



Community Development Department

DATE: July 7, 2021
FROM: Ben Ehreth, AICP, Community Development Director
ITEM: Floodplain Regulations – Zoning Ordinance Text Amendment

REQUEST:

The Community Development Department – Planning Division is initiated a zoning ordinance text amendment to revise the construction and elevation requirements for accessory structures located within the Special Flood Hazard Area (SFHA) or 100-year floodplain outlined in Section 14-04-19 of the City of Bismarck Zoning Ordinance.

Please place this item on the July 13, 2021 and July 27, 2021 City Commission meeting agendas.

BACKGROUND INFORMATION:

The Bismarck City Commission, at their meeting of December 8, 2020, directed Planning staff to review and propose changes to ordinance requirements for accessory structures located within the SFHA.

A stakeholder group comprised of industry professionals and staff was formed in January 2021. This group reviewed FEMA and State guidelines, and peer community requirements for accessory structures located within the SFHA. Proposed changes to the existing elevation and construction requirements outlined in the draft ordinance are a result of their review.

The Planning & Zoning Commission held a public hearing on the proposed zoning ordinance text amendment on June 23, 2021.

One resident spoke at the public hearing and had several questions about how the ordinance would apply to accessory buildings and structures within the City’s extraterritorial area.

At the conclusion of the public hearing, and based on the findings contained in the staff report, the Planning & Zoning Commission voted unanimously to approve the zoning ordinance text amendment for Section 14-04-19 of the City Code of Ordinances, as presented in the draft ordinance attached to the staff report

RECOMMENDED CITY COMMISSION ACTION:

July 13th meeting of the Board of City Commissioners – consider the zoning ordinance text amendment as outlined in Ordinance 6477 and call for a public hearing on this item for the July 27th meeting.

July 27th meeting of the Board of City Commissioners – hold a public hearing on the zoning ordinance text amendment as outlined in Ordinance 6477 and take final action on the request.

STAFF CONTACT INFORMATION:

Ben Ehreth, AICP | Community Development Director, 355-1842 or behreth@bismarcknd.gov

Brady Blaskowski, CBCO, CFM | Building Official/Floodplain Administrator, 355-1467 or bblaskowski@bismarcknd.gov

Jenny Wollmuth, AICP, CFM | Senior Planner, 355-1845 or jwollmuth@bismarcknd.gov

CITY OF BISMARCK

Ordinance No. 6477

First Reading _____
Second Reading _____
Final Passage and Adoption _____
Publication Date _____

AN ORDINANCE TO AMEND SECTION 14-04-19 OF THE BISMARCK CODE OF ORDINANCES RELATING TO **ACCESSORY BUILDINGS AND ACCESSORY STRUCTURES IN** THE FP FLOODPLAIN DISTRICT.

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

Section 1. Amendment. Section 14-04-19 (3) of the City of Bismarck Code of Ordinances 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:

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

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"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.

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"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).

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"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.

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6. Provisions for flood hazard reduction.

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b. Specific standards. In all special flood hazard areas where base flood elevation data 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:

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4. Attached garages, decks and landings providing primary access.

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~~e. 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.~~

5. 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 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;

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 floodwaters. 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-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,

v. Prior to the issuance of a building permit for the structure, the property owner must submit a signed non-conversion agreement to the City of Bismarck. 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 the City of Bismarck. The non-conversion agreement must be recorded with the Burleigh County Recorder.

d. Accessory structures that are not enclosed and do not have more than one ridged 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 the City of Bismarck. The non-conversion agreement must be recorded with the Burleigh County Recorder.

56. Additions to existing structures.

a. Any addition to any existing residential structure, non-residential structure, manufactured home, garage, deck, landing or accessory **building structure** that is considered a post-FIRM building and is not deemed a substantial improvement may be constructed with the lowest floor at the same elevation as the existing structure, provided the lowest floor of the existing structure is elevated on fill and/or a permanent foundation to at least one (1) foot above the base flood elevation. Any addition to any existing residential structure, non-residential structure, manufactured home, garage, deck, landing or accessory **building structure** that is considered a pre-FIRM building and is not deemed a substantial improvement may be constructed with the lowest floor at the same elevation as the existing structure.

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78. Variance procedure.

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89. 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; Ord. 5779, 07-27-10 and 08-10-10; Ord. 5811, 03-22-11; Ord. 6028, 01-28-14; Ord. 6068; 06-24-14; Ord. 6173, 10-27-15)

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, adoption and publication.



STAFF REPORT

Application for: **Zoning Ordinance Text Amendment**

Project ID: **ZOTA2021-003**

Project Summary

<i>Title:</i>	Accessory Structures Located in the Special Flood Hazard Area (SFHA)
<i>Status:</i>	Planning & Zoning Commission – Public Hearing
<i>Project Contact:</i>	Jenny Wollmuth, AICP, CFM, Senior Planner
<i>Section(s) Amended:</i>	Section 14-04-19 (FP – Floodplain District)
<i>Request:</i>	Adopt revisions to construction and elevation requirements for accessory structures located within the Special Flood Hazard Area (SFHA)

Staff Analysis

The Community Development Department – Planning Division is initiating a zoning ordinance text amendment to revise the construction and elevation requirements for accessory structures located within the Special Flood Hazard Area (SFHA) or 100-year floodplain outlined in Section 14-04-19 of the City of Code of Ordinances.

Accessory structures are buildings located on the same property as a principal building or house, and the use is incidental to the use of the principal building. These structures are used for parking or storage, represent a minimal investment by owners, and have a low damage potential during a flooding event.

Background Information

The Bismarck City Commission, at their meeting of December 8, 2020, directed Planning staff to review and propose changes to ordinance requirements for accessory structures located within the SFHA.

A stakeholder group comprised of industry professionals and staff was formed in January 2021. This group reviewed FEMA and State guidelines, and peer community requirements for accessory structures located within the SFHA.

Proposed changes to the existing elevation and construction requirements outlined in the draft ordinance are a result of their review.

The public has been duly notified of this request. A notice was published in the Bismarck Tribune on June 11th and June 18th.

Changes to Existing Requirements

The proposed changes would allow for accessory structures less than 600 square feet in area to be constructed below the Base Flood Elevation (BFE), according to floodproofing techniques approved by FEMA. Proposed changes would also allow accessory structures greater than 600 square feet in area to be constructed one foot above the BFE.

In order for these changes to be successful, definitions for accessory structure, agriculture structure, floodproofing(wet), non-conversion agreement and principal structure were added to the draft ordinance.

National Floodplain Insurance Program

The City of Bismarck and its Extra Territorial Area (ETA) is a participating community in the National Floodplain Insurance Program (NFIP).

(continued)

Participation in the NFIP is a State requirement for communities in North Dakota. Communities that participate in the NFIP must adopt a local floodplain ordinance that meets or exceeds FEMA and State requirements. Any modifications made to the City's floodplain ordinance, including construction and elevation requirements for accessory structures, must be reviewed by the State Floodplain Insurance Plan Coordinator and FEMA Floodplain Specialists for compliance with State and Federal Requirements. The proposed changes outlined in the draft ordinance have been reviewed and approved by both State and FEMA.

Required Findings of Fact (relating to land use)

1. The proposed text amendment would not adversely affect the public health, safety or general welfare;
2. The proposed text amendment is justified by a change in conditions since the zoning ordinance was originally adopted or clarifies

a provision that is confusing, in error or otherwise inconsistent with the general intent and purpose of the zoning ordinance;

3. The proposed text amendment is consistent with the general intent and purpose of the zoning ordinance; and
4. The proposed text amendment is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Staff Recommendation

Based on the above findings, staff recommends scheduling approval of the zoning ordinance text amendment for Section 14-04-19 of the City Code of Ordinances, as presented in the draft ordinance attached to the staff report.

Attachments

1. Draft zoning ordinance amendment

Staff report prepared by: Jenny Wollmuth, AICP, CFM, Senior Planner
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