

CITY OF APPLE VALLEY
ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF APPLE VALLEY, MINNESOTA, AMENDING TITLE XV OF THE CITY CODE ENTITLED "LAND USAGE" BY DELETING SECTIONS 155.305 THROUGH 155.318 AND REPLACING THE SAME BY ADDING SECTION 155.300 REGARDING SHORELAND OVERLAY DISTRICT REGULATIONS AND BY AMENDING CERTAIN DEFINITIONS IN SECTIONS 155.003

The City Council of Apple Valley ordains:

Section 1. Title XV of the Apple Valley City Code is amended by deleting the definition of "shoreland" in Section 155.003.

Section 2. Title XV of the Apple Valley City Code is amended by deleting Sections 155.305 through 155.318 and Appendix H in their entirety.

Section 3. Title XV of the Apple Valley City Code is amended by adding Section 155.300 to read as follows:

SHORELAND OVERLAY DISTRICT

Section 155.300.

(A) STATUTORY AUTHORIZATION AND PURPOSE STATEMENT.

(1) Statutory Authorization. The shoreland overlay district regulations herein are adopted pursuant to the authorization and regulations contained in Minnesota Statutes, Chapter 103F, Minnesota Rules, Parts 6120.2500 - 6120.3900, and in accordance with the planning and zoning enabling legislation in Minnesota Statutes, Chapter 462.

(2) Purpose Statement. Minnesota law has delegated responsibility to the City to regulate the subdivision, use and development of the shorelands of protected, public waters within the City for the preservation of water quality, natural characteristics, environmental values and the general health, safety and welfare of all protected waters. The protected public waters in the City have been given a shoreland management classification by the Minnesota Commissioner of Natural Resources as recreational development lakes, consisting of Alimagnet Lake, Moeller (Long) Lake and Farquar Lake, and natural environmental lake consisting of Keller Lake.

(3) Designation of Shoreland Overlay District. The shorelands of protected, public waters in the City, as defined and regulated by Minnesota shoreland laws, are hereby designated and zoned as "shoreland overlay district." The shoreland overlay district is a "zone on zone" district intended for those areas where additional or more stringent regulations are necessary to provide water quality and environmental protection of protected water within the district. The shoreland overlay district exists in addition to the underlying zoning district as designated on the

City's zoning map. In the case of overlapping or conflicting regulations, the more restrictive regulation shall apply.

(B) GENERAL PROVISIONS AND DEFINITIONS.

(1) Scope of Application. The provisions of this Section apply to the shorelands of the public water bodies as defined and classified herein.

(2) Definitions. For purposes of the Shoreland Overlay District regulations herein, the definitions of terms set forth in Chapter 153 (subdivision regulations) and Section 155.003 of this Chapter 155 (zoning regulations) shall apply to this Section, except for those terms otherwise specifically defined as follows:

Bluff. A topographic feature of land surface with gradual rising steep slope(s) having the following characteristics:

1. The slope must drain toward the waterbody.
2. The slope rises at least 25 feet above the ordinary high water level;
3. The grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high water level averages 30 percent or greater (see Figure 1), except that an area with an average slope of less than 18 percent over a distance of at least 50 feet shall not be considered part of the bluff (see Figure 2).

Figure 1. Illustration of Bluff

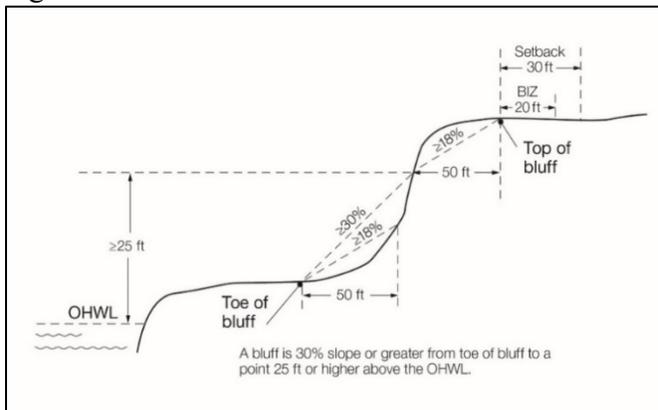
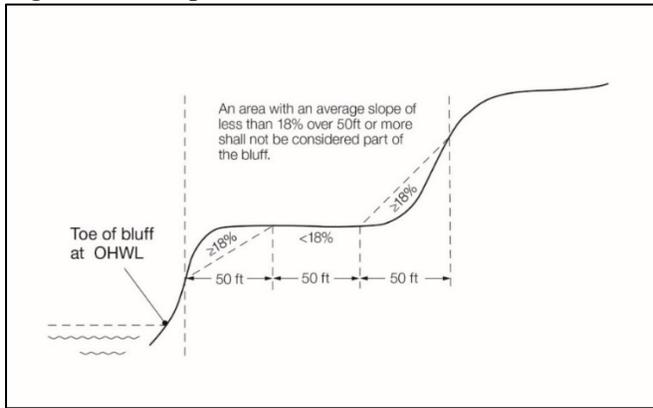


Figure 2. Exception to Bluff



Bluff impact zone. A bluff and land located within 20 feet of the top of a bluff.

Bluff, Toe of. The lower point of a 50-foot segment with an average slope exceeding 18 percent or the ordinary high water level, whichever is higher. *See Figure 1. Illustration of Bluff.*

Bluff, Top of. The higher point of a 50-foot segment with an average slope exceeding 18 percent. *See Figure 1. Illustration of Bluff.*

Boathouses and boat storage structures. A structure that is moored by attaching it by cable, chain, or rope to the shore or to an anchor and that has walls, a roof, and either an open well for boats or a floor from wall to wall for lifted watercraft for the purpose of storing a boat or boating equipment.

Building line. A line parallel to a lot line or the ordinary high water level at the required setback beyond which a structure may not extend.

Controlled access lot. A lot used to access public waters or as a recreation area for owners of nonriparian lots within the same subdivision containing the controlled access lot.

Commissioner. The commissioner of the Department of Natural Resources.

Deck. A horizontal, unenclosed platform with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site and at any point extending more than three feet above ground.

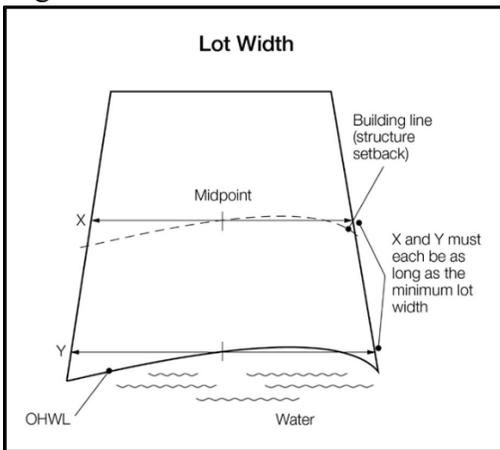
Height of building. The vertical distance between the highest adjoining ground level at the building or ten feet above the lowest adjoining ground level, whichever is lower, and the highest point of a flat roof or average height of the highest gable of a pitched or hipped roof.

Intensive vegetation clearing. The cutting or removal of non-invasive vegetation, including trees, shrubs, and perennial groundcover, in any proportion that adversely affects the overall vegetative cover of the subject area.

Lot width. The minimum distance between:

1. Side lot lines measured at the midpoint of the building line; and
2. Side lot lines at the ordinary high water level, if applicable (see Figure 4).

Figure 4. Lot Width



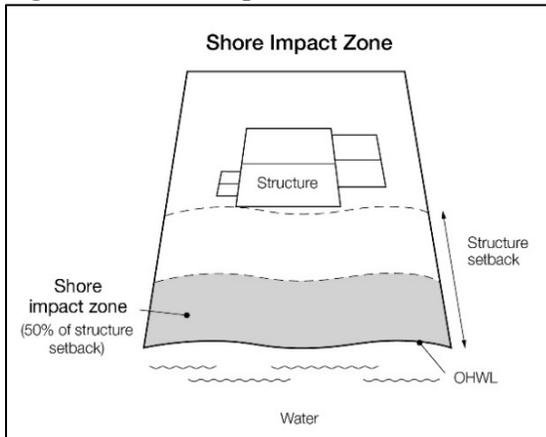
Ordinary high water level. The boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

Public waters. Any water as defined in Minnesota Statutes, Section 103G.005, Subd. 15, 15a.

Sanitary Sewer system. The City's municipal sanitary sewer system, including all pipelines or conduits, pumping stations, and force main, and all other construction, devices, appliances, or appurtenances and private service lines connected thereto that conducts wastes to a point of ultimate disposal.

Shore impact zone. Land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the structure setback (see Figure 5).

Figure 5. Shore Impact Zone



Shoreland or Shoreland District. Land located within 1,000 feet from the ordinary high water level of a waterbody, e.g. a lake, pond, or flowage, that is classified as a protected public waters in Clause D of this Section, except for purposes of Keller Lake only, the boundaries of the shoreland overlay district and the regulations herein apply only to those properties which abut the shore/ordinary high water level of (frontage on) Keller Lake. Notwithstanding the defined 1000 feet delination for a shoreland district herein, the boundary limits of a shoreland district may be less than 1000 feet where natural drainage divides are at lesser distance, as delineated and shown on the City's official zoning map.

Shore recreation facilities. Swimming areas, docks, watercraft mooring areas and launching ramps and other water recreation facilities.

Significant historic site. Any archaeological site, standing structure, or other property that meets the criteria for eligibility to the National Register of Historic Places or is listed in the State Register of Historic Sites, or is determined to be an unplatted cemetery that falls under the provisions of Minnesota Statutes, Section 307.08. A historic site meets these criteria if it is presently listed on either register or if it is determined to meet the qualifications for listing after review by the Minnesota state archaeologist or the director of the Minnesota Historical Society. All unplatted cemeteries are automatically considered to be significant historic sites.

Steep slope. Lands having average slopes greater than 12 percent, as measured over horizontal distances of 50 feet or more, which are not bluffs.

Subsurface sewage treatment systems (SSTS). An individual sewage treatment system as defined and regulated in Chapter 51 of this Code.

Suitability analysis. An in-depth evaluation of a subject property, consisting of a review of the natural and artificial features of the land, to determine if a proposed use is appropriate for the subject property.

Water-oriented accessory structure or facility. A small, above ground building or other improvement, except stairways, fences, docks, and retaining walls, which, because of the relationship of its use to surface water, reasonably needs to be located closer to public waters than the normal structure setback. Examples of such structures and facilities include, watercraft and watercraft equipment storage structures, gazebos, screen houses, fish houses, pump houses, saunas, patios, and detached decks. Boathouses and boat storage structures given the meaning under Minnesota Statutes, Section 103G.245 are not a water-oriented accessory structures.

Wetland. “Wetland” has the meaning given under Chapter 152 of this Code.

(C) ADMINISTRATION.

(1) **Permits.** In addition to any specific approvals required under this Section, the Minnesota State Building Code shall apply and complied with for the construction of buildings, building additions, structures and other construction, electrical, plumbing and mechanical work subject to the Minnesota State Building Code, Minnesota Rules and regulations for the installation, repair, replacement or alteration of a subsurface sewage treatment system (SSTS) shall apply and be complied with, and for any grading and filling activities the regulations in Chapter 152 and elsewhere in the Code shall apply. Applications for permits under the foregoing regulations shall be be governed by the regulations thereof elsewhere in this Code.

(2) **P permit Approval Conditioned on Compliance with Shoreland regulations.** No permit as noted in clause (1) above or otherwise may be issued if the proposed use or activity does not comply with the provisions of this Section.

(3) **Conditional Uses.** In addition to the requirements for conditional uses set forth elsewhere in this Chapter, all conditional uses in the shoreland district are subject to an evaluation of the waterbody and the topographic, vegetation, and soil conditions of property on which the use is proposed to ensure:

(a) **The prevention of soil erosion or other possible pollution of the public water, both during and after construction;**

(b) **The visibility of structures and other facilities as viewed from public waters is limited; and**

(c) **The property is presently, or will be with the completion of the project, served by municipal water and sanitary sewer; and**

(4) **Mitigation.** In evaluating all variances, conditional uses, zoning and building permit applications, the zoning authority shall require the property owner to address, when appropriate, the following conditions, when related to and proportional to the impact, to meet the purpose of this ordinance, to protect adjacent properties, and the public interest:

(a) **Advanced storm water runoff management treatment;**

(b) **Reducing impervious surfaces;**

- (c) Increasing setbacks from the ordinary high water level;
- (d) Restoration of wetlands;
- (e) Limiting vegetation removal and/or riparian vegetation restoration;
- (f) Provisions for the location, design, and use of structures, sewage treatment systems, water supply systems, watercraft launching and docking areas, and parking areas; and
- (g) Other conditions the zoning authority deems necessary.

(5) In evaluating plans to construct a SSTS, roads, driveways, structures, or other improvements on steep slopes, conditions may be attached to permit approval to prevent erosion and to preserve existing vegetation for screening of structures, vehicles, and other facilities as viewed from the surface of public waters assuming summer, leaf-on vegetation.

(6) Notifications to the Department of Natural Resources.

(a) In accordance with state law and regulations, the City will submit all proposed amendments to this Section (shoreland overlay regulations) and all notices of public hearings for applications for variances, ordinance amendments, conditional uses under this Section and for any proposed subdivisions/plats, including copy of the proposed subdivision/plat, of land within the shoreland overlay district to the Minnesota Department of Natural Resources (DNR) for its review and approval for compliance with the Minnesota Shoreland Management Rules.

(b) The notices of public hearings will be sent to the DNR commissioner or the commissioner's designated representative at least ten (10) days before the date of the hearing. The City's approval of an ordinance amendments, subdivision/plat, variance, and conditional use under this Section will be sent to the DNR commissioner or the commissioner's designated representative, within ten days of city's date of final action.

(c) Any request to change the shoreland management classification or to reduce the boundaries of public waters will be sent to the DNR commissioner or the commissioner's designated representative for approval in accordance with Minnesota Rules, part 6120.3000, subp.4 , or as amended hereafter.

(7) **Mandatory EAW.** An Environmental Assessment Worksheet consistent with Minnesota Rules, Chapter 4410 must be prepared for projects meeting the thresholds of Minnesota Rules, part 4410.4300, Subparts 19a, 20a, 25, 27, 28, 29, and 36a.

(D) SHORELAND DISTRICT AND LAND USES.

(1) **Shoreland Districts.** The following waterbodies located within the City are classified as protected public waters by the Minnesota DNR pursuant to Minnesota Rules as follows and as shown on the Apple Valley Official Zoning Map and subject to classification as a shoreland overlay district:

Recreational Development Lake	DNR Public Waters I.D. #
<i>Alimagnet</i>	<i>19002100</i>
<i>Farquar</i>	<i>19002300</i>
<i>Long</i>	<i>19002200</i>

Natural Environment Lake	DNR Public Waters I.D. #
<i>Keller*</i>	<i>19002500</i>

* For purposes of Keller Lake only, the boundaries of the shoreland overlay district and the regulations herein apply only to those properties which abut the shore/ordinary high water level of (frontage on) Keller Lake.

(2) **Land Uses.** Within any shoreland overlay district, no structure or land shall be used, except for the following uses or uses deemed similar by the City Council:

(a) **Permitted uses.** Except for those uses declared as a conditional use in this Section, those principal and accessory uses that are allowed as a permitted and permitted accessory use in the underlying zoning district, subject to all regulations thereof as provided in this Chapter or this Section as may apply.

(b) **Conditional uses.** The conditional uses that are allowed as a conditional use in the underlying zoning district, subject to a conditional use permit and all regulations thereof as provided in this Chapter or this Section as may apply.

(E) SPECIAL LAND USE PROVISIONS.

(1) **Commercial and Industrial Uses Prohibited.** Commercial or industrial uses are prohibited within a shoreland overlay district. This provision does not apply to lawful home occupations as regulated in this Chapter.

(2) **Sand and Gravel operations.** Sand and gravel operations, as defined elsewhere in this Chapter, are prohibited on any property within a shoreland overlay district.

(F) GENERAL PERFORMANCE STANDARDS.

The following requirements shall be met within a shoreland overlay district:

(1) **Lot Area and Width Standards.** All lots newly created on or after the effective date of this ordinance shall meet the following minimum lot area and lot width requirements:

(a) **Only that area of the lot that is above the ordinary high water level can be used to meet lot area and width standards;**

(b) Lot width standards must be met at both the ordinary high water level and at the building line;

(c) The area dimensions for “sewer lot” can only be used if publicly owned sewer system service is available and connected to the property; and

(d) Minimum lot area and lot width requirements:

1. Property on recreational development lake – No municipal sewer

Lot Type	Riparian Lot Area (sf)	Riparian Lot Width (ft)	Nonriparian Lot Area (sf)	Nonriparian Lot Width (ft)
One-family detached dwelling unit	40,000	150	40,000	150
Two-family attached dwelling units	80,000	225	80,000	265
Three-family attached dwelling units	120,000	300	120,000	375
Four-family attached dwelling units	160,000	375	160,000	490

2. Property on recreational development lake – Municipal sewer:

Lot Type	Riparian Lot Area (sf)	Riparian Lot Width (ft)	Nonriparian Lot Area (sf)	Nonriparian Lot Width (ft)
One-family detached dwelling	20,000	75	15,000	75
Two-family attached dwelling units	35,000	135	26,000	135
Three-family attached dwelling units	50,000	195	38,000	190
Four-family attached dwelling units	65,000	255	49,000	245

3. Property on natural environment lake – No municipal sewer

Lot Type	Riparian Lot Area (sf)	Riparian Lot Width (ft)	Nonriparian Lot Area (sf)	Nonriparian Lot Width (ft)
One-family detached dwelling	80,000	200	80,000	200
Two-family attached dwelling units	120,000	300	160,000	400
Three-family attached dwelling units	160,000	400	240,000	600
Four-family attached dwelling units	200,000	500	320,000	800

4. Property on natural environment lake – Municipal sewer

Lot Type	Riparian Lot Area (sf)	Riparian Lot Width (ft)	Nonriparian Lot Area (sf)	Nonriparian Lot Width (ft)
One-family detached dwelling	40,000	125	20,000	125
Two-family attached dwelling units	70,000	225	35,000	220
Three-family attached dwelling units	100,000	325	52,000	315
Four-family attached dwelling units	130,000	425	65,000	410

For purposes of this clause (d) and for two, three, or four-family attached dwelling units, “lot area” and “lot width” is the total or aggregate area or width of all the lots comprising the specific attached dwelling units structure. For illustration, if the two-family attached dwelling units occupy two individual separate lots of record, then both lots are included in calculating lot area and lot width.

(2) Special Residential Lot Provisions.

(a) A property which abuts a natural environment lakes and is subdivided or redeveloped for attached dwelling units consisting of two, three or four units per building shall be a conditional use and must meet the following standards:

1. Each building must be set back at least 200 feet from the ordinary high water level;

2. Each unit must be connected to the City’s municipal water and sanitary sewer system;

3. Watercraft docking facilities for each lot must be centralized in one location and serve all dwelling units on the lot; and

4. The property’s lake frontage/shoreline is no more than 25% of the lake’s total shoreline.

(b) Controlled access lots are permissible if created as part of a new subdivision and in compliance with the following standards:

1. The lot must meet the area and width requirements for residential lots under this Section and must be suitable for the intended uses and requirements of controlled access lots as provided in provision 4. set forth below;

2. If docking, mooring, or over-water storage of more than six (6) watercraft is to be allowed for a controlled access lot, then the width of the lot (keeping the same lot depth) must be increased by a percentage of the requirements for riparian residential lots for each watercraft beyond six, as follows:

Ratio of lake size to shore length (acres/mile)	Required percent increase in frontage
Less than 100	25%
100 – 200	20%
201 – 300	15%
301 – 400	10%
Greater than 400	5%

3. The lot must be jointly owned by all owners of the residential lots within the subdivision or by all owners of nonriparian lots in the subdivision if exclusively provided riparian access rights on the access lot; and

4. A covenant or other equivalent legal instrument must be recorded against the controlled access lot that provides:

a. Specify which lot owners have authority to use the access lot;

b. Identify what uses are allowed, which shall be limited to: watercraft launching, loading, storage, beaching, mooring, docking, swimming, sunbathing, or picnicking;

c. Limit the total number of vehicles allowed to be parked and the total number of watercraft allowed to be continuously moored, docked, or stored over water on the lot;

d. Require centralization of all common facilities and uses in the most suitable locations on the lot to minimize topographic and vegetation alterations; and

e. Require all parking areas, storage buildings, and other facilities to be screened by vegetation or topography as much as practical from view from the public water, assuming summer, leaf-on conditions.

(3) Access Easements. Easements providing access to boat docking and mooring facilities to non-riparian property owners are prohibited, except as provided herein.

(4) Placement, Height, and Design of Structures. When more than one setback applies to a site, structures, impervious surfaces, and SSTs must meet the setback from the Ordinary High Water Level (OHWL) as set forth in the table below, and comply with the setback provisions in this Paragraph (4). The setback for structures are as follows dependent on whether the property has sanitary sewer facilities and if so, whether the facilities are municipal or SSTs:

Waterbody Classification	<u>Setback (ft)</u> <u>No Sewer</u>	<u>Setback (ft)</u> <u>Municipal</u> <u>Sewer</u>	<u>Setback (ft)</u> <u>SSTs</u>
Natural Environment Lakes	150	150	150
Recreational Development Lakes	100	75	75

(a) Water-oriented accessory structure or facility. Notwithstanding the foregoing setback requirements, the setback of any water-oriented accessory structure or facility is no less than 10 feet from the ordinary high water level.

(b) Setbacks of decks. Open-aired deck additions attached to the primary residence structure may be allowed without a variance to a residence structure not meeting the required setback from the ordinary high water level if all of the following criteria are met:

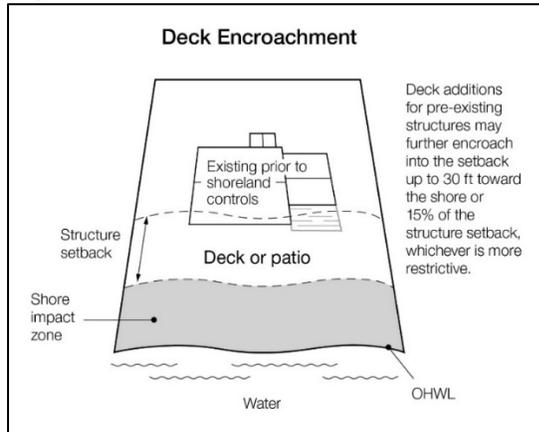
1. The residence structure existed on the date the structure setbacks were established;

2. An evaluation of the property and residence structure reveals no reasonable location for the deck meeting or exceeding the existing ordinary high water level setback of the residence structure;

3. The deck encroachment toward the ordinary high water level does not exceed 15 percent of the existing setback of the residence structure from the ordinary high water level or is no closer than 30 feet from the OHWL, whichever is more restrictive (see Figure 8); and

4. The deck is constructed in a raised platform design, with open floor slats underwhich is pervious surface and the deck is not roofed or screened.

Figure 8. Deck Encroachment



If a variance is required, all conditions to be considered for a variance under this Section and this Chapter relative to all zoning variances shall be met and a practical hardship shall be established.

(c) *Additional structure setbacks.* Structures must also meet the following setbacks, regardless of the waterbody classification:

Setback from:	Setback (ft)
Top of bluff	30
Unplatted cemetery	50
Public Right-of-way line (federal, state, or county)	50
City public Right-of-way line	20

(d) *Bluff Impact Zones.* Primary structures, impervious surfaces, and accessory structure, except stairways and landings, must not be placed within bluff impact zones.

(e) *Height of Structures.* All structures in the underlying zoning district for residential use, except churches and nonresidential agricultural structures, must not exceed 25 feet in height.

(f) *Lowest Floor Elevation.*

1. All structures must be placed at an elevation consistent with the floodplain regulations in this Chapter, if applicable. Structures not located with a floodplain overlay district must be constructed so the elevation to which the lowest floor, including basement, is placed or flood-proofed at a level at least three feet above the highest known water level, or three feet above the ordinary high water level, whichever is higher of the public water.

2. All service utilities must be elevated or water-tight to the elevation three feet above the highest known water level, or three feet above the ordinary high water level, whichever is higher of the public water.

3. If elevation methods involving fill would result in filling in the shoreland impact zone, then structures must instead be elevated through floodproofing methods in accordance with 4. below.

4. If the structure is required to be floodproofed, then it must be built to resist hydrostatic pressure through elevation methods such as blocks, pilings, filled stem walls, elevated concrete pad, internally flooded enclosed areas, or through other accepted engineering practices consistent with FEMA *Technical Bulletins 1, 2 and 3*.

(g) *Significant Historic Sites*. No structure may be placed on a significant historic site in a manner that affects the values of the site unless adequate information about the site has been removed and documented in a public repository.

(5) **Water Supply and Sewage Treatment**. Any public or private supply of water for domestic purposes must meet or exceed standards for water quality of the Minnesota Department of Health and the Minnesota Pollution Control Agency. Any premises used for human occupancy must be connected to the City's sanitary sewer system, where available, or comply with Minnesota Rules, Chapters 7080 – 7081.

(G) PERFORMANCE STANDARDS FOR VEHICLE INFRASTRUCTURE AND WATER ACCESS FACILITIES/STRUCTURES.

(1) **Placement and Design of Roads, Driveways, and Parking Areas**. Public and private roads and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening as viewed from public waters and comply with the following standards:

(a) Roads, driveways, and parking areas must meet structure setbacks and must not be placed within bluff and shore impact zones, when other reasonable and feasible placement alternatives exist. If no alternatives exist, they may be placed within these areas, and must be designed to minimize adverse impacts;

(b) Watercraft access ramps, approach roads, and access-related parking areas may be placed within shore impact zones provided the vegetative screening and erosion control conditions of this subpart are met;

(c) Private facilities must comply with the grading and filling provisions of Clause H(2) of this Section; and

(d) For public roads, driveways and parking areas, plans and related documentation must be designed by a professional engineer registered in the State of Minnesota and the public roads, driveways and parking areas shall be constructed to minimize and control erosion, sediment and stormwater runoff into public waters.

(2) **Stairways, Lifts, and Landings**. Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways, lifts, and landings must meet the following design requirements:

(a) Stairways and lifts must not exceed four feet in width on residential lots. Wider stairways may be used for public recreational uses, and with planned unit developments;

(b) Landings for stairways and lifts on residential lots must not exceed 32 square feet in area. Landings larger than 32 square feet may be used for public-space recreational uses and with planned unit developments;

(c) Canopies or roofs are not allowed on stairways, lifts, or landings;

(d) Stairways, lifts, and landings may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion; and

(e) Facilities such as ramps, lifts, or mobility paths for physically disabled persons are allowed for achieving access to shore areas, if they are consistent with the dimensional and performance standards of sub-clauses (a) through (d) above and the requirements of Minnesota Rules, Chapter 1341.

(3) **Water-oriented Accessory Structures or Facilities.** Each residential lot may have one water-oriented accessory structure or facility if it complies with the following provisions:

(a) The structure or facility must not exceed ten feet in height, exclusive of safety rails, and cannot occupy an area greater than 144 square feet. The structure or facility may include detached decks not exceeding eight feet above grade at any point or at-grade patios;

(b) The structure or facility is not in the Bluff Impact Zone;

(c) The setback of the structure or facility from the ordinary high water level must be at least ten feet;

(d) The structure is not a boathouse or boat storage structure as defined under Minnesota Statutes, Section 103G.245;

(e) The structure or facility must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer, leaf-on conditions;

(f) The roof may be used as an open-air deck with safety rails, but must not be enclosed with a roof or sidewalls or used as a storage area;

(g) The structure or facility must not be designed or used for human habitation and must not contain water supply or sewage treatment facilities;

(h) Water-oriented accessory structures may have the lowest floor placed lower than the elevation required under Clause (F)(4)(f) if the structure is designed to accommodate internal flooding, constructed of flood-resistant materials to the elevation, electrical and mechanical equipment is placed above the elevation and, if long duration flooding is anticipated, the structure is built to withstand ice action and wind-driven waves and debris.

(H) VEGETATION AND LAND ALTERATIONS.

(1) **Vegetation Management.** Removal or alteration of vegetation must comply with the provisions of this subsection except for: (1) Vegetation alteration necessary for the construction of structures and sewage treatment systems under validly issued permits for these facilities; (2). The construction of public roads and parking areas if consistent with Section G(1) of this ordinance;

Intensive vegetation clearing in the shore impact zone, bluff impact zone and on steep slopes is prohibited. Vegetation management along the shoreline shall comply with the protective buffer zone requirements set forth in the Natural Resources Management regulations in this Code (Chapter 152).

Limited clearing and pruning of trees and shrubs in the shore impact zone, bluff impact zone and on steep slopes is allowed to provide a view to the water from the principal dwelling and to provide for installation of stairways and landings, picnic areas, access paths, permissible beach and watercraft access areas, and municipal and other public utility infrastructure or permitted water-oriented accessory structures or facilities, provided that:

(a) The screening of structures, vehicles, or other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced;

(b) Cut vegetation debris or slash shall be scattered and not mounded on the ground;

(c) Perennial ground cover is restored and retained where possible;
and

(d) Picnic areas, access paths, beaches and watercraft access areas are prohibited in bluff impact zones.

(e) Fertilizer and pesticide runoff into surface waters must be minimized through use of vegetation, topography or both.

(2) Grading and Filling.

(a) Grading and filling activities must comply with the Natural Resources Management regulations set forth in this Code (Chapter 152) and the wetland protection standards under Minnesota Rules, Chapter 8420 and any other permits, reviews, or approvals by other local, state, or federal agencies, such as watershed districts, the DNR or US Army Corps of Engineers.

(b) Land disturbance and alterations must be designed and implemented to minimize the amount of erosion and sediment from entering surface waters during and after construction and subject to the following:

1. No fill or excavated material shall be stock piled or placed on the land in a manner that creates unstable slopes. Plans to place fill or excavated material on steep slopes must be designed by qualified professional and followed for continued slope stability and must not create finished slopes of 30 percent or greater;

2. No fill or excavated material shall be placed or stockpiled in bluff impact zones;

3. Any land disturbance or alterations below the ordinary high water level of the public water must first be authorized by Minnesota DNR commissioner under Minnesota Statutes, Section 103G;

4. Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, shall be governed by the Minnesota DNR Rules for permissibility and installation.

(3) **Connections to public waters.** Excavations to connect boat slips, canals, lagoons, and harbors to public waters require a public waters permit and must comply with Minnesota Rules, Chapter 6115.

(4) **Stormwater Management.** In addition to the stormwater management regulations set forth in Chapter 152 of this Code, the following shall be met:

(a) When possible, existing natural drainageways, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.

(b) Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas must be stabilized as soon as possible and appropriate facilities or methods used to retain sediment on the site.

(c) New constructed stormwater outfalls to public waters must be consistent with Minnesota Rules, Rule 6115.

(d) Impervious surfaces of lots must not exceed 25 percent of the lot area.

(1) SUBDIVISION/PLATTING REQUIREMENTS.

(1) **Land suitability.** Each lot created through subdivision, including a planned unit development authorized herein, must be suitable in its natural state for the proposed use with

minimal alteration. The applicant shall have a suitability analysis completed and submit a written report to address whether the proposed subdivision and use(s) are suitable for the property in its natural state with minimal alteration and whether any feature of the land use is likely to be harmful to the public water body or the health, safety, or welfare of future residents of the proposed subdivision or of the community. The suitability analysis shall consider factors relevant to the proposed use and the following features as applicable: susceptibility to flooding; existence of wetlands; soils, erosion potential; slope steepness; water supply, sewage treatment capabilities; water depth, depth to groundwater and bedrock, vegetation, near-shore aquatic conditions unsuitable for water-based recreation; fish and wildlife habitat; presence of significant historic sites; or any other relevant feature of the natural land. The suitability analysis by the applicant shall be completed by a licensed professional engineer or an equivalent professional approved by the City.

(2) **Consistency with other controls.** Subdivisions and each lot in a subdivision shall meet all regulations in this Section and in this Code as applicable.

(3) **Application Information requirements.** All applications for subdivision of land within a shoreland overlay district shall submit the following information relative to the subject property:

(a) Topographic contours at two-foot intervals or less from United States Geological Survey maps or more current sources, showing limiting site characteristics;

(b) All water boundary data shall be shown on the proposed plat as required by Minnesota Statutes, section 505.021, Subd. 1, which shall be obtained from United States Geological Survey quadrangle topographic maps or more current sources;

(c) Soils information to determine suitability for any proposed building and structures for every lot from the most current existing sources or from field investigations such as soil borings, percolation tests, or other methods;

(d) Location of existing municipal water and sewer utilities; extent of anticipated vegetation and topographic disturbance and alterations; near-shore aquatic conditions, including depths, types of bottom sediments, and aquatic vegetation; and proposed methods for controlling stormwater runoff and erosion, both during and after construction activities;

(e) Location of 100-year floodplain and floodway designations from current FEMA maps or data; and

(f) A line or contour representing the ordinary high water level, the “toe” and the “top” of bluffs, and the minimum building setback distances from the top of the bluff and the lake or stream.

(4) **Dedications.** Subdivision approval shall be subject to land dedication or an easement for storm water drainage and holding areas or ponds over existing natural drainage or ponding areas for management of stormwater and significant wetlands.

(J) PLANNED UNIT DEVELOPMENTS (PUD).

(1) PUDs Permissible. Planned unit developments (PUDs) for residential uses may be permitted for new developments on undeveloped land, redevelopment of previously built sites, or conversions of existing buildings and land. Deviation from the minimum lot size requirements set forth in this Section may be permitted for a PUD if all provisions of this Clause (J) are met.

(2) Regulation of PUDs. Planned unit developments in the shoreland district shall be deemed a conditional use subject to the terms and conditions of a Planned Development Agreement and Planned Development Ordinance approved by the City and shall comply with the provisions of this Clause (J) and those standards outlined elsewhere in the zoning and subdivision regulations in this Code. When there is a conflict in requirements, the more stringent of the requirements shall be applied. Applications will not be considered complete until all applicable environmental reviews are completed and submitted by the applicant.

(3) Application for a PUD. The applicant for a PUD must submit all documents and information with the PUD application that is required under the City's subdivision regulations in this Code and the subdivision provisions in this Section. Additionally, the applicant shall provide a detailed written statement setting forth how the proposed PUD benefits the City. The applicant shall provide a property owner's association agreement with mandatory membership, and consistent with part 7 of this section.

(4) Land use restrictions. Approval of a PUD under this Section will be subject to a condition requiring either deed restrictions, covenants, private permanent easements or other legal instruments that:

(a) Restrict or otherwise regulate future vegetative and topographic alterations, construction of additional buildings, and beaching of watercraft; and

(b) Preserve and restrict alteration to the open space area established and regulated elsewhere under this Clause (J)

(5) Density Determination. A new or expansion of an existing PUD must meet the density restrictions in accordance with the following:

(a) Step 1. Identify Density Analysis Tiers. Divide the project parcel into tiers by drawing one or more lines parallel to the ordinary high water level at the following intervals, proceeding landward:

Waterbody Classification	No Sewer (ft)	Sewer (ft)
Recreational Development Lakes	267	267
Natural Environment Lakes	400	320

(b) Step 2. Calculate Suitable Area for Development. Calculate the suitable area within each tier by excluding all wetlands, bluffs, or land below the ordinary high water level of public waters.

(c) Step 3. Determine Base Density: For residential PUDs, divide the suitable area within each tier by the minimum single residential lot area for lakes to determine the allowable number of dwelling units, or base density, for each tier.

Allowable densities may be transferred from any tier to any other tier further from the waterbody, but must not be transferred to any tier closer to the waterbody.

All PUDs with densities at or below the base density must meet the design standards set forth in this Paragraph J(7) herein.

(6) Increased Density

(a) An increase to the dwelling unit or dwelling site base density determined in Clause 5 above may be allowed as set forth in the following table if the design criteria in Clause (7) below are met, as well as the setback standards in (b) below:

Shoreland Tier	Maximum density increase within each tier (percent)
1st	50
2nd	100
3rd	200
4th	200
5th	200

(b) Structure setbacks from the ordinary high water level:

1. Are increased to at least 50 percent greater than the minimum setback; or

2. The impact on the waterbody is reduced an equivalent amount through vegetative management, topography, or additional acceptable means and the setback is at least 25 percent greater than the minimum setback.

(7) Design Criteria. All PUDs must meet the following design criteria:

(a) General Design Standards.

1. All residential planned unit developments must contain at least five dwelling units or sites.

2. On-site water supply and sewage treatment systems must be centralized and meet the standards in Clause (F)(5) of this Section. No private sewage treatment systems/SSTS are permitted.

3. Dwelling units or dwelling sites must be clustered into one or more groups and located on suitable areas of the development.

4. Dwelling units or dwelling sites must be designed and located to meet the dimensional standards in Clause (F)(4) herein.

5. Shore recreation facilities:

a. Must be centralized and located in areas suitable for them based on a suitability analysis.

b. The number of spaces provided for continuous beaching, mooring, or docking of watercraft must not exceed one for each allowable dwelling unit or site in the first tier (notwithstanding existing mooring sites in an existing commercially used harbor).

c. Launching ramp facilities, including a small dock for loading and unloading equipment, may be provided for use by occupants of dwelling units or sites located in other tiers.

6. Structures, parking areas, and other facilities must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks, color, or other means acceptable to the local unit of government, assuming summer, leaf-on conditions. Vegetative and topographic screening must be preserved, if existing, or may be required to be provided.

7. Accessory structures and facilities, except water oriented accessory structures, must meet the required structure setback and must be centralized.

8. Water-oriented accessory structures and facilities may be allowed if they meet or exceed design standards contained in Clause (G)(3) herein and are centralized.

(b) Open Space Requirements for a Residential PUD. In accordance with Minnesota Rules-DNR shoreland zoning requirements, the following shall be met:

1. Open space must constitute at least 50 percent of the total project area and must include

:

a. Areas with physical characteristics unsuitable for development in their natural state;

b. Areas containing significant historic sites or unplatted cemeteries;

natural or existing state as follows:

percent of the shore impact zone

of the shore impact zone.

of the shore impact zone.

c. Portions of the shore impact zone preserved in its

(i). For existing residential PUD's, at least 50

(ii). For new residential PUDs, at least 70 percent

(iii). For all commercial PUD's, at least 50 percent

2. Open space may include:

a. Outdoor recreational facilities for use by owners of dwelling units or sites, by guests staying in commercial dwelling units or sites, and by the general public;

b. Subsurface sewage treatment systems if the use of the space is restricted to avoid adverse impacts on the systems; and

c. Non-public water wetlands.

3. Open space shall not include:

a. Dwelling sites or lots, unless owned in common by an owners association;

b. Dwelling units or structures, except water-oriented accessory structures or facilities;

c. Road rights-of-way or land covered by road surfaces and parking areas;

d. Land below the OHWL of public waters; and

e. Commercial facilities or uses.

(c) Open Space Maintenance and Administration Requirements.

1. Open space preservation. Existing open space areas, including topography, vegetation, and allowable uses, must be preserved and maintained by use of deed restrictions, covenants, private permanent easements, or other equally effective and permanent means. The instrument must prohibit:

a. Commercial uses (for residential PUD's);

b. Vegetation and topographic disturbance or alterations other than routine maintenance;

c. Construction of additional buildings or storage of vehicles and other materials; and

d. Uncontrolled beaching of watercraft.

2. Development organization and functioning. Unless an equally effective alternative community framework is established, all residential planned unit developments must use an owners association for the preservation and maintenance of the required open area with the following features:

a. Membership must be mandatory for each dwelling unit or dwelling site owner and any successive owner;

b. Each member must pay a pro rata share of the association's expenses, and unpaid assessments can become liens on units or dwelling sites;

c. Assessments must be adjustable to accommodate changing conditions; and

d. The association must be responsible for insurance, taxes, and maintenance of all commonly owned property and facilities.

(d) Erosion Control and Stormwater Management. Erosion and sediment control plans must be prepared and complied with in accordance with the natural resources management regulation in this Code (Chapter 152).

Section 4. Title XV of the Apple Valley City Code is amended by adding or revising the following definitions in Section 155.003 to read as follows:

PLANNED DEVELOPMENT or PLANNED UNIT DEVELOPMENT. ~~An urban development often having two or more principal uses and having specialized performance standards relating to an overall approved development plan to provide for an optimal land use relationship.~~ Development of land that is not subject to the designated zoning district or standard zoning requirements for the property, but instead regulated in accordance with standards and criteria reached by agreement between the City and the developer. The uses in a Planned Development may be more than one type of principal uses or a single type of use. In SH, shoreland overlay districts, the term **PLANNED DEVELOPMENT** also applies does not apply to any commercial, or industrial use in so far as such use is not permitted within a shoreland overlay district. or multiple (attached) residential use.

COMMERCIAL. Any use ~~occurring and permitted within a business zone (LB, LB-1, NCC, GB, GB-1, RB, SC and VB)~~ of land or buildings for the sale, lease, rental, or trade of products, goods, and services.

STRUCTURE. Any building or appurtenance ~~That which~~ is built or constructed, ~~an edifice or building of any kind,~~ or any piece of work artificially built up or composed of parts joined together in some definite manner, including decks, platforms, retaining walls, but excluding aerial or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, towers, poles, and other supporting facilities.

Section 5. Summary approved. The City Council hereby determines that the text of the summary marked "Official Summary of Ordinance No. ____" a copy of which is attached hereto clearly informs the public of the intent and effect of the ordinance. The City Council further determines that publication of the title and such summary will clearly inform the public of the intent and effect of the ordinance.

Section 6. Filing. A copy of the ordinance shall be filed in the office of the City Clerk. This copy shall be available for inspection by any persons during regular office hours.

Section 7. Publication. The City Clerk shall publish the title of this ordinance and the official summary in the official newspaper of the City with notice that a printed copy of the ordinance is available for inspection by any person during regular office hours at the Office of the City Clerk.

Section 8. Effective date. This ordinance shall take effect upon its passage and the publication of its title and the official summary.

PASSED by the City Council this ____ day of _____, 2021.

Clint Hooppaw, Mayor

ATTEST:

Pamela J. Gackstetter, City Clerk

CITY OF APPLE VALLEY
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF APPLE VALLEY, MINNESOTA, AMENDING TITLE XV OF THE CITY CODE ENTITLED "LAND USAGE" BY DELETING SECTIONS 155.305 THROUGH 155.318 AND REPLACING THE SAME BY ADDING SECTION 155.300 REGARDING SHORELAND OVERLAY DISTRICT REGULATIONS AND BY AMENDING CERTAIN DEFINITIONS IN SECTIONS 155.003

The following is the official summary of Ordinance No. _____ passed by the City Council of Apple Valley on _____, 2021:

Chapter 155 is revised to delete the definition of "shoreland" in Section 155.003 and add the definition in the new Section 155.300 and to delete Sections 155.305 through 155.318 governing Shoreland Overlay District zoning regulations and adding Section 155.300 to replace the Shoreland Overlay District zoning regulations consistent and in accordance with the updated shoreland regulations mandated by Minnesota Department of Natural Resources Rules. Chapter 155 is further amended by revising certain definitions in Section 155.003 applicable to the general zoning regulations.

A printed copy of the ordinance is available for inspection by any person during regular office hours in the office of the City Clerk at the Apple Valley Municipal Center, 7100 147th Street W., Apple Valley, Minnesota 55124.