



**TOWN OF CEDAR POINT
PLANNING BOARD MEETING
6:30 P.M. - TUESDAY, MARCH 3, 2020
CEDAR POINT TOWN HALL**

1. Call to Order
2. Roll Call
3. February 4, 2020 Meeting Minutes
4. New Business
 - Text Amendment 2020-02 – Flood Damage Prevention Ordinance
 - Text Amendment 2020-03 – Enforcement Remedies
 - Planning Board Training – As Time Permits
5. Public Comments
6. Comments from Board Members
7. Adjourn

Next meeting Tuesday, April 7, 2020 at 6:30 P.M.

Tab 3 February 4, 2020 Minutes



Town of Cedar Point
Planning Board Meeting
February 4, 2020

The Town of Cedar Point Planning Board held its regularly scheduled monthly meeting on Tuesday, February 4, 2020 at 6:30 PM. Chairman Heironimus determined a quorum to be present and opened the meeting.

PRESENT: Chairman Heironimus, Vice Chairman Williams, Members Garavaglia, Riggs, Bragg, Town Administrator Rief

ABSENT: Members Reilly and Mareello

The Minutes from the January 7, 2020 meeting were presented for Board consideration and approval. Vice Chairman Williams made a **Motion** to approve the Minutes as presented. The Motion was seconded by Member Bragg. The Motion carried unanimously.

There were no items of business to discuss, however Mr. Rief took this opportunity to conduct training and continuing education for the members. He discussed statutory requirements of the Planning Board, and the role the board played in Land Use, Planning and Zoning.

Mr. Rief concluded the presentation with a brief discussion of the CERT program. CERT, or Community Emergency Response Team educates volunteers about disaster preparedness.

There were no public comments.

There being no further business to discuss, the meeting was adjourned. Member Riggs made a **Motion** to adjourn the meeting. The Motion was seconded by Vice Chairman Williams. The Motion carried unanimously.

The meeting adjourned at 8:07 PM.

Jennifer Heironimus, Chairman

Jayne Calhoun, Town Clerk

Tab 4 Text Amendment 2020-02

Current Language

Chapter 5A. Flood Damage Prevention

5A.1 FLOOD DAMAGE PREVENTION

A. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES

1. STATUTORY AUTHORIZATION

The Legislature of the State of North Carolina has delegated to local governmental the responsibility units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry in N.C.G.S. 160A Articles 8 and 19 and to specifically regulate construction in floodways pursuant to Chapter 143, Article 21, part 6 of the Gneral Statutes of North Carolina.

2. FINDINGS OF FACT

- (a) The flood prone areas within the jurisdiction of the Town of Cedar Point are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (b) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

3. STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- (a) restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- (b) require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (c) control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (d) control filling, grading, dredging, and all other development that

- may increase erosion or flood damage; and
- (e) prevent or regulate the construction of flood barriers that will unnaturally divert floodwaters or which may increase flood hazards to other lands.

4. OBJECTIVES

The objectives of this chapter are:

- (a) to protect human life and health;
- (b) to minimize expenditure of public money for costly flood control projects;
- (c) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (d) to minimize prolonged business losses and interruptions;
- (e) to minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- (f) to help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (g) to ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

B. GENERAL PROVISIONS

1. LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJs) if applicable, of the Town of Cedar Point and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

2. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS

The Special Flood Hazard Areas are those identified by the Federal Emergency Management Agency (FEMA) or produced under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Hazard Boundary Map (FHBM) or Flood Insurance Study (FIS) and its accompanying flood maps such as the Flood Insurance Rate Map(s) (FIRM) and/or the Flood Boundary Floodway Map(s) (FBFM), for Carteret County dated November 3, 2005, as amended, which with accompanying supporting data, and any revision thereto, including Letters of Map Amendment or Revision, are adopted by reference and declared to be a part of this ordinance. The Special Flood Hazard Areas (SFHA) also include those defined through standard engineering analysis for private developments or by governmental

agencies, but which have not yet been incorporated in the FIRM. This includes, but is not limited to, detailed flood data:

- (a) generated as a requirement of Section 5.10.C.3 (k) and (l) of this ordinance;
- (b) preliminary FIRMs where more stringent than the effective FIRM; or
- (c) post-disaster Flood Recovery Maps.

In addition, upon annexation to the Town of Cedar Point or inclusion in the Extra- Territorial Jurisdiction (ETJ), the Special Flood Hazard Areas identified by the Federal Emergency Management Agency (FEMA) and/or produced under the Cooperating Technical State agreement between the State of North Carolina and FEMA as stated above for the Unincorporated Areas of Carteret County, with accompanying maps and other supporting data, and any revision thereto, are adopted by reference and declared to be a part of this ordinance.

3. ESTABLISHMENT OF A FLOODPLAIN DEVELOPMENT PERMIT

A Floodplain Development Permit shall be required in conformance with the provisions of this Chapter prior to the commencement of any development activities within Special Flood Hazard Areas as determined in Section 5.10.B.2.

4. COMPLIANCE

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

5. ABROGATION AND GREATER RESTRICTIONS

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

6. INTERPRETATION

In the interpretation and application of this ordinance, all provisions shall be:

- (a) considered as minimum requirements;
- (b) liberally construed in favor of the governing body; and
- (c) deemed neither to limit nor repeal any other powers granted under State statutes.

7. WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such

areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Cedar Point or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

8. PENALTIES FOR VIOLATION

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a violation under this ordinance, remedies and punishments described in *Chapter 4, ENFORCEMENT* shall be applied.

c. ADMINISTRATION

1. DESIGNATION OF FLOODPLAIN ADMINISTRATOR

The Town Administrator, or his/her designee, hereinafter referred to as the “Floodplain Administrator”, is hereby appointed to administer and implement the provisions of this ordinance.

2. FLOODPLAIN DEVELOPMENT PERMIT AND CERTIFICATION REQUIREMENTS

- (a) Plans and Application Requirements. Application for a Floodplain Development Permit shall be made to the floodplain administrator on forms furnished by him or her prior to any development activities proposed to be located within flood prone areas. The following items/information shall be presented to the floodplain administrator to apply for a floodplain development permit.
 - i. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - a. the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, the location of utility systems, proposed grading/pavement areas, fill materials, storage areas, drainage facilities, and other proposed development;
 - b. the boundary of the SFHA as delineated on the FIRM or other flood map as determined in Section 5.10.B.2. or a statement that the entire lot is within the SFHA;
 - c. flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section 5.10.B.2.
 - d. the boundary of the floodway(s) or non- encroachment area(s) as

- determined in Section 5.10.B.2.
- e. the Base Flood Elevation (BFE) where provided as set forth in Section 5.10.B.2; Section 5.10.C.3(k) and (l); or Section 5.10.D.3, 5.10.D.4 and 5.10.D.2(e);
 - f. the old and new location of any watercourse that will be altered or relocated as a result of proposed development;
 - g. the boundary and effective date of COBRA zone or OPA, if applicable; and
 - h. preparation of the plot plan by or under the direct supervision of a registered land surveyor or professional engineer and certified by same.
- ii. Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
 - A. Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
 - B. Elevation in relation to mean sea level to which any non-residential structure will be flood-proofed;
 - C. Elevation in relation to mean sea level to which any proposed utility systems will be elevated or flood proofed;
 - iii. If flood proofing, a flood proofing certificate and back-up plans from a registered professional engineer or architect certifying that the non-residential flood-proofed development will meet the flood-proofing criteria in Section 5.10.D.2(b) and any other applicable provision of this ordinance.
 - iv. A Foundation Plan drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this Chapter are met. These details include but are not limited to:
 - A. Proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/piers);
 - B. Should solid foundation perimeter walls be used in floodplains other than coastal high hazard areas, details of sufficient openings to facilitate the unimpeded movements of floodwaters;
 - C. In Coastal High Hazard Areas, the following must also be submitted prior to floodplain development permit issuance:
 - 1. V-zone Certification form with accompanying plans and specifications verifying the engineered structure and breakaway wall designs as set forth in Section 5.10.D.2(d)(ii) of this ordinance.
 - 2. Plans for latticework or decorative screening, if applicable.

- Plans for any structures that will have lattice work or decorative screening must be submitted to the floodplain administrator for approval prior to floodplain development permit issuance;
3. Plans for non-structural fill, if applicable. Plans for placement of any non-structural fill must be submitted to the floodplain administrator for approval prior to floodplain development permit issuance. Requirements are detailed in Section 5.10.D.7(h) of this ordinance.
- v. Usage details of any enclosed space below the regulatory flood protection elevation.
 - vi. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
 - vii. Copy of all other Local, State and Federal permits required prior to floodplain development permit issuance (i.e. Wetlands, Erosion and Sedimentation Control, CAMA, Riparian Buffers, Mining, etc.)
 - viii. If floodplain development permit is issued for placement of Recreational Vehicles and/or Temporary Structures, documentation to ensure Sections 5.10.D.2(f) & (g) of this ordinance are met.
 - ix. If a watercourse is proposed to be altered and/or relocated, a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.
- (b) Floodplain Development Permit Data Requirements. The following information shall be provided at a minimum on the Floodplain Development Permit to ensure compliance with this Chapter:
- i. A description of the development to be permitted under the floodplain development permit issuance.
 - ii. The Special Flood Hazard Area determination for the proposed development per available data specified in Section 5.10.B.2.
 - iii. The regulatory flood protection elevation required for the reference level and all attendant utilities.
 - iv. The regulatory flood protection elevation required for the protection of all public utilities.
 - v. All certification submittal requirements with timelines.
 - vi. State that no fill material shall encroach into the floodway or non-

encroachment area of any watercourse, if applicable.

(c) Certification Requirements.

- i. An Elevation Certificate (FEMA Form 81-31) or Flood Proofing Certificate (FEMA Form 81- 65) is required after the reference level is completed. Within twenty-one (21) calendar days of establishment of the reference level elevation, or flood proofing, by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, or flood proofed elevation, whichever is applicable in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land, surveyor or professional engineer and certified by same. When flood proofing is utilized, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work done within the twenty-one (21) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the certification or failure to make said corrections required shall be cause to issue a stop-work order for the project.
- ii. A Final As-Built Elevation Certificate (FEMA Form 81-31) or Flood proofing Certificate (FEMA Form 81-65) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation or flood proofed elevation of the reference level and all attendant utilities. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood proofing is utilized, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built

construction. Failure to submit the certification or failure to make said corrections required shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

- iii. A V-Zone/Breakaway Wall Certification is required prior to issuance of a Floodplain Development permit within coastal high hazard areas. It shall be the duty of the permit applicant to submit to the floodplain administrator said certification to ensure the design standards of this Chapter are met. A registered professional engineer or architect shall develop or review the structural design, plans, and specifications for construction and certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this Chapter. This certification is a substitute for an Elevation Certificate.
- iv. If a manufactured home is placed within an A, AO, AE, or A1-30 zone and the elevation of the chassis is above 36 inches in height, an engineered foundation certification is required per Section 5.10.D.2(c).
- v. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
- vi. Certification Exemptions. The following structures, if located within A, AO, AE or A1- 30 zones, are exempt from the elevation/flood proofing certification requirements specified in items (1) and (2) above:
 - A. Recreational Vehicles meeting requirements of Section 5.10.D.2(f)(i);
 - B. Temporary Structures meeting requirements of Section 5.10.D.2(g); and
 - C. Accessory Structures less than 150 square feet meeting requirements of Section 5.10.D.2(h).

3. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

Duties of the floodplain administrator shall include, but not be limited to:

- (a) Review all floodplain development applications and issue permits for all

proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.

- (b) Advise permittee that additional Federal or State permits (Wetlands, Endangered Species, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.) may be required, and require that copies of such permits be provided and maintained on file with the floodplain development permit.
- (c) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (d) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (e) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Section 5.10.D.4 are met.
- (f) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) of all attendant utilities of all new or substantially improved structures, in accordance with Section 5.10.C.2(c).
- (g) Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been flood proofed, in accordance with Section 5.10.C.2(c).
- (h) Obtain actual elevation (in relation to mean sea level) of all public utilities, in accordance with Section 5.10.C.2(c).
- (i) When flood proofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with Section 5.10.C.2(c) and as may otherwise be required in this Section.
- (j) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Section.
- (k) When Base Flood Elevation (BFE) data has not been provided in accordance with Section 5.10.B.2, obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data and/or

non-encroachment area data available from a Federal, State, or other source, in order to administer the provisions of this Chapter.

- (l) When Base Flood Elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with Section 5.10.B.2, obtain, review, and reasonably utilize any floodway data, and/or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this Section.
- (m) When the exact location of boundaries of the Special Flood Hazard Areas conflict with the current, natural topography information at the site, the property owner may apply and be approved for a Letter of Map Amendment (LOMA) by FEMA. A copy of the Letter of Map Amendment issued from FEMA will be maintained by the floodplain administrator in the floodplain development permit file.
- (n) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection.
- (o) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- (p) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (q) Revocation of floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain

development permit mistakenly issued in violation of an applicable State or local law may also be revoked.

- (r) Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (s) Follow through with corrective procedures of Section 5.10.C.4.

4. CORRECTIVE PROCEDURES

- (a) **VIOLATIONS TO BE CORRECTED:** When the floodplain administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law pertaining to their property.
- (b) **ACTIONS IN EVENT OF FAILURE TO TAKE CORRECTIVE ACTION:** If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
 - i. that the building or property is in violation of the Flood Damage Prevention Ordinance;
 - ii. that a hearing will be held before the floodplain administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,
 - iii. that following the hearing, the floodplain administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.
- (c) **ORDER TO TAKE CORRECTIVE ACTION:** If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one-hundred-eighty (180) calendar days. Where the floodplain administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser

period as may be feasible.

- (d) **APPEAL:** Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the floodplain administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- (e) **FAILURE TO COMPLY WITH ORDER:** If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

5. VARIANCE PROCEDURES

- (a) The Zoning Board of Adjustment as established by Cedar Point, hereinafter referred to as the “appeal board”, shall hear and decide requests for variances from the requirements of this ordinance.
- (b) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Section 160A-388 of the North Carolina General Statutes.
- (c) Variances may be issued for the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure.
- (d) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
 - i. the danger that materials may be swept onto other lands to the injury of others;
 - ii. the danger to life and property due to flooding or erosion damage;
 - iii. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - iv. the importance of the services provided by the proposed facility to the community;
 - v. the necessity to the facility of a waterfront location, where applicable;
 - vi. the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

- vii. the compatibility of the proposed use with existing and anticipated development;
 - viii. the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - ix. the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - x. the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - xi. the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (e) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (f) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
- (g) Variances shall not be issued within any designated floodway or non-encroachment area if any increase in flood levels during the base flood discharge would result.
- (h) Conditions for Variances:
- i. Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
 - ii. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - iii. Variances shall only be issued upon:
 - A. a showing of good and sufficient cause;
 - B. a determination that failure to grant the variance would result in exceptional hardship; and
 - C. a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (i) Any applicant to whom, a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation

(BFE) and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced reference level elevation. Such notification shall be maintained with a record of all variance actions.

- (j) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

D. PROVISIONS FOR FLOOD HAZARD REDUCTION

1. GENERAL STANDARDS

In all Special Flood Hazard Areas, the following provisions are required:

- (a) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- (b) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (c) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (d) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. These include but are not limited to HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric meter panels/boxes, utility/cable boxes, appliances (i.e., washers, dryers, refrigerator, etc.), hot water heaters, electric outlets/switches.
- (e) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (f) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- (g) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (h) Any alteration, repair, reconstruction, or improvements to a structure that is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance.
- (i) Non-conforming structures or other development may not be enlarged, replaced, or rebuilt unless such enlargement or reconstruction is accomplished in conformance with the provisions of this ordinance. Provided, however, nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the

effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided that the bulk of the building or structure below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback is not increased and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.

- (j) New solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted in Special Flood Hazard Areas. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or flood proofed to at least the regulatory flood protection elevation and certified according to Section 5.10.C.2(c).

2. SPECIFIC STANDARDS

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Section 5.10.B.2 or Section 5.10.C.3 (k) and (l), the following provisions are required:

- (a) **RESIDENTIAL CONSTRUCTION.** New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation.
- (b) **NON-RESIDENTIAL CONSTRUCTION.** New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation. Structures located in A, AO, AE and A1-30 Zones may be flood proofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 5.10.C.2(c).
- (c) **MANUFACTURED HOMES**
 - i. New or replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower

than the regulatory flood protection elevation.

- ii. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by engineer certification, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty- six (36) inches in height, an engineering certification is required.
 - iii. All enclosures or skirting below the lowest floor shall meet the requirements of Section 5.10.D.2(d).
 - iv. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks, or subdivisions located within flood prone areas. This plan shall be filed with and approved by the floodplain administrator and the local Emergency Management coordinator.
- (d) ELEVATED BUILDINGS. New construction or substantial improvements of elevated buildings that include fully enclosed areas that are below the regulatory flood protection elevation shall not be designed to be used for human habitation, but shall be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises, be constructed entirely of flood resistant materials below the regulatory flood protection level and meet the following design criteria:
- i. In A, AO, AE, and A1-30 zones, measures for complying with this requirement shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. To meet this requirement, the foundation must either be certified by a professional engineer or architect or meet the following minimum design criteria:
 - A. Provide a minimum of two openings on different sides of each enclosed area subject to flooding.
 - B. The total net area of all openings must be at least one (1) square inch for each square foot of each enclosed area subject to flooding.

- C. If a building has more than one enclosed area, each area must have openings on exterior walls to allow floodwater to directly enter;
- D. The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade; and,
- E. Openings may be equipped with screens, louvers, or other opening coverings or devices provided they permit the automatic flow of floodwaters in both directions.
- F. Foundation enclosures:
 - 1. Vinyl or sheet metal skirting is not considered an enclosure for regulatory and flood insurance rating purposes. Therefore, such skirting does not require hydrostatic openings as outlined above.
 - 2. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires hydrostatic openings as outlined above to comply with this ordinance.
 - 3. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas.
- ii. In Coastal High Hazard Areas (VE and V1-30 zones), breakaway walls, lattice work or decorative screening shall be allowed below the regulatory flood protection elevation provided they are not part of the structural support of the building and are designed so as to breakaway, under abnormally high tides or wave action, without damage to the structural integrity of the building on which they are to be used and provided the following design specifications are met:
 - A. Material shall consist of open wood lattice or mesh insect screening; or
 - B. Breakaway walls meeting the following design specifications:
 - 1. Design safe loading resistance of each wall shall be not less than 10 nor more than 20 pounds per square foot, or
 - 2. If more than 20 pounds per square foot, a registered professional engineer or architect shall certify that the design wall collapse would result from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation

system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non- structural). The water loading values used shall be those associated with the base flood. The wind loading values used shall be those required by the North Carolina State Building Code.

(e) ADDITIONS/IMPROVEMENTS

- i. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - A. not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
 - B. a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
 - ii. Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.
 - iii. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - A. not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
 - B. a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
 - iv. Where an independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for new construction.
- (f) RECREATIONAL VEHICLES. Recreation vehicles placed on sites within a Special Flood Hazard Area shall either:
- i. be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to

the site only by quick disconnect type utilities, and has no permanently attached additions); or

- ii. meet all the requirements for new construction, including anchoring and elevation requirements of Section 5.10.C.2, Section 5.10.D.1, Section 5.10.D.2(c) and as may be required in other sections of this ordinance.

(g) **TEMPORARY STRUCTURES.**

Prior to the issuance of a floodplain development permit for a temporary structure, the following requirements must be met:

- i. Applicants must submit to the floodplain administrator a plan for the removal of such structure(s) in the event of a hurricane or flash flood warning notification. The plan must include the following information:
 - A. a specified time period for which the temporary use will be permitted;
 - B. the name, address, and phone number of the individual responsible for the removal of the temporary structure;
 - C. the time frame prior to the event at which a structure will be removed (i.e. minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
 - D. a copy of the contract or other suitable instrument with a trucking company to insure the availability of removal equipment when needed; and
 - E. designation, accompanied by documentation, of a location outside the Special Flood Hazard Area to which the temporary structure will be moved.
- ii. The above information shall be submitted in writing to the floodplain administrator for review and written approval.

(h) **ACCESSORY STRUCTURES.** When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

- i. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
- ii. Accessory structures shall be designed to have low flood damage potential;
- iii. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- iv. Accessory structures shall be firmly anchored in accordance with Section 5.10.D.1(a);

- v. All service facilities such as electrical shall be installed in accordance with Section 5.10.D.1(d); and
- vi. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with Section 5.10.D.2(d)(i).
- vii. An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or flood proofing certificate. Elevation or flood proofing certifications are required for all other accessory structures in accordance with Section 5.10.C.2(c).

3. SUBDIVISIONS, MANUFACTURED HOME PARKS AND MAJOR DEVELOPMENTS.

All subdivision, manufactured home park and major development proposals located within Special Flood Hazard Areas shall:

- (a) be consistent with the need to minimize flood damage;
- (b) have public utilities and facilities such as sewer gas, electrical, and water systems located and constructed to minimize flood damage;
- (c) have adequate drainage provided to reduce exposure to flood hazards; and,
- (d) have Base Flood Elevation (BFE) data provided if development is greater than the lesser of five (5) acres or fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference per Section 5.10.B.2 to be utilized in implementing this Chapter.

4. STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS.

Within the Special Flood Hazard Areas established in Section 5.6.B.2, where no Base Flood Elevation (BFE) data has been provided, the following provisions shall apply:

- (a) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty feet each side from top of bank or five times the width of the stream whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (b) If Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this Chapter and shall be elevated or flood proofed in accordance with elevations established in accordance

with Section 5.10.C.2. When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source, the reference level, including basement, shall be elevated at least two (2) feet above the highest adjacent grade.

5. STANDARDS FOR FLOODPLAINS WITH BFE BUT WITHOUT ESTABLISHED FLOODWAYS OR NON ENCROACHMENT AREAS

Along rivers and streams where Base Flood Elevation (BFE) data is provided but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

6. FLOODWAYS AND NON-ENCROACHMENT AREAS

Located within the Special Flood Hazard Areas established in Section 5.10.B.2 are areas designated as floodways or non-encroachment areas. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions shall apply to all development within such areas:

- (a) No encroachments, including fill, new construction, substantial improvements, and other developments shall be permitted unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood. Such certification and technical data shall be presented to the floodplain administrator prior to issuance of floodplain development permit.
- (b) If Section 5.10.D.6(a) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
- (c) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
 - i. the anchoring and the elevation standards of Section 5.10.D.2(c); and
 - ii. the no encroachment standard of Section 5.10.D.6(a).

7. COASTAL HIGH HAZARD AREAS (VE and V1-30 Zones).

Coastal High Hazard Areas are Special Flood Hazard Areas established in Division III and designated as Zones VE or V1-30. These areas have special flood hazards associated with high velocity waters from surges and, therefore, in addition to meeting all provisions in this Chapter, the following provisions shall apply to all new construction, substantial improvements, and all other development:

- (a) All development shall:
 - i. be located landward of the reach of mean high tide;
 - ii. be located landward of the first line of stable natural vegetation, and
 - iii. comply with all applicable CAMA setback requirements.
- (b) All development shall be elevated so that the bottom of the lowest supporting horizontal member (excluding pilings or columns) is located no lower than the regulatory flood protection elevation. Flood proofing may not be utilized on any structures in Coastal High Hazard Areas to satisfy the regulatory flood protection elevation requirements.
- (c) All space below the regulatory flood protection elevation shall be open so as not to impede the flow of water.
- (d) Open wood latticework or mesh insect screening may be permitted below the regulatory flood protection elevation for aesthetic purposes only and must be designed to wash away in the event of abnormal wave action. Design plans shall be submitted in accordance with Section 5.10.C.2(a)(iv)(c).
- (e) All development shall be securely anchored on pilings or columns.
- (f) All pilings and columns and the attached structures shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
- (g) A registered professional engineer or architect shall certify that the design, specifications and plan for construction are in compliance with the provisions contained in Section 5.10.C.2, Section 5.10.D.7(d), (f) and (h) of this ordinance.
- (h) There shall be no fill used as structural support. Non-compacted fill may be used around the perimeter of a building for landscaping aesthetic purposes provided the fill will wash out from storm surge, thereby rendering the building free of obstruction prior to generating excessive loading forces, ramping effects, or wave deflection. Design plans shall be submitted in accordance with Section 5.10.C.2(a)(iv)(b). The floodplain administrator may approve design plans for landscaping/aesthetic fill only after the applicant has provided an analysis by an engineer, architect, and/or soil scientist which demonstrates that the following factors have been fully considered:
 - i. Particle composition of fill material does not have a tendency for

- excessive natural compaction;
 - ii. Volume and distribution of fill will not cause wave deflection to adjacent properties; and,
 - iii. Slope of fill will not cause wave run-up or ramping.
- (i) There shall be no alteration of sand dunes that would increase potential flood damage.
 - (j) No manufactured homes shall be permitted except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring and elevation standards are in compliance with this ordinance.
 - (k) Recreational vehicles shall be permitted in Coastal High Hazard Areas provided that they meet the Recreational Vehicle criteria of Section 5.10.D.2(f)(i) and the Temporary Structure provisions of Section 5.10.D.2(g).

8. STANDARDS FOR AREAS OF SHALLOW FLOODING (AO Zones).

Located within the Special Flood Hazard Areas established in Section 5.10.B.2, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions shall apply within such areas:

- (a) All new construction and substantial improvements of all structures shall have the lowest floor, including basement, elevated to the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least to the regulatory flood protection elevation as defined for the Special Flood Hazard Areas where no BFE has been established.
- (b) All new construction and substantial improvements of non-residential structures shall have the option to, in lieu of elevation, be completely flood proofed together with attendant utilities and sanitary facilities to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required as per Section 5.10.C.2(c) and Section 5.10.D.2(b).

E. LEGAL STATUS PROVISIONS

1. EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING FLOOD DAMAGE PREVENTION ORDINANCE.

This ordinance in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance as originally enacted and amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit, or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of Cedar Point that were previously enacted or amended, which are not reenacted herein are repealed.

2. EFFECT UPON OUTSTANDING FLOODPLAIN DEVELOPMENT PERMITS.

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the floodplain administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

CHAPTER 9 Definitions

D. DEFINITIONS RELATING TO THE FLOOD DAMAGE PREVENTION ORDINANCE

Accessory Structure (Appurtenant Structure). A structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports, and storage sheds are common accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

Addition (To an Existing Building). An extension or increase in the floor area or height of a building or structure.

Appeal. A request for a review of the floodplain administrator's interpretation of any provision of this ordinance.

Area of Shallow Flooding. A designated Zone AO on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of Special Flood Hazard. See "Special Flood Hazard Area (SFHA)"

Basement. Any area of the building having its floor subgrade (below ground level) on all sides.

Base Flood. The elevation above sea level having a one (1) percent chance of being reached by flood waters caused by storm surge, tide, rain, wind, or a combination in any given year.

Base Flood Elevation (BFE). A determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area", it may be obtained from engineering studies available from a Federal or State or other source using FEMA approved engineering methodologies. This elevation, when combined with the "Freeboard", establishes the "Regulatory Flood Protection Elevation".

Building. See "Structure"

Chemical Storage Facility. A building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

Development. Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

Disposal. As defined in N.C.G.S. § 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

Elevated Building. A non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Encroachment. The advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Existing Manufactured Home Park or Manufactured Home Subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the original effective date of the floodplain management regulations adopted by the community.

Flood or Flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (a) the overflow of inland or tidal waters; and/or
- (b) the unusual and rapid accumulation of runoff of surface waters from any source.

Flood Boundary and Floodway Map (FBFM). An official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

Flood Hazard Boundary Map (FHBM). An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

Flood Insurance. The insurance coverage provided under the National Flood Insurance Program.

Flood Insurance Rate Map (FIRM). An official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

Flood Insurance Study (FIS). An examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs), and Flood Boundary, and Floodway Maps (FBFMs), if published.

Flood Prone Area. See "Floodplain"

Floodplain. Any land area susceptible to being inundated by water from any source.

Floodplain Administrator: The individual appointed to administer and enforce the floodplain management regulations.

Floodplain Development Permit. Any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

Floodplain Management. The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain Management Regulations. This ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power that control development in flood-prone areas. This term describes federal, state, or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Flood Proofing. Any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

Floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

Flood Zone. A geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

Freeboard. The height added to the Base Flood Elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization on the watershed. The Base Flood Elevation plus the freeboard establishes the Regulatory Flood Protection Elevation.

Functionally Dependent Facility. A facility which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

Hazardous Waste Facility. As defined in *N.C.G.S. § 130A, Article 9*, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

Highest Adjacent Grade (HAG). The highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

Historic Structure. Any structure that is:

- (a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (b) certified or preliminarily determined by the Secretary of 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;
- (c) individually listed on a local inventory of historic landmarks in communities with a Certified Local Government (CLG) Program; or
- (d) certified as contributing to the historical significance of a historic district designated by a community with a Certified Local Government (CLG) Program

Certified Local Government (CLG) Programs. Approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

Lowest Adjacent Grade (LAG). The elevation of the ground, sidewalk, or patio slab immediately next to the building, or deck support, after completion of the building.

Lowest Floor. Lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured Home. A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term manufactured home does not include a recreational vehicle.

Manufactured Home Park or Subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market Value. The building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

Mean Sea Level. For purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

New Construction. Structures for which the start of construction commenced on or after the effective date of the original version of the community's Flood Damage Prevention Ordinance and includes any subsequent improvements to such structures.

Non-Encroachment Area. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

Post-Firm. Construction or other development for which the start of construction occurred on or after the effective date of the initial Flood Insurance Rate Map for the area.

Pre-Firm. Construction or other development for which the start of construction occurred before the effective date of the initial Flood Insurance Rate Map for the area.

Principally Above Ground. That at least 51% of the actual cash value of the structure is above ground.

Public Safety and/or Nuisance. Anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Recreational Vehicle (RV). A vehicle, which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck; and
- (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

Reference Level. The top of the lowest floor for structures within Special Flood Hazard Areas designated as Zone A1-A30, AE, A, A99 or AO.

Regulatory Flood Protection Elevation. The Base Flood Elevation plus the Freeboard. In Special Flood Hazard Areas where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard. In Special Flood Hazard Areas where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.

Remedy A Violation. To bring the structure or other development into compliance with State and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

Riverine. Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Salvage Yard. Any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

Solid Waste Disposal Facility. As defined in *N.C.G.S. § 130A-290*, any facility involved in the disposal of solid waste.

Solid Waste Disposal Site. As defined in *N.C.G.S. § 130A-290*, any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

Special Flood Hazard Area (SFHA). The land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year, as determined in *Section 5.10* of this ordinance.

Start of Construction Includes Substantial Improvement. The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

Structure. A walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

Substantial Damage. Damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of substantial improvement.

Substantial Improvement. Any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures that have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- (a) any correction of existing violations of State or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary

- to assure safe living conditions; or,
- (b) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Variance. A grant of relief from the requirements of this ordinance.

Violation. The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in *Section 5.10* is presumed to be in violation until such time as that documentation is provided.

Water Surface Elevation (WSE). The height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Watercourse. A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Proposed Revision

FLOOD DAMAGE PREVENTION ORDINANCE

Coastal Regular Phase

ARTICLE 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

SECTION A. STATUTORY AUTHORIZATION.

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Article 6 of Chapter 153A; Articles 8 and 19 of Chapter 160A; and Articles 7, 9, and 11 of Chapter 160D (Effective January 1, 2021) of the North Carolina General Statutes, delegated to local governmental units the authority to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the Board of Commissioners of the Town of Cedar Point, North Carolina, does ordain as follows:

SECTION B. FINDINGS OF FACT.

- (1) The flood prone areas within the jurisdiction of the Town of Cedar Point are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

SECTION C. STATEMENT OF PURPOSE.

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- (1) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (4) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (5) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

SECTION D. OBJECTIVES.

The objectives of this ordinance are to:

- (1) Protect human life, safety, and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the

general public;

- (4) Minimize prolonged business losses and interruptions;
- (5) Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- (6) Minimize damage to private and public property due to flooding;
- (7) Make flood insurance available to the community through the National Flood Insurance Program;
- (8) Maintain the natural and beneficial functions of floodplains;
- (9) Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (10) Ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

ARTICLE 2. DEFINITIONS.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance it’s most reasonable application.

“Accessory Structure (Appurtenant Structure)” means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

“Addition (to an existing building)” means an extension or increase in the floor area or height of a building or structure.

“Alteration of a watercourse” means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

“Appeal” means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.

“Area of Special Flood Hazard” see “Special Flood Hazard Area (SFHA)”.

“Base Flood” means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. This elevation, when combined with the “Freeboard”, establishes the “Regulatory Flood Protection Elevation”.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

“Breakaway Wall” means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

“Building” see “Structure”.

“Chemical Storage Facility” means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

“Coastal Area Management Act (CAMA)” means North Carolina’s Coastal Area Management Act, this act, along with the Dredge and Fill Law and the Federal Coastal Zone Management Act, is managed through North Carolina Department of Environmental Quality (NCDEQ) Division of Coastal Management (DCM).

“Coastal A Zone (CAZ)” means an area within a special flood hazard area, landward of a V zone or landward of an open coast without mapped V zones. In a Coastal A Zone, the principal source of flooding must be astronomical tides, storm surges, seiches, or tsunamis, not riverine flooding. During the base flood conditions, the potential for wave heights shall be greater than or equal to 1.5 feet. Coastal A Zones are not normally designated on FIRMs. (see Limit of Moderate Wave Action (LiMWA))

“Coastal Barrier Resources System (CBRS)” consists of undeveloped portions of coastal and adjoining areas established by the Coastal Barrier Resources Act (CoBRA) of 1982, the Coastal Barrier Improvement Act (CBIA) of 1990, and subsequent revisions, and includes areas owned by Federal or State governments or private conservation organizations identified as Otherwise Protected Areas (OPA).

“Coastal High Hazard Area” means a Special Flood Hazard Area 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 a FIRM, or other adopted flood map as determined in Article 3, Section B of this ordinance, as Zone VE.

“Design Flood”: See “Regulatory Flood Protection Elevation.”

“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Development Activity” means any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.

“Digital Flood Insurance Rate Map (DFIRM)” means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

“Disposal” means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

“Elevated Building” means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

“Encroachment” means the advance or infringement of uses, fill, excavation, buildings, structures or development into a special flood hazard area, which may impede or alter the flow capacity of a floodplain.

“Existing building and existing structure” means any building and/or structure for which the “start of construction” commenced before the community entered the NFIP, dated July 26, 1989.

“Existing Manufactured Home Park or Manufactured Home Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the effective date of the initial floodplain management regulations adopted by the community, dated July 26, 1989.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (a) The overflow of inland or tidal waters; and/or
- (b) The unusual and rapid accumulation or runoff of surface waters from any source.

“Flood Boundary and Floodway Map (FBFM)” means an official map of a community, issued by the FEMA, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

“Flood Hazard Boundary Map (FHBM)” means an official map of a community, issued by the FEMA, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

“Flood Insurance” means the insurance coverage provided under the National Flood Insurance Program.

“Flood Insurance Rate Map (FIRM)” means an official map of a community, issued by the FEMA, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated. (see also DFIRM)

“Flood Insurance Study (FIS)” means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the FEMA. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

“Flood Prone Area” see “Floodplain”

“Flood Zone” means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

“Floodplain” means any land area susceptible to being inundated by water from any source.

“Floodplain Administrator” is the individual appointed to administer and enforce the floodplain management regulations.

“Floodplain Development Permit” means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

“Floodplain Management” means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

“Floodplain Management Regulations” means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

“Flood-resistant material” means any building product [material, component or system] capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements*, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

“Floodway” means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

“Freeboard” means the height added to the BFE to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge or culvert openings, storm surge or precipitation exceeding the base flood, and the hydrological effect of urbanization of the watershed. The BFE plus the freeboard establishes the “Regulatory Flood Protection Elevation”.

“Functionally Dependent Facility” means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

“Hazardous Waste Management Facility” means, as defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

“Highest Adjacent Grade (HAG)” means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

“Historic Structure” means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of 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;
- (c) Individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”; or
- (d) Certified as contributing to the historical significance of a historic district designated by a community with a “Certified Local Government (CLG) Program.”

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

“Letter of Map Change (LOMC)” means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

- (a) Letter of Map Amendment (LOMA): An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
- (b) Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
- (c) Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community’s floodplain management regulations.
- (d) Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

“Light Duty Truck” means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

- (a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- (b) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (c) Available with special features enabling off-street or off-highway operation and use.

“Limit of Moderate Wave Action (LiMWA)” means the boundary line given by FEMA on coastal map studies marking the extents of Coastal A Zones (CAZ).

“Lowest Adjacent Grade (LAG)” means the lowest elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

“Lowest Floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

“Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“Map Repository” means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed. In North Carolina, FEMA has recognized that the application of digital flood hazard data products carries the same authority as hard copy products. Therefore, the NCEM’s Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data, the NC FRIS website (<http://FRIS.NC.GOV/FRIS>) is the map repository, and for historical flood hazard data the FloodNC website (<http://FLOODNC.GOV/NCFLOOD>) is the map repository.

“Market Value” means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

“New Construction” means structures for which the “start of construction” commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

“Non-Conversion Agreement” means a document stating that the owner will not convert or alter what has been constructed and approved. Violation of the agreement is considered a violation of the ordinance and, therefore, subject to the same enforcement procedures and penalties. The agreement must be filed with the recorded deed for the property. The agreement must show the clerk’s or recorder’s stamps and/or notations that the filing has been completed.

“Post-FIRM” means construction or other development for which the “start of construction” occurred on or after the effective date of the initial Flood Insurance Rate Map.

“Pre-FIRM” means construction or other development for which the “start of construction” occurred before the effective date of the initial Flood Insurance Rate Map.

“Primary Frontal Dune (PFD)” means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

“Principally Above Ground” means that at least 51% of the actual cash value of the structure is above ground.

“Public Safety” and/or “Nuisance” means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

“Recreational Vehicle (RV)” means a vehicle, which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck;
- (d) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use, and
- (e) Is fully licensed and ready for highway use.

For the purpose of this ordinance, “Tiny Homes/Houses” and Park Models that do not meet the items listed above are not considered Recreational Vehicles and should meet the standards of and be permitted as Residential Structures.

“Reference Level” is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zone AE. The reference level is the bottom of the lowest horizontal structural member of the lowest floor for structures within Special Flood Hazard Areas designated as Zone VE.

“Regulatory Flood Protection Elevation” means the “Base Flood Elevation” plus the “Freeboard”. In “Special Flood Hazard Areas” where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus 2, 3, or 4 feet of freeboard.

“Remedy a Violation” means to bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

“Salvage Yard” means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

“Sand Dunes” means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

“Shear Wall” means walls used for structural support but not structurally joined or enclosed at the end (except by breakaway walls). Shear walls are parallel or nearly parallel to the flow of the water.

“Solid Waste Disposal Facility” means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a) (35).

“Solid Waste Disposal Site” means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

“Special Flood Hazard Area (SFHA)” means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year, as determined in Article 3, Section B of this ordinance.

“Start of Construction” includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

“Structure” means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

“Substantial Damage” means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of “substantial improvement”. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

“Substantial Improvement” means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- (a) Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure

- safe living conditions; or
- (b) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to Article 4 Section E of this ordinance.

“Technical Bulletin and Technical Fact Sheet” means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

It should be noted that Technical Bulletins and Technical Fact Sheets provide guidance on the minimum requirements of the NFIP regulations. State or community requirements that exceed those of the NFIP take precedence. Design professionals should contact the community officials to determine whether more restrictive State or local regulations apply to the building or site in question. All applicable standards of the State or local building code must also be met for any building in a flood hazard area.

“Temperature Controlled” means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

“Variance” is a grant of relief from the requirements of this ordinance.

“Violation” means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 is presumed to be in violation until such time as that documentation is provided.

“Water Surface Elevation (WSE)” means the height, in relation to NAVD 1988, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

“Watercourse” means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

ARTICLE 3. GENERAL PROVISIONS.

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES.

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJs) as allowed by law, of the Town of Cedar Point.

SECTION B. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS.

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its FIS dated June 19, 2020 for Carteret County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance, and all revisions thereto after January 1, 2021. Future revisions to the FIS and DFIRM panels that do not change flood hazard data within the jurisdictional authority of the Town of Cedar Point are also adopted by reference and declared a part of this ordinance. Subsequent Letter of Map Revisions (LOMRs) and/or Physical Map Revisions (PMRs) shall be adopted within 3 months.

SECTION C. ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Article 3, Section B of this ordinance.

SECTION D. COMPLIANCE.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

SECTION E. ABROGATION AND GREATER RESTRICTIONS.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION F. INTERPRETATION.

In the interpretation and application of this ordinance, all provisions shall be:

- (a) Considered as minimum requirements;
- (b) Liberally construed in favor of the governing body; and
- (c) Deemed neither to limit nor repeal any other powers granted under State statutes.

SECTION G. WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Town of Cedar Point or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

SECTION H. PENALTIES FOR VIOLATION.

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall subject the violator to a civil citation of not more than \$100.00 per for each day the violation continues. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Cedar Point from taking such other lawful action as is necessary to prevent or remedy any violation.

ARTICLE 4. ADMINISTRATION.

SECTION A. DESIGNATION OF FLOODPLAIN ADMINISTRATOR.

The Town Administrator, hereinafter referred to as the “Floodplain Administrator”, or their designee, is hereby appointed to administer and implement the provisions of this ordinance. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this ordinance, the Floodplain Administrator shall be responsible for the coordination and community’s overall compliance with the National Flood Insurance Program and the provisions of this ordinance.

SECTION B. FLOODPLAIN DEVELOPMENT APPLICATION, PERMIT AND CERTIFICATION REQUIREMENTS.

- (1) **Application Requirements.** Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:
 - (a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the

proposed floodplain development:

- (i) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 - (ii) The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Article 3, Section B, or a statement that the entire lot is within the Special Flood Hazard Area;
 - (iii) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Article 3, Section B;
 - (iv) The boundary of the floodway(s) or non-encroachment area(s) as determined in Article 3, Section B;
 - (v) The Base Flood Elevation (BFE) where provided as set forth in Article 3, Section B; Article 4, Section C; or Article 5, Section D;
 - (vi) The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
 - (vii) The boundary and designation date of the Coastal Barrier Resource System (CBRS) area or Otherwise Protected Areas (OPA), if applicable; and
 - (vii) The certification of the plot plan by a registered land surveyor or professional engineer.
- (b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
- (i) Elevation in relation to NAVD 1988 of the proposed reference level (including basement) of all structures;
 - (ii) Elevation in relation to NAVD 1988 to which any non-residential structure in Zone AE will be floodproofed; and
 - (iii) Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed.
- (c) If floodproofing, a Floodproofing Certificate (FEMA Form 086-0-34) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.
- (d) A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
- (i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
 - (ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Article 5, Section B(4)(d) when solid foundation perimeter walls are used in Zone AE.
 - (iii) The following, in Coastal High Hazard Areas, in accordance with the provisions of Article 5, Section B(4)(e) and Article 5, Section G [and \(Article 5, Section H if applicable\)](#):
 - (1) V-Zone Certification with accompanying plans and specifications verifying the engineered structure and any breakaway wall designs. In addition, prior to the Certificate of Compliance/Occupancy issuance, a registered professional engineer or architect shall certify the finished construction is compliant with the design, specifications and plans for VE Zone construction.
 - (2) Plans for open wood latticework or insect screening, if applicable; and

- (3) Plans for non-structural fill, if applicable. If non-structural fill is proposed, it must be demonstrated through coastal engineering analysis that the proposed fill would not result in any increase in the BFE or otherwise cause adverse impacts by wave ramping and deflection on to the subject structure or adjacent properties.

- (e) Usage details of any enclosed areas below the lowest floor.
- (f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
- (g) Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.
- (h) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Article 5, Section B, subsections (6) and (7) of this ordinance are met.
- (i) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(2) **Permit Requirements.** The Floodplain Development Permit shall include, but not be limited to:

- (a) A complete description of all the development to be permitted under the floodplain development permit (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.).
- (b) The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Article 3, Section B.
- (c) The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.
- (d) The Regulatory Flood Protection Elevation required for the protection of all public utilities.
- (e) All certification submittal requirements with timelines.
- (f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse unless the requirements of Article 5, Section F have been met.
- (g) The flood openings requirements, if in Zone AE.
- (h) Limitations of below BFE enclosure uses, where applicable . (i.e., parking, building access and limited storage only).
- (i) A statement, if in Zone VE, that there shall be no alteration of sand dunes which would increase potential flood damage.

(j) A statement, if in Zone VE, that there shall be no fill used for structural support. (OPTIONAL).

(k) A statement, that all materials below BFE/RFPE must be flood resistant materials. (OPTIONAL).

(3) **Certification Requirements.**

- (a) Elevation Certificates
 - (i) An Elevation Certificate (FEMA Form 086-0-33) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to NAVD 1988. The Floodplain

Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

- (ii) An Elevation Certificate (FEMA Form 086-0-33) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to NAVD 1988. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.
 - (iii) A final Finished Construction Elevation Certificate (FEMA Form 086-0-33) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy. The Finished Construction Elevation Certificate certifier shall provide at least 2 photographs showing the front and rear of the building taken within 90 days from the date of certification. The photographs must be taken with views confirming the building description and diagram number provided in Section A. To the extent possible, these photographs should show the entire building including foundation. If the building has split-level or multi-level areas, provide at least 2 additional photographs showing side views of the building. In addition, when applicable, provide a photograph of the foundation showing a representative example of the flood openings or vents. All photographs must be in color and measure at least 3" × 3". Digital photographs are acceptable.
- (b) Floodproofing Certificate
- (i) If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
 - (ii) A final Finished Construction Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy.
- (c) If a manufactured home is placed within Zone AE and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Article 5,

Section B(3)(b).

- (d) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer’s certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
- (e) Certification Exemptions. The following structures are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:
 - (i) Recreational Vehicles meeting requirements of Article 5, Section B(6)(a);
 - (ii) Temporary Structures meeting requirements of Article 5, Section B (7); and
 - (iii) Accessory Structures that are 150 square feet or less and meeting requirements of Article 5, Section B (8).
- (f) A V-Zone Certification with accompanying design plans and specifications is required prior to issuance of a Floodplain Development permit within coastal high hazard areas. It shall be the duty of the permit applicant to submit to the Floodplain Administrator said certification to ensure the design standards of this ordinance are met. A registered professional engineer or architect shall develop or review the structural design, plans, and specifications for construction and certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this ordinance. This certification is not a substitute for an Elevation Certificate. In addition, prior to the Certificate of Compliance/Occupancy issuance, a registered professional engineer or architect shall certify the finished construction is compliant with the design, specifications and plans for VE Zone construction.

(4) **Determinations for existing buildings and structures.**

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- (a) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
- (b) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (c) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
- (d) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

SECTION C. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.

The Floodplain Administrator shall perform, but not be limited to, the following duties:

- (1) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.
- (2) Review all proposed development within Special Flood Hazard Areas to assure that all necessary local, state and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33

U.S.C. 1334.

- (3) Notify adjacent communities and the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
- (5) Obtain actual elevation (in relation to NAVD 1988) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Article 4, Section B (3).
- (6) Obtain actual elevation (in relation to NAVD 1988) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Article 4, Section B (3).
- (7) Obtain actual elevation (in relation to NAVD 1988) of all public utilities in accordance with the provisions of Article 4, Section B (3).
- (8) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Article 4, Section B (3) and Article 5, Section B (2).
- (9) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (10) When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the BFE, advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. However, if the property is to be removed from the V Zone it must not be located seaward of the landward toe of the primary frontal dune. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.
- (11) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- (12) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- (13) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (14) Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- (15) Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

- (16) Follow through with corrective procedures of Article 4, Section D.
- (17) Review, provide input, and make recommendations for variance requests.
- (18) Maintain a current map repository to include, but not limited to, historical and effective FIS Report, historical and effective FIRM and other official flood maps and studies adopted in accordance with the provisions of Article 3, Section B of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
- (19) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

SECTION D. CORRECTIVE PROCEDURES.

- (1) Violations to be corrected: When the Floodplain Administrator finds violations of applicable state and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.
- (2) Actions in Event of Failure to Take Corrective Action: If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner’s last known address or by personal service, stating:
 - (a) That the building or property is in violation of the floodplain management regulations;
 - (b) That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
 - (c) That following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.
- (3) Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one hundred eighty (180) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.
- (4) Appeal: Any owner who has received an order to take corrective action may appeal the order to the Town Board of Commissioners by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The Board of Commissioners shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- (5) Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be subject to the remedy provisions set forth in Article 3, Section H.

SECTION E. VARIANCE PROCEDURES.

- (1) The Board of Adjustment as established by the Town of Cedar Point, hereinafter referred to as the “appeal board”, shall hear and decide requests for variances from the requirements of this ordinance.
- (2) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
- (3) Variances may be issued for:

- (a) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
 - (b) Functionally dependent facilities if determined to meet the definition as stated in Article 2 of this ordinance, provided provisions of Article 4, Section E(9)(b), (c), and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
 - (c) Any other type of development provided it meets the requirements of this Section.
- (4) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
- (a) The danger that materials may be swept onto other lands to the injury of others;
 - (b) The danger to life and property due to flooding or erosion damage;
 - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (d) The importance of the services provided by the proposed facility to the community;
 - (e) The necessity to the facility of a waterfront location as defined under Article 2 of this ordinance as a functionally dependent facility, where applicable;
 - (f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (g) The compatibility of the proposed use with existing and anticipated development;
 - (h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (k) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (5) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (6) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.
- (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the BFE and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE may result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (8) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the FEMA and the State of North Carolina upon request.
- (9) Conditions for Variances:
- (a) Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.

- (b) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 - (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (d) Variances shall only be issued prior to development permit approval.
 - (e) Variances shall only be issued upon:
 - (i) A showing of good and sufficient cause;
 - (ii) A determination that failure to grant the variance would result in exceptional hardship; and
 - (iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (10) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met.
- (a) The use serves a critical need in the community.
 - (b) No feasible location exists for the use outside the Special Flood Hazard Area.
 - (c) The reference level of any structure is elevated or floodproofed to at least the Regulatory Flood Protection Elevation.
 - (d) The use complies with all other applicable federal, state and local laws.
 - (e) The Town of Cedar Point has notified the Secretary of the North Carolina Department of Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION.

SECTION A. GENERAL STANDARDS.

In all Special Flood Hazard Areas, the following provisions are required:

- (1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the FEMA Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements*.
- (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) All new electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall be located at or above the RFPE or designed and installed to prevent water from entering or accumulating within the components during the occurrence of the base flood. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, water heaters, and electric outlets/switches.
 - (a) Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning

equipment, and other service equipment shall also meet the above provisions.

- (b) Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.
- (9) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Article 4, Section E (10). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of Article 4, Section B (3).
- (10) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (11) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (12) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (13) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (14) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
- (15) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest BFE shall apply.
- (16) Fill is prohibited in the SFHA, including construction of buildings on fill. This includes not approving Conditional Letters or Letters of Map Revision - Based on Fill (CLOMR-F or LOMR-F). **(maximum 280 CRS points possible)**
(OPTIONAL) Note: This should be consistent with Article 5, Section G (11)(e) in coastal areas.

SECTION B. SPECIFIC STANDARDS.

In all Special Flood Hazard Areas where BFE data has been provided, as set forth in Article 3, Section B, or Article 5, Section D, the following provisions, in addition to the provisions of Article 5, Section A, are required:

- (1) Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance.
- (2) Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other

non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance. Structures located in Zone AE may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy.

(3) Manufactured Homes.

- (a) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance.
- (b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
- (c) All enclosures or skirting below the lowest floor shall meet the requirements of Article 5, Section B(4).
- (d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

(4) Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor in AE zones or below the lowest horizontal structural member in VE zones:

- (a) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
- (b) Shall not be temperature-controlled or conditioned;
- (c) Shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and
- (d) Shall include, in Zone AE, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
 - (i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;
 - (ii) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
 - (iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
 - (iv) The bottom of all required flood openings shall be no higher than one (1) foot above the higher of the interior or exterior adjacent grade;
 - (v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
 - (vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore,

do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

- (e) Shall, in Coastal High Hazard Areas (Zone VE), meet the requirements of Article 5, Section G.
- (f) Property owners shall be required to execute and record a non-conversion agreement prior to issuance of a building permit declaring that the area below the lowest floor shall not be improved, finished or otherwise converted to habitable space (30 CRS points); _____ (the Town of Cedar Point) will have the right to inspect the enclosed area (30 CRS points). _____ (the Town of Cedar Point) will conduct annual inspections (30 CRS points). This agreement shall be recorded with the _____ (county name) County Register of Deeds and shall transfer with the property in perpetuity. **(OPTIONAL for a maximum total of 90 CRS points)**
- (g) Release of restrictive covenant. If a property which is bound by a non-conversion agreement is modified to remove enclosed areas below BFE, then the owner may request release of restrictive covenant after staff inspection and submittal of confirming documentation. **(OPTIONAL)**

(5) Additions/Improvements.

- (a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - (i) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
 - (ii) A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing structure and the addition must comply with the standards for new construction.
- (b) Additions to pre-FIRM or post-FIRM structures that are a substantial improvement with no modifications/rehabilitations/improvements to the existing structure other than a standard door in the common wall, shall require only the addition to comply with the standards for new construction.
- (c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - (i) Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction consistent with the code and requirements for the original structure.
 - (ii) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- (d) Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a three (3) year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the three (3) year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:
 - (i) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.
 - (ii) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

- (6) Recreational Vehicles. Recreational vehicles shall either:
- (a) Temporary Placement
 - (i) Be on site for fewer than 180 consecutive days; or
 - (ii) Be fully licensed and ready for highway use. (A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions.)
 - (b) Permanent Placement. Recreational vehicles that do not meet the limitations of Temporary Placement shall meet all the requirements for new construction.
- (7) Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:
- (a) A specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;
 - (b) The name, address, and phone number of the individual responsible for the removal of the temporary structure;
 - (c) The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
 - (d) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
 - (e) Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.
- (8) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
- (a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
 - (b) Accessory structures shall not be temperature-controlled;
 - (c) Accessory structures shall be designed to have low flood damage potential;
 - (d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 - (e) Accessory structures shall be firmly anchored in accordance with the provisions of Article 5, Section A (1);
 - (f) Accessory structures, regardless of the size or cost, shall not be placed below elevated buildings in V and VE Zones;
 - (f) All service facilities such as electrical shall be installed in accordance with the provisions of Article 5, Section A (4); and
 - (g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Article 5, Section B(4)(d).

An accessory structure with a footprint less than one hundred fifty (150) square feet and satisfies the criteria outlined

above is not required to meet the elevation or floodproofing standards of Article 5, Section B (2). Elevation or floodproofing certifications are required for all other accessory structures in accordance with Article 4, Section B (3).

- (9) Tanks. When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
- (a) Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;
 - (b) Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;
 - (c) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Article 5, Section B (2) of this ordinance shall not be permitted in the VE Zone. Tanks may be permitted in other flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.
 - (d) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:
 - (i) At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
 - (ii) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.
- (10) Other Development.
- (a) Commercial storage facilities are not considered “limited storage” as noted in this ordinance, and shall be protected to the Regulatory Flood Protection Elevation as required for commercial structures.

SECTION C. RESERVED.

SECTION D. *RESERVED.*

SECTION E. RESERVED.

SECTION F. RESERVED.

SECTION G. COASTAL HIGH HAZARD AREA (ZONE VE).

Coastal High Hazard Areas are Special Flood Hazard Areas established in Article 3, Section B, and designated as Zone VE. These areas have special flood hazards associated with high velocity waters from storm surges or seismic activity and, therefore, all new construction and substantial improvements shall meet the following provisions in addition to the provisions of Article 5, Sections A and B:

- (1) All new construction and substantial improvements shall:
 - (a) Be located landward of the reach of mean high tide;
 - (b) Comply with all applicable CAMA setback requirements.
- (2) All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal structural

member of the lowest floor (excluding pilings or columns) is no lower than the regulatory flood protection elevation. Floodproofing shall not be utilized on any structures in Coastal High Hazard Areas to satisfy the regulatory flood protection elevation requirements.

- (3) All new construction and substantial improvements shall have the space below the bottom of the lowest horizontal structural member of the lowest floor either be free of obstruction or constructed with breakaway walls, open wood latticework or insect screening, provided they are not part of the structural support of the building and are designed so as to breakaway, under abnormally high tides or wave action without causing damage to the elevated portion of the building or supporting foundation system or otherwise jeopardizing the structural integrity of the building. The following design specifications shall be met:
- (a) Material shall consist of open wood or plastic lattice having at least 40 percent of its area open, or
 - (b) Insect screening; or
 - (c) Breakaway walls shall meet the following design specifications:
 - (1) Breakaway walls shall have flood openings that allow for the automatic entry and exit of floodwaters to minimize damage caused by hydrostatic loads, per Article 5, Section B(4)(d) (i-vi); and
 - (2) Design safe loading resistance shall be not less than 10 nor more than 20 pounds per square foot; or
 - (3) Breakaway walls that exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by State or local codes) shall be certified by a registered professional engineer or architect that the breakaway wall will collapse from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). The water loading values used shall be those associated with the base flood. The wind loading values used shall be those required by the North Carolina State Building Code.
- (4) All new construction and substantial improvements shall be securely anchored to pile or column foundations. All pilings and columns and the structure attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
- (a) Water loading values used shall be those associated with the base flood.
 - (b) Wind loading values used shall be those required by the current edition of the North Carolina State Building Code.
- (5) For concrete pads, including patios, decks, parking pads, walkways, driveways, pool decks, etc. the following is required:
- (a) Shall be structurally independent of the primary structural foundation system of the structure and shall not adversely affect structures through redirection of floodwaters or debris; and
 - (b) Shall be constructed to breakaway cleanly during design flood conditions, shall be frangible, and shall not produce debris capable of causing damage to any structure. (The installation of concrete in small segments (approximately 4 feet x 4 feet) that will easily break up during the base flood event, or score concrete in 4 feet x 4 feet maximum segments is acceptable to meet this standard); and
 - (c) Reinforcing, including welded wire fabric, shall not be used in order to minimize the potential for concreted pads being a source of debris; and
 - (d) Pad thickness shall not exceed 4 inches; or
 - (e) Provide a Design Professional's certification stating the design and method of construction to be used meet the applicable criteria of this section.

- (6) For swimming pools and spas, the following is required:
 - (a) Be designed to withstand all flood-related loads and load combinations.
 - (b) Be elevated so that the lowest horizontal structural member is elevated above the RFPE; or
 - (c) Be designed and constructed to break away during design flood conditions without producing debris capable of causing damage to any structure; or
 - (d) Be sited to remain in the ground during design flood conditions without obstructing flow that results in damage to any structure.
 - (e) Registered design professionals must certify to local officials that a pool or spa beneath or near a VE Zone building will not be subject to flotation or displacement that will damage building foundations or elevated portions of the building or any nearby buildings during a coastal flood.
 - (f) Pool equipment shall be located above the RFPE whenever practicable. Pool equipment shall not be located beneath an elevated structure.
- (7) All elevators, vertical platform lifts, chair lifts, etc., the following is required:
 - (a) Elevator enclosures must be designed to resist hydrodynamic and hydrostatic forces as well as erosion, scour, and waves.
 - (b) Utility equipment in Coastal High Hazard Areas (VE Zones) must not be mounted on, pass through, or be located along breakaway walls.
 - (c) The cab, machine/equipment room, hydraulic pump, hydraulic reservoir, counter weight and roller guides, hoist cable, limit switches, electric hoist motor, electrical junction box, circuit panel, and electrical control panel are all required to be above RFPE. When this equipment cannot be located above the RFPE, it must be constructed using flood damage-resistant components.
 - (d) Elevator shafts/enclosures that extend below the RFPE shall be constructed of reinforced masonry block or reinforced concrete walls and located on the landward side of the building to provide increased protection from flood damage. Drainage must be provided for the elevator pit.
 - (e) Flood damage-resistant materials can also be used inside and outside the elevator cab to reduce flood damage. Use only stainless steel doors and door frames below the BFE. Grouting in of door frames and sills is recommended.
 - (f) If an elevator is designed to provide access to areas below the BFE, it shall be equipped with a float switch system that will activate during a flood and send the elevator cab to a floor above the RFPE.
- (8) Accessory structures, regardless of size or cost, shall not be permitted below elevated structures.
- (9) Property owners shall be required to execute and record a non-conversion agreement prior to issuance of a building permit declaring that the area below the lowest floor, or the detached accessory building shall not be improved, or otherwise converted; _____ (*the Town of Cedar Point*) will have the right to inspect the enclosed area. This agreement shall be recorded with the _____ (*county name*) County Register of Deeds and shall transfer with the property in perpetuity. **(OPTIONAL)**
- (10) Release of restrictive covenant. If a property which is bound by a non-conversion agreement is modified to remove enclosed areas below BFE, then the owner may request release of restrictive covenant after staff inspection and submittal of confirming documentation. **(OPTIONAL)**
- (11) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions of Article 4, Section B and Article 5, Section G (3) and (4), on the current version of the North Carolina V-Zone Certification form or equivalent local version. In addition, prior to the Certificate of Compliance/Occupancy issuance, a registered professional engineer or architect shall certify the finished construction

is compliant with the design, specifications and plans for VE Zone construction.

(12) Fill/Grading

- (a) Minor grading and the placement of minor quantities of nonstructural fill may be permitted for landscaping and for drainage purposes under and around buildings and for support of parking slabs, pool decks, patios and walkways.
- (b) The fill material must be similar and consistent with the natural soils in the area.
- (c) The placement of site-compatible, non-structural fill under or around an elevated building is limited to two (2) feet. Fill greater than two (2) feet must include an analysis prepared by a qualified registered design professional demonstrating no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent elevated buildings and structures.
- (d) Nonstructural fill with finished slopes that are steeper than five (5) units horizontal to one (1) unit vertical shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent elevated buildings and structures.

(e) Fill is prohibited in the SFHA (*maximum 280 CRS points possible*) (*OPTIONAL*) Note: this should be consistent with Article 5, Section A (16)

- (13) There shall be no alteration of sand dunes or mangrove stands which would increase potential flood damage.
- (14) No manufactured homes shall be permitted except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring and elevation standards of this Section have been satisfied.
- (15) Recreational vehicles may be permitted in Coastal High Hazard Areas provided that they meet the Recreational Vehicle criteria of Article 5, Section B(6)(a).
- (16) A deck that is structurally attached to a building or structure shall have the bottom of the lowest horizontal structural member at or above the Regulatory Flood Protection Elevation and any supporting members that extend below the Regulatory Flood Protection Elevation shall comply with the foundation requirements that apply to the building or structure, which shall be designed to accommodate any increased loads resulting from the attached deck. The increased loads must be considered in the design of the primary structure and included in the V-Zone Certification required under Article 4, Section B, (3)(f).
- (17) A deck or patio that is located below the Regulatory Flood Protection Elevation shall be structurally independent from buildings or structures and their foundation systems, and shall be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.
- (18) In coastal high hazard areas, development activities other than buildings and structures shall be permitted only if also authorized by the appropriate state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:
 - (a) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;
 - (b) Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters.
 - (c) Docks, piers, and similar structures.
- (19) No more than four (4) electrical outlets and no more than four (4) electrical switches may be permitted below RFPE unless required by building code.

SECTION H. STANDARDS FOR COASTAL A ZONES (ZONE CAZ) LHMWA

Structures in CAZs shall be designed and constructed to meet V Zone requirements, including requirements for breakaway walls. However, the NFIP regulations also require flood openings in walls surrounding enclosures below elevated buildings in CAZs (see Technical Bulletin 1, *Openings in Foundation Walls and Walls of Enclosures*). Breakaway walls used in CAZs must have flood openings that allow for the automatic entry and exit of floodwaters to minimize damage caused by hydrostatic loads. Openings also function during smaller storms or if anticipated wave loading does not occur with the base flood.

- (1) All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is no lower than the regulatory flood protection elevation. Floodproofing shall not be utilized on any structures in Coastal A Zones to satisfy the regulatory flood protection elevation requirements.
- (2) All new construction and substantial improvements shall have the space below the bottom of the lowest horizontal structural member of the lowest floor either be free of obstruction or constructed with breakaway walls, open wood latticework or insect screening, provided they are not part of the structural support of the building and are designed so as to breakaway, under abnormally high tides or wave action without causing damage to the elevated portion of the building or supporting foundation system or otherwise jeopardizing the structural integrity of the building. The following design specifications shall be met:
 - (a) Material shall consist of open wood or plastic lattice having at least 40 percent of its area open, or
 - (b) Insect screening; or
 - (c) Breakaway walls shall meet the following design specifications:
 - (1) Breakaway walls shall have flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the design criteria in Article 5, Section B(4)(d); and
 - (2) Design safe loading resistance shall be not less than 10 nor more than 20 pounds per square foot; or
 - (3) Breakaway walls that exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by State or local codes) shall be certified by a registered professional engineer or architect that the breakaway wall will collapse from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). The water loading values used shall be those associated with the base flood. The wind loading values used shall be those required by the North Carolina State Building Code.
- (3) Concrete pads, including patios, decks, parking pads, walkways, driveways, etc. must meet the provisions of Article 5, Section G (5).
- (4) All new construction and substantial improvements shall meet the provisions of Article 5, Section G (3).
- (5) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions of Article 4, Section B and Article 5, Section G (3) and (4), on the current version of the North Carolina V-Zone Certification form or a locally developed V-Zone Certification form.
- (6) Recreational vehicles may be permitted in Coastal A Zones provided that they meet the Recreational Vehicle criteria of Article 5, Section B(6)(a).
- (7) Fill/Grading must meet the provisions of Article 5, Section G (11)
- (8) Fill is prohibited in the SFHA (*maximum 280 CRS points possible*) (OPTIONAL)

- (9) Decks and patios must meet the provisions of Article 5 Section G (15) and (16).
- (10) In coastal high hazard areas, development activities other than buildings and structures must meet the provisions of Article 5, Section G (17)

SECTION I. RESERVED.

SECTION J. RESERVED.

ARTICLE 6. LEGAL STATUS PROVISIONS.

SECTION A. EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING FLOOD DAMAGE PREVENTION ORDINANCE.

This ordinance in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted July 26, 1989 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of the Town of Cedar Point enacted on July 26, 1989, as amended, which are not reenacted herein are repealed.

The date of the initial Flood Damage Prevention Ordinance for Carteret County is insert adoption date of the community’s initial Flood Damage Prevention Ordinance.

SECTION B. EFFECT UPON OUTSTANDING FLOODPLAIN DEVELOPMENT PERMITS.

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

SECTION C. SEVERABILITY.

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

SECTION D. EFFECTIVE DATE.

This ordinance shall become effective June 19, 2020.

SECTION E. ADOPTION CERTIFICATION.

I hereby certify that this is a true and correct copy of the Flood Damage Prevention Ordinance as adopted by the Board of Commissioners of the Town of Cedar Point, North Carolina, on the ____ day of _____, 2020.

WITNESS my hand and the official seal of insert Name, Title, this the Day (number or text) day of Month, Year.

(signature)

Tab 4 Text Amendment 2020-03

§ 1-5. General Penalty; Enforcement of Code.

(a) *Civil penalty.* Any person who violates any provision of this Code shall be subject to a civil penalty in an amount not to exceed \$500.00; however, if a different civil penalty is provided in this Code for a violation of a specific chapter, the specific penalty will apply.

(1) Civil penalties shall be assessed by written notice from the town administrator, or his designee, to the offender describing the violation and the amount of the penalty. The amount of penalty shall be determined by the town administrator and shall be commensurate with the violation. Where applicable, the notice shall state that each day the violation continues shall be an additional and separate violation subject to the same daily civil penalty set forth in the notice. The notice shall further state that no additional notice will be sent for continuing violations and penalties.

(2) The notice shall inform the recipient that he, within ten days of receipt of notice of the violation, may, in writing, request a hearing before the town administrator on the notice of violation and assessment of the penalty. If a request for a hearing is made, the town administrator shall schedule the hearing as soon as practical. Following the hearing, the town administrator, in writing, shall affirm, reverse, or modify the notice of violation and shall have the authority to reduce or reverse the imposition of the penalty assessed.

(3) The decision of the town administrator may be appealed by written notice to the board of commissioners. Notice of appeal to the board must be given within ten days of the date of the town administrator's written decision. If an appeal is made, a hearing shall be held before the board of commissioners as soon as practical. The board, by a written order entered as soon after the hearing as practical, shall affirm, reverse, or modify the notice of violation and shall have the authority to reduce or reverse the imposition of the penalty assessed.

(4) Civil penalties shall be paid to the town within 30 days after the assessment is made if no hearing is requested, or within 30 days after the assessment is affirmed if a hearing by the town administrator is requested or an appeal to the town board is made. If not so paid, the town may initiate a civil action in the nature of collection of a debt to collect any unpaid penalty.

(5) The person, firm or corporation who violates any provision of this Code shall be subject to the civil penalty provided herein; however, there is a rebuttable presumption that the owner of property where a violation occurs is responsible for the violation.

(6) Payment of a civil penalty shall not be evidence of, or an admission of, criminal guilt.

Draft Revisions to Code of Ordinances re Enforcement Provisions

(b) *Misdemeanor offense.* Pursuant to N.C.G.S. § 160A-175(b), violations of this Code shall not be considered a misdemeanor offense, unless otherwise specifically stated herein.

Deleted: If any person shall violate any provision of this Code, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500.00.

(c) *Traffic and parking offenses.* Notwithstanding the foregoing subsection (b) of this § 1-5, if any person shall violate a provision of this Code regulating the operation or parking of vehicles, he shall be responsible for an infraction and shall be required to pay a penalty of not more than \$50.00. Each day's continuing violation constitutes a separate offense.

(d) *Equitable remedies.* Any provision of this Code or other town ordinance may be enforced by injunction, order of abatement, or any other appropriate equitable remedy. When a violation of this Code occurs, the town may apply to the appropriate division of the general court of justice for an appropriate equitable remedy and it shall not be a defense to the application of the town for equitable relief that there is an adequate remedy at law.

(e) *Injunction and abatement.*

(1) Any provision of this Code making unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement, and the general court of justice shall have jurisdiction to issue such orders. When a violation of this Code occurs, the town may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

(2) In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture, or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the Code. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the town may execute the order of abatement. The town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(f) *Enforcement of ordinances.* The provisions of this Code may be enforced by any one, all or a combination of the remedies authorized and prescribed by this section.

(g) *Continuing violation.* Except as otherwise specifically provided, each day's continuing violation of this Code shall be a separate and distinct offense.

Chapter 9.

Offenses and Miscellaneous Provisions.

Nuisances.

Division I. Nuisances, in general.

§ 9-7 General Penalty. In addition to the specific enforcement provisions contained in this Division, a violation hereof is subject to the General Penalty provisions set forth in § 1-5 of this Code.

Deleted: a misdemeanor and may be enforced by any provision of §1-5 of this Code.

Division IX. Regulation of Golf Carts.

Golf Carts.

(b) Civil Penalties.

Any act constituting a violation of this Division shall subject the offender to a civil penalty in an amount as set forth in the Town's Fee Schedule, plus any attorney fees, court costs, or other collection expenses incurred by the Town. If the offender fails to pay the penalty within 30 days of receiving written notice of the violation, the amount owed may be recovered by the Town in a civil action in the nature of debt. In addition, failure to pay a civil penalty shall constitute grounds for revocation of golf cart registration.

Deleted: of \$50.00

Chapter 4 – Enforcement

4.1 PURPOSE

This ~~chapter~~ establishes procedures through which the Town seeks to ensure compliance with the provisions of this Ordinance. It also sets forth the remedies and penalties for violations of this Ordinance. The provisions of this chapter are intended to encourage the voluntary correction of violations, where possible.

Deleted: article

4.2 AUTHORITY

As provided by NCGS § 160A-389, as amended, if any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this Ordinance, the Town, in addition to other remedies, may institute appropriate action or proceedings, including civil penalties, to prevent the unlawful action or use, to restrain, correct or abate any violation, to prevent the occupancy of the building, structure or land or to prevent any illegal act, conduct, business or use in or about the premises. The Town of Cedar Point shall have the power to impose civil penalties as provided in NCGS § 160A-175(a), (c) (g) and NCGS § 160A-389, as amended.

4.3 APPLICABILITY

This Ordinance shall apply to all property within the corporate limits of the Town of Cedar Point and its area of Extraterritorial Jurisdiction (ETJ). Unless otherwise specified, the Enforcement Officer shall have the authority to administer and enforce the provisions of the Ordinance within this area.

4.4 ENFORCEMENT OFFICER

The word Enforcement Officer shall mean the Town Administrator or his/her designee and, when applicable, the Building Inspector. The Enforcement Officer may enter any building, structure, or premises as provided by law, to perform any duty imposed upon him/her by this ordinance.

4.5 VIOLATIONS

Any violation of this ordinance shall be subject to the enforcement remedies and penalties provided by this chapter and by state law, ~~except that a violation of this ordinance shall not constitute a criminal offense~~. Each day's violation of any provision of this ordinance is a separate and distinct offense.

4.6 RESPONSIBLE PERSONS

The owner, tenant, or occupant of any land or structure, or part thereof, and any

architect, engineer, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Ordinance may be held responsible for the violation and be subject to the penalties provided herein.

4.7 ENFORCEMENT PROCEDURES

Upon the Enforcement Officer's determination that any provision of this Ordinance has been violated, a written notice shall be delivered by personal service or by registered or certified mail, return receipt requested, to the property owner, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the Town Administrator's discretion.

The final written notice, delivered by certified mail, which may also be the initial notice, shall state the action the Town Administrator intends to take if the violation is not corrected, and shall advise that the Town Administrator's order may be appealed to the Board of Adjustment within thirty (30) days of final written notice.

Once the final written notice is delivered, the penalties covered in *Section 4.8* shall apply.

Suspected violations and complaints can be reported to the Town Administrator in writing. Complainants who provide contact information will be apprised of the outcome of the investigation whereas anonymous complainants will not.

4.8 PENALTIES

A. CIVIL PENALTY

Any person, firm, or corporation who violates any provision of this Ordinance shall be subject to a civil penalty in the amount of \$500.00; however, if a different civil penalty is provided in this Ordinance for a violation of a specific chapter or provision, the specific penalty will apply.

1. Civil penalties shall be assessed by written notice from the Town Administrator, or his/her designee, to the offender describing the violation and the amount of the penalty. The Town Administrator has the authority to reduce the amount of civil penalty if he determines that the prescriptive penalty exceeds the amount necessary to compensate the public for the violation or to encourage future compliance. Where applicable, the notice shall state that each day the violation continues shall be an additional and separate violation subject to the same daily civil penalty set forth in the notice. The notice shall further state that no additional notice will be sent for continuing violations and penalties.

2. The notice shall inform the recipient that he or she, within ten days of receipt of notice of the violation, may in writing request a hearing before the Town Administrator on the notice of violation and assessment of the penalty. If a request for hearing is made, the Town Administrator shall schedule the hearing as soon as practical. Following the hearing, the Town Administrator in writing shall affirm, reverse, or modify the notice of violation and shall have the authority to reduce or reverse the imposition of the penalty assessed.
3. The decision of the Town Administrator may be appealed by written notice to the Board of Adjustment. Notice of appeal to the Board must be given to the Town Clerk within ten days of the date of the Town Administrator's written decision. If an appeal is made, a hearing shall be held before the Board of Adjustment as soon as practical. The Board, by a written order entered as soon after the hearing as practical, shall affirm, reverse, or modify the notice of violation and shall have the authority to reduce or reverse the imposition of the penalty assessed.
4. Civil penalties shall be paid to the Town within 30 days after the assessment is made if no hearing is requested, or within 30 days after the assessment is affirmed if a hearing by the Town Administrator is requested or an appeal to the Board of Adjustment is made. If not so paid, the Town may initiate a civil action in the nature of collection of a debt to collect any unpaid penalty.
5. The person, firm, or corporation who violates any provision of this Ordinance shall be subject to the civil penalty provided herein; however, there is a rebuttable presumption that the owner of property where a violation occurs is responsible for the violation.
6. Payment of a civil penalty shall not be evidence of, or an admission of, criminal guilt.

B. MISDEMEANOR OFFENSE

~~Pursuant to N.C.G.S. § 160A-175(b), violations of this Ordinance shall not be considered a misdemeanor offense.~~

Deleted: If any person shall violate any provision of this Article, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500.00

C. EQUITABLE REMEDIES

Any provision of this Ordinance may be enforced by injunction, order of abatement, or any other appropriate equitable remedy. When a violation of this Ordinance occurs, the Town may apply to the appropriate division of the General Court of Justice for an appropriate equitable remedy and it shall not be a defense to the application that there is an adequate remedy at law.

D. ENFORCEMENT

The provisions of this Code may be enforced by any one, all or a combination of the remedies authorized and prescribed by this section, and/or the General Statutes of

North Carolina, except that a violation of this ordinance shall not constitute a criminal offense.

E. **CONTINUING VIOLATION**

Except as otherwise specifically provided, each day's continuing violation of this Ordinance shall be a separate and distinct offense.

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