

**SPECIAL COUNCIL MEETING     January 23, 2018  
5:30 p.m.**

The Special Council meeting was held Tuesday, January 23, 2018, in the City Hall Conference Room at City Hall, 17 S. 8<sup>th</sup> Street, Miles City, Montana. Council Members present were Brant Kassner, Dwayne Andrews, John Uden, Rick Huber, Jeff Erlenbusch, Kathy Wilcox and Susanne Galbraith. Councilperson Ken Gardner arrived at 6:30pm.

Also present were Mayor John Hollowell Floodplain Administrator/AutoCAD/AssistantPWV Samantha Malenovsky, and City Clerk/Minute Recorder Lorrie Pearce.

A. Variance Training-  
NFIP Coordinator for DNRC, Traci Sears presented variance training to Council. The following was discussed:

1. Mapping

- A 100- Year flood has a 1% chance of occurring any given year
- Flood Insurance Rate Maps (FIRMs)- Identify areas of flood risk, used for various purposes and needs periodic updating
- Zone AE-100 year floodplain includes flood fringe and floodway
- Zone X is the 500 year floodplain
- Zone AE,A,AO,AH, etc. is the 100 year floodplain hazard area. They require flood insurance on buildings with a federally backed mortgage, floodplain regulations apply, floodplain permits are necessary. Referred to as 1% annual chance floodplain and regulated flood hazard area
- Floodway has the fastest flows and the deepest depths of flood water and kept clear from development so that flood waters may pass.

2. Regulations

- Protects property rights to ensure action of any property owner does not adversely impact the property rights of other
- Leads to reduced flood losses while promoting better stewardship and community mitigation efforts
- Prevention of harm is treated different legally than making the community a better place-tougher to challenge in court
- Requires a permit for development in a high risk flood zone
- Describes the permitting process in detail
- Describes community procedure for appeals, variances, and violations
- Local floodplain regulations include- Administrative and enforcement procedures, specific requirements, regulations, and standards to support the purpose. A tie into FEMA's flood maps and follows State and FEMA's minimum requirements
- The floodplain permitting process includes any development (made activity) in a high-risk flood zone. It needs to go through the permitting process, and all required local, state, and federal permits and must be approved before a floodplain application is considered complete
- Freeboard in Montana requires 2 feet of freeboard for new construction. Higher freeboard lowers flood risk and insurance premiums.
- An appeal is a request for a review of a rule interpretation made by the community; a variance is a grant of relief from the requirements of the rules that would result in an un-necessary hardship to the owner or applicant. Miles City Council primary function is to hear and rule upon applications for a variances and appeals from decisions of the local floodplain administrator

# PROCEEDING OF CITY COUNCIL

## MILES CITY, MONTANA

- Proposed variance from FEMA regulations must show: Good and sufficient cause is shown, an exceptional hardship to the applicant exists, the variance provides the minimum necessary action to afford relief, the variance will not increase flood heights, cause additional threats to public safety, cause extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with local laws or ordinances. If variance is granted, the community must maintain a record of all variances
- Best advice to Council is to rarely grant these variance on a very limited basis
- Variances to community regulations that are above and beyond minimum FEMA regulations will typically have a lower threshold for approval than a variance from FEMA rules would
- Could significantly lower Community Rating System (CRS) activity points. Could potentially cause and increase in insurance premiums that get a reduction from CRS classification
- Notification should be given to property owners that may be affected by higher insurance premiums due to the issuance of a variance
- Variance Applications must be submitted and include:
  - Completed floodplain permit application, variance application, supporting materials for applications and supporting materials that address criteria in section 12-59 of Miles City floodplain ordinance and articles 9 and 10. A public notice should be published in local paper and notice sent to adjacent property owners
- Criteria for Variances
  - Is there good and sufficient cause (financial hardship is not a good and sufficient cause, failure to grant the variance would result in exceptional hardship to the applicant. Residential and nonresidential buildings are not in the floodway except for alterations or substantial improvement to existing builds. Any enclosure including a crawl space must meet the requirements in Section 10.2.14, Wet flood proofing if the enclosure interior grade is at or below the BFE. 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. The proposed use is adequately flood proofed. The variance is the minimum necessary, considering the flood hazard, to afford relief, and a reasonable alternative location is not available. An encroachment does not cause an increase to the BFE that is beyond that allowed in these regulations. All other criteria for a floodplain permit besides the specific development standard request are met.
- Exceptions
  - 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 BFE.
  - 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
- Board Decision:
  - 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. Make findings, and approve, conditionally approve or deny a Floodplain permit and variance within 60 days of a complete application.

If approved, attach conditions to the approval of Floodplain permit and Variance including a project completion date and inspections during and after construction.

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.

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 DRNC.

**ADJOURNMENT**

The meeting was adjourned at 6:52p.m.



John Hollowell, Mayor



Lorrie Pearce, City Clerk