

# **CITY OF BISMARCK**

## **Ordinance No. XXXX**

*First Reading* \_\_\_\_\_

*Second Reading* \_\_\_\_\_

*Final Passage and Adoption* \_\_\_\_\_

*Publication Date* \_\_\_\_\_

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-04-19 OF THE BISMARCK CODE OF ORDINANCES (REV.) RELATING TO THE FP FLOODPLAIN DISTRICT.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-04-09 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to the FP Floodplain District is hereby amended and re-enacted to read as follows:

14-04-19. FP Floodplain District. In any FP floodplain district, the following regulations shall apply:

1. Statement of purpose. It is the purpose of this ~~ordinance~~ section to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- a. To protect human life and health;
- b. To minimize expenditure of public money for costly flood control projects; ~~and~~
- c. To minimize the need for rescue and relief efforts associated with flooding, and generally undertaken at the expense of the general public;
- d. To minimize prolonged business interruptions;

e. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in special flood hazard areas;

f. To help maintain a stable tax base by providing for the use and development of special flood hazard areas so as to minimize future flood blight areas;

eg. To ensure that potential buyers are notified that property is located in an area of a special flood hazard area; and

h. To ensure that those who occupy the special flood hazard areas assume responsibility for their actions.

2. Methods of reducing flood losses. In order to accomplish its purposes, this section includes methods and provisions for:

a. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion, flood water elevations or flow velocities;

b. Requiring that uses vulnerable to flooding, including attendant utilities and facilities which serve such uses, be protected against flood damage at the time of initial construction;

c. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or convey flood waters;

d. Controlling filling, grading, dredging, and other development which may increase flood damage; and

e. Preventing or regulating the construction of flood barriers or obstructions which will unnaturally divert flood waters or which may increase flood hazards in other areas.

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

"Appeal" means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance section or a request for a variance.

"Attendant utilities and equipment" means utilities, electrical, plumbing, heating, ventilation, and air conditioning equipment, as well as facilities and service associated with new construction.

"Base flood or 100-year flood" means the flood having a one per cent (1%) chance of being equaled or exceeded in any given year.

"Base flood elevation (BFE)" means the height of the base flood or 100-year flood, usually in feet above mean sea level, as designated on a FEMA published flood insurance rate map (FIRM) or as determined by the storm water management plan prepared for the area in which the property is located.

"Basement" means any area of a building having its floor below ground level (subgrade) on all sides.

"Best available data (BAD)" means water elevation information from any source used to estimate or determine the base flood elevation (ie, high water mark).

"Conveyance or hydraulic conveyance" means a geometric characteristic of a river or watercourse at a given location that determines the flow-carrying capacity at that location.

"Development" means 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 located within the ~~area~~ of special flood hazard area.

"Fill" means materials such as soil, gravel, or crushed stone that is placed in an area and increases the ground elevation, whether or not that was the intention.

"Flood or flooding" means a general and temporary condition ~~or~~ of partial or complete inundation of normally dry land areas from:

a. ~~T~~the overflow of inland or tidal waters; and/or

b. ~~T~~the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood insurance rate map" (FIRM) or digital flood insurance rate map (DFIRM)" means the official map ~~on which~~ issued by the Federal Emergency Management Agency (FEMA) has delineated both the areas of where special flood hazards areas and the risk premium zones applicable to the community are designated as Zone A, AE, AO, AH, A1-A30 or A-99.

"Flood insurance study (FIS)" means the official report provided by the Federal Emergency Management Agency (FEMA) that includes flood profiles, the flood ~~boundary-floodway~~ insurance rate map (FIRM), and the water surface elevation of the base flood.

"Floodplain or flood-prone area" means any land area susceptible to partial or complete inundation by water from any source.

"Floodplain Administrator" means the person designated by the City of Bismarck to administer the City's floodplain ~~district~~ regulations.

"Floodproofing (dry)" means protection provided a structure, together with attendant utilities and sanitary facilities, which is watertight to two (2) feet above the base flood elevation with walls that are substantially impermeable to the passage of water.

"Floodway or regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge

the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

"Letter of map revision (LOMR)" means an official amendment to the currently effective flood insurance rate map (FIRM). It is issued by FEMA and changes flood zones, delineations and elevations. A letter of map revision based on fill (LOMR(f)) is a LOMR issued by FEMA based on the placement of fill.

~~"Lowest floor" means the lowest floor of the lowest enclosed area a structure including the basement and/or crawl space. An unfinished or flood resistant enclosure, usable 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 requirements of this ordinance.~~

~~"Manufactured home" means a structure that is transportable in one or more sections, which is built on a permanent chassis, and is designed to be used for use with or without a permanent foundation when connected to the required utilities. It includes recreational vehicles or travel trailers placed on a site for more than 180 consecutive days. The term "manufactured home" does not include a recreational vehicle, but does include a mobile home.~~

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"New construction" means structures for which the "start of construction" commenced on or after the effective date of this ~~ordinance~~ section.

"Non-residential" means any building or structure or portion thereof that is not classified as residential.

"Reasonably safe from flooding" means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area, and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

"Recreational vehicle" means a vehicle which is built on a single chassis; four hundred (400) square feet or less when measured at the largest horizontal projection; designed to be self-propelled or permanently towable by a light duty truck; and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal uses. Recreational vehicles include, but are not limited to, travel trailers, trailers on wheels, park-model trailers and other similar vehicles.

"Residential" means:

a. Buildings and structures and portions thereof where people live or that are used for sleeping purposes on a transient or non-transient basis;

b. Residential structures, including but not limited to one and two-family dwellings, multifamily dwellings, group dwellings, bed and breakfast facilities, hotels and motels; and

c. Institutional facilities where people are cared for or live on a 24-hour basis in a supervised environment, including but not limited to board and care facilities, assisted living facilities, nursing homes, group homes, congregate care facilities, hospitals, medical centers, jails and detention centers.

~~"Area of sSpecial flood hazard area (SFHA)" means the an area of land in the floodplain within a community subject to that would be inundated by a flood having a one per cent (1%) or greater chance of flooding of being equaled or exceeded in any given year (100-year flood).~~

"Start of construction" includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means 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, or 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.~~

"Storage tank" means any closed vessel used to store gases or liquids.

"Storm water management plan" means a document prepared in accordance with the provisions of Title 14.1 of the City Code of Ordinances to evaluate surface water runoff and flood risks within a development, plat or watershed; to document special flood hazard areas; and to determine the systems required to convey or control flood flows within and through the area.

"Structure" means a walled and roofed building, including manufactured homes and gas or liquid above-ground storage tanks that is principally above ground.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the building to its pre-damaged condition would equal or exceed fifty percent (50%) of the assessed value of the structure before the damage occurred.

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the assessed value of the structure either: before the improvement or repair is started; or if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either: any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"Variance" means a grant of relief from the requirements of this ordinance section which permits construction in a manner that would otherwise be prohibited by this ordinance section.

34. General provisions.

a. Jurisdiction. ~~The jurisdiction of t~~This ordinance (section) shall apply to all special flood hazard areas within the jurisdiction of the City of Bismarck, including all lands within the corporate limits of the City of Bismarck and the extraterritorial jurisdiction as provided for in Section 40-47-01.1 of the North Dakota Century Code that would be inundated by a 100-year flood.

b. Basis for establishing the ~~areas of~~ special flood hazard areas. ~~The areas of~~ special flood hazard areas identified by the Federal Emergency Management Agency (FEMA) in a scientific and engineering report titled "The Flood Insurance Study for Burleigh County, North Dakota and Incorporated Areas", dated July 19, 2005, with an accompanying flood insurance rate map (FIRM), is hereby adopted by reference and declared to be a part of this ordinance section. The Flood Insurance Study (FIS) is on file in the office of the Floodplain Administrator. Special flood hazard areas may also be designated in a storm water management plan prepared for a development, plat or watershed.

c. Compliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance section and other applicable regulations.

d. Greater restrictions. This section is not intended to repeal, remedy, or impair any existing easements, covenants, or deed restrictions. However, where this section and another section of the City Code of Ordinances, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.



e. Interpretation. In the interpretation and application of this section, all provisions shall be:

1) Considered as minimum requirements;

2) Liberally construed in favor of the City of Bismarck; and

3) Deemed neither to limit or repeal any other powers granted under the North Dakota Century Code or the City Charter of the City of Bismarck.

df. Warning and disclaimer of liability. The degree of flood protection required by this ordinance section is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This ordinance section does not imply that land outside the ~~areas of~~ special flood hazards areas or uses permitted ~~without~~ in such areas will be free from flooding or flood damages. This ordinance section shall not create liability on the part of the City of Bismarck, any officer or employee thereof, or the Federal Emergency Management Agency (FEMA) for any flood damages that result from reliance on this ordinance section or any administrative decision lawfully made thereunder.

~~e. District boundaries. The boundaries of the floodplain and floodway districts shall be as they appear on the zoning map on file in the office of the Director of Community Development. Compliance with provisions of this ordinance (section) shall not be grounds for the removal of lands from the floodplain district. All areas of diking shall be constructed at least two feet above the 100-year floodplain level. (eliminated)~~

~~f. Establishment of building permit. A building permit shall be obtained before construction or development begins within any area of special flood hazard established herein.~~

~~Application for a building permit shall be made on forms provided and shall be accompanied by any reasonable supporting material as may be requested by the office of building inspection. (eliminated)~~

~~g. Use of other base flood data. When base flood elevation data has not been provided in accordance with subsection (3) (b), Basis for establishing the areas of special flood hazard, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation data available from a federal, state, or other source, in order to administer this ordinance in accordance with its purpose and intent. (moved to Section 5)~~

~~h. Interpretation of FIRM boundaries. Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards, (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation. (moved to Section 5)~~

~~i. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. All variances shall be issued by the board of adjustment. (moved to Section 7(h))~~

~~jg. Letter of Map Revision (LOMR). Development on any parcel for which a Letter of Map Revision (LOMR) has been issued shall comply with all of the requirements and recommendations as contained therein.~~

~~45. Establishment of development permit Administration.~~

~~a. Establishment of a development permit. A development permit shall be obtained before construction or development begins within any area~~

~~of~~ special flood hazard area established in subsection 4(b) (basis for establishing the special flood hazard areas). Application for a development permit shall be made on forms furnished by the Floodplain Administrator ~~who will administer this ordinance and issue all permits hereunder.~~ Application and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

1) Elevation in relation to mean sea level, of the lowest floor (including basements and/or crawl spaces) of all structures;

2) Elevation in relation to mean sea level to which any structure has been floodproofed;

3) Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in subsection 6(b)(2) (nonresidential construction); and

4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

b. Establishment of a non-structural development permit. A non-structural development permit shall be obtained before any land disturbing activity begins within any special flood hazard area established in subsection 4(b) (basis for establishing the special flood hazard areas). Application for a non-structural development permit shall be made on forms furnished by the Floodplain Administrator and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; proposed elevations upon completion of the land disturbing activity; the

type of fill being used, if fill is proposed; and a description of the extent to which any watercourse will be altered or relocated as a result of proposed land disturbing activity.

c. Designation of the Floodplain Administrator. The Building Official is hereby appointed to administer and implement this section by granting or denying development permit and non-structural development permit applications in accordance with its provisions.

d. Duties and Responsibilities of the Floodplain Administrator. Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to:

1) Permit review:

1a) Review all development permits and non-structural development permits to determine that the permit requirements of this ordinance section have been satisfied.

2b) Review all development permits and non-structural development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

3c) Review all development permits and non-structural development permits to determine if the proposed development or land disturbing activity is located in the floodway. If located in the floodway, assure that the encroachment provisions of this ordinance section are met.

e-2) Use of other base flood data. When base flood elevation data has not been provided in accordance with subsection 4 (b) (basis for establishing the special flood hazard areas), the Floodplain Administrator shall obtain, review and reasonably utilize

any base flood elevation data available (known as best available data (BAD)) from a federal, state or other source, as criteria for requiring that new construction, substantial improvements, or other development in the floodplain are administered in accordance with subsection 6(b) (specific standards).

3) Information to be obtained and maintained:

1a) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement and/or crawl space) of all new or substantially improved structures, and whether or not the structure contains a basement and/or crawl space.

2b) For all new or substantially improved floodproofed structures:

a) ~~Verify~~ Obtain and record the actual elevation (in relation to mean sea level) to which the structure has been floodproofed; and

b) Maintain the floodproofing certifications required hereunder in subsection 5(a) (3).

c) Maintain for public inspection all records pertaining to the provisions of this section.

4) Alteration of watercourses. ~~In case of alteration of watercourses, t~~The Floodplain Administrator ~~will~~ shall:

1a) Notify adjacent nearby communities, water resource districts, and the North Dakota ~~s~~State ~~e~~Engineer, as necessary, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the

Federal Emergency Management Agency  
(FEMA).

2b) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished; and

c) Notify the appropriate water resource district prior to removal or placement of fill within two hundred (200) feet of the bank of a body of water during normal flow or stage.

5) Interpretation of flood insurance rate map (FIRM) or digital flood insurance rate map (DFIRM) boundaries. Make interpretation where needed, as to the exact location of the boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in subsection 7 (variance procedure).

56. Provisions for flood hazard reduction.

a. General standards. In all ~~areas~~ of special flood hazards areas the following standards are required:

1) ~~Anchoring~~

a) All new construction and substantial improvements, including additions, shall be anchored to prevent flotation, collapse or lateral movement of the structure.

b) All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or

frame ties to ground anchors. This requirement is in addition to applicable ~~S~~state and local anchoring requirements for resisting wind forces.

2) Construction materials and methods~~;~~

a) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;

b) All new construction and substantial improvements shall be constructed ~~utilizing~~ using methods and practices that minimize flood damage~~;~~ and

c) All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. Such facilities shall be located in areas that have been elevated on fill to at least two (2) feet above the base flood elevation for residential structures and manufactured homes.

3) Utilities~~;~~

a) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system~~;~~

b) All ~~N~~new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems~~;~~ and discharge from the systems~~;~~ into flood waters; and

c) All new and replacement on-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

4) ~~Subdivision proposals:~~

a) All subdivision proposals shall be consistent with the need to minimize flood damage;

b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and

d) Base flood elevation data shall be provided for all subdivision proposals and other proposed developments. Elevation data must be provided in NAVD88 for areas with a flood insurance rate map (FIRM) or other base flood elevation data in that datum.

b. Specific standards. In all ~~areas of special flood hazards~~ areas where base flood elevation data ~~has~~ have been provided as set forth in subsection 4(b) (basis for establishing the special flood hazard areas) or subsection 5(d) (2) (use of other base flood data), the following provisions are required~~;~~:

1) ~~Residential construction:~~ New construction and substantial improvement of any residential structure shall have the lowest floor, including basement or crawl space, elevated on fill to a minimum of one (1) foot at least two (2) feet above the base flood elevation, and shall:

a) ~~Have structural components capable of resisting hydrostatic and~~



~~hydrodynamic loads and effects of buoyance. Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting requirement must either be certified by registered professional engineer or architect or must meet or exceed the following minimum criteria:~~

~~i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;~~

~~ii. The bottom of all openings shall be no higher than one foot above grade;~~

~~iii. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.~~

2) ~~Nonresidential construction.~~  
Construction and substantial improvement of any ~~commercial, industrial or other~~ nonresidential structure shall either have the lowest floor, including basement or crawl space, elevated on fill to a minimum of one (1) foot at least two (2) feet above the base flood elevation or, together with attendant utility and sanitary facilities, shall:

a) Be floodproofed to at least two (2) feet above the base flood elevation, so that below this elevation the structure is watertight with walls substantially impermeable to the passage of water;

b) Have structural components capable of resisting hydrostatic and

hydrodynamic loads and effects of buoyancy. Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting requirement must either be certified by registered professional engineer or architect or must meet or exceed the following minimum criteria:

i. A minimum of two openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided;

ii. The bottom of all openings shall be no higher than one (1) foot above grade;

iii. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters; and

c) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the permitting official Floodplain Administrator as set forth in subsection 5(d)(3) (information to be obtained and maintained).

### 3) Manufactured homes.

a) Manufactured homes shall be anchored in accordance with this subsection 6(a)(1) (anchoring).

b) All manufactured homes or those to be substantially improved shall be elevated on compacted fill a permanent foundation such that the lowest floor of

the manufactured home is elevated on fill a minimum of one (1) foot to at least two (2) feet above the base flood elevation, and is securely anchored as specified elsewhere in this section to an adequately anchored foundation system.

4) Attached garages, decks and landings providing primary access, and accessory buildings.

a) Garages attached to any residential structure, non-residential structure or manufactured home shall be subject to the same construction requirements as the residential structure, non-residential structure or manufactured home to which it is attached.

b) Decks and landings providing access to the primary entrance of a residential structure, non-residential structure or manufactured home shall be subject to the same construction requirements as the residential structure, non-residential structure or manufactured home to which is provides access.

c) Accessory buildings over one hundred twenty (120) square feet in area for residential structures, non-residential structures and manufactured homes shall be subject to the same construction requirements as the residential structure, non-residential structure or manufactured home to which it is accessory.

4c. Floodways. Located within areas of the special flood hazard areas established in subsection 4(b) (basis for establishing the special flood hazard areas) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles,

and erosion potential, the following provisions apply:

a1) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

b2) If the preceding subsection is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of ~~this ordinance~~ subsection 6 (provisions for flood hazard reduction).

#### 7. Variance procedure.

a. Board of Adjustment. The Board of Adjustment, as established in Chapter 14-06 of the City Code of Ordinances (Board of Adjustment), shall hear and decide appeals and requests for variances from the requirements of this section.

b. Appeals. An appeal may be filed by any person, firm or corporation aggrieved, or by any governmental officer, department or board affected by any decision or determination made by the Floodplain Administrator in the enforcement or administration of this section, in accordance with the provisions of Sections 14-06-02 (Powers and Duties) and 14-06-03 (Appeal Procedures).

c. Variances. An application for a variance may be made by any person, firm or corporation with a legal interest in the property for which the variance is being sought, in accordance with the provisions of Sections 14-06-02 (Powers and Duties) and 14-06-03 (Appeal Procedures).

d. In considering appeals and variance applications, and in addition to the requirements

outlined in Section 14-06-02 (Powers and Duties), the Board of Adjustment shall consider all technical evaluations, all relevant factors, and the standards specified in this section, including:

1) The danger that materials may be swept onto other lands to the injury of others;

2) The danger to life and property due to flooding or erosion damage;

3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

4) The importance of the services provided by the proposed facility to the community;

5) The necessity to the facility of a waterfront location, where applicable;

6) The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage;

7) The compatibility of the proposed use with the existing and anticipated development;

8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

e. Upon consideration of the factors of in subsection(7)(d) and the purposes of this section, the Board of Adjustment may attach such conditions to the granting of a variance as it deems necessary to further the purpose of this section.

f. Conditions for variances.

1) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this subsection.

2) Variances shall not be issued within the identified floodplain if any increase in flood levels during the base flood discharge would result.

3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

4) Variances shall only be issued upon:

a) A showing of good and sufficient cause;

b) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

c) A determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, cause fraud on or victimization of the public or

conflict with existing local laws or ordinances.

g. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below lower than two (2) above the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

h. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency (FEMA) upon request.

8. Penalties for Violations. Penalties for violation of this section shall be in accordance with the provisions of Chapter 14-05 (Enforcement) of the City Code of Ordinances.

*(Ord. 4137, 5-26-87; Ord. 4737, 11-14-95; Ord. 4948, 10-13-98; Ord. 5037, 03-14-00; Ord. 5259, 05-27-2003; Ord. 5423, 05-24-05; Ord. 5728, 05-26-09)*

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. Effective Date. This ordinance shall take effect following final passage and adoption.