hazards

nationwide and publishes and updates flood hazard data in support of the NFIP. Under Map Modernization, FEMA will be updating and modernizing the flood hazard maps for most communities. Flood hazard data will be provided to communities in the form of a Flood Insurance Rate Map (FIRM) (hereafter referred to as the "flood map") and a Flood Insurance Study (FIS) (hereafter referred to as the "flood study"). Your community will need to adopt the new or revised flood map and flood study.

The identification of flood hazards serves many important purposes. Identifying flood hazards creates an awareness of the hazard, especially for those who live and work in flood-prone areas. Maps provide States and communities with the information needed for land use planning and to reduce flood risk to floodplain development and implement other health and safety requirements through codes and

## Flood Study And Adoption Timeline

Initial Scoping  
Meeting Held

Flood Hazard Data Development/Flood Map & Flood Study Production\*

regulations. States and communities can also use the information for emergency management.

Each time that FEMA provides your community with additional flood hazard data, your community must adopt new floodplain management regulations or amend existing regulations to incorporate the new data and meet any additional requirements that result from any changes in the data, such as the designation of a floodway for the first time. Your floodplain management regulations must also meet any additional State requirements and be adopted through a process that complies with any procedural requirements established in your State for the adoption of ordinances or regulations.

**What is the process for developing new flood hazard data or revising existing data?**

FEMA works closely with communities to develop new flood hazard data or revise existing data during the flood study process. In general, the study process includes the following activities:

- FEMA holds a scoping meeting with community officials to identify where a new flood study is necessary and the type of study and extent (number of stream miles) of the study.
- FEMA undertakes a flood study to identify the flood hazards and to develop Base Flood Elevations (BFEs) (hereafter referred to as "flood elevations") and floodways for the areas of study identified during the scoping process. In addition, the mapping process includes activities such as obtaining the base map, incorporating Letters of Map Change, and developing the flood hazard database.
- When the study is completed, FEMA provides the community with a preliminary flood map and flood study for review. In addition, FEMA may hold a public

meeting – often referred to as the "Final Meeting" to explain and obtain comments on the preliminary flood map and flood study.

- FEMA provides a 90-day appeal period when new or revised flood elevations are proposed. Before the appeal period is initiated, FEMA will publish the proposed flood elevation determinations in the Federal Register and notify the community's Chief Executive Officer of the determination. FEMA will then publish information about the flood elevation determinations at least twice in a local newspaper. The appeal period provides the community and owners or lessees of property in the community an opportunity to submit information on whether the flood elevations are scientifically or technically incorrect.
- At the end of the 90-day appeal period, FEMA resolves all appeals and finalizes the flood map and flood study.
- FEMA then issues a Letter of Final Determination (LFD) (hereafter referred to as the "final letter"), which establishes the final flood elevations, and provides the new flood map and flood study to the community. The final letter initiates the six-month adoption period. The community must adopt or amend its floodplain management regulations during this six-month period.
- The flood map and flood study become effective at the end of the six-month period. The effective date is also the date when flood insurance rates will be based on the new flood data for new construction built after this date. The effective map will be the one that will be used by federally insured or regulated lenders to determine if flood insurance is required as a condition of a loan.

FEMA has also entered into agreements with over 200 communities, States, and regional agencies to be active partners in FEMA's flood hazard mapping program under the Cooperating Technical Partner (CTP) Program. These

**Preliminary Report  
& Map Issued**

**End of Appeal  
Period**

**Final Community  
Meeting Held**

**Letter of Final  
Determination  
Issued**

**Date of  
Effective  
Flood Map**

**30  
Days**

**90-Day Appeal Period  
on Flood Elevations**

**Resolve Appeals  
& Finalize Map  
Products\***

**Six-Month Adoption Period**

\* The timeframe for completing these activities may vary.

agencies are participating with FEMA in developing and updating flood maps. (See the box on the inside of the back cover page for a brief description of the CTP program.)

**What must an NFIP participating community do when FEMA provides new or revised flood hazard data?**

Each time FEMA provides a community with new or revised flood hazard data, the community must either adopt new floodplain management regulations or amend its existing regulations to reference the new flood map and flood study. In some cases, communities may have to adopt additional floodplain management requirements if a new type of flood hazard data is provided, such as a new flood zone (going from an A Zone without flood elevations to an AE Zone with flood elevations or going from an AE Zone to a V Zone – the coastal high hazard area), or the addition of a floodway designation.

The following guide is to help you determine whether changes need to be made in your community's floodplain management regulations when a new or revised flood map and flood study are provided:

- If the community's floodplain management regulations are compliant with the NFIP requirements when the final letter is issued, the community needs to amend only the map reference section of their floodplain management regulations to identify the new flood map and flood study
- If the community has a legally valid automatic adoption clause established in the map reference section of the regulations and the community's regulations are otherwise compliant with the NFIP requirements, then the floodplain management regulations do not need to be amended. Automatic adoption clauses adopt all future revisions to the flood map without further action by the community. Automatic adoption clauses are not permitted in many States.
- If the community is provided a new type of flood hazard data, the community will need to either adopt new regulations or amend existing regulations to include the appropriate NFIP requirements in addition to referencing the new flood map and flood study.

The final letter indicates the sections of the NFIP floodplain management requirements at **44 CFR Section 60.3** that a

community must adopt based on the type of flood hazard data provided to the community.

You can contact the FEMA Regional Office or your State NFIP Coordinating Agency for assistance on the specific requirements your community will need to adopt. (See "For Assistance" on the back cover page for contact information.)

If your community has adopted higher standards than the minimum requirements of the NFIP, your community may qualify for a reduction in flood insurance premiums for your citizens under the Community Rating System (CRS). (See the box on the inside of the back cover for a brief description of the CRS.)

**When must a community adopt the new or revised flood hazard data?**

Your community must amend its existing floodplain management regulations or adopt new regulations before the effective date of the flood map, which is identified in the final letter. The final letter initiates the six-month adoption period.

Communities are encouraged to adopt the appropriate floodplain management regulations as soon as possible after the final letter is issued. The adopted regulations must be submitted to FEMA or the State and be approved by FEMA before the effective date of the flood map.

FEMA will send two letters notifying the community that it must have approved floodplain management regulations in place before the effective date of the flood map. The first letter is a reminder letter and is sent to the community 90 days before the effective date. The second letter is sent to the community 30 days before the effective date of the flood map. This letter is the actual letter that notifies the community it will be suspended from the NFIP if it does not adopt the flood map before the effective date. Notice of the suspension is also published in the Federal Register

If the community adopts or amends its floodplain management regulations prior to the effective date of the flood map and the FEMA Regional Office approves the community's regulations, the suspension will not go into effect and the community will remain eligible for the NFIP.



Elevated home on pile foundation



Elevated home on crawl space foundation

**What happens if a community does not adopt the appropriate floodplain management regulations during the six-month adoption period?**

If a community does not adopt new floodplain management regulations or amend its existing regulations before the effective date of the flood map, the community will be suspended from the NFIP.

The following sanctions apply if a community is suspended from the NFIP:

- Property owners will not be able to purchase NFIP flood insurance policies and existing policies will not be renewed.
- Federal grants or loans for development will not be available in identified flood hazard areas under programs administered by Federal agencies such as the Department of Housing and Urban Development, Environmental Protection Agency, and Small Business Administration.
- Federal disaster assistance will not be provided to repair insurable buildings located in identified flood hazard areas for damage caused by a flood.
- Federal mortgage insurance or loan guarantees will not be provided in identified flood hazard areas such as those written by the Federal Housing Administration and the Department of Veteran Affairs.

## **ADOPTING YOUR COMMUNITY'S NEW DIGITALLY-FORMATTED FLOOD MAP**

FEMA will be reformatting your community's existing (paper) flood map into a digital format. This means taking your existing flood map and producing a digital, geospatially referenced flood layer on a new, digital base map. For some communities where existing flood data is determined to be accurate, FEMA will prepare the new flood map without developing new flood hazard data or changing existing data (elevations or flood flows). However, geospatially referencing the floodplain delineations to a new base map will likely result in some changes in the floodplain boundaries. In addition, the flood map and flood study will be modified to incorporate Letters of Map Change that have been approved by FEMA since the original flood map was issued for your community.

- Federally insured or regulated lending institutions, such as banks and credit unions, are allowed to make conventional loans for insurable buildings in flood hazard areas of non-participating communities. However, the lender must notify applicants that the property is in a flood hazard area and that the property is not eligible for Federal disaster assistance. Some lenders may voluntarily choose not to make these loans.

If your community is suspended from the NFIP for failure to adopt or amend its floodplain management regulations prior to the map effective date, your community can be reinstated into the program upon adoption. If development takes place in your community during suspension that does not meet the minimum NFIP requirements, your community will be asked to take actions to reduce the increased flood hazard prior to reinstatement.

When reformatting your community's map to a digital format, the flood map will need to be republished with a new effective date. Communities will be given a review period and an opportunity to provide comments to FEMA on the new flood map. In these cases, your community's floodplain management regulations will have to be amended to reference the new map unless your community has a valid automatic adoption provision. The digitally based flood map will provide you with increased capabilities in using the flood hazard information for floodplain management and other purposes.

**\*\* DRAFT \*\***

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA, AMENDING APPENDIX E, FLOODPLAIN MANAGEMENT ORDINANCE, OF THE BAYPORT CITY CODE**

**SECTION 1.0 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE**

1.1 Statutory Authorization: The legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and Chapter 462 delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, as the Governing Body of the City of Bayport, Minnesota, the Bayport City Council does ordain as follows:

1.2 Findings of Fact:

- 1.21 The flood hazard areas of the City of Bayport, Minnesota, are subject to periodic inundation which results in potential loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures or flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- 1.22 Methods Used to Analyze Flood Hazards This Ordinance is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the Minnesota Department of Natural Resources.
- 1.23 National Flood Insurance Program Compliance This Ordinance is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 -78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program

1.3 Statement of Purpose: It is the purpose of this Ordinance to promote the public health, safety, and general welfare and to minimize those losses described in Section 1.21 by provisions contained herein.

**SECTION 2.0 GENERAL PROVISIONS**

2.1 Lands to Which Ordinance Applies: This Ordinance shall apply to all lands within the jurisdiction of the City of Bayport shown on the Official Zoning Map and/or the attachments thereto as being located within the boundaries of the Floodway and Flood Fringe Districts.

2.2 Establishment of Official Zoning Map: The Official Zoning Map together with all materials attached thereto is hereby adopted by reference and declared to be a part of this Ordinance. The attached material shall include the Flood Insurance Study for Washington County, Minnesota And Incorporated Areas and Flood Insurance Rate Map panels therein numbered 27163C0268E, 27163C0269E, 27163C0356E and 27163C0357E, all dated February 3, 2010 and prepared by the Federal Emergency Management Agency. The Official Zoning Map shall be on file in the Office of the Zoning Administrator.

2.3 Regulatory Flood Protection Elevation: The regulatory flood protection elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway

2.4 Interpretation:

- 2.41 In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the Governing Body and shall not be deemed a limitation or repeal of any other powers granted by state statutes

2.42 The boundaries of the zoning districts shall be determined by scaling distances on the Official Zoning Map. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the Official Zoning Map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions and there is a formal appeal of the decision of the Zoning Administrator, the Board of Adjustment shall make the necessary interpretation. All decisions will be based on elevations on the regional (100-year) flood profile, the ground elevations that existed on the site at the time the Community adopted its initial floodplain ordinance or on the date of the first National Flood Insurance Program map showing the area within the 100-year floodplain if earlier, and other available technical data. Persons contesting the location of the district boundaries shall be given a reasonable opportunity to present their case to the Board of Adjustment and to submit technical evidence.

2.5 Abrogation and Greater Restrictions: It is not intended by this Ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall prevail. All other ordinances inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency only.

2.6 Warning and Disclaimer of Liability: This Ordinance does not imply that areas outside the flood plain districts or land uses permitted within such districts will be free from flooding or flood damages. This Ordinance shall not create liability on the part of the City of Bayport or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

2.7 Severability: If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

2.8 Definitions. Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this Ordinance its most reasonable application.

2.811 Accessory Use or Structure - a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

2.812 Basement - means any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.

2.813 Conditional Use - means a specific type of structure or land use listed in the official control that may be allowed but only after an in-depth review procedure and with appropriate conditions or restrictions as provided in the official zoning controls or building codes and upon a finding that:

- (a) Certain conditions as detailed in the zoning ordinance exist
- (b) The structure and/or land use conform to the comprehensive land use plan if one exists and are compatible with the existing neighborhood

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

2.815 Flood - a temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.

2.816 Flood Frequency - the frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded

2.817 Flood Fringe - that portion of the flood plain outside of the floodway. Flood fringe is synonymous with the term "floodway fringe" used in the Flood Insurance Study for Flood Insurance Study for Washington County, Minnesota And Incorporated Areas.

- 2.818 Flood Plain - the beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.
- 2.819 Flood Proofing - a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages
- 2.820 Floodway - the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain which are reasonably required to carry or store the regional flood discharge.
- 2.821 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.
- 2.822 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."
- 2.823 Obstruction - any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory flood plain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.
- 2.824 Principal Use or Structure - means all uses or structures that are not accessory uses or structures
- 2.825 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.
- 2.826 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. For the purposes of this Ordinance, the term recreational vehicle shall be synonymous with the term travel trailer/travel vehicle.
- 2.827 Regional Flood - a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in a flood insurance study.
- 2.828 Regulatory Flood Protection Elevation - The regulatory flood protection elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.
- 2.829 Structure - anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, recreational vehicles not meeting the exemption criteria specified in Section 9.31 of this Ordinance and other similar items.
- 2.830 Substantial Damage - means 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.

- 2.831 Substantial Improvement - within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, 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.
  - (b) Any alteration of an "historic structure," provided that the alteration will not preclude the structure's continued designation as an "historic structure." For the purpose of this Ordinance, "historic structure" shall be as defined in 44 Code of Federal Regulations, Part 59.1.
- 2.832 Variance - means a modification of a specific permitted development standard required in an official control including this Ordinance to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a hardship, practical difficulty or unique circumstance as defined and elaborated upon in a community's respective planning and zoning enabling legislation.

2.9 Annexations: The Flood Insurance Rate Map panels adopted by reference into Section 2.2 above 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 shall be subject to the provisions of this Ordinance immediately upon the date of annexation into the City of Bayport.

## SECTION 3.0 ESTABLISHMENT OF ZONING DISTRICTS

### 3.1 Districts:

- 3.11 Floodway District. For the St. Croix River, the Floodway District shall include those areas designated as Zone AE on the Flood Insurance Rate Map panels adopted in Section 2.2 that are below the ordinary high water level as defined in Minnesota Statutes, Section 103G.005, subdivision 14.
- 3.12 Flood Fringe District. For the St. Croix River, the Flood Fringe District shall include those areas designated as Zone AE on the Flood Insurance Rate Map panels adopted in Section 2.2 that are below the 100-year flood elevation but above the ordinary high water level as defined in Minnesota Statutes, Section 103G.005, subdivision 14.

3.2 Compliance: No new structure or land shall hereafter be used and no structure shall be constructed, located, extended, converted, or structurally altered without full compliance with the terms of this Ordinance and other applicable regulations which apply to uses within the jurisdiction of this Ordinance. Within the Floodway and Flood Fringe Districts, all uses not listed as permitted uses or conditional uses in Sections 4.0 and 5.0 that follow, respectively, shall be prohibited. In addition, a caution is provided here that:

- 3.21 New manufactured homes, replacement manufactured homes and certain travel trailers and travel vehicles are subject to the general provisions of this Ordinance and specifically Section 9.0.
- 3.22 Modifications, additions, structural alterations, normal maintenance and repair, or repair after damage to existing nonconforming structures and nonconforming uses of structures or land are regulated by the general provisions of this Ordinance and specifically Section 11.0.

- 3.23 As-built elevations for elevated or flood proofed structures must be certified by ground surveys and flood proofing techniques must be designed and certified by a registered professional engineer or architect as specified in the general provisions of this Ordinance and specifically as stated in Section 10.0 of this Ordinance.

#### **SECTION 4.0 FLOODWAY DISTRICT (FW)**

The permitted and conditional uses listed below are only allowable in the floodway if not prohibited by any other underlying zoning district classifications of the City of Bayport and if not prohibited by any applicable state or federal law

##### **4.1 Permitted Uses:**

- 4.11 General farming, pasture, grazing, outdoor plant nurseries, horticulture, and wild crop harvesting.
- 4.12 Boat launching ramps, swimming areas, parks, wildlife and nature preserves, and fishing areas.
- 4.13 Residential lawns, gardens and play areas

##### **4.2 Standards for Floodway Permitted Uses:**

- 4.21 The use shall have a low flood damage potential.
- 4.22 The use shall be permissible in the underlying zoning district if one exists.
- 4.23 The use shall not obstruct flood flows or increase flood elevations and shall not involve structures, fill, obstructions, excavations or storage of materials or equipment.

##### **4.3 Conditional Uses:**

- 4.31 Extraction and storage of sand, gravel, and other materials
- 4.32 Marinas, boat rentals, docks, piers, wharves, and water control structures.
- 4.33 Railroads, streets, bridges, utility transmission lines, and pipelines.
- 4.34 Placement of fill

##### **4.4 Standards for Floodway Conditional Uses:**

- 4.41 All Uses. No fill (including fill for roads), deposit, obstruction, or other uses may be allowed as a conditional use that will cause any increase in the stage of the 100-year or regional flood or cause an increase in flood damages in the reach or reaches affected
- 4.42 All floodway conditional uses shall be subject to the procedures and standards contained in Section 10.4 of this Ordinance.
- 4.43 The conditional use shall be permissible in the underlying zoning district if one exists.
- 4.44 Fill:
  - (a) Fill, dredge spoil, and all other similar materials deposited or stored in the flood plain shall be protected from erosion by vegetative cover, mulching, riprap or other acceptable method.
  - (b) Dredge spoil sites and sand and gravel operations shall not be allowed in the floodway unless

a long-term site development plan is submitted which includes an erosion/sedimentation prevention element to the plan.

- (c) As an alternative, and consistent with Subsection (b) immediately above, dredge spoil disposal and sand and gravel operations may allow temporary, on-site storage of fill or other materials which would have caused an increase to the stage of the 100-year or regional flood but only after the Governing Body has received an appropriate plan which assures the removal of the materials from the floodway based upon the flood warning time available. The conditional use permit must be title registered with the property in the Office of the County Recorder.

4.45 **Storage of Materials and Equipment** Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Governing Body. The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.

4.46 **Community-wide structural works for flood control** intended to remove areas from the regulatory flood plain shall not be allowed in the floodway.

## **SECTION 5.0 FLOOD FRINGE DISTRICT (FF)**

5.1 **Permitted Uses:** Permitted uses shall be those uses of land or structures listed as permitted uses in the underlying zoning use district(s). If no pre-existing, underlying zoning use districts exist, then any residential or non residential structure or use of a structure or land shall be a permitted use in the Flood Fringe District provided such use does not constitute a public nuisance. All permitted uses shall comply with the standards for Flood Fringe District "Permitted Uses" listed in Section 5.2 and the "Standards for all Flood Fringe Uses" listed in Section 5.5.

### **5.2 Standards for Flood Fringe Permitted Uses**

5.21 All structures, including accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the regulatory flood protection elevation. The finished fill elevation for structures shall be no lower than one (1) foot below the regulatory flood protection elevation and the fill shall extend at such elevation at least fifteen (15) feet beyond the outside limits of the structure erected thereon

5.22 As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed 500 square feet at its largest projection may be flood proofed in accordance with the following standards

(a) Accessory structures shall not be designed for human habitation.

(b) Accessory structures shall be elevated on fill or structurally dry flood proofed in accordance with the FP-1 or FP-2 flood proofing classifications in the State Building Code. As an alternative, an accessory structure may be flood proofed to the FP-3 or FP-4 flood proofing classification in the State Building Code and, for a detached garage, the detached garage must be used solely for parking of vehicles and limited storage. Flood proofed accessory structures must meet the following additional standards.

(1) The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls,

(2) Any mechanical and utility equipment in a structure must be elevated to or above the regulatory flood protection elevation or properly flood proofed; and

(3) To allow for the equalization of hydrostatic pressure, there must be a minimum of two "automatic" openings in the outside walls of the structure having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. There must be

openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.

**5.23 The cumulative placement of fill where at any one time in excess of one-thousand (1,000) cubic yards of fill is located on the parcel shall be allowable only as a conditional use, unless said fill is specifically intended to elevate a structure in accordance with Section 5.21 of this ordinance.**

**(Note: This is defined by FEMA as an optional provision for the city to adopt. This language is consistent with the current provisions in city code. As such, staff recommends it be included.)**

5.24 The storage of any materials or equipment shall be elevated on fill to the regulatory flood protection elevation.

5.25 The provisions of Section 5.5 of this Ordinance shall apply.

5.3 Conditional Uses Any structure that is not elevated on fill or flood proofed in accordance with Section 5.21 - 5.22 and or any use of land that does not comply with the standards in Section 5.23 - 5.24 shall only be allowable as a conditional use. An application for a conditional use shall be subject to the standards and criteria and evaluation procedures specified in Sections 5.4-5.5 and 10.4 of this Ordinance.

5.4 Standards for Flood Fringe Conditional Uses:

5.41 Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the regulatory flood protection elevation. These alternative methods may include the use of stilts, pilings, parallel walls, etc., or above-grade, enclosed areas such as crawl spaces or tuck under garages. The base or floor of an enclosed area shall be considered above-grade and not a structure's basement or lowest floor if: 1) the enclosed area is above-grade on at least one side of the structure; 2) it is designed to internally flood and is constructed with flood resistant materials; and 3) it is used solely for parking of vehicles, building access or storage. The above-noted alternative elevation methods are subject to the following additional standards:

(a) Design and Certification - The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the State Building Code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the regulatory flood protection elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.

(b) Specific Standards for Above-grade, Enclosed Areas - Above-grade, fully enclosed areas such as crawl spaces or tuck under garages must be designed to internally flood and the design plans must stipulate:

- (1) A minimum area of openings in the walls where internal flooding is to be used as a flood proofing technique. 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 automatic openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding unless a registered professional engineer or architect certifies that a smaller net area would suffice. The automatic openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters without any form of human intervention, and
- (2) That the enclosed area will be designed of flood resistant materials in accordance

with the FP-3 or FP-4 classifications in the State Building Code and shall be used solely for building access, parking of vehicles or storage.

5.42 Basements, as defined by Section 2.812 of this Ordinance, shall be subject to the following:

- (a) Residential basement construction shall not be allowed below the regulatory flood protection elevation
- (b) Non-residential basements may be allowed below the regulatory flood protection elevation provided the basement is structurally dry flood proofed in accordance with Section 5.43 of this Ordinance.

5.43 All areas of non residential structures including basements to be placed below the regulatory flood protection elevation shall be flood proofed in accordance with the structurally dry flood proofing classifications in the State Building Code. Structurally dry flood proofing must meet the FP-1 or FP-2 flood proofing classification in the State Building Code and this shall require making the structure watertight with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures flood proofed to the FP-3 or FP-4 classification shall not be permitted

**5.44 When at any one time more than 1,000 cubic yards of fill or other similar material is located on a parcel for such activities as on-site storage, landscaping, sand and gravel operations, landfills, roads, dredge spoil disposal or construction of flood control works, an erosion/sedimentation control plan must be submitted unless the community is enforcing a state approved shoreland management ordinance. In the absence of a state approved shoreland ordinance, the plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the 100-year or regional flood event. The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the Governing Body. The plan may incorporate alternative procedures for removal of the material from the flood plain if adequate flood warning time exists.**

(Note: This is defined by FEMA as an optional provision for the city to adopt. This language is consistent with the current provisions in city code. As such, staff recommends it be included.)

5.45 Storage of Materials and Equipment:

- (a) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
- (b) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Governing Body

5.46 The provisions of Section 5.5 of this Ordinance shall also apply.

5.5 Standards for All Flood Fringe Uses:

**5.51 All new principal structures must have vehicular access at or above an elevation not more than two (2) feet below the regulatory flood protection elevation. If a variance to this requirement is granted, the Board of Adjustment must specify limitations on the period of use or occupancy of the structure for times of flooding and only after determining that adequate flood warning time and local flood emergency response procedures exist.**

(Note: This is defined by FEMA as an optional provision for the city to adopt. This language is consistent with the current provisions in city code. As such, staff recommends it be included.)

- 5.52 Commercial Uses - accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the regulatory flood protection elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth and velocity such that when multiplying the depth (in feet) times velocity (in feet per second) the product number exceeds four (4) upon occurrence of the regional flood.
- 5.53 Manufacturing and Industrial Uses - measures shall be taken to minimize interference with normal plant operations especially along streams having protracted flood durations. Certain accessory land uses such as yards and parking lots may be at lower elevations subject to requirements set out in Section 5.52 above. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in flood plain areas.
- 5.54 Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation - FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.
- 5.55 Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the Official Zoning Map.
- 5.56 Standards for recreational vehicles are contained in Section 9.3.
- 5.57 All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

**SECTION 6.0 RESERVED FOR FUTURE USE**

**SECTION 7.0 SUBDIVISIONS<sup>2</sup>**

<sup>2</sup>**Note: This Section is not intended as a substitute for a comprehensive city or county subdivision ordinance.**

7.1 Review Criteria: No land shall be subdivided which is unsuitable for the reason of flooding, inadequate drainage, water supply or sewage treatment facilities. All lots within the flood plain districts shall be able to contain a building site outside of the Floodway District at or above the regulatory flood protection elevation. All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this Ordinance and have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation. For all subdivisions in the flood plain, the Floodway and Flood Fringe District boundaries, the regulatory flood protection elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents.

7.2 Removal of Special Flood Hazard Area Designation. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

## **SECTION 8.0 PUBLIC UTILITIES, RAILROADS, ROADS, AND BRIDGES**

8.1 Public Utilities All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the flood plain shall be flood proofed in accordance with the State Building Code or elevated to above the regulatory flood protection elevation

8.2 Public Transportation Facilities. Railroad tracks, roads, and bridges to be located within the flood plain shall comply with Sections 4.0 and 5.0 of this Ordinance. Elevation to the regulatory flood protection elevation shall be provided where failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. 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.

8.3 On-site Sewage Treatment and Water Supply Systems: Where public utilities are not provided: 1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and 2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Section.

## **SECTION 9.0 MANUFACTURED HOMES AND MANUFACTURED HOME PARKS AND PLACEMENT OF RECREATIONAL VEHICLES.**

9.1 New manufactured home parks and expansions to existing manufactured home parks shall be subject to the provisions placed on subdivisions by Section 7.0 of this Ordinance.

9.2 The placement of new or replacement manufactured homes in existing manufactured home parks or on individual lots of record that are located in flood plain districts will be treated as a new structure and may be placed only if elevated in compliance with Section 5.0 of this Ordinance. If vehicular road access for pre-existing manufactured home parks is not provided in accordance with Section 5.51, then replacement manufactured homes will not be allowed until the property owner(s) develops a flood warning emergency plan acceptable to the Governing Body.

9.21 All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

9.3 Recreational vehicles that do not meet the exemption criteria specified in Section 9.31 below shall be subject to the provisions of this Ordinance and as specifically spelled out in Sections 9.33-9.34 below.

9.31 Exemption - Recreational vehicles are exempt from the provisions of this Ordinance if they are placed in any of the areas listed in Section 9.32 below and further they meet the following criteria

- (a) Have current licenses required for highway use.
- (b) Are highway ready meaning on wheels or the internal jacking system, are attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks and the recreational vehicle has no permanent structural type additions attached to it
- (c) The recreational vehicle and associated use must be permissible in any pre-existing, underlying zoning use district

9.32 Areas Exempted For Placement of Recreational Vehicles:

- (a) Individual lots or parcels of record.
  - (b) Existing commercial recreational vehicle parks or campgrounds.
  - (c) Existing condominium type associations
- 9.33 Recreational vehicles exempted in Section 9.31 lose this exemption when development occurs on the parcel exceeding \$500 for a structural addition to the recreational vehicle or exceeding \$500 for an accessory structure such as a garage or storage building. The recreational vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation/flood proofing requirements and the use of land restrictions specified in Sections 4.0 and 5.0 of this Ordinance. There shall be no development or improvement on the parcel or attachment to the recreational vehicle that hinders the removal of the recreational vehicle to a flood free location should flooding occur.
- 9.34 New commercial recreational vehicle parks or campgrounds and new residential type subdivisions and condominium associations and the expansion of any existing similar use exceeding five (5) units or dwelling sites shall be subject to the following:
- (a) Any new or replacement recreational vehicle will be allowed in the Floodway or Flood Fringe Districts provided said recreational vehicle and its contents are placed on fill above the regulatory flood protection elevation and proper elevated road access to the site exists in accordance with Section 5.51 of this Ordinance. No fill placed in the floodway to meet the requirements of this Section shall increase flood stages of the 100-year or regional flood.
  - (b) All new or replacement recreational vehicles not meeting the criteria of (a) above may, as an alternative, be allowed as a conditional use if in accordance with the following provisions and the provisions of 10.4 of the Ordinance. The applicant must submit an emergency plan for the safe evacuation of all vehicles and people during the 100 year flood. Said plan shall be prepared by a registered engineer or other qualified individual, shall demonstrate that adequate time and personnel exist to carry out the evacuation, and shall demonstrate the provisions of Section 9.31 (a) and (b) of this Ordinance will be met. All attendant sewage and water facilities for new or replacement recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding in accordance with Section 8.3 of this Ordinance.

## **SECTION 10.0 ADMINISTRATION**

10.1 Zoning Administrator. A Zoning Administrator or other official designated by the Governing Body shall administer and enforce this Ordinance. If the Zoning Administrator finds a violation of the provisions of this Ordinance the Zoning Administrator shall notify the person responsible for such violation in accordance with the procedures stated in Section 12.0 of the Ordinance.

### **10.2 Permit Requirements:**

10.21 Permit Required. A Permit issued by the Zoning Administrator in conformity with the provisions of this Ordinance shall be secured prior to the erection, addition, modification, rehabilitation (including normal maintenance and repair), or alteration of any building, structure, or portion thereof, prior to the use or change of use of a building, structure, or land; prior to the construction of a dam, fence, or on-site septic system; prior to the change or extension of a nonconforming use; prior to the repair of a structure that has been damaged by flood, fire, tornado, or any other source; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the flood plain.

10.22 Application for Permit. Application for a permit shall be made in duplicate to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following where applicable: plans in

duplicate drawn to scale, showing the nature, location, dimensions, and elevations of the lot, existing or proposed structures, fill, or storage of materials, and the location of the foregoing in relation to the stream channel.

10.23 State and Federal Permits. Prior to granting a permit or processing an application for a conditional use permit or variance, the Zoning Administrator shall determine that the applicant has obtained all necessary state and federal permits.

10.24 Certificate of Zoning Compliance for a New, Altered, or Nonconforming Use. It shall be unlawful to use, occupy, or permit the use or occupancy of any building or premises or part thereof hereafter created, erected, changed, converted, altered, or enlarged in its use or structure until a certificate of zoning compliance shall have been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this Ordinance

10.25 Construction and Use to be as Provided on Applications, Plans, Permits, Variances and Certificates of Zoning Compliance. Permits, conditional use permits, or certificates of zoning compliance issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this Ordinance, and punishable as provided by Section 12.0 of this Ordinance.

10.26 Certification. The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this Ordinance. Flood proofing measures shall be certified by a registered professional engineer or registered architect.

10.27 Record of First Floor Elevation The Zoning Administrator shall maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the flood plain. The Zoning Administrator shall also maintain a record of the elevation to which structures or alterations and additions to structures are flood proofed.

10.28 Notifications for Watercourse Alterations The Zoning Administrator shall notify, in riverine situations, adjacent communities and the Commissioner of the Department of Natural Resources prior to the community authorizing any alteration or relocation of a watercourse. If the applicant has applied for a permit to work in the beds of public waters pursuant to Minnesota Statute, Chapter 103G, this shall suffice as adequate notice to the Commissioner of Natural Resources. A copy of said notification shall also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA)

10.29 Notification to FEMA When Physical Changes Increase or Decrease the 100-year Flood Elevation. As soon as is practicable, but not later than six (6) months after the date such supporting information becomes available, the Zoning Administrator shall notify the Chicago Regional Office of FEMA of the changes by submitting a copy of said technical or scientific data.

### 10.3 Board of Adjustment:

10.31 Rules. The Board of Adjustment shall adopt rules for the conduct of business and may exercise all of the powers conferred on such Boards by State law.

10.32 Administrative Review The Board of Adjustment shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement or administration of this Ordinance.

10.33 Variances. The Board of Adjustment may authorize upon appeal in specific cases such relief or variance from the terms of this Ordinance as will not be contrary to the public interest and only for those circumstances such as hardship, practical difficulties or circumstances unique to the property under consideration, as provided for in the respective enabling legislation for planning and zoning for cities or counties as appropriate. In the granting of such variance, the Board of Adjustment shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in this Ordinance, any other zoning regulations in the Community, and in the respective enabling legislation that justified the granting of the variance. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:

- (a) Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- (b) Variances shall only be issued by a community upon (i) a showing of good and sufficient cause, (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 existing local laws or ordinances.
- (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

10.34 Hearings. Upon filing with the Board of Adjustment of an appeal from a decision of the Zoning Administrator, or an application for a variance, the Board of Adjustment shall fix a reasonable time for a hearing and give due notice to the parties in interest as specified by law. The Board of Adjustment shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed variances sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing.

10.35 Decisions. The Board of Adjustment shall arrive at a decision on such appeal or variance within 60 days. In passing upon an appeal, the Board of Adjustment may, so long as such action is in conformity with the provisions of this Ordinance, reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination of the Zoning Administrator or other public official. It shall make its decision in writing setting forth the findings of fact and the reasons for its decisions. In granting a variance the Board of Adjustment may prescribe appropriate conditions and safeguards such as those specified in Section 10.46, which are in conformity with the purposes of this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance punishable under Section 12.0. A copy of all decisions granting variances shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

10.36 Appeals. Appeals from any decision of the Board of Adjustment may be made, and as specified in this community's official controls and also by Minnesota Statutes.

10.37 Flood Insurance Notice and Record Keeping. The Zoning Administrator shall notify the applicant for a variance that: 1) 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 2) Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. A community shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

10.4 Conditional Uses. Applications shall be submitted to the Zoning Administrator. The Planning Commission shall hear and make a recommendation to the Governing Body on applications for conditional uses permissible under this Ordinance. The Governing Body shall make a final determination on the application.

10.41 Hearings. Upon filing with the Zoning Administrator an application for a conditional use permit, the Zoning Administrator shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed conditional use sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing.

10.42 Decisions. The Governing Body shall arrive at a decision on a conditional use within 60 days of filing the completed application, unless continued by the Planning Commission or Governing Body in order to obtain additional information pursuant to Minnesota State Statutes. In granting a conditional use permit the Governing Body shall prescribe appropriate conditions and safeguards, in addition to those specified in Section 10.46, which are in conformity with the purposes of this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the conditional use permit is granted, shall be deemed a violation of this Ordinance punishable under Section 12.0. A copy of all decisions granting conditional use permits shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

10.43 Procedures to be followed by the Governing Body in passing on Conditional Use Permit Applications Within all Flood Plain Districts.

(a) Require the applicant to furnish the following information and additional information as deemed necessary by the Zoning Administrator and/or Governing Body for determining the suitability of the particular site for the proposed use:

- (1) Plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood proofing measures, and the relationship of the above to the location of the stream channel; and
- (2) Specifications for building construction and materials, flood proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.

(b) Transmit one copy of the information described in subsection (a) to a designated engineer or other expert person or agency for technical assistance, where necessary, in evaluating the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, and other technical matters.

(c) Based upon the technical evaluation of the designated engineer or expert, the Governing Body shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.

10.44 Factors Upon Which the Decision of the Governing Body Shall Be Based. In passing upon conditional use applications, the Governing Body shall consider all relevant factors specified in other sections of this Ordinance, and

- (a) The 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 or they may block bridges, culverts or other hydraulic structures
- (c) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions
- (d) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- (e) The importance of the services provided by the proposed facility to the community.

- (f) The requirements of the facility for a waterfront location.
- (g) The availability of alternative locations not subject to flooding for the proposed use.
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future
- (i) The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
- (j) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (k) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- (l) Such other factors which are relevant to the purposes of this Ordinance

10.45 Time for Acting on Application. The Governing Body shall act on an application in the manner described above within 60 days from receiving the application, except that where additional information is required pursuant to 10.43 of this Ordinance. The Governing Body shall render a written decision within 60 days from the receipt of such additional information.

10.46 Conditions Attached to Conditional Use Permits. Upon consideration of the factors listed above and the purpose of this Ordinance, the Governing Body shall attach such conditions to the granting of 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) Modification of waste treatment and water supply facilities.
- (b) Limitations on period of use, occupancy, and operation.
- (c) Imposition of operational controls, sureties, and deed restrictions.
- (d) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.
- (e) Flood proofing measures, in accordance with the State Building Code and this Ordinance. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood proofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.

## SECTION 11.0 NONCONFORMING USES

11.1 A structure or the use of a structure or premises 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. Historic structures, as defined in Section 2.831(b) of this Ordinance, shall be subject to the provisions of Sections 11.11 – 11.15 of this Ordinance.

11.11 No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity.

11.12 Any structural alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use shall be protected to the Regulatory Flood Protection Elevation in accordance with any of the elevation on fill or flood proofing techniques (i.e., FP-1 thru FP-4 floodproofing classifications) allowable in the State Building Code, except as further restricted in 11.13 and 11.16 below.

**11.13 The cost of all structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed 50 percent of the market value of the structure unless the conditions of this Section are satisfied. The cost of all structural alterations and additions must include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the cost of all previous and proposed alterations and additions exceeds 50 percent of the market value of the structure, then the structure must meet the standards of Section 4.0 or 5.0 of this Ordinance for new structures depending upon whether the structure is in the Floodway or Flood Fringe District, respectively.**

**(Note: This is defined by FEMA as an optional provision for the city to adopt. This language is not currently included in the existing city code, but it is consistent with the intent of the existing code, which is to consider cumulative improvements over the life of the nonconforming structure. As such, staff recommends it be included.)**

- 11.14 If any nonconforming use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this Ordinance. The Assessor shall notify the Zoning Administrator in writing of instances of nonconforming uses that have been discontinued for a period of 12 months.
- 11.15 If any nonconforming use or structure is substantially damaged, as defined in Section 2.830 of this Ordinance, it shall not be reconstructed except in conformity with the provisions of this Ordinance. The applicable provisions for establishing new uses or new structures in Sections 4.0 and 5.0 will apply depending upon whether the use or structure is in the Floodway or Flood Fringe District, respectively.
- 11.16 If a substantial improvement occurs, as defined in Section 2.831 of this Ordinance, from any combination of a building addition to the outside dimensions of the existing building or a rehabilitation, reconstruction, alteration, or other improvement to the inside dimensions of an existing nonconforming building, then the building addition and the existing nonconforming building must meet the requirements of Section 4.0 or 5.0 of this Ordinance for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District, respectively.

## **SECTION 12.0 PENALTIES FOR VIOLATION**

- 12.1 Violation of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) shall constitute a misdemeanor and shall be punishable as defined by law.
- 12.2 Nothing herein contained shall prevent the City of Bayport from taking such other lawful action as is necessary to prevent or remedy any violation. Such actions may include but are not limited to:
- 12.21 In responding to a suspected Ordinance violation, the Zoning Administrator and Local Government 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 availability to the guilty party. The Community 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
- 12.22 When an Ordinance violation is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources' and Federal Emergency Management Agency Regional Office along with the Community's plan of action to correct the violation to the degree possible
- 12.23 The Zoning Administrator shall notify the suspected party of the requirements of this Ordinance and all other official controls and the nature and extent of the suspected violation of these controls. If the structure and/or use is under construction or development, the Zoning Administrator may order the construction or development immediately halted until a proper permit or approval is granted by the Community. If the construction or development is already completed, then the Zoning Administrator may either: (1) issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with the official controls; or (2) notify the responsible party to apply for an after-the-fact permit/development approval within a specified period of time not to exceed 30-days.

12.24 If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this Ordinance and shall be prosecuted accordingly. The Zoning Administrator shall also upon the lapse of the specified response period notify the landowner to restore the land to the condition which existed prior to the violation of this Ordinance.

#### **SECTION 13.0 AMENDMENTS**

The flood plain designation on the Official Zoning Map shall not be removed from flood plain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regulatory flood protection elevation and is contiguous to lands outside the flood plain. Special exceptions to this rule may be permitted by the Commissioner of Natural Resources if he determines that, through other measures, lands are adequately protected for the intended use.

All amendments to this Ordinance, including amendments to the Official Zoning Map, must be submitted to and approved by the Commissioner of Natural Resources prior to adoption. Changes in the Official Zoning Map must meet the Federal Emergency Management Agency's (FEMA) Technical Conditions and Criteria and must receive prior FEMA approval before adoption. The Commissioner of Natural Resources must be given 10-days written notice of all hearings to consider an amendment to this Ordinance and said notice shall include a draft of the Ordinance amendment or technical study under consideration.

#### **SECTION 14.0 RESERVED**

#### **SECTION 15.0 REPEAL OF PREVIOUS FLOODPLAIN ORDINANCE**

Ordinance Number 687, the previous City of Bayport ordinance governing floodplain management, is hereby repealed in its entirety.

#### **SECTION 16.0 EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage and publication according to law. Passed by the City Council for the City of Bayport this 7<sup>th</sup> day of December, 2009.

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Mitch Berg, City Administrator

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Jon Nowaczek, Mayor

# City of Bayport

 FEMA Panel #  
Municipal Boundaries









