

# **DESK PACKET**

**(MATERIALS SUBMITTED AFTER MEETING PACKET PUBLICATION)**

## **E. NEW BUSINESS**

- 4. Ordinance 2023-23**

Introduced by:	Mayor
Date:	09/19/23
Hearing:	10/24/23
Action:	
Vote:	

**KENAI PENINSULA BOROUGH  
ORDINANCE 2023-23**

**AN ORDINANCE AMENDING KPB 20.30.280 AND KPB 21.06 REGARDING  
FLOODPLAIN MANAGEMENT TO ADOPT REQUIRED CHANGES TO REMAIN  
COMPLIANT WITH THE NATIONAL FLOOD INSURANCE PROGRAM**

**WHEREAS,** the Kenai Peninsula Borough has had an accredited floodplain management program under the National Flood Insurance Program (“NFIP”) since 1988, which makes federal disaster insurance, federal hazard mitigation grants, federally subsidized mortgages, and affordable individual homeowner flood insurance available within the Borough; and

**WHEREAS,** continued participation in the NFIP is predicated upon continued good standing in the NFIP; and

**WHEREAS,** as part of the 2022 Federal Emergency Management Agency (“FEMA”) Community Assistance Visit, FEMA officials reviewed KPB Chapter 21.06 to assess compliance with federal requirements and to provide required and recommended changes to the Chapter; and

**WHEREAS,** the proposed amendments increase flood safety, bring code pertaining to FEMA minimum regulations into compliance with federal standards and provide clarifications; and

**WHEREAS,** the proposed amendments address other portions of Borough Code for clerical purposes; and

**WHEREAS,** at the meeting of \_\_\_\_\_, the Seward-Bear Creek Flood Service Area Board recommended \_\_\_\_\_; and

**WHEREAS,** at the meeting of \_\_\_\_\_, the Kenai Peninsula Borough Planning Commission recommended \_\_\_\_\_; and

**WHEREAS,** the Borough’s best interest will be served by maintaining its good standing in the NFIP by amending its floodplain management ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** That KPB 20.30.280 is hereby amended as follows:

**20.30.280. – Floodplain requirements.**

- A. All subdivision plats which are within areas where the floodplain has been identified by the Federal Emergency Management Agency (FEMA), and which involve 50 lots or five acres whichever is lesser, shall include the base flood elevation source. If the base flood elevation is not provided from another authoritative source, it must be generated at the responsibility of the developer and noted on the final plat.
- B. Any area of the subdivision within the regulatory floodplain, floodway or Seward Mapped Flood Data Area (SMFDA) is to be shown and labeled on the plat.

...

- D. All subdivisions or replats within the Flood Insurance Rate Map (FIRM) area or SMDFA, as amended, as defined by KPB [21.06.020] 21.06.070, shall contain the following note:

...

- E. All subdivisions or replats that include any portion of the mapped floodway shall contain the following note:

**FLOODWAY NOTICE:**

Portions of this subdivision are within the floodway. Pursuant to KPB Chapter 21.06, all development (including fill) in the floodway is prohibited unless certification by an engineer [OR ARCHITECT] is provided demonstrating that encroachments shall not result in any increases in flood levels during the occurrence of the base flood discharge.

- [F] EACH PLAT WITHIN A CITY WHICH HAS MET THE REQUIREMENTS OF THIS SECTION SHALL CONTAIN THE FOLLOWING STATEMENT: "THE FIRST FINISHED AND HABITABLE FLOOR OF A BUILDING CONSTRUCTED WITHIN A FLOODPLAIN SHALL BE BUILT AT OR ABOVE THE 100-YEAR FLOOD LEVEL."

- [G]E. This section applies to all cities which adopt a resolution requesting participation in the FEMA floodplain program and which are subsequently recognized by the state as participants.

[H]G. A city may adopt an ordinance as part of its building code with greater restrictions than those set forth in KPB 20.30.280(A). A note shall be placed on the plat to indicate that the developer is responsible for contacting the city to determine the restrictions prior to any development.

**SECTION 2.** That KPB 21.06.010 is hereby amended as follows:

**21.06.010. – [FINDINGS AND STATEMENT] Statutory authorization, findings, and statement.**

The assembly adopts the following findings and statements establishing a floodplain management chapter:

A. Statutory Authorization. The State of Alaska has delegated the responsibility to local governmental units to adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry.

[A.]B. Findings. The flood hazard areas of Kenai Peninsula Borough are subject to periodic inundation which results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

C. These flood losses may be caused by the cumulative effect of obstructions in flood hazard areas, which increase flood heights and velocities and, when inadequately anchored, cause damage in other areas. Uses that are inadequately flood proofed, elevated, or otherwise protected from flood damage, also contribute to flood loss.

[B.]D. Statement of Purpose. It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

...

7. To ensure that potential buyers are notified that property is in an area of special flood hazard; [AND]

8. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions[.]; and

9. To allow participation in and, to maintain eligibility for, flood insurance and disaster relief.

[C.]E. Objectives. In order to accomplish its purposes, this chapter includes methods and provisions for:

...

**SECTION 3.** That KPB 21.06.030 is hereby amended as follows:

**21.06.030. – General provisions.**

...

C. *Basis for Establishing Flood Protection Elevation.* The Flood Protection Elevation (FPE) shall be the applicable elevation as determined by the planning department using the criteria below and will be the elevation to which structures and utilities must be raised as required in the building standards in KPB 21.06.050.

...

E. *Noncompliance—Enforcement and Penalties.* Structures and activities which are not permitted or allowed by this chapter are prohibited. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall be enforced by the remedies set forth in KPB 21.50. Each day a violation continues is a separate violation. Nothing herein contained shall prevent the Kenai Peninsula Borough from taking such other lawful action as is necessary to prevent or remedy any violation.

F. *Conflicts.* Unless otherwise preempted by applicable law, where this chapter and another rule, ordinance, statute, regulation, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restriction will prevail. Notwithstanding, nothing in this chapter may be construed to require the borough to enforce a private covenant or deed restriction.

G. *Interpretation.* In the interpretation and application of this chapter, all provisions must be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body; and,
3. Deemed neither to limit nor repeal any other powers granted under state statutes.

SECTION 4. That KPB 21.06.040 is hereby amended as follows:

**21.06.040. – Administration.**

...

- [1. ELEVATION IN RELATION TO MEAN SEA LEVEL OF THE LOWEST FLOOR (INCLUDING BASEMENT) OF ALL STRUCTURES;
2. ELEVATION IN RELATION TO MEAN SEA LEVEL TO WHICH ANY STRUCTURE HAS BEEN FLOODPROOFED;
3. CERTIFICATION BY A REGISTERED PROFESSIONAL ENGINEER OR ARCHITECT THAT THE FLOODPROOFING METHODS FOR ANY NONRESIDENTIAL STRUCTURE MEET THE FLOODPROOFING CRITERIA IN KPB 21.06.050(B)(2);
4. DESCRIPTION OF THE EXTENT TO WHICH A WATERCOURSE WILL BE ALTERED OR RELOCATED AS A RESULT OF PROPOSED DEVELOPMENT.]

1. For A Zones (A, A1-30, AE, AH, AO).

- a. Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all structures. In Zone AO, elevation of existing highest adjacent grade and proposed elevation of lowest floor of all structures;
- b. Proposed elevation in relation to mean sea level to which any non-residential structure will be floodproofed;
- c. Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in KPB 21.06.050(B)(2); and
- d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

2. For V Zones (VE, V1-30 and V).

- a. Proposed elevation in relation to mean sea level of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all structures, and whether such structures contain a basement;
- b. Base Flood Elevation data for subdivision proposals or other development, including manufactured home parks or subdivisions, greater than 50 lots or 5 acres, whichever is the lesser.

...

4. *Information to be Obtained and Maintained.*

Obtain and maintain the following for public inspection and make available as needed:

- [A. WHERE BASE FLOOD ELEVATION DATA IS PROVIDED THROUGH THE FLOOD INSURANCE STUDY OR REQUIRED IN SUBSECTION (C)(2) OF THIS SECTION, RECORD THE ACTUAL ELEVATION AS SUBMITTED (IN RELATION TO MEAN SEA LEVEL) OF THE LOWEST FLOOR (INCLUDING BASEMENT) OF ALL NEW OR SUBSTANTIALLY IMPROVED STRUCTURES, AND WHETHER OR NOT THE STRUCTURE CONTAINS A BASEMENT;
- B. FOR ALL NEW OR SUBSTANTIALLY IMPROVED FLOODPROOFED STRUCTURES:
  - I. RECORD THE ACTUAL ELEVATION AS SUBMITTED (IN RELATION TO MEAN SEA LEVEL), AND
  - II. MAINTAIN THE FLOODPROOFING CERTIFICATIONS REQUIRED IN KPB 21.06.040(A)(3);
- C. MAINTAIN FOR PUBLIC INSPECTION ALL RECORDS PERTAINING TO THE PROVISIONS OF THIS CHAPTER IN PERPETUITY.]
- a. Certification required by KPB 21.06.050(B)(1) and KPB 21.06.050(A)(2) (lowest floor elevations for all structures, bottom of the lowest horizontal structural member (if applicable), and service facilities/mechanical equipment);
- b. Certification required by KPB 21.06.050(B)(2) (lowest floor elevations or floodproofing of non-residential structures and service facilities/mechanical equipment);
- c. Certification required by KPB 21.06.050(B)(1)(b) (engineered flood openings);
- d. Certification required by KPB 21.06.050(C) (floodway encroachments);
- e. Records of all variance actions, including justification for their issuance; and
- f. Improvement and damage calculations.

[5. *ALTERATION OF WATERCOURSES.*

- A. NOTIFY ADJACENT COMMUNITIES AND THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS PRIOR TO ANY ALTERATION OR RELOCATION OF A WATERCOURSE, AND SUBMIT EVIDENCE OF SUCH NOTIFICATION TO THE FEDERAL INSURANCE ADMINISTRATION.
- B. REQUIRE THAT MAINTENANCE IS PROVIDED WITHIN THE ALTERED OR RELOCATED PORTION OF SAID WATERCOURSE SO THAT THE FLOOD-CARRYING CAPACITY IS NOT DIMINISHED.]

5. Notification to Other Entities.

- a. Whenever a watercourse is to be altered or relocated, notify adjacent communities and the State Coordinating Office prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administrator through appropriate notification means, and assure that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained.
- b. Base Flood Elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the Floodplain Administrator must notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Volume 44 Code of Federal Regulations Section 65.3, to ensure that, upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.
- c. Notify the Federal Insurance Administrator in writing of acquisition by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.

6. Remedial Actions. The Kenai Peninsula Borough must take actions on violations of this chapter pursuant to KPB 21.06.030(E) herein.

[6.]7. Fee Required. The planning department shall charge fees for permits and [EXCEPTIONS] variances. Fees shall be the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees to be paid by the applicant at the time that the floodplain development permit application is submitted.

**SECTION 5.** That KPB 21.06.050 is hereby amended as follows:

**21.06.050. – Standards.**

- A. *General Standards.* In all flood hazard areas, the following standards are required:



1. Alteration of Water Courses.

- a. The flood-carrying capacity within the altered or relocated portion of said watercourse must be maintained. Maintenance must be provided within the altered or relocated portion of said watercourse to ensure that the flood-carrying capacity is not diminished.

[1.]2. Anchoring.

- a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

...

3. Storage of Materials and Equipment

- a. The storage or processing of materials that could be injurious to human, animal, or plant life if released due to damage from flooding is prohibited in special flood hazard areas.
- b. Storage of other material or equipment may be allowed if not subject to damage by floods and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning.

[2.]4. Construction Materials and Methods.

...

[3.]5. Utilities.

...

[4.]6. Subdivision Proposals.

...

[5.]7. Review of Development Permits.

...

- B. *Specific Standards.* In all flood hazard areas, as set forth in KPB 21.06.030(B), the following provisions are required:

1. *Residential Construction.*

- a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above the Flood Protection Elevation.

- b. Fully enclosed areas below the lowest floor, including crawlspaces, basements, and skirting, that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
  - i. A minimum of two openings located on separate walls and having a total net area of not less than 1 square inch for every square foot of enclosed space subject to flooding shall be provided.
  - ii. The bottom of all openings shall be no higher than 1 foot above grade.
  - iii. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
  - iv. Enclosed areas below the Flood Protection Elevation must be unfinished and usable only for parking, access or storage of materials easily moved during a flood event.
  - v. Before a final floodplain development permit is issued by the planning department for a residential structure with enclosed areas below the [BASE FLOOD ELEVATION] Flood Protection Elevation, the owners shall sign a non-conversion agreement stating that the enclosed space shall remain in compliance with KPB 21.06.050(B)(1)(b)(iv). The non-conversion agreement shall be recorded, [BY THE KENAI PENINSULA BOROUGH] placing future buyers of properties on notice of the hazards of enclosed spaces below the Flood Protection Elevation and the requirements to keep the permitted structure compliant with KPB floodplain regulations.

...

- 2. *Nonresidential Construction.* [NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENT OF ANY COMMERCIAL, INDUSTRIAL OR OTHER NONRESIDENTIAL STRUCTURE SHALL EITHER HAVE THE LOWEST FLOOR, INCLUDING BASEMENT, ELEVATED TO THE LEVEL OF THE FLOOD PROTECTION ELEVATION; OR, TOGETHER WITH ATTENDANT UTILITY AND SANITARY FACILITIES, SHALL]:

a. New construction and substantial improvement of any commercial, industrial or other nonresidential structure, together with attendant utility and sanitary facilities, must have its lowest floor elevated to the Flood Protection Elevation to meet the standards in KPB 21.060.050(B)(1)(b); or

b. Nonresidential structures that are not elevated must:

[A.] i. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water; and

[B.] ii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

[C.] iii. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth in KPB 21.06.040(C)(4)(b); and

iv. Before a final floodplain development permit is issued by the planning department for a nonresidential structure with enclosed areas below the flood protection elevation, the owners shall sign a non-conversion agreement stating that the enclosed space shall not be converted to a residential space. The non-conversion agreement shall be recorded, placing future buyers of properties on notice of the hazards of enclosed spaces below the Flood Protection Elevation and the requirements to keep the permitted structure compliant with KPB floodplain regulations.

[D. NONRESIDENTIAL STRUCTURES THAT ARE ELEVATED, NOT FLOODPROOFED, MUST MEET THE SAME STANDARD FOR SPACE BELOW THE LOWEST FLOOR AS DESCRIBED IN KPB 21.06.050(B)(1)(B).]

[E]c. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are 1 foot below the floodproofed level (e.g. a building constructed to the base flood level will be rated as 1 foot below that level).

[F. FOR ZONES AH, AO, AND AREAS OF THE SMFDA, DRAINAGE PATHS ARE REQUIRED AROUND STRUCTURES ON SLOPES TO DRAIN FLOODWATERS AWAY FROM PROPOSED STRUCTURES.]

3. Appurtenant Structures (Detached Garages and Storage Structures). Appurtenant structures located in A Zones (A, AE, A1-30, AH, AO) used solely for parking of vehicles or storage may be constructed such that the floor is below the Flood Protection Elevation, provided the structure is designed and constructed in accordance with the following requirements:

- a. Use of the appurtenant structure must be limited to parking of vehicles or storage;
- b. The portions of the appurtenant structure located below the Flood Protection Elevation must be built using flood resistant materials;
- c. The appurtenant structure must be adequately anchored to prevent flotation, collapse and lateral movement;
- d. Any machinery or equipment servicing the appurtenant structure must be elevated or floodproofed to or above the Flood Protection Elevation;
- e. The appurtenant structure must comply with floodway encroachment provisions in KPB 21.06.050(C); and
- f. The appurtenant structure must be designed to allow for the automatic entry and exit of flood waters in accordance with KPB 21.06.050(B)(1)(b). Detached garages, storage structures and other appurtenant structures not meeting the above standards must be constructed in accordance with all applicable standards in KPB 21.06.050(B)(2). Upon completion of the structure, certification that the requirements of this section have been satisfied shall be provided to the Floodplain Administrator for verification.
- g. Before a final floodplain development permit is issued by the planning department for an appurtenant structure with enclosed areas below the flood protection elevation, the owners shall sign a non-conversion agreement stating that the enclosed space shall not be converted to a residential space. The non-conversion agreement shall be recorded, placing future buyers of properties on notice of the hazards of enclosed spaces below the Flood Protection Elevation and the requirements to keep the permitted structure compliant with KPB floodplain regulations.

[3.]4. *Manufactured Homes.* All manufactured homes to be placed or substantially improved within Zones A1-30, AH, and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of subsection (A)[(1)](2) of this section.

[4.]5. *Recreational vehicles.*

...

[5.]6. *Before regulatory floodway.*

...

[6.]7. *Fuel storage tanks.*

...

[7.]8. *Logging or clearing.*

...

9. AH, AO, and SMFDA. Drainage paths are required around structures on slopes to drain floodwaters away from proposed structures.

C. *Floodways.*

...

1. All encroachments, including fill, new construction, substantial improvements, and other development are prohibited unless certification by a registered professional engineer [OR ARCHITECT] is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

...

3. Encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations may be permitted, provided that the Kenai Peninsula Borough first applies for and fulfills the requirements for a Conditional Letter of Map Revision (CLOMR), and receives approval from the Federal Insurance Administrator to revise the FIRM and FIS in accordance with KPB 21.06.040(C)(5)(b).

...

**SECTION 6.** That KPB 21.06.060 is hereby amended as follows:

**21.06.060. – [EXCEPTIONS] Variance procedure.**

The variance criteria set forth in this section are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this chapter would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants or the property owners.

It is the duty of the Kenai Peninsula Borough to help protect its citizens from flooding through regulating development in the Special Flood Hazard Area. This need is so compelling and the implications of the cost of insuring a structure built below the Base Flood Elevation are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this ordinance are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

*A. Appeal Board.*

1. The Kenai Peninsula Borough Planning Commission shall hear and decide appeals and requests for [EXCEPTIONS] variances from the requirements of this chapter.

...

5. Upon consideration of the factors of subsection (A)(4) of this section and the purposes of this chapter, the planning commission may attach such conditions to the granting of [EXCEPTIONS] variances as it deems necessary to further the purposes of this chapter,
6. The planning department shall maintain the records of all appeal actions and report any [EXCEPTIONS] variances to the Federal Insurance Administration upon request.

*B. Conditions for [EXCEPTIONS] Variances.*

1. Generally, the only condition under which a[N EXCEPTION] variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of ½ acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing subparagraphs (a) through (k) of subsection (A)(4) of this section have been fully considered. As the lot size increases the technical justification required for issuing the [EXCEPTION] variance increases.
2. [EXCEPTIONS] Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.
3. [EXCEPTIONS] Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
4. [EXCEPTIONS] Variances shall only be issued upon a determination that the [EXCEPTION] variance is the minimum necessary, considering the flood hazard, to afford relief.
5. [EXCEPTIONS] Variances shall only be issued upon:  
...
  - b. A determination that failure to grant the [exception] variance would result in exceptional hardship to the applicant;
  - c. A determination that the granting of a [exception] 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.
6. [EXCEPTIONS] Variances, or variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, or to economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, [EXCEPTIONS] variances from the flood elevations should be quite rare.

7. [EXCEPTIONS] Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-flood proofing where it can be determined that such action will have low damage potential, complies with all other [EXCEPTION] variance criteria except subsection (B)(1) of this section, and otherwise complies with KPB 21.06.060(A) and (B).
8. Any applicant to whom a[N EXCEPTION] variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

**SECTION 7.** That KPB 21.06.070 is hereby amended as follows:

**21.06.070. – Definitions.**

...

“Anchored” or “anchoring” means a system of ties, anchors and anchoring equipment that will withstand flood and wind forces. The system must work in saturated soil conditions.

“Alteration of watercourse” means any action that will change the location of the channel occupied by water within the banks of any portion of a riverine waterbody.

...

“Coastal high hazard area” means [THE AREA SUBJECT TO HIGH VELOCITY WATERS DUE TO WIND, TIDAL ACTION, STORM, TSUNAMI OR ANY SIMILAR FORCE, ACTING SINGLY OR IN ANY COMBINATION RESULTING IN A WAVE OR SERIES OF WAVES OF SUFFICIENT MAGNITUDE, VELOCITY OR FREQUENCY TO ENDANGER PROPERTY AND LIVES] an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on the FIRM as Zone V1-30, VE, or V.

...

[“EXCEPTION” MEANS A GRANT OF RELIEF FROM THE REQUIREMENTS OF THIS CHAPTER, WHICH PERMITS CONSTRUCTION IN A MANNER THAT WOULD OTHERWISE BE PROHIBITED BY THIS CHAPTER.]

[“FEDERAL EMERGENCY MANAGEMENT AGENCY” IS THE AGENCY RESPONSIBLE FOR ADMINISTRATION OF THE NATIONAL FLOOD INSURANCE PROGRAM.



“FLOOD HAZARD AREA” MEANS THE LAND AREA COVERED BY THE FLOOD, HAVING A 1 PERCENT CHANCE OF OCCURRING IN ANY GIVEN YEAR. SEE ALSO “100-YEAR OR 1-PERCENT ANNUAL EXCEEDANCE PROBABILITY FLOOD.”]

“Flood elevation study” means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards. Also known as a Flood Insurance Study (FIS).

...

“Functionally dependent use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long term storage or related manufacturing facilities.

“Historic structure” means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. By an approved state program as determined by the Secretary of the Interior or
  - b. Directly by the Secretary of the Interior in states without approved programs.

...

“Recreational vehicle” means a vehicle that is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

...

"Special Flood Hazard Area (SFHA)" means Flood hazard areas identified on the Flood Insurance Rate Map [AREAS OF HIGH RISK AS DEFINED IN THE CURRENT EFFECTIVE FIRM AND DFIRM] panels for the Kenai Peninsula Borough. These are the areas that will be inundated by the flood event having a 1-percent chance of being equaled or exceeded in any given year. See also "100-year or 1-percent annual exceedance probability flood.

...

"Variance" means a grant of relief from the requirements of this chapter, which permits construction in a manner that would otherwise be prohibited by this chapter.

**SECTION 8.** That KPB 21.50.055 is hereby amended as follows:

**21.50.055. – Fines.**

...

Code Chapter & Section	Violation Description	Daily Fine
...		
KPB 21.06.030([D]) <u>E</u>	Structure or activity prohibited by KPB 21.06	\$300.00
[KPB 21.06.045]	[FAILURE TO OBTAIN A DEVELOPMENT PERMIT/VIOLATION OF SMFDA PERMIT CONDITIONS/FLOODPLAIN MANAGEMENT]	[\$300.00]

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \* DAY  
OF \* 2023.**

\_\_\_\_\_  
Brent Johnson, Assembly President

ATTEST:

\_\_\_\_\_  
Michele Turner, CMC, Borough Clerk

Yes:

No:

Absent:

**KENAI PENINSULA BOROUGH**  
**ORDINANCE 2023-23**  
**AN ORDINANCE AMENDING KPB 20.30.280 AND KPB 21.06 REGARDING**  
**FLOODPLAIN MANAGEMENT TO ADOPT REQUIRED CHANGES TO REMAIN**  
**COMPLIANT WITH THE NATIONAL FLOOD INSURANCE PROGRAM**  
**AMENDMENT GUIDE**

**SECTION 1.** That KPB 20.30.280 is hereby amended as follows:

**20.30.280. – Floodplain requirements.**

- A. All subdivision plats which are within areas where the floodplain has been identified by the Federal Emergency Management Agency (FEMA), and which involve 50 lots or five acres whichever is lesser, shall include the base flood elevation source. If the base flood elevation is not provided from another authoritative source, it must be generated at the responsibility of the developer and noted on the final plat.
- B. Any area of the subdivision within the regulatory floodplain, floodway or Seward Mapped Flood Data Area (SMFDA) is to be shown and labeled on the plat.
- ...
- D. All subdivisions or replats within the Flood Insurance Rate Map (FIRM) area or SMFDA, as amended, as defined by KPB [21.06.020] 21.06.070, shall contain the following note:  
...
- E. All subdivisions or replats that include any portion of the mapped floodway shall contain the following note:

**FLOODWAY NOTICE:**

Portions of this subdivision are within the floodway. Pursuant to KPB Chapter 21.06, all development (including fill) in the floodway is prohibited unless certification by an engineer **[OR ARCHITECT]** is provided demonstrating that encroachments shall not result in any increases in flood levels during the occurrence of the base flood discharge.

[F. EACH PLAT WITHIN A CITY WHICH HAS MET THE REQUIREMENTS OF THIS SECTION SHALL CONTAIN THE FOLLOWING STATEMENT: "THE FIRST FINISHED AND HABITABLE FLOOR OF A BUILDING CONSTRUCTED WITHIN A FLOODPLAIN SHALL BE BUILT AT OR ABOVE THE 100-YEAR FLOOD LEVEL."]

[G]E. This section applies to all cities which adopt a resolution requesting participation in the FEMA floodplain program and which are subsequently recognized by the state as participants.

[H]G. A city may adopt an ordinance as part of its building code with greater restrictions than those set forth in KPB 20.30.280(A). A note shall be placed on the plat to indicate that the developer is responsible for contacting the city to determine the restrictions prior to any development.

**SECTION 2.** That KPB 21.06.010 is hereby amended as follows:

**21.06.010. – [FINDINGS AND STATEMENT] Statutory authorization, findings, and statement.**

The assembly adopts the following findings and statements establishing a floodplain management chapter:

A. Statutory Authorization. The State of Alaska has delegated the responsibility to local governmental units to adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry.

[A.]B. Findings. The flood hazard areas of Kenai Peninsula Borough are subject to periodic inundation which results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

C. These flood losses may be caused by the cumulative effect of obstructions in flood hazard areas, which increase flood heights and velocities and, when inadequately anchored, cause damage in other areas. Uses that are inadequately flood proofed, elevated, or otherwise protected from flood damage, also contribute to flood loss.

[B.]D. Statement of Purpose. It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

...

7. To ensure that potential buyers are notified that property is in an area of special flood hazard; [AND]

8. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions[.]; and

9. To allow participation in and, to maintain eligibility for, flood insurance and disaster relief.

[C.]E. Objectives. In order to accomplish its purposes, this chapter includes methods and provisions for:

...

**SECTION 3.** That KPB 21.06.030 is hereby amended as follows:

**21.06.030. – General provisions.**

...

*C. Basis for Establishing Flood Protection Elevation.* The Flood Protection Elevation (FPE) shall be the applicable elevation as determined by the planning department using the criteria below and will be the elevation to which structures

and utilities must be raised as required in the building standards in KPB 21.06.050.

...

- E. *Noncompliance—Enforcement and Penalties*. Structures and activities which are not permitted or allowed by this chapter are prohibited. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall be enforced by the remedies set forth in KPB 21.50. Each day a violation continues is a separate violation. Nothing herein contained shall prevent the Kenai Peninsula Borough from taking such other lawful action as is necessary to prevent or remedy any violation.
- F. *Conflicts*. Unless otherwise preempted by applicable law, where this chapter and another rule, ordinance, statute, regulation, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restriction will prevail. Notwithstanding, nothing in this chapter may be construed to require the borough to enforce a private covenant or deed restriction.
- G. *Interpretation*. In the interpretation and application of this chapter, all provisions must be:
  - 1. Considered as minimum requirements;
  - 2. Liberally construed in favor of the governing body; and,
  - 3. Deemed neither to limit nor repeal any other powers granted under state statutes.

**SECTION 4.** That KPB 21.06.040 is hereby amended as follows:

**21.06.040. – Administration.**

...

- [1. ELEVATION IN RELATION TO MEAN SEA LEVEL OF THE LOWEST FLOOR (INCLUDING BASEMENT) OF ALL STRUCTURES;
- 2. ELEVATION IN RELATION TO MEAN SEA LEVEL TO WHICH ANY STRUCTURE HAS BEEN FLOODPROOFED;
- 3. CERTIFICATION BY A REGISTERED PROFESSIONAL ENGINEER OR ARCHITECT THAT THE FLOODPROOFING METHODS FOR ANY NONRESIDENTIAL STRUCTURE MEET THE FLOODPROOFING CRITERIA IN KPB 21.06.050(B)(2);

4. DESCRIPTION OF THE EXTENT TO WHICH A WATERCOURSE WILL BE ALTERED OR RELOCATED AS A RESULT OF PROPOSED DEVELOPMENT.]

1. For A Zones (A, AI-30, AE, AH, AO).

- a. Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all structures. In Zone AO, elevation of existing highest adjacent grade and proposed elevation of lowest floor of all structures;
- b. Proposed elevation in relation to mean sea level to which any non-residential structure will be floodproofed;
- c. Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in KPB 21.06.050(B)(2); and
- d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

2. For V Zones (VE, VI-30 and V).

- a. Proposed elevation in relation to mean sea level of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all structures, and whether such structures contain a basement;
- b. Base Flood Elevation data for subdivision proposals or other development, including manufactured home parks or subdivisions, greater than 50 lots or 5 acres, whichever is the lesser.

...

4. *Information to be Obtained and Maintained.*

Obtain and maintain the following for public inspection and make available as needed:

[A. WHERE BASE FLOOD ELEVATION DATA IS PROVIDED THROUGH THE FLOOD INSURANCE STUDY OR REQUIRED IN SUBSECTION (C)(2) OF THIS SECTION, RECORD THE ACTUAL ELEVATION AS SUBMITTED (IN RELATION TO MEAN SEA LEVEL) OF THE LOWEST FLOOR (INCLUDING BASEMENT) OF ALL NEW OR SUBSTANTIALLY IMPROVED STRUCTURES, AND WHETHER OR NOT THE STRUCTURE CONTAINS A BASEMENT;

B. FOR ALL NEW OR SUBSTANTIALLY IMPROVED FLOODPROOFED STRUCTURES:



- I. RECORD THE ACTUAL ELEVATION AS SUBMITTED (IN RELATION TO MEAN SEA LEVEL), AND
- II. MAINTAIN THE FLOODPROOFING CERTIFICATIONS REQUIRED IN KPB 21.06.040(A)(3);
- C. MAINTAIN FOR PUBLIC INSPECTION ALL RECORDS PERTAINING TO THE PROVISIONS OF THIS CHAPTER IN PERPETUITY.]
- a. Certification required by KPB 21.06.050(B)(1) and KPB 21.06.050(A)(2) (lowest floor elevations for all structures, bottom of the lowest horizontal structural member (if applicable), and service facilities/mechanical equipment);
- b. Certification required by KPB 21.06.050(B)(2) (lowest floor elevations or floodproofing of non-residential structures and service facilities/mechanical equipment);
- c. Certification required by KPB 21.06.050(B)(1)(b) (engineered flood openings);
- d. Certification required by KPB 21.06.050(C) (floodway encroachments);
- e. Records of all variance actions, including justification for their issuance; and
- f. Improvement and damage calculations.

[5. *ALTERATION OF WATERCOURSES.*

- A. NOTIFY ADJACENT COMMUNITIES AND THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS PRIOR TO ANY ALTERATION OR RELOCATION OF A WATERCOURSE, AND SUBMIT EVIDENCE OF SUCH NOTIFICATION TO THE FEDERAL INSURANCE ADMINISTRATION.
- B. REQUIRE THAT MAINTENANCE IS PROVIDED WITHIN THE ALTERED OR RELOCATED PORTION OF SAID WATERCOURSE SO THAT THE FLOOD-CARRYING CAPACITY IS NOT DIMINISHED.]

5. *Notification to Other Entities.*

- a. Whenever a watercourse is to be altered or relocated, notify adjacent communities and the State Coordinating Office prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administrator through appropriate notification

means, and assure that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained.

- b. Base Flood Elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the Floodplain Administrator must notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Volume 44 Code of Federal Regulations Section 65.3, to ensure that, upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.
- c. Notify the Federal Insurance Administrator in writing of acquisition by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.

6. Remedial Actions. The Kenai Peninsula Borough must take actions on violations of this chapter pursuant to KPB 21.06.030(E) herein.

[6.]7. Fee Required. The planning department shall charge fees for permits and [EXCEPTIONS] variances. Fees shall be the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees to be paid by the applicant at the time that the floodplain development permit application is submitted.

**SECTION 5.** That KPB 21.06.050 is hereby amended as follows:

**21.06.050. – Standards.**

A. *General Standards.* In all flood hazard areas, the following standards are required:

1. Alteration of Water Courses.

- a. The flood-carrying capacity within the altered or relocated portion of said watercourse must be maintained. Maintenance must be provided within the altered or relocated portion of said watercourse to ensure that the flood-carrying capacity is not diminished.

[1.]2. Anchoring.

- a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of

buoyancy.

...

3. Storage of Materials and Equipment

- a. The storage or processing of materials that could be injurious to human, animal, or plant life if released due to damage from flooding is prohibited in special flood hazard areas.
- b. Storage of other material or equipment may be allowed if not subject to damage by floods and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning.

[2.]4. Construction Materials and Methods.

...

[3.]5. Utilities.

...

[4.]6. Subdivision Proposals.

...

[5.]7. Review of Development Permits.

...

B. *Specific Standards.* In all flood hazard areas, as set forth in KPB 21.06.030(B), the following provisions are required:

1. *Residential Construction.*

- a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above the Flood Protection Elevation.
- b. Fully enclosed areas below the lowest floor, including crawlspaces, basements, and skirting, that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
  - i. A minimum of two openings located on separate walls and having a total net area of not less than 1 square inch for every square foot of enclosed space subject to flooding shall be provided.
  - ii. The bottom of all openings shall be no higher than 1 foot above grade.

- iii. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- iv. Enclosed areas below the Flood Protection Elevation must be unfinished and usable only for parking, access or storage of materials easily moved during a flood event.
- v. Before a final floodplain development permit is issued by the planning department for a residential structure with enclosed areas below the [BASE FLOOD ELEVATION] Flood Protection Elevation, the owners shall sign a non-conversion agreement stating that the enclosed space shall remain in compliance with KPBB 21.06.050(B)(1)(b)(iv). The non-conversion agreement shall be recorded, [BY THE KENAI PENINSULA BOROUGH] placing future buyers of properties on notice of the hazards of enclosed spaces below the Flood Protection Elevation and the requirements to keep the permitted structure compliant with KPBB floodplain regulations.

...

2. *Nonresidential Construction.* [NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENT OF ANY COMMERCIAL, INDUSTRIAL OR OTHER NONRESIDENTIAL STRUCTURE SHALL EITHER HAVE THE LOWEST FLOOR, INCLUDING BASEMENT, ELEVATED TO THE LEVEL OF THE FLOOD PROTECTION ELEVATION; OR, TOGETHER WITH ATTENDANT UTILITY AND SANITARY FACILITIES, SHALL]:

a. New construction and substantial improvement of any commercial, industrial or other nonresidential structure, together with attendant utility and sanitary facilities, must have its lowest floor elevated to the Flood Protection Elevation to meet the standards in KPBB 21.060.050(B)(1)(b); or

b. Nonresidential structures that are not elevated must:

[A.] i. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water; and

[B.] ii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

[C.] iii. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth in KPBB 21.06.040(C)(4)(b); and

iv. Before a final floodplain development permit is issued by the planning department for a nonresidential structure with enclosed areas below the flood protection elevation, the owners shall sign a non-conversion agreement stating that the enclosed space shall not be converted to a residential space. The non-conversion agreement shall be recorded, placing future buyers of properties on notice of the hazards of enclosed spaces below the Flood Protection Elevation and the requirements to keep the permitted structure compliant with KPB floodplain regulations.

[D. NONRESIDENTIAL STRUCTURES THAT ARE ELEVATED, NOT FLOODPROOFED, MUST MEET THE SAME STANDARD FOR SPACE BELOW THE LOWEST FLOOR AS DESCRIBED IN KPB 21.06.050(B)(1)(B).]

[E]c. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are 1 foot below the floodproofed level (e.g. a building constructed to the base flood level will be rated as 1 foot below that level).

[F. FOR ZONES AH, AO, AND AREAS OF THE SMFDA, DRAINAGE PATHS ARE REQUIRED AROUND STRUCTURES ON SLOPES TO DRAIN FLOODWATERS AWAY FROM PROPOSED STRUCTURES.]

3. Appurtenant Structures (Detached Garages and Storage Structures). Appurtenant structures located in A Zones (A, AE, A1-30, AH, AO) used solely for parking of vehicles or storage may be constructed such that the floor is below the Flood Protection Elevation, provided the structure is designed and constructed in accordance with the following requirements:

- a. Use of the appurtenant structure must be limited to parking of vehicles or storage;
- b. The portions of the appurtenant structure located below the Flood Protection Elevation must be built using flood resistant materials;
- c. The appurtenant structure must be adequately anchored to prevent flotation, collapse and lateral movement;
- d. Any machinery or equipment servicing the appurtenant structure must be elevated or floodproofed to or above the Flood Protection Elevation;
- e. The appurtenant structure must comply with floodway encroachment provisions in KPB 21.06.050(C); and
- f. The appurtenant structure must be designed to allow for the automatic entry

and exit of flood waters in accordance with KPB 21.06.050(B)(1)(b). Detached garages, storage structures and other appurtenant structures not meeting the above standards must be constructed in accordance with all applicable standards in KPB 21.06.050(B)(2). Upon completion of the structure, certification that the requirements of this section have been satisfied shall be provided to the Floodplain Administrator for verification.

- g. Before a final floodplain development permit is issued by the planning department for an appurtenant structure with enclosed areas below the flood protection elevation, the owners shall sign a non-conversion agreement stating that the enclosed space shall not be converted to a residential space. The non-conversion agreement shall be recorded, placing future buyers of properties on notice of the hazards of enclosed spaces below the Flood Protection Elevation and the requirements to keep the permitted structure compliant with KPB floodplain regulations.

[3.]4. *Manufactured Homes.* All manufactured homes to be placed or substantially improved within Zones A1-30, AH, and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of subsection (A)[(1)](2) of this section.

[4.]5. *Recreational vehicles.*

...

[5.]6. *Before regulatory floodway.*

...

[6.]7. *Fuel storage tanks.*

...

[7.]8. *Logging or clearing.*

...

9. *AH, AO, and SMFDA.* Drainage paths are required around structures on slopes to drain floodwaters away from proposed structures.

C. *Floodways.*

...

1. All encroachments, including fill, new construction, substantial improvements, and other development are prohibited unless certification by a registered professional engineer [OR ARCHITECT] is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

...

3. Encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations may be permitted, provided that the Kenai Peninsula Borough first applies for and fulfills the requirements for a Conditional Letter of Map Revision (CLOMR), and receives approval from the Federal Insurance Administrator to revise the FIRM and FIS in accordance with KPB 21.06.040(C)(5)(b).

...

**SECTION 6.** That KPB 21.06.060 is hereby amended as follows:

**21.06.060. – [EXCEPTIONS] Variance procedure.**

The variance criteria set forth in this section are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this chapter would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants or the property owners.

It is the duty of the Kenai Peninsula Borough to help protect its citizens from flooding through regulating development in the Special Flood Hazard Area. This need is so compelling and the implications of the cost of insuring a structure built below the Base Flood Elevation are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this ordinance are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

*A. Appeal Board.*

1. The Kenai Peninsula Borough Planning Commission shall hear and decide appeals and requests for [EXCEPTIONS] variances from the requirements of this chapter.

...

5. Upon consideration of the factors of subsection (A)(4) of this section and the purposes of this chapter, the planning commission may attach such conditions to the granting of [EXCEPTIONS] variances as it deems necessary

to further the purposes of this chapter,

6. The planning department shall maintain the records of all appeal actions and report any [EXCEPTIONS] variances to the Federal Insurance Administration upon request.

B. *Conditions for [EXCEPTIONS] Variances.*

1. Generally, the only condition under which a [EXCEPTION] variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of ½ acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing subparagraphs (a) through (k) of subsection (A)(4) of this section have been fully considered. As the lot size increases the technical justification required for issuing the [EXCEPTION] variance increases.
2. [EXCEPTIONS] Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.
3. [EXCEPTIONS] Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
4. [EXCEPTIONS] Variances shall only be issued upon a determination that the [EXCEPTION] variance is the minimum necessary, considering the flood hazard, to afford relief.
5. [EXCEPTIONS] Variances shall only be issued upon:  
...
  - b. A determination that failure to grant the [exception] variance would result in exceptional hardship to the applicant;
  - c. A determination that the granting of a [exception] 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.
6. [EXCEPTIONS] Variances, or variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, or to economic or financial circumstances. They primarily address small lots in densely populated



residential neighborhoods. As such, [EXCEPTIONS] variances from the flood elevations should be quite rare.

7. [EXCEPTIONS] Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-flood proofing where it can be determined that such action will have low damage potential, complies with all other [EXCEPTION] variance criteria except subsection (B)(1) of this section, and otherwise complies with KPB 21.06.060(A) and (B).
8. Any applicant to whom a [N EXCEPTION] variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

**SECTION 7.** That KPB 21.06.070 is hereby amended as follows:

**21.06.070. – Definitions.**

...

“Anchored” or “anchoring” means a system of ties, anchors and anchoring equipment that will withstand flood and wind forces. The system must work in saturated soil conditions.

“Alteration of watercourse” means any action that will change the location of the channel occupied by water within the banks of any portion of a riverine waterbody.

...

“Coastal high hazard area" means [THE AREA SUBJECT TO HIGH VELOCITY WATERS DUE TO WIND, TIDAL ACTION, STORM, TSUNAMI OR ANY SIMILAR FORCE, ACTING SINGLY OR IN ANY COMBINATION RESULTING IN A WAVE OR SERIES OF WAVES OF SUFFICIENT MAGNITUDE, VELOCITY OR FREQUENCY TO ENDANGER PROPERTY AND LIVES] an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on the FIRM as Zone V1-30, VE, or V.

...

["EXCEPTION" MEANS A GRANT OF RELIEF FROM THE REQUIREMENTS OF THIS CHAPTER, WHICH PERMITS CONSTRUCTION IN A MANNER THAT WOULD OTHERWISE BE PROHIBITED BY THIS CHAPTER.]

["FEDERAL EMERGENCY MANAGEMENT AGENCY" IS THE AGENCY RESPONSIBLE FOR ADMINISTRATION OF THE NATIONAL FLOOD INSURANCE PROGRAM.

"FLOOD HAZARD AREA" MEANS THE LAND AREA COVERED BY THE FLOOD, HAVING A 1 PERCENT CHANCE OF OCCURRING IN ANY GIVEN YEAR. SEE ALSO "100-YEAR OR 1-PERCENT ANNUAL EXCEEDANCE PROBABILITY FLOOD.]

"Flood elevation study" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards. Also known as a Flood Insurance Study (FIS).

...

"Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long term storage or related manufacturing facilities.

"Historic structure" means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. By an approved state program as determined by the Secretary of the Interior or
  - b. Directly by the Secretary of the Interior in states without approved programs.

...

“Recreational vehicle” means a vehicle that is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

...

“Special Flood Hazard Area (SFHA)” means Flood hazard areas identified on the Flood Insurance Rate Map [AREAS OF HIGH RISK AS DEFINED IN THE CURRENT EFFECTIVE FIRM AND DFIRM] panels for the Kenai Peninsula Borough. These are the areas that will be inundated by the flood event having a 1-percent chance of being equaled or exceeded in any given year. See also "100-year or 1-percent annual exceedance probability flood.

...

"Variance" means a grant of relief from the requirements of this chapter, which permits construction in a manner that would otherwise be prohibited by this chapter.

**SECTION 8.** That KPB 21.50.055 is hereby amended as follows:

**21.50.055. – Fines.**

...

Code Chapter & Section	Violation Description	Daily Fine
...		
KPB 21.06.030([D]) <u>E</u>	Structure or activity prohibited by KPB 21.06	\$300.00
<u>[KPB 21.06.045]</u>	<u>[FAILURE TO OBTAIN A DEVELOPMENT PERMIT/VIOLATION OF SMFDA PERMIT CONDITIONS/FLOODPLAIN MANAGEMENT]</u>	<u>[\$300.00]</u>