

City of Delano  
County of Wright  
State of Minnesota

**Ordinance O-24-05**

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

- A. The potential danger to life and property due to increased flood heights or velocities caused by encroachments.
- B. The danger that materials may be swept onto other lands or downstream to the injury of others.
- C. The safety of access to the property in times of flood for ordinary and emergency vehicles.

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

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

### **12.3 Notifications to the Department of Natural Resources**

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

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

## **SECTION 13.0 NONCONFORMITIES**

**13.1 Continuance of Nonconformities.** A use, structure, or occupancy of land which was lawful before the passage or amendment of this ordinance, but which is not in conformity with the provisions of this ordinance, may be continued subject to the following conditions:

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13.11 Within the floodway and general floodplain districts (when a site has been determined to be located in the floodway following the procedures in Section 8.3, or when the floodway has not been delineated), any expansion or enlargement of uses or structures is prohibited.

13.12 Within all districts, any addition, modification, rehabilitation, repair, or alteration shall be in conformance with the provisions of this ordinance, shall not increase the flood damage potential or increase the degree of obstruction to flood flows, and where applicable, must be protected to the Regulatory Flood Protection Elevation (RFPE).

13.13 If any nonconforming structure is determined to be substantially damaged or substantially improved based on the procedures in Section 13.2, it may not be reconstructed except in conformity with the provisions of this ordinance. Any structures located outside the one-percent annual chance floodplain are exempt from this provision.

13.14 If any nonconforming use, or any use of a nonconforming structure, is discontinued for more than one year, any future use of the premises must conform to this ordinance.

13.15 If any nonconforming structure has utilities, electrical, or mechanical equipment damaged due to flooding, it must be rebuilt in conformance with the elevation requirements in Section 4.31.D to the greatest extent practicable. This requirement shall apply regardless of the determinations made in Section 13.2.

**13.2 Substantial Improvement and Substantial Damage Determinations.** Prior to issuing any permits for additions, modifications, rehabilitations, repairs, alterations, or maintenance to nonconforming structures, the Zoning Administrator is required to determine if such work constitutes substantial improvement or repair of a substantially damaged structure. A determination must be made in accordance with the following procedures:

13.21 Estimate the market value of the structure. In the case of repairs, the market value of the structure shall be the market value before the damage occurred and before any restoration or repairs are made.

13.22 Estimate the cost of the project. The property owner shall accommodate for inspection, and furnish other documentation needed by the zoning administrator to evaluate costs.

- A. Improvement costs shall be comprised of the market rate of all materials and labor, as well as the costs of all ordinary maintenance and upkeep carried out over the past one year.
- B. Costs to repair damages shall be comprised of the market rate of all materials and labor required to restore a building to its pre-damaged condition regardless of the

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work proposed, as well as associated improvement costs if structure is being restored beyond its pre-damaged condition.

13.23 Compare the cost of the improvement, repairs, or combination thereof to the estimated market value of the structure and determine whether the proposed work constitutes substantial improvement or repair of a substantially damaged structure, as defined in Section 2.0 of this ordinance.

- A. For the purposes of determining whether the proposed work would constitute substantial improvement, the evaluation shall also include all improvements completed since the community has adopted floodplain standards impacting this structure.
- B. If any nonconforming structure experiences a repetitive loss, as defined in Section 2.0 of this ordinance, it shall be considered substantially damaged and must not be reconstructed except in conformity with the provisions of this ordinance.

13.24 Based on this determination, the zoning administrator shall prepare a determination letter and notify the property owner accordingly. Structures determined to be substantially damaged or substantially improved may not be reconstructed except in conformity with the provisions of this ordinance.

## SECTION 14.0 VIOLATIONS AND PENALTIES

**14.1 Uses in Violation of the Ordinance.** Every structure, fill, deposit, or other use placed or maintained in the floodplain in violation of this ordinance shall be considered a public nuisance.

**14.2 Civil Remedies.** The creation of a public nuisance may be enjoined and the maintenance of a public nuisance under this ordinance may be abated by an action brought by the City of Delano or the Department of Natural Resources.

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