

ORDINANCES
MILES CITY, MONTANA

ORDINANCE NO. 1316

AN ORDINANCE REVISING SECTIONS 12-56 THROUGH 12-62 OF THE FLOOD CODE PROVISIONS OF THE CODE OF ORDINANCES OF MILES CITY, MONTANA, REGARDING REVIEW OF FLOODPLAIN VARIANCE APPLICATIONS.

BE IT ORDAINED, by the City Council of the City of Miles City, Montana, as follows:

Section 1. Sections 12-56 through 12-62 of the Flood Code provisions within the Code of Ordinances of Miles City, Montana, shall be revised to read as follows:

Sec. 12-56 GENERAL

A variance from the minimum development standards of these regulations may be granted by the City Council. An approved variance would permit construction in a manner otherwise as required or prohibited by these regulations. ((44 CFR 59.1) (ARM 36.15.218))

Sec. 12-57 VARIANCE APPLICATION REQUIREMENTS:

1. Prior to any consideration of a variance from any development standard in these regulations, a completed Floodplain Permit application and required supporting material must be submitted.
2. Additionally, supporting materials in a Variance application specific to the variance request including facts and information addressing the criteria in this section must be submitted.
3. If the Floodplain permit application and Variance application is deemed not correct and complete, the Floodplain Administrator shall notify the applicant of deficiencies within a reasonable time not to exceed 30 days. Under no circumstances should it be assumed that the variance is automatically granted.

Sec. 12-58 NOTICE REQUIREMENTS FOR FLOODPLAIN VARIANCE APPLICATION Public Notice of the Floodplain Variance application shall provide the following information:

1. Name of applicant and the landowner (if different);
2. Legal description of the site and its address or another general description by which the public can locate it;
3. Present land use at the site;
4. Proposed use;
5. That a public hearing is to be held before the City Council, and that the City Council will conduct a public hearing and accept public comment on the application;
6. The date, time and place of the hearing; and
7. Where applications are available for review.

Notice of the hearing shall be provided as follows:

1. By certified mail, at least 15 calendar days before the hearing, to the applicant, landowner, and all adjoin property owners (including purchasers of record under contract for deed) and owners of land within 150 feet of the subject property;
2. By newspaper publication, at least 15 calendar days before the hearing, one legal notice in the official newspaper;
3. To the State National Floodplain Insurance Program Coordinator located in DNRC by the most efficient method.

Sec. 12-59 EVALUATION OF VARIANCE APPLICATION

1. A Floodplain permit and Variance shall only be issued upon a determination by the City Council that the variance is the minimum allowance necessary, considering

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the flood hazard, to afford relief from these regulations and provided all of the following criteria are met:

1. There is a good and sufficient cause. Financial hardship is not a good and sufficient cause; (44 CFR 60.6(a)(3))
 2. Failure to grant the variance would result in exceptional hardship to the applicant; (44 CFR 60.3(a)(3)) & ARM 36.15.218(b))
 3. Residential and nonresidential buildings are not in the Floodway except for alterations or substantial improvement to existing buildings, Residential dwellings including basements and attached garages do not have the lowest floor elevation below the Base Flood Elevation;
 4. Any enclosure including a crawl space must meet the requirements of Section 12-51.14, Wet Flood Proofing if the enclosure interior grade is at or below the Base Flood Elevation;
 5. Granting of a variance will not result in increased flood heights to existing buildings, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other existing local laws or ordinances; (44 CFR 60.6 (a)(3) & (ARM 36.15.218(a))
 6. The proposed use is adequately flood proofed; (ARM 36.15.218(c))
 7. The variance is the minimum necessary, considering the flood hazard, to afford relief; (44 CFR 60.6(a)(4))
 8. Reasonable alternative locations are not available; (MCA 76-5-406(3) & ARM 36.15.218(d))
 9. An encroachment does not cause an increase to the Base Flood Elevation that is beyond that allowed in these regulations; and (44 CFR 60.6(a)(1))
 10. All other criteria for a Floodplain permit besides the specific development standard requested by variance are met.
2. An exception to the variance criteria may be allowed as follows:
 1. For either new construction of a structure outside of the Floodway only or for substantial improvements or an alteration of a structure, on a lot of one-half acres or less that is contiguous to and surrounded by lots with existing structures constructed below the Base Flood Elevation; or (44 CFR 60.6(a).
 2. Historic Structures – variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum relief necessary to preserve the historic character and design of the structure. The historic nature of the building must be designated as a preliminary or historic structure by U.S. Secretary of Interior or an approved state or local government historic preservation program. (44 CFR 60.6(a))

Sec. 12-60 DECISION

1. The City Council shall:

1. Evaluate the Floodplain permit application and Variance application using the criteria in Section 12-59, and the application requirements and minimum development standards in Articles 9 and 10;

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2. Make findings, and approve, conditionally approve or deny a Floodplain permit and variance within 60 days of a complete application. (criteria as stated in Section 12-33.1)
3. If approved, attach conditions to the approval of Floodplain permit and Variance including a project completion date and inspections during and after construction.
4. Notify the applicant that the issuance of a Floodplain permit and Variance to construct a structure not meeting the minimum building requirements in these regulations may result in increased premium rates for flood insurance and that flood insurance premiums are determined by actuarial risk and will not be modified by the granting of a variance. (44CFR 60.6(a))
5. Submit to the Floodplain Administrator a record of all actions involving a Floodplain permit and variance, including the findings and decision and send a copy of each variance granted to DNRC.(44 CFR 60.6(a)(6) & MCA 76-5-405)

Sec. 12-62 GENERAL

An administrative appeal may be brought before the City Council for review of the Floodplain Administrator's order, decision to grant, condition or deny a floodplain permit or interpretation of the Regulated Flood Hazard Area boundary.

Section 2. This Ordinance shall become effective thirty (30) days after its final passage.

Said Ordinance read and put on its passage this 10th day of October, 2017.

ATTEST:


Lorrie Pearce, City Clerk


John Hollowell, Mayor

FINALLY PASSED AND ADOPTED this 28th day of November, 2017.

ATTEST:


Lorrie Pearce, City Clerk


John Hollowell, Mayor

Affidavit of Publication

STATE OF MONTANA }
County of Custer } ss.

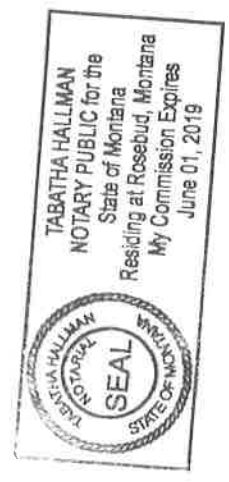
Mary Rose Bovee, being duly sworn on her oath, says that she has been the principal clerk of the printer of the MILES CITY STAR, a daily newspaper of general circulation, printed and published at Miles City, in said County and State. **City of Miles City, Legal Notice. Ordinance Number 1316.** A printed and true copy which, cut from the columns of said newspaper, is hereto attached, and made a part hereof, was printed and published in said newspaper, in the regular and entire issue of every number of the paper during the period and time of publication, on the following dates

October 13 and 20, 2017.

Signed Mary Rose Bovee
Subscribed and sworn to before me this 20th
day of October, 2017
Tabatha Hallman

Tabatha Hallman, Notary Public for the state of Montana, residing at Rosebud. My Commission Expires

June 1, 2019.



LEGAL NOTICE

NOTICE IS HEREBY GIVEN that the City Council of the City of Miles City at a Regular Council Meeting held on Tuesday, October 10, 2017 at 7:00 p.m., passed on first reading the following Ordinance:

ORDINANCE NO. 1316: AN ORDINANCE REVISING SECTIONS 12-56 THROUGH 12-62 OF THE FLOOD CODE PROVISIONS OF THE CODE OF ORDINANCES OF MILES CITY, MONTANA, REGARDING REVIEW OF FLOODPLAIN VARIANCE APPLICATIONS

The above Ordinance is on file and available for public inspection at the City Clerk's Office at City Hall, 17 S. 8th Street, Miles City, Montana. You are further notified that objections to the final adoption of the Ordinance will be heard by the City Council at its regularly scheduled meeting in the Council Chambers at City Hall, 17 S. 8th Street, Miles City, Montana, on Tuesday, October 24, 2017 at 7:00 p.m.

For information or questions you may contact the City Clerk at 234-3462.
BY ORDER OF THE CITY COUNCIL

Lorrie Pearce
City Clerk
(Published October 13, and 20, 2017)

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