

# Article 4. Land Use Applications and Enforcement

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## 4.1 TEXT AMENDMENT, REZONING, DEVELOPMENT PLAN AMENDMENTS, AND MEDICAL DISTRICT AMENDMENTS

### A. Purpose

The regulations imposed, and the districts created, by this Code may be amended from time to time in the manner herein provided. This process for amending the Land Development Code text or the Zoning Map is intended to permit modifications in response to changed conditions or changes in City policy. Text amendments and rezonings are not intended to relieve particular hardships or confer special privileges or rights upon any person or party.

### B. Initiation

The City Council, Planning Commission or owner of property within the City may propose a text amendment or rezoning.

### C. Authority

1. The City Council, after receiving a recommendation from the Planning Commission, will take formal action on requests for a text amendment or rezoning.
2. When an amendment is proposed for areas designated as Environmentally Sensitive Areas, or for regulations related to Environmentally Sensitive Areas, the City Council, after receiving a recommendation from the Planning Commission, may approve the following types of amendments:

- a. Remove land from Environmentally Sensitive Area designation if it is found that an error was made and that property fails to meet the criteria for Environmentally Sensitive Area designation.
  - b. Add land to Environmentally Sensitive Area designation if it is found that the land meets the criteria for Environmentally Sensitive Area designation.
  - c. Change regulations or requirements for Environmentally Sensitive Areas.
3. Changes to the Floodplain Overlay District must meet the Federal Emergency Management Agency's (FEMA) Technical Conditions and Criteria and must receive prior FEMA approval before adoption. The Federal Emergency Management Agency (FEMA) may remove land from the Flood Insurance Rate Maps (FIRM) and consequently the Floodplain Overlay District designation. An applicant must follow the FEMA-established administrative procedures to change the designation of these properties either through a Letter of Map Amendment (LOMA) process and/or the Letter of Map Revision Based on Fill (LOMR-F) process to remove land from the FIRM.

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

#### **D. Procedure**

All applications for a text amendment, rezoning, development plan amendment or medical district amendment must be filed with the Zoning Administrator in accordance with the requirements in Section 3.2 (Application). Within an Environmentally Sensitive Area, rezoning to an Environmental Planned Unit Development (EPUD) must be in accord with the requirements and procedure of Section 4.4.C.6 (Review Process: Environmental Planned Unit Development (EPUD)).

##### **1. Acceptance of Application by Zoning Administrator**

Upon receipt of an application, the Zoning Administrator will review the application for completeness. The Zoning Administrator will schedule a complete application for an upcoming Planning Commission agenda for consideration.

##### **2. Action by the Planning Commission**

The Planning Commission will consider the application and hold a public hearing in accordance with Section 3.4 (Public Hearing). Notice for the public hearing must be in accordance with Section 3.3 (Public Notice). The Planning Commission must then transmit to the City Council its conclusions and recommendation concerning the proposed amendment, based upon the standards of Paragraph E (Findings of Fact) below.

### 3. Action by the City Council

- a. After receiving the recommendation from the Planning Commission, the City Council will consider the application and hold a public hearing in accordance with Section 3.4 (Public Hearing). Notice for the public hearing must be in accordance with Section 3.3 (Public Notice).
- b. The City Council will take action in the form of approval, approval with conditions, or denial on applications for text amendments, and approval or denial on applications for rezonings. The City Council may also refer the matter back to the Planning Commission for further consideration without an additional public hearing at the Planning Commission.
- c. When an amendment is proposed for regulations related to the Scenic Rivers Overlay District, a Scenic Rivers Certification of Approval (Section 4.7) is required in addition to City Council approval.
- d. No amendment to this Code or Zoning Map may be adopted on less than an affirmative majority vote of the City Council, unless a rezoning changes all, or part, of the existing classification of a zoning district from residential to either commercial or industrial. Such rezoning must be adopted by a two-thirds ( $\frac{2}{3}$ ) affirmative majority vote of the City Council.

### 4. Timeline

All application procedures must follow the timelines required by Minnesota Statutes Section 15.99 (Time Deadline for Agency Action).

#### E. Findings of Fact

The Planning Commission, in making recommendation, and the City Council, in granting approval or denial, must consider the following standards:

1. Consistency with the Comprehensive Plan.
2. Conservation of property values and rights, and whether the amendment will have an adverse effect on adjacent properties.
3. Effect of the change upon existing uses of property and the zoning district(s).

#### F. Retention of Zoning Power

No amendment adopted to rezone property, upon petition of its owner(s), prohibits the City Council from subsequently rezoning the same property.

## 4.2 VARIANCE

### A. Purpose

The variance process is intended to provide a circumscribed means by which relief is granted from unforeseen applications of this Code that create practical difficulties.

## **B. Initiation**

An owner of any property in the City may request a variance.

## **C. Authority**

1. Major variances, in accordance with the standards of, and as defined by, Paragraph 3 (Procedure for Major Variance) below, may be authorized only after a public hearing, when the Zoning Board of Appeals has made findings of fact in accordance with Paragraph E (Findings of Fact), that owing to special conditions, a literal enforcement of the provisions of this Code would result in practical difficulties or particular hardship for the owner of a structure or land.
2. The Zoning Administrator is authorized to grant certain administrative variances, in accordance with the standards of, and as defined by, Paragraph 2 (Procedure for Administrative Variance) below, and only after making findings of fact in accordance with Paragraph E (Findings of Fact) below, that owing to special conditions, a literal enforcement of the provisions of this Code would result in practical difficulties or particular hardship for the owner of a structure or land.

## **D. Procedure**

All applications for a variance must be filed with the Zoning Administrator in accordance with the requirements of Section 3.2 (Application). Prior to processing an application for a variance to the Floodplain Overlay District regulations, the Zoning Administrator must determine that the applicant has obtained all necessary state and federal permits.

### **1. Acceptance of Application by Zoning Administrator**

- a. Upon receipt of an application, the Zoning Administrator will review the application for completeness. Once it is determined that the application is complete, the Zoning Administrator will make a determination whether the application is for an administrative variance or a major variance. In the case of a major variance, the Zoning Administrator will forward a copy of the application to the Zoning Board of Appeals.
- b. When a variance to the Floodplain Overlay District regulations is proposed, the Zoning Administrator must notify the applicant that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25) or one-hundred dollars (\$100) of insurance coverage, and such construction below the one-hundred (100) year or regional flood level increases risks to life and property. Such notification will be maintained with a record of all variance actions. A community shall maintain a record of all variance actions, including their justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

### **2. Procedure for Administrative Variance**

- a. The Zoning Administrator is authorized to render final decisions on applications for variances from the regulations of this Code in the following instances and no others:
  - i. Development on a nonconforming lot of record, where the lot area or lot width requirements is at least ninety percent (90%) of the required minimum lot area and width for the district, provided all other bulk requirements are met.
  - ii. Reduction in required setbacks provided the reduction is no more than ten percent (10%) or two (2) feet, whichever is less.
  - iii. Increase in permitted maximum lot coverage by no more than five percent (5%).
  - iv. Reduction in the required number of off-street parking spaces, by no more than ten percent (10%) of the number of spaces required.
  - v. Allow variances to the façade articulation design guidelines for the Gateway Overlay District.
  - vi. Approve the increased projection of a wall sign over twelve (12) inches when mounted on a slanted wall surface.
  - vii. Approve accessory structures within the AG District that exceed the maximum building height.
  - viii. Variances to required setbacks for window wells in residential districts.
- b. Any variances proposed to the Floodplain, Shoreland or Scenic Rivers Overlay Districts must be considered a major variance.
- c. Notice for administrative variances must be in accordance with Section 3.3 (Public Notice). The Zoning Administrator will review the application and make findings of fact in accordance with Paragraph E (Findings of Fact) below, and will approve, approve with conditions, or deny the request. The Zoning Administrator may also, at his/her discretion, determine that, because of its nature, an administrative variance application must be resubmitted in accordance with the procedures for a major variance, as described in Paragraph 3 (Procedure for Major Variance) below.
- d. If any noticed property owner objects to the administrative variance application in writing, prior to the date the Zoning Administrator is scheduled to render a decision, the application must be resubmitted to the Zoning Board of Appeals as a major variance. Major variance application, notice and public hearing requirements will be required.
- e. If the Zoning Administrator denies the application for an administrative variance, the applicant may appeal the decision to the Zoning Board of Appeals. Appeals must be filed within ten (10) days of the Zoning Administrator's denial in accordance with Section 4.15 (Appeals).

### 3. Procedure for Major Variance

- a. The Zoning Board of Appeals will consider the application and hold a public hearing in accordance with Section 3.4 (Public Hearing). Notice for the public hearing must be in accordance with Section 3.3 (Public Notice).
- b. The Zoning Board of Appeals may impose such conditions and restrictions upon the variance as necessary to reduce or minimize the effect of such variance upon other properties in the neighborhood, and to better carry out the intent of the Code and the Comprehensive Plan. Violation of such conditions and restrictions, when made a part of variance approval, is deemed a violation of the Code.
- c. The Zoning Board of Appeals must provide for a record of its proceedings including the minutes of the meeting, its findings, and the action taken on each matter heard by it, including its final order. Within fourteen (14) days of the close of the public hearing, the Zoning Board of Appeals must make its determination and mail a copy of the determination to the applicant, petitioner and Mayor or his/her representative.
- d. When a variance is proposed for regulations related to the Scenic Rivers Overlay District, a Scenic Rivers Certification of Approval (Section 4.7) is required in addition to Zoning Board of Appeals approval.

### 4. Timeline

All application procedures must follow the timelines required by Minnesota Statutes Section 15.99 (Time Deadline for Agency Action).

### E. Findings of Fact

No variance from the provisions of this Code will be granted unless the Zoning Board of Appeals makes specific findings of fact based directly on the standards and conditions imposed by this section. These standards are as follows:

1. Because of the particular physical surrounding, shape or topography conditions of the specific parcel of land involved, practical difficulties to the owner would result if the strict letter of the law were carried out.
2. There are exceptional circumstances or conditions that are unique and applicable to the property or building that do not apply generally to other properties or buildings in the same zone or neighborhood and that were not created by the property owner.
3. The granting of the variance is a reasonable request and will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements in the zone or neighborhood in which the property is located.
4. The proposed variance will not be contrary to the essential character of the neighborhood nor the intent of this Code or the Comprehensive Plan.

5. When considering a variance to the Scenic Rivers District regulations, setbacks, excluding those not within a floodway, where development exists on both sides of the proposed building site, water and road setback may be varied to conform to the existing established setbacks.
6. When considering a variance to the Shoreland Overlay District regulations, the Zoning Board of Appeals must also consider whether the property owner has reasonable use of the land without the variance, whether the property is used seasonally or year-round, whether the variance is being requested solely on the basis of economic considerations, and the characteristics of development on adjacent properties.
7. For existing developments within the Shoreland Overlay District, the application for variance must clearly demonstrate whether a conforming sewage treatment system is available for the intended use of the property. The variance, if issued, must require reconstruction of a nonconforming sewage treatment system.
8. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:
  - a. Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
  - b. Variances shall only be issued by a community upon:
    - i. A showing of good and sufficient cause.
    - ii. A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
    - iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
  - c. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

#### **F. Limitations on Variances**

1. No variance to the Floodplain or Shoreland Overlay District regulations may permit uses prohibited in the district in which the property is located.
2. No variance to the Floodplain Overlay District regulations may permit a lower degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law.

## **G. Term of Variance**

No variance will be valid for a period longer than one (1) year, unless the erection of the structure or alteration of the land as permitted has begun within that period or an extension of time has been granted by the City Council.

### **4.3 CONDITIONAL USE PERMIT**

#### **A. Purpose**

The principal objective of this Code is to provide for an orderly arrangement of compatible building and land uses, and for the proper location of all types of uses required in the social and economic welfare of the City. To accomplish this objective, each type and kind of use is classified as permitted in one (1) or more of the various districts established by this Code. However, in addition to those uses specifically classified and permitted in each district, there are certain additional uses, which it may be desirable to allow because of their unusual characteristics or the service they provide the public. These conditional uses require particular consideration as to their proper location in relation to adjacent established or intended uses, or to the planned development of the community. The conditions controlling the location and operation of such conditional uses are established by the conditional use permit approval process of this section.

#### **B. Initiation**

An owner of any property in the City may request a conditional use permit.

#### **C. Authority**

The Zoning Board of Appeals may permit and/or amend the conditional uses of land or structures, or both, listed in the district regulations of this Code, if the Zoning Board of Appeals finds that the proposed location and establishment of any such use will be desirable and/or necessary to the public convenience or welfare, and will be harmonious and compatible with other uses adjacent to and in the vicinity of the selected site(s), and will not cause undue congestion in the public street or hazard in the area, based upon the standards of Paragraph E (Findings of Fact) below.

#### **D. Procedure**

All applications for a conditional use permit will be filed with the Zoning Administrator in accordance with the requirements in Section 3.2 (Application). Prior to processing an application for a conditional use permit within the Floodplain Overlay District, the Zoning Administrator must determine that the applicant has obtained all necessary state and federal permits.

##### **1. Acceptance of Application by Zoning Administrator**

Upon receipt of an application, the Zoning Administrator will review the application for completeness. Once it is determined that the application is complete, the Zoning Administrator will make a determination whether the application is for an administrative conditional use permit or a major conditional use permit. In the case of a major conditional use permit, the Zoning Administrator

will schedule a complete application for a public hearing before the Zoning Board of Appeals.

## 2. Procedure for Administrative Conditional Use Permit

- a. The Zoning Administrator is authorized to render final decisions on applications for conditional use permit from the regulations of this Code in the following instances and no others:
  - i. All administrative conditional use permits must have a previously approved major conditional use permit.
  - ii. Small adjustments or deviations from the approved site plan, including but not limited to: building setbacks, parking setbacks, parking lot design and landscaping plans.
  - iii. Building and parking lot additions that are consistent with the approved major conditional use permit.
- b. Any conditional use permits proposed within the Floodplain, Shoreland, or Scenic Rivers Overlay Districts must be considered a major conditional use permit.
- c. Notice for administrative conditional use permits must be in accordance with Section 3.3 (Public Notice). The Zoning Administrator will review the application and make findings of fact in accordance with Paragraph F (Findings of Fact) below, and will approve, approve with conditions, or deny the request. The Zoning Administrator may also, at his/her discretion, determine that, because of its nature, an administrative conditional use permit application must be resubmitted in accordance with the procedures for a major conditional use permit, as described in Paragraph 3 (Procedure for Major Conditional Use Permit) below.
- d. If any noticed property owner objects to the administrative conditional use permit application in writing, prior to the date the Zoning Administrator is scheduled to render a decision, the application must be resubmitted to the Zoning Board of Appeals as a regular conditional use permit. Major conditional use permit application, notice and public hearing requirements will be required.
- e. The Zoning Administrator may impose conditions and safeguards upon the premises benefited by a conditional use permit as may be necessary to prevent injurious effects on the other property in the neighborhood. Violation of such conditions and safeguards, when made a part of the conditional use permit, are deemed a violation of this Code and the conditional use permit will be revoked.
- f. If the Zoning Administrator denies the application for an administrative conditional use permit, the applicant may appeal the decision to the Zoning Board of Appeals. Appeals must be filed within ten (10) days of the Zoning Administrator's denial in accordance with Section 4.15 (Appeals).

### **3. Procedure for Major Conditional Use Permit**

- a. The Zoning Board of Appeals will consider the application and hold a public hearing in accordance with Section 3.4 (Public Hearing). Notice for the public hearing must be in accordance with Section 3.3 (Public Notice).
- b. Within fourteen (14) days of the close of the public hearing, the Zoning Board of Appeals will make its determination and mail a copy of the determination to the applicant.
- c. The Zoning Board of Appeals may impose conditions and safeguards upon the premises benefited by a conditional use permit as may be necessary to prevent injurious effects on the other property in the neighborhood. Violation of such conditions and safeguards, when made a part of the conditional use permit, are deemed a violation of this Code and the conditional use permit will be revoked.

### **4. Timeline**

All application procedures must follow the timelines required by Minnesota Statutes Section 15.99 (Time Deadline for Agency Action).

### **E. Conditional Use Permits within all Flood Plain Districts**

A copy of all decisions granting conditional use permits shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

#### **1. Procedures for Conditional use Permits within Flood Plain Districts**

- a. The applicant is required to provide the following information for determining the suitability of the proposed use on a particular site:
  - i. A site plan drawn at a standard engineering scale that shows the nature, location, dimensions, and elevation of the lot, existing and proposed structures, fill, storage of materials, flood proofing measures, and the relationship of the above to the location of the stream channel; and,
  - ii. Building and construction materials, flood proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facility specifications; and,
  - iii. Any other information deemed necessary by the Zoning Administrator.
- b. A copy of the information listed above to a designated engineer or other expert person or agency for technical assistance, where necessary, in evaluating the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection and other technical matters.
- c. Based upon the technical evaluation of the designated engineer or expert, the Zoning Board of Appeals shall determine the specific flood hazard at the

site and evaluate the suitability of the proposed use in relation to the flood hazard.

2. Potential Conditions to be attached to Conditional Use Permits - The Zoning Board of Appeals may include some or all of the following potential conditions, but are not limited to the following:
  - a. Modifications of waste treatment and water supply facilities.
  - b. Limitations on period of use, occupancy, and operation.
  - c. Imposition of operational controls, sureties, and deed restrictions.
  - d. Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.
  - e. Flood proofing measures, in accordance with the State Building Code and the Land Development Code. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood proofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.

#### **F. Findings of Fact**

No conditional use permit will be approved by the Zoning Board of Appeals unless it has made findings of fact, based upon the evidence presented at the public hearing, to support the following conclusions:

1. That the proposed use at that particular location requested is necessary or desirable to provide a service or a facility which is in the interest of public convenience and will contribute to the general welfare of the neighborhood or community.
2. That such use will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property values or improvements in the vicinity.
3. That the proposed use will comply with the regulations specified in this Code for the district in which the proposed use is to be located.
4. That the use is listed as a conditional use in the district in which it is to be located.
5. For conditional uses within the Scenic Rivers Overlay District, the following must also be evaluated:
  - a. The maintenance of safe and healthful conditions.
  - b. The prevention and control of water pollution, including sedimentation.
  - c. Existing topographic and drainage features and vegetative cover on the site.
  - d. The location of the site with respect to floodplains and floodways of rivers or streams.

- e. The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover.
  - f. The location of the site with respect to existing or future access roads.
  - g. The need of the proposed use for a shoreland location.
  - h. The compatibility with uses on adjacent land.
  - i. The amount of liquid wastes to be generated and the adequacy of the proposed disposal system.
  - j. Locational factors under which:
    - i. Domestic uses are generally preferred.
    - ii. Uses that are not inherently a source of pollution within an area are preferred over locations that tend to increase that possibility.
6. For conditional uses within the Floodplain Overlay District, the following must also be evaluated:
- a. The danger to life and property due to increased flood heights or velocities caused by encroachments.
  - b. The danger that materials may be swept onto other lands or downstream to the injury of others, or they may block bridges, culverts or other hydraulic structures.
  - c. The proposed water supply and sanitation systems, and the ability of these systems to prevent disease, contamination and unsanitary conditions.
  - d. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
  - e. The importance of the services provided by the proposed facility to the community.
  - f. The requirements of the facility for a waterfront location.
  - g. The availability of alternative locations not subject to flooding for the proposed use.
  - h. The compatibility of the proposed use with existing development and development anticipated in the future.
  - i. The relationship of the proposed use to the Comprehensive Plan and floodplain management program for the area.
  - j. The safety of access to the property in times of flood for ordinary and emergency vehicles.

- k. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.
  - l. Such other factors which are relevant to the purposes of this Code.
7. For conditional uses within the Shoreland Overlay District, the following must also be evaluated:
- a. A thorough evaluation of the waterbody and the topography, vegetation and soil condition on the site must be made to ensure:
    - i. The prevention of soil erosion or other possible pollution of public waters, both during and after construction.
    - ii. The visibility of structures and other facilities as viewed from public waters is limited.
    - iii. The site is adequate for water supply and on-site sewage treatment.
    - iv. The types, uses and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercraft.
  - b. The Zoning Board of Appeals, upon consideration of the criteria listed above, may attach such conditions to the issuance of the conditional use permits as it deems necessary to fulfill the purposes of the Shoreland Overlay District regulations. Such conditions may include, but are not limited to:
    - i. Increased setbacks from the ordinary high water level.
    - ii. Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted.
    - iii. Special provisions for the location, design and use of structures, sewage treatment systems, watercraft launching and docking areas, and vehicle parking areas.

#### **G. Term of Conditional Use Permit**

No conditional use will be valid for a period longer than one (1) year, unless the erection of the structure or alteration of the land as permitted has begun within that period or an extension of time has been granted by the Zoning Board of Appeals.

### **4.4 ENVIRONMENTALLY SENSITIVE AREAS SITE PLAN REVIEW**

#### **A. Purpose**

The intent of the Environmentally Sensitive Areas Site Plan Review process is to protect, conserve and enhance Environmentally Sensitive Areas (ESA) and to provide for equitable economic return in consideration of protection and preservation of ESA. Allowing flexibility in the development design is crucial and will be determined on a case-by-case basis for the property under consideration. The historic differences in

development and use of land, based on the underlying zoning district, will be considered in the process. Furthermore, it is the intent of the ESA designation to discourage requests for rezoning purely for the purpose of evading compliance to the goals, standards and requirements of this Code.

**B. Applicability**

1. The following activities within an ESA and its impact zone (see Paragraph 2 below) require an Environmentally Sensitive Areas Site Plan Review:
  - a. Subdivision of land.
  - b. Any new construction or building additions within the boundaries of an ESA and its impact zone.
  - c. The following land alterations within the boundaries of an ESA and its impact zone: clear cutting, removal of native vegetation, fills and excavations, grading, and modification of drainage patterns or other alteration having a negative impact on the viability or survival of the ESA.
  - d. New roads, bridges, road expansion projects and/or public or private utilities above or below ground.
2. For purposes of this Code, impact zones extend the following distances outward from the boundaries of the ESA:
  - a. Minnesota Department of Natural Resources (DNR) Protected Waters, Riparian Corridors, Rock Outcrops and Native Prairies: One-hundred (100) feet
  - b. Natural Heritage Sites, High Priority Natural Resource Sites and all Wetlands: One-hundred (100) feet
  - c. Medium and Low Priority Natural Resource Sites: Fifty (50) feet
3. The following activities within an ESA and its impact zone are exempt from an Environmentally Sensitive Areas Site Plan Review:
  - a. That portion of property located within and subject to the regulations of the Floodplain, Shoreland or Scenic Rivers Overlay District. However, the owner and/or developer may request to include such property within the Environmentally Sensitive Areas Site Plan Review.
  - b. Activities regulated by the following acts: Minnesota Wetland Conservation Act and Section 404 of the Clean Water Act, not including contiguous impact zones. However, the owner and/or developer may request to include such property within the Environmentally Sensitive Areas Site Plan Review.
  - c. Public right-of-way dedication and improvement projects that are subject to the National Environmental Policy Act (NEPA) of 1969 and/or the Minnesota Environmental Review Program (MERP), and comply with the Comprehensive Plan.

- d. Stormwater retention, groundwater recharge and discharge, groundwater monitoring, water purification, nutrient retention and removal, and pollution control facilities that have been approved for installation by county, state and/or federal regulatory agencies.
- e. Customary dredging and channel maintenance of existing drainage facilities. This includes vegetative maintenance for access and stormwater and/or flood control purposes within, and adjacent to, drainageways.
- f. Activities associated with the repair, maintenance or replacement of pipeline and utility lines within an existing utility right-of-way, and public highways, roads, trails and bridges within existing street rights-of-way.
- g. Activities associated with the routine maintenance of an existing public road, utility and pipeline right-of-way. This exemption is for the maintenance, but not the expansion, of right-of-way in which roads and utilities are located.
- h. Temporary emergency procedures necessary for the safety or protection of property.
- i. Single utility poles required to provide service to the local area.
- j. Ongoing customary agricultural operations.
- k. Unplatted property that is two (2) acres or less in size, in its entirety, that is occupied by a single-family dwelling unit prior to the original date of adoption of the Environmentally Sensitive Areas Ordinance.

### **C. Procedure**

In developing and reviewing plans for a property within an ESA, the Zoning Administrator and City staff, the Environment and Development Team (EDT), Planning Commission and City Council must take into account the defined hierarchy of protection in Paragraph 10 (Hierarchy of ESA Protection) below and the development guidelines in Paragraph 9 (ESA Development Guidelines) below.

#### **1. Activation of the Environment and Development Team**

- a. If the Zoning Administrator and Engineering Department determine that a proposed development will occur within an ESA or its impact zone, then the Zoning Administrator will activate the EDT.
- b. The Zoning Administrator will convene the initial meeting of the EDT and provide to all material pertinent to the proposal as it becomes available. The following information will be prepared for the initial meeting with the EDT, and for the development of the Concept Plan and Natural Resource Management Plan.
  - i. A contour map based, at least, upon topographical maps published by the U.S. Geological Survey.

- ii. The location of severely constraining elements, such as wetlands, watercourses, intermittent streams and one-hundred (100) year floodplains, and existing or proposed rights-of-way and easements.
  - iii. The location of features such as woodlands, tree lines, prairies, wildlife habitat, open and/or active fields or meadows, watershed divides and drainage ways, fences or stone walls, rock outcrops, and existing structures, roads, tracks and trails.
- c. The EDT may elect to conduct on-site visit(s) to familiarize themselves with the property.

## **2. Verification of ESA**

- a. Scientific members of the EDT will help determine more accurately the boundaries of the ESA, connections of the natural communities present on and adjacent to the property, and the quality and significance of the identified ESA.
- b. Major development that would require a substantial amount of work/time for the scientific members may require the owner/developer to hire a consultant.
- c. Scientific members of the EDT will report their findings to the entire EDT.

## **3. Concept Plan**

A Concept Plan is a non-engineered plan for a property proposed for development. The Concept Plan will provide information in sufficient detail to analyze the proposed development and its relation to the ESA located on the property. This plan may be required to be completed prior to any development or alteration of the property.

- a. Staff and scientific members will work in an advisory capacity to the owner and/or developer proposing the project regarding the development of a Concept Plan and Natural Resource Management Plan.
- b. The owner and/or developer will prepare the Concept Plan and submit it to the Zoning Administrator, who will forward it to other members of the EDT.
- c. The owner and/or developer will present the Concept Plan to other members of the EDT for discussion.

## **4. Natural Resource Management Plan**

- a. In conjunction with, or following, the Concept Plan, the Planning and Zoning Department, with help from the EDT, will provide for a Natural Resource Management Plan to help protect the composition, structure and function of the natural communities and wildlife habitat within the ESA which is to be protected within the project and, if appropriate, adjacent buffer areas.

- b. The Natural Resource Management Plan outlines specific management and protection measures and how they will be accomplished for the ESA and, if appropriate, for the buffer areas. See suggested guidelines in *Appendix A – ESA Information*.
- c. The Natural Resource Management Plan outlines by whom and how implementation takes place. If platting is required, this Natural Resource Management Plan, upon approval by the City Council, is included in the subdivision agreement and/or the deed, if appropriate.

**5. Review Process: Requiring Platting (Excludes EPUD)**

The development process for a project which includes an ESA, but does not require rezoning or where the owner and/or developer does not request a rezoning to an EPUD (see Paragraph 6 (Review Process: Environmental Planned Unit Development (EPUD)) below), will follow the process outlined in Paragraphs 1 through 4 above and the following:

- a. The owner and/or developer will prepare a preliminary plat in accordance with the Concept Plan requirements and submit it to the Zoning Administrator, along with a Natural Resource Management Plan. The Zoning Administrator will forward these to members of the EDT.
- b. Scientific members of the EDT will assess the effects of the preliminary plat and Natural Resource Management Plan on the ESA(s) included in the project and submit report to the Zoning Administrator, who will forward the report to other members of the EDT.
- c. The Zoning Administrator will present his/her findings and recommendation, in consideration of EDT analysis, on the preliminary plat and Natural Resource Management Plan to the Planning Commission.
- d. A final plat will be submitted.
- e. Recommendation from the Planning Commission regarding the Natural Resource Management Plan, preliminary plat and final plat will be reviewed and approved by the City Council.
- f. Conditions of the plat approval will be included in the subdivision agreement for the final plat. The Natural Resource Management Plan, upon approval by the City Council, may be included in the subdivision agreement, if appropriate.
- g. As part of approval, incentives, in accordance with Paragraph 8 (Incentives) below, may be granted. However, incentives that increase impact pressures on other ESA should be avoided.

## 6. Review Process: Environmental Planned Unit Development (EPUD)

### a. Purpose

The purpose of the Environmental Planned Unit Development (EPUD) is to offer an alternative to residential, commercial, industrial and agricultural zoning, as outlined in this Code, for development of parcels containing ESA. The EPUD is similar in intent to a PUD, except that it pertains only to parcels containing ESA and it follows the planning and review process outlined in this section.

### b. General Standards

Deviation from the definitive and precise requirements of the zoning districts may be permitted within an EPUD if the particular areas to be developed can offer greater value to the community and better meet the community's health, welfare and safety requirements and the goals of this Code. The EPUD may contain a mix of land uses (residential, commercial and industrial) as appropriate.

### c. Procedure

The procedure for EPUD will follow the process outlined in Paragraphs 1 through 4 above and the following:

- i. The owner and/or developer will request EPUD zoning.
- ii. The Planning and Zoning Department will prepare a preliminary plat in accordance with the Concept Plan requirements and submit it to the Zoning Administrator, along with a Natural Resource Management Plan. The Zoning Administrator will forward these to the EDT.
- iii. Scientific members of the EDT assess the effects of the EPUD on the ESA, preliminary plat and Natural Resource Management Plan, and submit a report to the Zoning Administrator, who will forward the report to the other members of the EDT.
- iv. The Zoning Administrator presents his/her findings and recommendation, in consideration of the EDT analysis, on the EPUD, preliminary plat and Natural Resource Management Plan to the Planning Commission.
- v. The Planning Commission will hold a public hearing and review the EPUD, preliminary plat, Natural Resource Management Plan and, if appropriate, the final plat, and make a recommendation to the City Council.
- vi. The City Council will approve the EPUD as a rezoning, in accord with the procedures of Section 4.1 (Text Amendment and Rezoning).
- vii. Conditions of the approval will be included in the EPUD. The final plat must be consistent with the EPUD.

## **7. Review Process: Not Requiring Platting**

The review process for activities occurring on property where platting is not required will follow the process outlined in Paragraphs 1 through 4 above and the following.

- a. The owner and/or developer will provide information to the Zoning Administrator detailing what activities are proposed for the property.
- b. If the EDT is activated, the EDT may visit the property.
- c. The EDT may work on developing a Concept Plan, and if appropriate, a Natural Resource Management Plan for the property.
- d. The Zoning Administrator will give final approval of the Concept Plan and Natural Resource Management Plan.
- e. Any activities on the property must follow the Concept Plan and Natural Resource Management Plan.
- f. As part of approval, incentives, in accordance with Paragraph 8 (Incentives) below, may be granted. However, incentives that increase impact pressures on other ESA should be avoided.

## **8. Incentives**

To provide for equitable economic return in consideration of protection and preservation of ESA covered by this Code, incentives include, but are not limited to:

- a. Exceptions from subdivision regulations, such as allowing narrower public right-of-way, reduced sidewalk requirements, and reduced street widths.
- b. Reduced setback requirements.
- c. Acceptance of donation of an ESA in-lieu of park dedication.
- d. Preservation of an ESA through conservation easement or Natural Resource Management Plan, in-lieu of park dedication.
- e. Assessment on storm drain to exclude the square footage that is in the protected area.
- f. Use of wetlands as a storm drain alternative.
- g. Allowance for wetlands; if incentives are given for a wetland on property that has other ESA, development should occur outside of such other ESA.
- h. Other assessment relief.
- i. Allowance of increased density and smaller lot size.

- j. Clustering of development outside the ESA.
- k. Exception from lot coverage regulations.
- l. Waiver of application fees.
- m. Land swaps.
- n. In the commercial and industrial districts, additional incentives include, but are not limited to:
  - i. Reduction of the required area for paved parking.
  - ii. Exception from standard height restrictions.
  - iii. Exception from standard setback requirements.
  - iv. Exception from landscaping requirements.
  - v. Use of unpaved, dust-free parking surfaces.

#### **9. ESA Development Guidelines**

The following development guidelines apply within ESA. Every development must:

- a. Maximize the protection of the ESA.
- b. Provide for an equitable economic return for the development.
- c. Maintain viable riparian and wildlife corridors, rare species and connections between ESA.
- d. Keep undeveloped ESA large enough to maximize sustainability and minimize fragmentation.
- e. Maintain a buffer adequate to the health and viability of the ESA.
- f. Minimize adverse construction impacts on the ESA.

#### **10. Hierarchy of ESA Protection**

The hierarchy of protection defined in this section is listed in descending order from the highest to the lowest level of protection. In general, higher priority areas should receive more protection than lower priority areas. The preservation of rare species, riparian and wildlife corridors and complexes of the ESA will receive priority treatment in each category.

##### **a. Natural Heritage Areas and Rare Species**

The goal is that any development and alterations take place outside these areas.

##### **b. Natural Resource Areas**

**i. High Priority Areas: Level I**

High priority areas are natural resource areas in a complex, which are slightly disturbed by human activity, uncommon state-wide and/or very rare or unique locally. The goal is to protect these areas and avoid any deterioration.

**ii. Medium Priority Areas: Level II**

Medium priority areas are natural resource areas in a complex with moderate to severe human disturbance, or natural resource areas that are not in a complex with only slight human disturbance. Although common state-wide, many are experiencing widespread threats and are of poor quality while others are more secure. The goal is to conserve the quality of these areas while allowing minor encroachment or disturbance.

**iii. Low Priority Areas: Level III**

Low priority areas are natural resource areas with moderate to severe human disturbances that are not part of a complex. The goal is that design, placement and construction techniques used in these areas will enhance the general ambiance and character of the natural resource area.

**4.5 HERITAGE PRESERVATION LOCAL PROPERTY DESIGNATION FORM**

**A. Purpose**

The purpose of the Heritage Preservation Property Local Designation Form is to identify, preserve, protect, enhance, perpetuate and use areas, places, buildings, structures and other objects having special historical interest and value in the City of St. Cloud, which are in the public interest and desired in the interest of the health, education, safety, welfare and prosperity of the people for the following purposes:

1. Safeguard the heritage of the City by preserving properties which reflect significant elements of the City's cultural, social, economic, political, visual and/or architectural history.
2. Protect and enhance the City's appeal to residents, visitors and tourists, and serve as a support and stimulus to business and industry.
3. Enhance the visual and aesthetic character, diversity and interest of the City.
4. Foster civic pride in the beauty and notable accomplishments of the past and present.
5. Promote the preservation and continued use of significant historic properties for the education and general welfare of the people of the City.
6. Encourage new design and construction that complements the City's historical buildings.

7. Protect property values within the City.
8. Identify, as early as possible, and resolve conflicts between preservation of historical buildings and alternative land uses.

**B. Initiation**

Nomination of a property(s) to be considered for designation as a Historic District must be submitted to the Zoning Administrator on an approved City nomination application and must be accompanied by all required support information. A nomination application may be submitted by the following:

1. Heritage Preservation Commission
2. City Council
3. The Mayor
4. Any person with a legal equitable interest in the subject property.

**C. Authority**

Historic districts will be designated by the City Council upon the recommendation of the Planning Commission and the Heritage Preservation Commission.

**D. Procedure for Designation**

1. Upon receipt of a complete nomination application, the Heritage Preservation Commission will determine if the nomination potentially meets any of the designation criteria of Paragraph E (Designation Criteria) and is worthy of designation, in which case, the Heritage Preservation Commission will prepare a historic district designation study.
2. Upon completion of a historic district designation study, the Heritage Preservation Commission will hold a public hearing in accordance with Section 3.4 (Public Hearing). Notice for the public hearing must be in accordance with Section 3.3 (Public Notice).
3. After the public hearing, the Heritage Preservation Commission will forward a recommendation to the Planning Commission, in writing, of either approval, in whole or part, or denial of the proposed Historic District with the details of the proposed historic district. A simple majority vote of the Heritage Preservation Commission for approval, in whole or part, is required. The minutes of the public hearing will be provided to the Planning Commission.
4. A copy of the Heritage Preservation Commission recommendation for the proposed designation of a Historic District, including boundaries, will be sent to the Minnesota Historical Society in accordance with Minnesota Statutes, Section 471:193, Subd. 6, which provides for a sixty (60) day review period. The historical society's comments will be sent to the City Council for consideration.

5. Upon receipt of a recommendation from the Heritage Preservation Commission, the Planning Commission will review the proposed Historic District for consistency with the Comprehensive Plan, the effect of the proposed Historic District upon the surrounding neighborhood, and any other planning consideration that may be relevant to the proposed Historic District. The Planning Commission will forward its recommendation, as well as the public records of its proceedings, to the City Council.
6. Upon receipt of the Planning Commission's recommendation and expiration of the Minnesota Historical Society's review period, the City Council will schedule a public hearing in accordance with Section 3.4 (Public Hearing). Notice for the public hearing must be in accordance with Section 3.3 (Public Notice). The City Council will conduct a public hearing and take final action on the proposed historic district within thirty (30) days of the date of the City Council public hearing.
7. Failure to send any notice by mail to any property owner(s) where the address of such owner(s) is not a matter of public record will not invalidate any proceeding in connection with the proposed historic district.
8. The City Council may adopt an interim ordinance, in accordance with Minnesota Statute 462.355, prohibiting the issuance of a permit to construct, demolish, or alter any structure within the proposed designation area being studied by the Heritage Preservation Commission for historic district designation.
9. A Heritage Preservation Property(s) may be removed from a historic district following the same manner and procedure that was followed in the designation of the property(s).

#### **E. Designation Criteria**

While considering the nomination of a historic district, the Heritage Preservation Commission will apply one (1) or more of the following criteria:

1. The property has yielded, or may be likely to yield, information important in prehistory or history.
2. The property is associated with significant events or with an important pattern of cultural, political, economic or social history.
3. The property has distinguishing characteristics of an architectural type, period, form or treatment which is not adequately represented elsewhere in the City.
4. The property exemplifies work of a master builder, engineer, designer, artist, craftsman or architect.
5. The property contains or is associated with distinctive elements of the City's identity.
6. The property has distinguishing characteristics of significance that are for the most part original and intact or capable of restoration.

**F. Recording of Heritage Preservation Properties**

The Office of the City Clerk will record with the respective County Register of Deeds the legal description of all buildings, lands or areas designated as a Historic District by the City Council and will transmit a copy of said legal description to the Chief Building Official.

**G. National Register or State Application**

The Heritage Preservation Commission will make no application to the National Register or to the State of Minnesota for the designation of a historic district without the consent of the City Council after review and comment by the Planning Commission. Property owner(s) will be sent mailed notice at least ten (10) days prior to any City Council action to consent to such application submission by the City.

**H. Repository for Documents**

Planning and Zoning Department will keep a record of heritage preservation documents available for public review.

**I. Retention of Designating Ordinance and Heritage Preservation Ordinance Power**

No amendment adopted to change or revoke a historic district designation, in whole or part, upon petition of its owner or owners will prohibit the City Council from subsequently amending the designating ordinance to re-designate the same property.

**4.6 HERITAGE PRESERVATION PROPERTY CERTIFICATE OF APPROPRIATENESS**

**A. Purpose**

A Heritage Preservation Property Certificate of Appropriateness is required for demolition, in whole or part, subject to Minnesota Statute Chapter 463, reconstruction or repairs or erection of exterior signs, moving of buildings, new construction and exterior alterations, within the City's Historic Districts. Actions pursuant to Paragraph D (Emergency Repairs) below regarding emergency work is exempt from permit requirements.

**B. Authority**

1. The Zoning Administrator may issue a Heritage Preservation Property Certificate of Appropriateness for minor alterations.
2. The Heritage Preservation Commission may issue a Heritage Preservation Property Certificate of Appropriateness for major alterations. However, the Zoning Administrator, after consultation with the Heritage Preservation Commission Chair, may issue a Heritage Preservation Property Certificate of Appropriateness for major alterations that are in clear conformance with the applicable design review guidelines.

## C. Procedure

Demolition, in whole or part, subject to Minnesota Statute Chapter 463, reconstruction or repairs or erection of exterior signs, moving of buildings, new construction and exterior alterations, within the City's historic districts are subject to review and approval as provided for in Paragraphs 1 (Minor Alteration) or 2 (Major Alteration) below, as applicable. The application must include detailed plans including a site plan, building elevations, and design details and materials as necessary to evaluate the request. The Zoning Administrator will review the alteration application and if complete, forward the application to the Heritage Preservation Commission at their next available meeting.

### 1. Minor Alteration

- a. Applications for minor alterations will be approved by the Zoning Administrator when the work is in conformance with the design review guidelines for the St. Cloud commercial historic district published in the "City of St. Cloud Downtown Preservation Design Manual," and the design review guidelines for St. Cloud's residential historic districts published in the "City of St. Cloud Residential Historic District Preservation Design Manual."
- b. A Certificate of Appropriateness will be issued by the Zoning Administrator, and the Heritage Preservation Commission will be notified of the certificate issuance. The Zoning Administrator, at his/her discretion, may require applications for minor alterations to be classified as major alterations and thereby subject to Paragraph 2 (Major Alteration) below.

### 2. Major Alteration

- a. Applications for major alterations that are clearly in conformance with the design review guidelines for the St. Cloud commercial historic district published in the "City of St. Cloud Downtown Preservation Design Manual" and the design review guidelines for St. Cloud's residential historic districts published in the "City of St. Cloud Residential Historic District Preservation Design Manual" may be approved by the Zoning Administrator after consultation with, and approval by the Heritage Preservation Commission Chair. With approval of major alterations by the Zoning Administrator, a Certificate of Appropriateness will be issued, and the Heritage Preservation Commission will be notified of the certificate issuance.
- b. Applications for all other major alterations must be reviewed and approved by the Heritage Preservation Commission. The Heritage Preservation Commission will determine, within forty (40) days of receipt of an application for major alteration, if the work to be performed pursuant to the permit application and plans are contrary to the design review guidelines for the St. Cloud commercial historic district published in the "City of St. Cloud Downtown Preservation Design Manual" and the design review guidelines for St. Cloud's residential historic districts published in the "City of St. Cloud Residential Historic District Preservation Design Manual."
- c. If it is determined that the alteration permit application will not have an adverse effect on the historic district and conforms to the applicable design

review guidelines, the application will be approved and the applicant will be notified in writing of the approval through a Certificate of Appropriateness. If it is determined that the permit application will have an adverse effect on the historic district and/or does not conform to the applicable design review guidelines, the Heritage Preservation Commission will notify the applicant in writing of its findings and advise the applicant of their right to appeal to the City Council.

- d. If the Heritage Preservation Property Certificate of Appropriateness is denied or modified by the Heritage Preservation Commission, the applicant may, within ten (10) days of the date of the decision, have a right to appeal such order and decision to the City Council. An appeal will be deemed complete upon receipt by the Planning and Zoning Department of two (2) copies of a notice to appeal and statement setting forth the grounds for the appeal. One (1) copy of the notice of appeal and statement will be sent to the Heritage Preservation Commission and one (1) copy to the City Council. The City Council will hold a public hearing in accordance with Section 3.4 (Public Hearing). Notice for the public hearing must be in accordance with Section 3.3 (Public Notice). The City Council will render a decision on the appeal within thirty (30) days of the date of the public hearing or it will be considered denied.

#### **D. Emergency Repairs**

In emergency situations where immediate repair is needed to protect the safety of the structure and its inhabitants, and where such repair is in conflict with the approved design review guidelines, the Chief Building Official may approve the repair without prior Heritage Preservation Commission action. In the case of a permit issued pursuant to this section, the Chief Building Official will notify the Heritage Preservation Commission of its action and specify the facts or conditions constituting the emergency situation.

### **4.7 SCENIC RIVERS CERTIFICATION OF APPROVAL**

#### **A. Purpose**

The Scenic Rivers Certification of Approval ensures that decisions that affect the land use regulations of the Scenic Rivers Overlay District are consistent with the intent and regulations of the Scenic Rivers Overlay District.

#### **B. Applicability**

The following actions and approvals must obtain a Scenic Rivers Certification of Approval:

1. Amendments to Scenic Rivers Overlay District regulations.
2. Variances from Scenic Rivers Overlay District regulations.
3. Approval of a plat that is inconsistent with Scenic Rivers Overlay District regulations.

**C. Authority**

The Minnesota Commissioner of Natural Resources may issue a Scenic Rivers Certification of Approval.

**D. Procedure**

Action taken by the City on amendments, variances or plat approvals become effective upon any of the following:

1. The final decision by the City has previously received a Scenic Rivers Certification of Approval.
2. The City receives a Scenic Rivers Certification of Approval.
3. Thirty (30) days have elapsed from the day the Minnesota Commissioner of Natural Resources received notice of the final decision and the City has received neither notice of approval nor notice of non-approval.
4. The Minnesota Commissioner of Natural Resources certifies approval within thirty (30) days after conducting a public hearing.

**E. Appeals**

1. In cases where the Minnesota Commissioner of Natural Resources gives notice of non-approval of an amendment, variance or inconsistent plat, either the applicant or the City may, within thirty (30) days, file with the Minnesota Commissioner of Natural Resources a demand for hearing.
2. If the demand for hearing is not filed within thirty (30) days of receipt of notice, the notice of non-approval becomes final.
3. The Minnesota Commissioner of Natural Resources is responsible for the conduct of the public hearing, in accordance with NR 81.

**4.8 SCENIC RIVERS CONSTRUCTION SITE PERMIT**

**A. Purpose**

The Scenic Rivers Construction Site Permit is intended to ensure compliance of new construction with the Scenic Rivers Overlay District regulations.

**B. Applicability**

Within the Scenic Rivers Overlay District, no person, firm or corporation may perform work requiring a construction site permit, conditional use permit or variance unless a Scenic Rivers Construction Site Permit has been issued and posted on the premises verifying the accuracy of setbacks. Any person performing such work is criminally liable to the same extent as the property owner to comply with the setback distances.

**C. Authority**

The Zoning Administrator may issue a Scenic Rivers Construction Site Permit.

**D. Procedure**

1. No person may erect, make alterations, additions or move any structure, or part thereof, without first securing a Scenic Rivers Construction Site Permit.
2. Application for a Scenic Rivers Construction Site Permit is made to the Zoning Administrator on forms furnished by the City. Each application for a permit to construct or alter a building must be accompanied by a plan drawn to scale showing the dimensions of the lot to be built upon, and the size and location of the building and accessory buildings to be erected.
3. Applications must contain such other information as deemed necessary for the proper enforcement of the Scenic Rivers Overlay District and this Code, or any other ordinance.
4. In addition, the Zoning Administrator may issue the Scenic Rivers Construction Site Permit only after determining that the building plan, together with the application, comply with the planning of future road construction. Such information will be furnished by the City.

**4.9 FLOODPLAIN PERMIT AND CERTIFICATE OF FINISHED FLOOR ELEVATION**

**A. Purpose**

A Floodplain Permit and Certificate of Finished Floor Elevation is intended to ensure compliance with the Floodplain Overlay District regulations of this Code.

**B. Applicability**

A Floodplain Permit and Certificate of Finished Floor Elevation is required prior to the following actions within the Floodplain Overlay District:

1. The erection, addition, alteration, modification, or rehabilitation (including normal maintenance and repair) of any structure or portion thereof.
2. The use or change of use of a structure or land.
3. The change or extension of a nonconforming use.
4. The placement of fill, excavation of materials, or the storage of materials or equipment within the floodplain.
5. The construction of a dam, fence, or on-site septic system.
6. Prior to the repair of a structure that has been damaged by fire, flood, tornado or any other source.

**C. Authority**

The Zoning Administrator may issue the Floodplain Permit and Certificate of Finished Floor Elevation.

**D. Procedure**

1. Application for a Floodplain Permit is made, in duplicate, to the Zoning Administrator on forms furnished by the City, and must include the following:
  - a. Plans drawn to scale showing the nature, location, dimensions and elevations of the lot.
  - b. All existing and/or proposed structures.
  - c. Fill or storage of materials.
  - d. The location of the above in relation to the stream channel.
2. The applicant is required to submit certification by a registered professional engineer, registered architect or registered land surveyor that the finished fill and building elevations were accomplished in compliance with Floodplain Overlay District regulations. Flood-proofing measures must be certified by a registered professional engineer or registered architect.
3. Prior to granting a Floodplain Permit, the Zoning Administrator must determine that the applicant has obtained all necessary state and federal permits.
4. The Zoning Administrator must issue a Floodplain Permit for each activity requiring a permit as specified in Paragraph B (Applicability) above. This permit will specify that the use of land conforms to the requirements of the Floodplain Overlay District regulations. Any use, arrangement or construction not authorized by the permit is deemed a violation of this Code.

**E. Authorization**

Floodplain Permits issued on the basis of approved plans and applications authorize only the use, arrangement and construction set forth in such approved plans and applications, and no other use, arrangement or construction is permitted. Any use, arrangement or construction not authorized by the permit is deemed a violation of the Code.

**F. Records**

1. The Zoning Administrator will maintain a record of the elevation of the lowest floor, including basement, of all new structures and alterations or additions to existing structures in the Floodplain Overlay District.
2. The Zoning Administrator will issue Certificate of Finished Floor Elevation for all new structures and alterations or additions to existing structures in the Floodplain Overlay District and maintain a record of the elevation to which structures and alterations or additions to structures are flood-proofed.

## **G. Notifications for Watercourse Alterations**

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

## **H. Notification to FEMA**

Notification to FEMA when physical changes increase or decrease the 100-year flood elevation. As soon as practicable, but no later than six (6) months after the date such supporting information becomes available, the Zoning Administrator shall notify the Chicago Regional Office of FEMA of the changes by submitting a copy of said technical scientific data.

## **4.10 SHORELAND PERMIT**

### **A. Purpose**

A Shoreland Permit is intended to ensure compliance with the Shoreland Overlay District regulations of this Code.

### **B. Applicability**

A Shoreland Permit is required for the following activities within the Shoreland Overlay District:

1. The construction of buildings, building additions, accessory structures and signs.
2. The installation and/or alteration of County-approved sewage treatment systems.
3. Grading and filling activities not exempted by Shoreland Overlay District regulations.

### **C. Authority**

The Zoning Administrator may issue the Shoreland Permit.

### **D. Procedure**

1. Application for a Shoreland Permit is made to the Zoning Administrator on the forms provided by the City. The application must include all necessary information required by the Zoning Administrator to determine the site's suitability for the intended use and that a compliant sewage treatment system will be provided.
2. A Shoreland Permit authorizing an addition to an existing structure must stipulate that an identified nonconforming sewage treatment system will be reconstructed or replaced in accordance with the provisions of this Code.

3. The Zoning Administrator must issue a Shoreland Permit for each activity requiring a permit as specified in Paragraph B (Applicability) above. This permit will specify that the use of land conforms to the requirements of the Shoreland Overlay District regulations.

**E. Authorization**

Shoreland Permits issued on the basis of approved plans and applications authorize only the use, arrangement and construction set forth in such approved plans and applications, and no other use, arrangement or construction is permitted. Any use, arrangement or construction not authorized by the permit is deemed a violation of the Code.

**4.11 SIGN PERMIT**

**A. Applicability**

No sign, except those identified as exempt in Section 18.6 (Information and Activities Exempt From Sign Permit), may be erected, constructed, altered or relocated without first obtaining a sign permit.

**B. Authority**

The Chief Building Official is responsible for determining compliance with this Code and issuing a sign permit.

**C. Permit Issuance**

The Chief Building Official, upon receipt of an application for a sign permit, will examine the plans, specifications and other data, and the premises where the sign is proposed to be erected. If the proposed structure is in compliance with all the requirements of the sign regulations of this Code, and all other laws and ordinances of the City, the Chief Building Official will issue a permit.

**D. Approval of Electrified Signs**

The application for a sign permit for the erection of a sign in which electrical wiring and connections are to be used will be submitted to the Chief Building Official, who will forward the specifications regarding all wiring and connections to the Electrical Inspector, who will examine the plans and specifications to determine compliance with the Electrical Code of the City as a condition of granting the permit.

**E. License and Bond Insurance Requirements**

No person will engage in the business of erecting signs, nor be entitled to a permit to erect a sign under this Code unless licensed to do so by the City Council. A license may be granted by the City Council on written application filed with the City Clerk in such form as prescribed and accompanied by the required annual license fee. No license will take effect until the licensee files with the City Clerk a copy of the licensee's liability insurance policy in a form approved by the City Attorney. The application will be accompanied by a surety bond, executed by the licensee as

principal, and by a corporate surety, authorized to execute a bond under the laws of the State of Minnesota, in the penal sum of ten-thousand dollars (\$10,000), approved by the City Attorney and conditioned that the licensee will pay all permit fees required under this Code, pay any fines imposed upon him for violation of the Code, conform to all of the provisions of this Code, and will indemnify and hold the City, its officers and agents, harmless from any damage or claim resulting from or related to the erection or maintenance of any sign in the City by the licensee.

The application will also be accompanied by a copy of the licensee's general policy of liability and property damage insurance, which will provide a penal sum of not less than one-hundred thousand dollars (\$100,000) for injuries to or death of one (1) person, not less than three-hundred thousand dollars (\$300,000) on account of one accident, and not less than one-hundred thousand dollars (\$100,000) for property damage. The bond required herein will be effective for the period from January 1 through December 31 of the license year. The bond and insurance policy will provide that the bond or insurance policy will not be cancelled for any cause by the principal, the insured, or the surety or insurance company without first giving ten (10) days notice to the City, in writing, of the intention to cancel. The notice will be addressed to the City Clerk by registered mail or will be delivered to the City Clerk personally. Annual licenses will expire the 31st of December of each year. License fees will not be pro-rated or refundable.

#### **F. Inspection**

The Chief Building Official may inspect, at such times as deemed appropriate, each sign or other advertising structure regulated by this Code. The purpose of the inspection is to ascertain whether the structure is secure or insecure, whether in need of repair or removal, or not in conformance with the permit application or otherwise in violation of the provisions of this Code.

#### **G. Revocation of Permit**

Upon the termination or revocation of the sign permit, the licensee must remove the sign or other advertising structure without cost or expense of any kind to the City. In the event of the failure, neglect or refusal on the part of the licensee to do so, the City may proceed to remove the same and charge the expense to the licensee.

#### **H. Expiration**

If the work authorized under a sign permit has not been completed within six (6) months after the date of issuance, the permit will expire.

### **4.12 BUILDING PERMIT**

- A.** No person or corporation may erect, construct, enlarge, repair, move, improve, convert, or demolish any structure in the City, or cause the same to be done without first obtaining a separate building permit for each such structure from the Chief Building Official.
- B.** No building permit will be issued unless such building is designed and arranged to conform to the provisions of this Code.

- C. Every application for building permit which involves new or altered use of land must be accompanied by two (2) site plans, one (1) of which will be given to the Zoning Administrator. All plans must be drawn to scale showing:
1. Actual dimensions of the lot(s) to be built upon.
  2. Location and size of the structure.
  3. Improvement or use to be erected, altered or placed.
  4. Location of required off-street parking and loading areas, size of yards and open spaces, existing and proposed streets and alleys adjoining or within the lot.
  5. Any other information as may be necessary to provide for the enforcement of regulations.
  6. In the case of flood land areas, elevations and locations of the following must be shown: lot, existing or proposed structures, fill, storage of material and stream channel.
  7. Scenic Rivers Site Construction Permit approval, if applicable.

#### **4.13 TEMPORARY EXCAVATION PERMIT**

- A. The use of land for the removal of topsoil, sand or gravel, and other material from the land is not permitted except by the granting of a temporary excavation permit by the City Council upon recommendation by the Planning Commission. Permits will be issued for a maximum period of one (1) year and are subject to review and re-hearing at that time.
- B. The applicant must submit a plan of intent as to the future use of the property being excavated, as well as development plans showing proposed elevations, drainage and access routes to be used in hauling to and/or from the site, and daily hours intended for operation and projected period of excavation.
- C. If, during the excavation work, it becomes necessary for the applicant excavating to create a condition of grade or drainage dangerous to public health or safety, it will become the applicant's duty to immediately correct the dangerous situation created, as well as fence the area from the general public during the period of danger.
- D. It is necessary for the applicant securing a temporary excavation permit to present adequate proof of bonding to the City in the form of a performance bond, sufficient in value to cover the expense of the completion of the development plan or to bring such portion of the completed project to a safe grade and elevation to ensure public health and safety, and to provide safe and adequate drainage of the site.

#### **4.14 CERTIFICATE OF OCCUPANCY**

- A. No land may be occupied or used, and no structure erected, reconstructed or structurally altered may be occupied or changed in use, in whole or in part, for any purpose unless, a certificate of occupancy has been issued by the Chief Building Official.

- B. Every application for residential building permit is deemed an application for a certificate of occupancy.

**4.15 APPEALS**

**A. Purpose**

The zoning appeals process for review of decisions of the Zoning Administrator or the Zoning Board of Appeals is intended to provide appropriate checks and balances on administrative authority.

**B. Initiation**

A person has standing to appeal a Zoning Administrator or Zoning Board of Appeals decision if the person has a specific personal and legal interest in the subject of the appeal. The applicant must provide evidence that demonstrates a unique and unusual adverse effect the decision has or will have on the reasonable use, enjoyment and value of the applicant's property.

**C. Authority**

1. The Zoning Board of Appeals may review the determinations of the Zoning Administrator which result from requests made pursuant to this Code. Other decisions and actions of the Zoning Administrator cannot be appealed under this process.
2. The City Council may review the decisions of the Zoning Board of Appeals.

**D. Procedure**

All applications for an appeal will be filed with the Zoning Administrator in accordance with the requirements in Section 3.2 (Application).

**1. Acceptance of Application by Zoning Administrator**

Upon receipt of an application, the Zoning Administrator will review the application for completeness. The Zoning Administrator will schedule a complete application for a public hearing before the Zoning Board of Appeals.

**2. Appeal of Zoning Administrator Decision**

- a. The Zoning Board of Appeals must consider the application and hold a public hearing in accordance with Section 3.4 (Public Hearing). Notice for the public hearing must be in accordance with Section 3.3 (Public Notice).
- b. After receipt of a complete application from the Zoning Administrator, the Zoning Board of Appeals will hold a public hearing on the application and make its determination within fourteen (14) days of the close of the public hearing. A copy of the determination will be mailed to the applicant and Mayor or his/her representative.

- c. The Zoning Board of Appeals may, based upon the standards of Paragraph E (Findings of Fact) below, and so long as such action is in conformity with the provisions of this Code, reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination of the Zoning Administrator.
- d. The Zoning Board of Appeals must provide a record of its proceedings which includes the minutes of the meeting, its findings, and the action taken on each matter heard by it, including its final order.

### **3. Appeal of Zoning Board of Appeals Decision**

The applicant, Mayor or Planning Commission may file an appeal to the City Council from any decision of the Zoning Board of Appeals. Additionally, the City Council may, within ten (10) days of the Board's determination, choose to review a decision of the Zoning Board of Appeals upon a simple majority vote. The decision of the Zoning Board of Appeals, upon appeal or review, may be reversed by the City Council upon a vote by two-thirds ( $\frac{2}{3}$ ) of the Council, based upon the standards of Paragraph E (Findings of Fact) below, and so long as such action is in conformity with the provisions of this Code, reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination of the Zoning Board of Appeals.

#### **E. Findings of Fact**

No determination of the Zoning Administrator or Zoning Board of Appeals may be overturned unless it finds one (1) or both of the following:

- 1. The determination is not clearly supported by the text of the appropriate section(s) of this Code.
- 2. The determination is contrary to the intent of this Code and the Comprehensive Plan.

#### **F. Limitations on Appeals**

A decision of either the Zoning Administrator or Zoning Board of Appeals may only be appealed if an application is filed within ten (10) days of that decision.

## **4.16 ENFORCEMENT**

- A.** This Code is administered and enforced by the Zoning Administrator, who is designated the enforcing officer, except Article 19, Section 19.12 which is administered and enforced by the Public Utilities Director or designee.
  - 1. Exception: The provisions of Article 4, Section 4.16 do not apply to enforcement pursuant to Article 19, Section 19.12. Violations of Article 19, section 19.12 will be enforced pursuant to the administrative procedures outlined in St. Cloud City Ordinance Section 1100 and as referenced in Article 19, Section 19.12.
- B.** The owner of a building or premise in or upon which a violation of any provision of this Code has been committed or exists, or the lessee of the entire building or the entire premise in or upon which violation has been committed or exists, or the owner or

lessee of any part of the building or premise in or upon which violation has been committed or exists, will be served with an order to remove said violation. If the violator has not complied with said order within ten (10) days after being served, the violator is guilty of a penal offense, which is punishable as a misdemeanor.

- C. After a conviction becomes final, the continued violation of such provision constitutes a separate offense for each day such violation continues, with the exception of subdivision regulations. Anyone violating any of the subdivision regulations of Article 19 (Off-Site Development Standards) of this Code is guilty of a misdemeanor, and each month such violation continues constitutes a separate offense.
- D. An owner or occupant of any area, place, structure or other object within a duly designated Heritage Preservation Property who violates the provisions of this Code, or an ordinance designating a Heritage Preservation Property, is guilty of a misdemeanor. A Heritage Preservation Property on which there exists any remodeling, repair, construction or a building moved in violation of this Code or an ordinance designating a Heritage Preservation Property, is hereby declared a nuisance, and the imposition of penalties prescribed does not prevent the City from instituting an appropriate action or proceeding to prevent an unlawful remodeling, repair, construction, building, building moving or demolition or to restrain, correct or abate a violation.
- E. In the Floodplain Overlay District, nothing will prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation of Floodplain Overlay District regulations. Such actions include, but are not limited to:
  - 1. In response to a suspected violation, the Zoning Administrator and local government may utilize the full array of enforcement actions available to it including, but not limited to, prosecution and fines, injunctions, after-the-fact permits, orders of corrective measures, or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The community must act in good faith to enforce these official controls and to correct violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.
  - 2. When an ordinance violation is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator will immediately investigate the situation and document the nature and extent of the violation. As soon as is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources (DNR) and Federal Emergency Management Agency (FEMA) Regional Office along with the community's plan of action to correct the violation to the degree possible.
  - 3. The Zoning Administrator must notify the suspected party of the requirements of this Code and all other official controls, and the nature and extent of the suspected violation of these controls. If the structure and/or use is under construction or development, the Zoning Administrator may order the construction or development immediately halted until a proper permit or approval is granted. If the construction or development is already completed, then the Zoning Administrator may either issue an order identifying the corrective actions that must be made within a specified time period to bring the use or

structure into compliance with the official controls, or notify the responsible party to apply for an after-the-fact permit/development approval within a specified period of time not to exceed thirty (30) days.