

**ORDINANCE 24-003**

**AN ORDINANCE TO AMEND AND RE-ENACT ARTICLE 33 OF THE 1972 AMENDED ZONING ORDINANCE OF BURLEIGH COUNTY, NORTH DAKOTA RELATING TO ARTICLE 21 – FP – FLOODPLAIN DISTRICT REGULATIONS.**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BURLEIGH COUNTY, NORTH DAKOTA:**

**Section 1. Amendment**

Article 21 of the Zoning Ordinance is hereby amended:

**ARTICLE 21 - FP - FLOODPLAIN DISTRICT REGULATIONS**

In any FP - floodplain district, the following regulations shall apply:

**Section 1. Statement of Purpose.**

It is the purpose of this article 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;
- c. To minimize the need for rescue and relief efforts associated with flooding, generally undertaken at the expense of the general public;
- d. To minimize prolonged business interruptions;
- e. To minimize damage to public facilities and utilities located in special flood hazard areas such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges;
- 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;

- g. To ensure that potential buyers are notified that property is located in a special flood hazard area;-
- h. To ensure that those who occupy the special flood hazard areas assume responsibility for their actions; and
- i. To provide an increased level of protection in anticipation of future increases in the base flood elevation (BFE).

## **Section 2. Methods of Reducing Flood Losses.**

In order to accomplish its purposes, this article 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 which will unnaturally divert flood waters or which may increase flood hazards in other areas.

## **Section 3. Definitions.**

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

**“Accessory Structure”** for floodplain management purposes means structures that are on the same parcel of property as a principal structure, the use of which is incidental to the use of the principal structure. Accessory structures are a single-story structure that may only be used for parking or storage, represent a minimal investment by owners, and have low damage potential. Structures that include the following uses are not considered accessory structures for floodplain management purposes: habitable spaces, bathrooms, toilet rooms, laundry facilities, and

entertainment and recreational spaces including but not limited to workshops and game rooms.

***Agricultural Structure*** for floodplain management purposes means structures that are used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock.

***“Appeal”*** means a request for a review of the Floodplain Administrator’s interpretation of any provision of this article 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 services 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 digital flood insurance rate map (DFIRM) 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 subgrade (below ground level) on all sides.

***“Best available data (BAD)”*** means water elevation information from any source used to estimate or determine the base flood elevation (i.e., high water mark).

***“Community”*** means any political subdivision that has the authority to zone, or any Indian tribe or authorized tribal organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction

***“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 special flood hazard area.

***“Enclosure”*** means enclosed walled in areas below the lowest floor of an elevated building that are constructed of flood-resistant materials and designed to automatically equalize hydrostatic flood forces on exterior walls by allowing the entry and exit of floodwaters.

***“Existing Manufactured Home Park or Subdivision”*** means a manufactured home park or

subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

***“Expansion to an existing Manufactured Home Park or Subdivision”*** means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured home is to be affixed. (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

***“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 of partial or complete inundation of normally dry land areas from:

- a. The overflow of inland or tidal waters; and/or
- b. 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 issued by the Federal Emergency Management Agency (FEMA) where special flood hazards areas are designated as Zone A, AE, AO, AH, A1-A30 or A99.

***“Flood insurance study”*** (FIS) means the official report provided by the Federal Emergency Management Agency (FEMA) that includes flood profiles, the flood 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 Burleigh County to administer the County’s floodplain regulations.

***“Flood proofing (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.

***“Floodproofing (wet)”*** means the use of flood damage resistant materials and construction techniques to minimize flood damage to structures by intentionally allowing floodwater to enter and exit automatically (without human intervention) to minimize unequal pressure of water on walls (hydrostatic load or pressure). Wet floodproofing also requires structures to be anchored to resist flooding, have mechanical and utility equipment elevated or protected, and

have flood openings installed in walls.

**“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 amendment (LOMA)”** means an official amendment to the currently effective flood insurance rate map (FIRM) which establishes that a property is not located in a special flood hazard area. A letter of map amendment (LOMA) is issued by FEMA.

**“Letter of map revision (LOMR)”** means an official amendment to the currently effective flood insurance rate map (FIRM) which 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 a structure including the basement and/or crawl space.

**“Manufactured home”** means 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 connected to the required utilities. 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 (2) 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 article.

**“New Manufactured Home Park or Subdivision”** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

**“Non-conversion agreement”** means an agreement signed by applicants and property owners, affirming that the owners agree not to convert or modify in any manner that is inconsistent with approved permit (and variance conditions, when applicable).

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

**“Pre-FIRM Building”** means a building for which construction or substantial improvement occurred on or before September 18, 1985, or the effective date of the initial Flood Insurance Rate Map (FIRM).

**“Principal structure”** for floodplain management purposes means a structure that is not an accessory structure. All principal structures must be constructed in accordance with the requirements applicable to residential construction or nonresidential construction as determined by the use of the structure.

**“Post-FIRM Building”** means a building for which construction or substantial improvement occurred after September 18, 1985 the effective date of the initial Flood Insurance Rate Map (FIRM) whichever is later.

**“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:

- a. built on a single chassis
- b. 400 sf or less when measured at the largest horizontal projection
- c. designed to self-propelled or permanently towable by a light duty truck
- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use; including, but not limited to:
- e. 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.

**“Special flood hazard area (SFHA)”** means an area of land that would be inundated by a flood having two tenths of one percent (0.2%) or greater chance of being equaled or exceeded in any given year (500-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 a 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.

**“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 Article 33 (Subdivision Regulations) 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.

**“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 market value as assessed of the structure before the damage occurred.

**“Substantial improvement”** means any repair, reconstruction, or improvement of a structure, that occurs within a consecutive two (2) year period. The cost of which equals or exceeds fifty percent (50%) of the market value as assessed of the structure either:

- a. Before the improvement or repair is started; or
- b. If the structure has been damaged and is being restored, before the damage occurred.

For the purpose 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:

- a. 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
- b. 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 article that permits construction in a manner that would otherwise be prohibited by this article.

**"Violation"** means failure of a structure or other development to be fully compliant with the floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by the floodplain management ordinance is presumed to be in violation until such time as that documentation is provided.

#### **Section 4. General Provisions.**

- a. **Jurisdiction.** This article shall apply to all special flood hazard areas within the jurisdiction of Burleigh County, including all lands within Burleigh County's zoning jurisdiction pursuant to Article 5, but excluding the corporate limits of the City of Bismarck or any other incorporated city and the extra-territorial jurisdiction of those cities as provided for in Section 40-47-01.1 of the North Dakota Century Code.
- b. **Basis for establishing the special flood hazard areas.** The 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 June 6, 2024 with an accompanying flood insurance rate map (FIRM), and as subsequently updated by any Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR) and/or Letter of Map Revision Based on Fill (LOMR(f)) issued by the Federal Emergency Management Agency (FEMA), is hereby adopted by reference and declared to be a part of this article. 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 article and other applicable regulations, unless a valid building permit was in place prior to May 7, 2012,



except as provided for in subsection 6(b)(5) (additions to existing structures).

- d. Greater restrictions. This article is not intended to repeal, remedy, or impair any existing easements, covenants or deed restrictions. However, where this article and another article of the County Zoning Ordinance, 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 article, all provisions shall be:
  - 1. Considered as minimum requirements;
  - 2. Liberally construed in favor of Burleigh County; and
  - 3. Deemed neither to limit nor repeal any other powers granted to Burleigh County under the North Dakota Century Code.
- f. Warning and disclaimer of liability. The degree of flood protection required by this article 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 man-made or natural causes. This article does not imply that land outside the special flood hazards areas or uses permitted within such areas will be free from flooding or flood damages. This section shall not create liability on the part of Burleigh County, any officer or employee thereof, or the Federal Emergency Management Agency (FEMA) for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.
- g. Letter of Map Revision (LOMR) has been issued shall comply with all of the requirements and recommendations as contained therein. Development on any parcel for which a LOMR has been issued shall be constructed in accordance with the provisions of FEMA Technical Bulletin 10-01.
- h. Non-conforming Status. Any structure constructed with the lowest floor elevated as required by the regulations in effect at the time of construction shall not be considered a non-conforming structure for the purposes of this section, provided the lowest floor of said structure is elevated on fill and/or a permanent foundation to at least one (1) foot above the base flood elevation.

## **Section 5. Administration.**

- a. Establishment of a development permit. A development permit shall be obtained

before construction or development begins within any special flood hazard area established in subsection 4(b) of this article (basis for establishing the special flood hazard areas). Application for a 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; 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 the same datum as the current FIRM or elevation in relation to mean sea level in NAVD 88 of the lowest floor (including basements and/or crawl spaces) of all structures:
  2. Elevation in the same datum as the current FIRM or elevation in relation to mean sea level in NAVD88 to which any structure has been flood proofed:
  3. Certification by a registered professional engineer or architect that the flood proofing methods for any non-residential structure meet the flood proofing criteria in subsection 6(b)(2) of this article (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) of this article (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 article by granting or denying development permit and non-structural development permit applications in accordance with the applicable 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 application review.

- a. Review all development permit applications and non-structural development permit applications to determine that the permit requirements of this article have been satisfied;
  - b. Review all development permit applications and non-structural development permit applications to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required; and
  - c. Review all development permit applications and non-structural development permit applications 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 article are met.
2. Use of other base flood data. When base flood elevation data has not been provided in accordance with subsection 4(b) of this article (basis for establishing the special flood hazard areas), the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway 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 is administered in accordance with subsection 6(b) of this article (specific standards).
  3. Information to be obtained and maintained.
    - a. Obtain and record the actual elevation in relation to elevation in the same datum as the current FIRM in NAVD88 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.
    - b. For all new or substantially improved flood proofed structures:
      1. Obtain and record the actual elevation in relation to elevation in the same datum as the current FIRM to mean sea level in NAVD88 to which the structure has been flood proofed; and
      2. Maintain the flood proofing certifications required in subsection 6(b) of this article (specific standards).
    - c. Maintain for public inspection all records pertaining to the provisions of

this article.

4. Alteration of watercourses. The Floodplain Administration shall:
  - a. Notify nearby communities, water resource districts, and the North Dakota State 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);
  - b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished; and
5. Interpretation of flood insurance rate map (FIRM) or digital flood insurance rate map (DFIRM) boundaries. Make interpretations 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 of this article (appeal and variance procedures). The Floodplain Administrator may require information be submitted by a registered land surveyor.

## **Section 6. Provisions for Flood Hazard Reduction.**

A. General standards. In all special flood hazards areas, the following standards are required:

### A. Anchoring.

1. All new construction and substantial improvements, including additions, shall be anchored to prevent flotation, collapse or lateral movement of the structure; and
  - a. 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 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 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 construction 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 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 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 reduced exposure to flood damage;
- d. Base flood elevation data shall be provided for all subdivision proposals and other proposed developments. Elevation data must be provided in the same datum as the current FIRM, NAVD88 for areas with a flood insurance rate map (FIRM) or other base flood elevation data in that datum; and
- e. All roadways within and providing access to subdivisions shall be constructed in accordance with County engineering standards.

B. Specific standards.

In all special flood hazards areas where base flood elevation data have been provided as set

forth in subsection 4(b) of this article (basis for establishing the special flood hazard areas) or subsection 5(d)(2) of this article (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 and/or crawl space, elevated on fill and/or a permanent foundation to at least two (2) feet above the base flood elevation.
2. Nonresidential construction. New construction and substantial improvement of any nonresidential structure shall either have the lowest floor, including basement and/or crawl space, elevated on fill and/or a permanent foundation to at least two (2) feet above the base flood elevation or, together with attendant utility and sanitary facilities, shall:
  - a. Be flood proofed 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.
  - 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 Floodplain Administrator as set forth in subsection 5(d)(3) of this article (information to be obtained and maintained).
3. Manufactured homes.
  - a. Manufactured homes shall be anchored in accordance with subsection 6(a)(1) of this article (anchoring).
  - b. All manufactured homes or those to be substantially improved shall be on a permanent foundation, as referenced in FEMA P-85 / 2009, have the lowest floor bottom of the frame of the manufactured home elevated on fill and/or a permanent foundation to at least two (2) feet above the base flood elevation, and be securely anchored to an adequately anchored foundation system. However, within a Pre-FIRM manufactured home park, a newly placed manufactured home or those to be substantially improved shall be on a permanent foundation, have the bottom of the frame of the manufactured home elevated on fill and/or a permanent foundation to at least one (1) foot above the base flood elevation, and be securely anchored to an adequately anchored foundation system

4. Recreational Vehicles

- a. All recreational vehicles located within a Special Flood Hazard Area to be placed on a site must be on the site for less than 180 consecutive days; AND be fully licensed and highway ready.

5. Enclosures.

New construction and substantial improvements may have enclosures with areas below the base flood elevation, that are less than 300 square feet and usable solely for building access and utility service connections serving the building, if constructed in accordance with the following requirements:

- a. Must have structural and non-structural components constructed of flood damage resistant material. Flood damage resistant materials must meet or exceed the requirements of the most recent version of FEMA Technical Bulletin 2;
- b. Must be provided with flood openings designed to equalize the hydrostatic pressure of flood forces on exterior walls by allowing the automatic entry and exit of floodwaters. Flood opening designs must meet or exceed the requirements of the most recent version of FEMA Technical Bulletin 1:
- c. Must have mechanical, electrical, and utility equipment elevated at least two (2) feet above the base flood elevation or specifically designed to prevent water from entering or accumulating with the components during flooding in accordance with the most recent version of FEMA Technical Bulletin P-348; and,
- d. Prior to the issuance of a building permit, the property owner must submit a signed non-conversion agreement to Burleigh County. The non-conversion agreement must be recorded with the Burleigh County Recorder.

6. 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 it provides access.

## 7. Accessory Structures

- a. Accessory structures defined within this section that are not greater than 600 square feet in area may be constructed with the lowest floor below the base flood elevation in accordance with the following wet floodproofing requirements:
  - i. Must be anchored to resist floatation, collapse and lateral movement.
  - ii. Must have structural and non-structural components constructed of flood damage resistant material to an elevation of at least two (2) feet about the base flood elevation. Flood damage materials must meet or exceed the requirements of the most recent version of FEMA Technical Bulletin 2;
  - iii. Must be provided with flood openings designed to equalize the hydrostatic pressure of flood forces on exterior walls by allowing the automatic entry and exit of flood waters. Flood opening designs must meet or exceed the requirements of the most recent version of FEMA Technical Bulletin 1;
  - iv. Must have mechanical, electrical and utility equipment elevated at least two (2) feet above the base flood elevation or specifically designed to prevent water from entering or accumulating within the components Technical Bulletin P-348; and,
  - v. Prior to the issuance of a building permit for the structure, the property owner must submit a signed non-conversion agreement to Burleigh County. The non-conversion agreement must be recorded with the Burleigh County Recorder.

b. Accessory structures defined within this section that are greater than 600 square feet in area may be constructed with the lowest floor one foot above the base flood elevation in accordance with the following requirements.

- i. Must have mechanical, electrical and utility equipment elevated at least two-feet above the base flood elevation or specifically designed to prevent water from entering or accumulating within the components during flooding in accordance with the most recent version of FEMA Technical Bulletin P-348; and
- ii. Prior to the issuance of a building permit for the structure, the property owner must submit a signed non-conversion agreement to Burleigh County. The non-conversion agreement must be recorded with the Burleigh County Recorder.



c. Accessory structures that are not enclosed and do not have more than one rigid wall may be constructed at grade in accordance with the following requirements.

- i. Must have structural and non-structural components constructed of flood damage resistant material to an elevation of at least two feet above the base flood elevation. Flood damage materials must meet or exceed the requirements of the most recent version of FEMA Technical Bulletin 2;
- ii. Must have mechanical, electrical and utility equipment elevated at least two-feet above the base flood elevation or specifically designed to prevent water from entering or accumulating within the components during flooding in accordance with the most recent version of FEMA Technical Bulletin P-348; and
- iii. Prior to the issuance of a building permit for the structure, the property owner must submit a signed non-conversion agreement to Burleigh County. The non-conversion agreement must be recorded with the Burleigh County Recorder.

8. Additions to existing structures.

- a. Any addition to any existing residential structure, non-residential structure, manufactured home, garage, deck, landing or accessory building that is not deemed a substantial improvement may be constructed with the lowest floor at the same elevation as the existing structure.

9. Floodways.

Floodways are designated areas located within the special flood hazard areas established in subsection 4(b) of this article (basis for establishing the special flood hazard areas). 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:

1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge; and
2. If the preceding subsection is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of subsection 6 of this article (provisions for flood hazard reduction).

Section 7. Appeal and Variance Procedures.

- a. Board of Appeals. The Board of County Commissioners shall act as the Board of Appeals. The Board of Appeals shall hear and decide appeals and requests for variances from the requirements of this article.
- b. Appeals. An appeal may be filed by any person, firm or corporation aggrieved by any order, requirement, determination or final decision made by the Floodplain Administrator in the enforcement or administration of this article, in accordance with the provisions of Article 27 (Appeal Procedure).
- c. Variances. An application for a variance from the requirements of this article 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 Article 28 (Variances).
  1. Required Findings. In considering applications for a variance, and in addition to the requirements of outlined in Article 28 (Variances), the Board of Appeals shall consider all technical evaluations, all relevant factors, and the standards specified in this article, including:
    - a. The danger to life and property due to flooding or erosion damage;
    - b. The danger that materials may be swept onto other lands to the injury of others;
    - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
    - d. The importance of the services provided by the proposed facility to the community;
    - e. The necessity to the facility of a waterfront location, where applicable;
    - f. The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage;
    - g. The compatibility of the proposed use with the existing and anticipated development;
    - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
    - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;

- j. 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
  - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
  - l. Any other factor deemed relevant by the Board of Appeals.
2. Upon consideration of the factors in subsection(7)(c)(1) and the purposes of this article, the Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purpose of this article.
3. Conditions for variances.
- a. 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.
  - b. Variances may be issued by a community for new construction and substantial improvements to be erected on a lot of one-half acres or less in size constructed below the base flood level, in conformance with the procedures of paragraphs (a), (3), (4), (5), and (6) of this section.
  - c. Variances shall not be issued any designated regulatory floodway, if any significant increase in flood levels during the base flood discharge would result.
  - d. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - d. Variances shall only be issued 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 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.

- e. 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 lower than two (2) feet 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.
4. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency (FEMA) upon request.
  5. Encroachment Analysis: When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements or development (including fill) shall be permitted within Zones A1 – 30 and AE on the community’s FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

**Section 8. Penalties for Violations.**

Penalties for violation of this article shall be in accordance with the provisions of Article 31 (Penalties for Violation).

**Section 9. Repeal.**

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

**Section 10. Severability.**

If any section provision or part of this ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

**Section 11. Effective Date.**

This ordinance shall take effect after final passage, adoption and publication as provided by law.

First Reading Passed: April 10, 2024

Passed and adopted this 6th day of May, 2024

  
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Brian Bitner      Chairperson

**Final passage and adoption:**

I, Mark Splonskowski, do hereby certify that I am the duly elected auditor of the County of Burleigh, State of North Dakota, and that the foregoing is a full, true and correct copy of an ordinance adopted by the Board of Burleigh County Commissioners at its regular meeting of May 6, 2024

IN WITNESS WHEREOF: I have hereto set my hand and seal of Burleigh County this 21 day of May, 2024

  
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Mark Splonskowski, Burleigh County Auditor/Treasurer