

CHAPTER XXI FLOOD DAMAGE PREVENTION

Prior ordinance history: Ordinance Nos. 85-27, 87-10, 87-30, 89-23, 91-22, 93-1 and 13-10.

21-1 STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

21-1.1 Statutory Authorization.

The Legislature of the State of New Jersey has, in N.J.S.A. 40:48-1 et seq., delegated the responsibility to local governmental units to adopt regulations designed to promote public health, safety, and general welfare of its citizenry. Therefore, the City Council of the City of Ocean City of Cape May County, New Jersey does ordain as follows. (Ord. #13-31, § 21-1.1)

21-1.2 Findings of Fact.

- a. The flood hazard areas of the City of Ocean City are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- b. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and when inadequately anchored, causes damage in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

(Ord. #13-31, § 21-1.2)

21-1.3 Statement of Purpose.

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

- a. Protect human life and health;
- b. Minimize expenditure of public money for costly flood control projects;
- c. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- d. Minimize prolonged business interruptions;
- e. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, bridges located in areas of special flood hazard;
- f. Help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
- g. Ensure that potential buyers are notified that property is in an area of special flood hazard; and
- h. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

(Ord. #13-31, § 21-1.3)

21-1.4 Methods of Reducing Flood Losses.

In order to accomplish its purposes, this Chapter includes methods and provisions for:

- a. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

- b. Requiring that uses vulnerable to floods including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- c. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
- d. Controlling filling, grading, dredging, and other development which may increase flood damage; and
- e. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

(Ord. #13-31, § 21-1.4)

21-2 DEFINITIONS.

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

"A Zone" "V Zone" shall mean area of special flood hazards.

Advisory Base Flood Elevation (ABFE) shall mean the elevation shown on a community's Advisory Flood Hazard Map that indicates the advisory stillwater elevation plus wave effect ($ABFE = SWEL + \text{wave effect}$) resulting from a flood that has a one (1%) percent or greater chance of being equaled or exceeded in any given year.

Advisory Flood Hazard Area (AFHA) shall mean the land in the floodplain within a community subject to flooding from the one (1%) percent annual chance event depicted on the Advisory Flood Hazard Map.

Advisory Flood Hazard Map shall mean the official map on which the Federal Emergency Management Administration has delineated the areas of advisory flood hazards applicable to the community.

Anchorage shall mean the mechanism by which the structural systems of all buildings or structures are designed, connected and anchored to prevent flotation, collapse or permanent lateral movement due to structural loads and stresses from flooding.

Appeal shall mean a request for a review of the Construction Code Official's interpretation of any provision of this Chapter or a request for a variance.

Area of Shallow Flooding shall mean a designated AO, AH, or VO Zone on a community's Digital Flood Insurance Rate Map (DFIRM) with a one (1%) percent annual or greater chance of flooding to an average depth of one (1') to three (3') feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard shall mean the land in the floodplain within a community subject to a one (1%) percent or greater chance of flooding in any given year.

Base Flood shall mean the flood having a one (1%) percent chance of being equaled or exceeded in any given year.

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

Beaches shall mean gently sloping unvegetated areas of sand that extend landward from the mean high waterline to either:

- a. The vegetation line;
- b. A manmade feature generally parallel to the ocean, inlet or bay waters, such as a retaining structure, sea wall, bulkhead, road or boardwalk, except that sand areas that extend fully under, or landward of an elevated boardwalk are considered to be beach; or
- c. The seaward or bayward foot of dunes, whichever is closest to the bay, inlet or ocean waters.

Best Available Flood Hazard Data shall mean the most recent available flood risk guidance FEMA has provided. The Best Available Flood Hazard Data may be depicted on but not limited to Advisory Flood Hazard Area Maps, Work Maps or Preliminary FIS and FIRM.

Best Available Flood Hazard Data Elevation shall mean the most recent available flood elevation FEMA has provided. The Best Available Flood Hazard Data Elevation may be depicted on an Advisory Flood Hazard Area Map; Work Map; or Preliminary FIS and FIRM.

Previous
Hit

Next
Hit

Previous
Document

Next
Document

Document: CHAPTER XXI FLOOD DAMAGE
PREVENTION

Breakaway Wall shall mean 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 supporting foundation system.

Coastal High Hazard Area shall mean an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Development shall mean any manmade 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 located within the area of special flood hazard.

Digital Flood Insurance Rate Map (DFIRM) shall mean the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Dune Vegetation shall mean vegetative species which normally grow or may be placed on the slopes of dunes or behind them, with no distinction being made as to how such plants are introduced into their location. These species include, but are not limited to, beachgrass (*Ammophila breviligulata*), dusty miller (*Artemisia stelleriana*), sea rocket (*Cakile edentula*), seaside goldenrod (*Solidago sempervirens*), bayberry (*Myrica pensylvanica*), beach pea (*Lathyrus japonicus*), salt spray rose (*Rosa rugosa*) or seaside spurge (*Euphorbia polygonifolia*).

Elevated Building shall mean a non-basement building (i) built, in the case of a building in an area of special flood hazard, to have the top of the elevated floor or, in the case of a building in a coastal high-hazard area, to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the base flood elevation by means of piling, columns (posts and piers), or shear walls parallel to the flow of the water, and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. In an area of special flood hazard "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters. In areas of coastal high hazard "elevated buildings" also includes a building otherwise meeting the definition of "elevated building" even though the lower area is enclosed by means of breakaway walls.

Erosion shall mean the process of the gradual wearing away of land masses.

Erosion Hazard Areas shall mean shoreline areas that are eroding and/or have a history of erosion, causing them to be highly susceptible to further erosion and damage from storms.

- a. Erosion hazard areas may be identified by any one of the following characteristics:
 1. Lack of beaches;
 2. Lack of beaches at high tide;
 3. Narrow beaches;
 4. High beach mobility;
 5. Foreshore extended under a boardwalk;
 6. Low dunes or no dunes;
 7. Escarped foredune;
 8. Gaps in dune fields;
 9. Steep beach slopes;
 10. Cluffed bluffs adjacent to beach;
 11. Insufficient dune or bluff vegetation;
 12. Exposed, damaged or breached jetties, groins or seawalls;
 13. High long-term erosion rates; or
 14. Pronounced downdrift effects of groins (jetties).

- b. Erosion hazard areas extend inland to the limit of the area likely to be eroded in less than fifty (50) years, including developed and undeveloped areas. The distance is measured from the most seaward, established dune crest for unvegetated dune areas, the first vegetation line from the water for established vegetated dune areas, or the landward edge of a beach of the eight (8') foot (NGVD) contour line, whichever is farther inland, for non-dune areas. An established unvegetated dune is a dune that has been in place for at least two (2) winter seasons, or has been constructed with the approval of the Department. An established vegetated dune is a dune with an existing vegetative cover which has been growing on site for at least two (2) growing seasons.

Flood or *Flooding* shall mean 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 Insurance Rate Map (FIRM) shall mean the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) shall mean the official report in which the Federal Insurance Administration has provided flood profiles, as well as the Flood Insurance Rate Map(s) and the water surface elevation of the base flood.

Floodplain Management Regulations shall mean zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such State or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodway shall mean 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 0.2 foot.

Highest Adjacent Grade shall mean the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure shall mean any structure that is:

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

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

Manufactured Home shall mean a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

Manufactured Home Park or *Manufactured Home Subdivision* shall mean a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

Mean Sea Level shall mean the average height of the sea for all stages of the tide.

New Construction shall mean structures for which the start of construction commenced on or after the effective date of a floodplain regulation adopted by a community and includes any subsequent improvements to such structures.

New Manufactured Home Park or Subdivision shall mean 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) is completed on or after the effective date of the floodplain management regulations adopted by the municipality.

Primary Frontal Dune shall mean 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 from coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from the relatively steep slope to a relatively mild slope.

Recreational Vehicle shall mean a vehicle which is [i] built on a single chassis; [ii] four hundred (400) square feet or less when measured at the longest horizontal projections; [iii] designed to be self-propelled or permanently towable by a light duty truck; and [iv] designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Sand Dunes shall mean systems or formations of drifting windblown materials, usually sand, which are upland of the beach and oriented roughly parallel to the shoreline. These formations may be natural or of human origin and are usually stabilized with natural vegetation. The term "dune" includes all areas between the inland limits of the dry sandy beach and the foot of the most inland slope. Dunes include the following subcategories:

- a. *Primary Frontal Dune* — A contiguous or nearly contiguous 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 minor slope.
- b. *Primary Backdunes and Secondary and Tertiary Dunes* — The backslope of the foredune and extend from the dune ridges immediately landward of the foredune to the inland toe of the most inland slope.
- c. *Migrating Dunes* — Dunes which have changed location through the course of time.
- d. *Artificial Dunes* — Accumulation of sediment in dune from which have been built by any non-natural process such as bulldozing, or sand fencing.
- e. *Stabilized Dunes* — Dunes maintained in a fixed location by artificial means.
- f. *Dune Fields* — Include but are not limited to any combination of dune types previously defined.

Sand Fence shall mean a picket type (snow fence) or other barricade type established in a line or a pattern to accumulate sand and aid in the formation of a dune.

Start of Construction shall mean for other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. No. 97-348) includes substantial improvements 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 one hundred eighty (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 a 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 or 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 a building, whether or not that alteration affects the external dimensions of the building.

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

Substantial Damage shall mean damage of any origin sustained by a structure whereby the cost of restoring the structure to its condition before damage would equal or exceed fifty (50%) percent of the market value of the structure before the damage occurred.

Substantial Improvement shall mean any reconstruction, rehabilitation, addition, or other improvement of a structure within a 5-year period, the cost of which equals or exceeds fifty (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 project for improvement of a structure to correct existing violations of State or local health, sanitary or safety code specifications which have been identified by the local code enforcement officer 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 shall mean a grant of relief from the requirements of this Chapter that permits construction in a manner that would otherwise be prohibited by this Chapter.

(Ord. #13-31, § 21-2)

21-3 GENERAL PROVISIONS.

21-3.1 Lands to Which This Chapter Applies.

This Chapter shall apply to all areas of special flood hazards within the jurisdiction of the City of Ocean City, Cape May County, New Jersey. (Ord. #13-31 § 21-3.1)

21-3.2 Basis for Establishing the Areas of Special Flood Hazard.

The areas of special flood hazard for the City of Ocean City, Community No. 345310 are identified and defined on the following documents prepared by the Federal Emergency Management Agency:

- a. A scientific and engineering report "Flood Insurance Study for the City of Ocean City" dated March 5, 1984.
- b. Flood Insurance Rate Maps and Flood Boundary Maps dated September 5, 1984 and any revision thereto.
- c. *Best Available Flood Hazard Data*. These documents shall take precedence over effective panels and FIS in construction and development regulations only. Where the effective mapping or Base Flood Elevation conflict or overlap with the Best Available Flood Hazard Data, whichever imposes the more stringent requirement shall prevail.

The above documents are hereby adopted and declared to be a part of this Chapter. The Flood Insurance Study, maps and advisory documents are on file at 115 12th Street, Ocean City, New Jersey.

(Ord. #13-31, § 21-3.2)

21-3.3 Penalties for Noncompliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Chapter and other applicable regulations. Violation of the provisions of this Chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this Chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than five hundred (\$500.00) dollars or imprisoned for not more than ninety (90) days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Additionally, any person convicted of violating this Chapter by the alteration, damage or destruction of any sand dune shall be required to reimburse the City of Ocean City for the full cost of restoration of the affected beach and/or sand dune to its original condition prior to violation of this Chapter. If the violation of this Chapter is of a continuing nature, each day in which said violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Ocean City from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. #13-31, § 21-3.3)

21-3.4 Abrogation and Greater Restrictions.

This Chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Chapter and other ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. #13-31, § 21-3.4)

21-3.5 Interpretation.

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

- a. Considered as minimum requirements;
 - b. Liberally construed in favor of the public health, safety and welfare and the Governing Body; and
 - c. Deemed neither to limit nor repeal any other powers granted under State statutes.
- (Ord. #13-31, § 21-3.5)

21-3.6 Warning and Disclaimer of Liability.

The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This Chapter does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages.

This Chapter shall not create liability on the part of the City of Ocean City, any officer or employee thereof or the Federal Insurance Administration, for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made thereunder.

(Ord. #13-31, § 21-3.6)

21-3.7 Creation and Maintenance of a Dune System.

In order to create and maintain a unified dune system, the City hereby adopts as its policy the report of Coastal and Marina Engineering Consultants, Inc. entitled "A Dune Establishment and Maintenance Program for the City of Ocean City, New Jersey" dated June 1, 1988. The creation and maintenance of sand dunes consistent with said report is hereby authorized, notwithstanding the provisions of any ordinance, including provisions of this Chapter to the contrary. The alteration of any existing sand dunes in order specifically to create and maintain other existing or new dunes is hereby authorized, provided the said alteration will not increase the flood potential of the property behind the sand dune so altered, and further provided that said action is undertaken by appropriate representatives of the City of Ocean City. (Ord. #13-31, § 21-3.7)

21-4 ADMINISTRATION.

21-4.1 Establishment of Development Permit.

A development permit shall be obtained before construction or development begins, including placement of manufactured homes, within any area of special flood hazard established in subsection 21-3.2. Application for a development permit shall be made on forms furnished by the Construction Code Official and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- a. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
- b. Elevation in relation to mean sea level to which any structure has been floodproofed;
- c. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in subsection 21-5.2b; and
- d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- e. Plans for any walls to be used to enclose space below the base flood level.
- f. Certifications from licensed professional engineer or architect as required in subsection 21-4.3c,3.
- g. Any other plans, certifications, or drawings as may be required by the Construction Code Official.

h. Topographic maps of the site to be developed where dunes are or may be found on said site.
(Ord. #13-31, § 21-4.1)

21-4.2 Designation of the Local Administrator.

The Construction Code Official is hereby appointed to administer and implement this Chapter by granting or denying development permit applications in accordance with its provisions. (Ord. #13-31, § 21-4.2)

21-4.3 Duties and Responsibilities of the Administrator.

Duties of the Construction Code Official shall include, but not be limited to:

a. Permit Review.

1. Review all development permits to determine that the permit requirements of this Chapter have been satisfied.
2. Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
3. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of subsection 21-5.3a. are met.
4. Review all development permits in the coastal high hazard area of the area of special flood hazard to determine if the proposed development alters sand dunes so as to increase potential flood damage.
5. Review plans for walls to be used to enclose space below the base flood level in accordance with subsection 21-5.4b,4.
 - (a) Development is prohibited on beaches, except for development that has no prudent or feasible alternative in an area other than a beach, and that will not cause significant adverse long term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities.

Examples of acceptable activities are:

- (1) Demolition and removing of paving and structures;
 - (2) Dune creation and related sand fencing and planting of vegetation for dune stabilization;
 - (3) The reconstruction of existing amusement and fishing piers and boardwalks;
 - (4) Temporary recreation structures for public safety as first aid and lifeguard stations;
 - (5) Shore protection structures which meet the use conditions of N.J.A.C. 7:7E7.11(E); and
 - (6) Linear development which meets the policy on location of linear development pursuant to N.J.A.C. 7:7E-6.1.
- (b) Development is prohibited on dunes, except for development that has no prudent or reasonable alternative in an area other than a dune, and that will not cause significant adverse long term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities.

Examples of acceptable activities are:

- (1) Demolition and removal of paving structures;
- (2) Limited, the designated access ways for pedestrian and authorized motor vehicles between public streets and the beach provided for the minimum feasible interference with the beach and dune system and are oriented so as to provide minimum feasible threat of breaching or overtopping as a result of storm surge or wave run up;
- (3) Limited stairs, walkways, pathways and boardwalks to permit access across dunes or beaches, provided they cause minimum feasible interference with the beach and dune system;
- (4) The planting of native vegetation to stabilize dunes;

- (5) Sand fencing, either a brush type barricade or a picket, to accumulate sand and aid in dune formation;
 - (6) Shore protection structures which meet the conditions of N.J.A.C. 7E-7.11(E);
 - (7) Linear development which meets the policy on location of linear development of N.J.A.C. 7:7E-6.1.
- (c) Development is prohibited in the erosion hazard areas, except for:
- (1) Linear development which meets the policy on location of linear development of N.J.A.C. 7:70-6.1;
 - (2) Shore protection activities which meet the appropriate coastal engineering use policies of N.J.A.C. 7:7E-7.11.
- b. *Use of Other Base Flood and Floodway Data.* When base flood elevation and floodway data has not been provided in accordance with subsection 21-3.2, Basis for Establishing the Areas of Special Flood Hazard, the Construction Code Official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer subsection 21-5.2a, Specific Standards, Residential Construction, and subsection 21-5.2b, Specific Standards, Nonresidential Construction.
- c. *Information to Be Obtained and Maintained.*
- 1. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
 - 2. For all new or substantially improved floodproofed structures:
 - (a) Verify and record the actual elevation (in relation to mean sea level); and
 - (b) Maintain the floodproofing certifications required in subsection 21-4.1c.
 - 3. In coastal high hazard areas, certification shall be obtained from a registered professional engineer or architect that the provisions of subsection 21-5.4b,1 and 21-5.4b,2(a) and (b) are met.
 - 4. Maintain for public inspection all records pertaining to the provisions of this Chapter.
- d. *Alteration of Watercourses.*
- 1. Notify adjacent communities and the New Jersey Department of Environmental Protection, Dam Safety and Flood Control Section and the Land Use Regulation Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
 - 2. Require that maintenance is provided within the altered or relocated portion of said watercourse so the flood carrying capacity is not diminished.
- e. *Interpretation of FIRM Boundaries.* Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in subsection 21-4.4.

(Ord. #13-31, § 21-4.3)

21-4.4 Variance Procedure.

a. Appeal Board.

- 1. The Flood Damage Prevention Appeal Board is hereby established to hear and decide appeals and requests for variances from the requirements of this Chapter. The Flood Damage Prevention Appeal Board shall consist of seven (7) members appointed by the Mayor with the advice and consent of the Governing Body. The members shall be citizens of the City of Ocean City. The initial members shall serve for staggered terms as follows:

One (1) member for a term of one (1) year.

Two (2) members for terms of two (2) years.

Two (2) members for terms of three (3) years.

Two (2) members for terms of four (4) years.

Thereafter, each member shall be appointed for a term of four (4) years.

(a) Notice of Applications.

- (1) Applications for appeal of decisions of the Construction Code Official, and applications for variances shall be filed with the Secretary to the Appeal Board. The application for appeal shall be filed on forms provided by the Appeal Board. When presenting the application, the applicant shall provide ten (10) copies of any plans, drawings, surveys, reports or other written documents upon which the applicant relied when seeking a development permit.
- (2) Notice of hearing for a variance pursuant to paragraph a,2 shall be given to the owners of all real property as shown on the current tax duplicates, located within two hundred (200') feet in all directions of the property which is the subject of such hearing; provided that this requirement shall be deemed satisfied by notice to the (1) condominium association, in the case of any unit owner whose unit has a unit above or below it, or (2) horizontal property regime, in the case of any co-owner whose apartment has an apartment above or below it. Notice shall be given by: (1) serving a copy thereof on the property owner as shown on the said current tax duplicate, or his agent in charge of the property, or (2) mailing a copy thereof by certified mail to the property owner at his address as shown on the said current tax duplicate.

Notice to a partnership owner may be made by service upon any partner. Notice to a corporate owner may be made by service upon its president, a vice president, secretary or other person authorized by appointment or by law to accept service on behalf of the corporation. Notice to a condominium association, horizontal property regime, community trust or homeowners' association, because of its ownership of common elements or areas located within two hundred (200') feet of the property which is the subject of the hearing, may be made in the same manner as to a corporation without further notice to unit owners, co-owners, or homeowners on account of such common elements or areas.

- (3) Upon the written request of an applicant the Tax Assessor of Ocean City shall, within seven (7) days, make and certify a list from said current tax duplicates of names and addresses of owners to whom the applicant is required to give notice pursuant to paragraph a,1(a)(2) of this subsection. The applicant shall be entitled to rely upon the information contained in such list, and failure to give notice to any owner not on the list shall not invalidate any hearing or proceeding. A sum not to exceed twenty-five (\$.25) cents per name, or ten (\$10.00) dollars, whichever is greater, may be charged for such list.
- (4) The applicant shall file an affidavit of proof of service with the Appeal Board holding the hearing on a variance.
- (5) Following the receipt of a completed appeal application, the Appeal Board shall meet and consider the applicable within forty-five (45) days.
- (6) Any application for variances from the requirements of this Chapter must first be submitted to and reviewed by the State of New Jersey Department of Environmental Protection, Division of Coastal Resources.

(b) Hearing.

- (1) The Appeal Board shall make the rules governing hearings. Any applications, maps, surveys or other documents filed in connection with an application shall be available for public inspection at least ten (10) days before the date of the hearing, during normal business hours in the office of the Construction Code Official. The applicant may produce other documents, records, or testimony at the hearing to substantiate or clarify or supplement the previously filed maps and documents.
- (2) The officer presiding at the hearing or such person as he may designate shall have power to administer oaths.
- (3) The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer, and the right of cross-examination shall be

permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitations as to time and number of witnesses.

- (4) Technical rules of evidence shall not be applicable to the hearing, but the Appeal Board may exclude irrelevant, immaterial or unduly repetitious evidence.
- (5) The Appeal Board shall provide for the verbatim recording of the proceedings by either stenographer, mechanical or electronic means. The Appeal Board shall furnish a transcript, or duplicate recording in lieu thereof, on request to any interested party at his expense.
- (6) The Appeal Board shall include findings of fact and conclusions based thereon, in each decision on any appeal or variance request. Said findings and conclusions shall be reduced to writing.

[a] A memorializing resolution shall be adopted at a meeting held not later than forty-five (45) days after the date of the meeting at which the Appeal Board voted to grant or deny approval. Only members of the Appeal Board who voted for the action taken may vote on the memorializing resolution, and the vote of a majority of such members present at the meeting at which the resolution is presented for adoption shall be sufficient to adopt the resolution. If the Appeal Board fails to adopt a resolution or memorializing resolution as here-inabove specified, any interested party may apply to the Superior Court in a summary manner for an order compelling the Appeal Board to reduce its findings and conclusions to writing within a stated time.

- (7) A copy of the decision shall be mailed by the Appeal Board within ten (10) days of the date of decision to the applicant or, if represented, then to his attorney, without separate charge, and to all who request a copy of the decision, for a reasonable fee. A copy of the decision shall also be filed by the Appeal Board in the office of the Construction Code Official. The Construction Code Official shall make a copy of such filed decision available to any interested party for a reasonable fee and available for public inspection at his office during reasonable hours.

(c) **Scope of Review.**

- (1) The scope of review of any appeal taken to the Appeal Board by an applicant shall be those set forth in the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-70. In hearing and deciding such appeals, the Appeal Board shall consider those factors set forth in subsection 21-4.3a. of this Chapter.
2. The Flood Damage Prevention Appeal Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Construction Code Official in the enforcement or administration of this Chapter; and applications for variances from the requirements of this Chapter.
3. Those aggrieved by the decision of the Flood Damage Prevention Appeal Board, or any taxpayer, may appeal such decision to the Superior Court of New Jersey by action in lieu of prerogative writ.
4. In passing upon such applications, the Flood Damage Prevention Appeal Board, shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Chapter, 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, where applicable;
 - (f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (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 of 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. Upon consideration of the factors of subsection 21-4.4a,4 and the purposes of this Chapter, the Flood Damage Prevention Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Chapter.
 6. The Construction Code Official shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Insurance Administration upon request.

b. *Conditions for Variances.*

1. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in (a)–(k) subsection 21-4.4a,4 have been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justification required for issuing the variance increases.
2. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
3. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. 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 to the applicant; and
 - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in subsection 21-4.4a,4, or conflict with existing local laws or ordinances.
6. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(Ord. #13-31 § 21-4.4)

21-5 PROVISIONS FOR FLOOD HAZARD REDUCTION.

21-5.1 General Standards.

In all areas of special flood hazards, compliance with the applicable requirements of the Uniform Construction Code (N.J.A.C. 5:23) and the following standards, whichever is more restrictive, is required:

- a. *Anchoring.*

1. All new construction to be placed or substantially improved and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
 2. All manufactured homes to be placed or substantially improved shall be anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- b. *Construction Materials and Methods.*
1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
 2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- c. *Utilities.*
1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
 2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters;
 3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding; and
 4. For all new construction and substantial improvements the electrical, heating, ventilation, plumbing and 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.
- d. *Subdivision Proposals and Other Proposed New Development.*
1. All subdivision proposals and other proposed new development shall be consistent with the need to minimize flood damage;
 2. All subdivision proposals and other proposed new development shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
 3. All subdivision proposals and other proposed new development shall have adequate drainage provided to reduce exposure to flood damage; and
 4. Base flood elevation data shall be provided for subdivision proposals and other proposed new development which contain at least fifty (50) lots or five (5) acres (whichever is less).
- e. *Enclosure Openings.* All new construction and substantial improvements having fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1') foot above grade. Openings may be equipped with screens, louvers, or other covering or devices provided that they permit the automatic entry and exit of floodwaters.

(Ord. #13-31, § 21-5.1)

21-5.2 Specific Standards.

In all areas of special flood hazards where base flood elevation data have been provided as set forth in subsection 21-3.2, Basis for Establishing the Areas of Special Flood Hazard or in subsection 21-4.3b, Use of Other Base Flood Data, the following standards are required:

a. *Residential Construction.*

1. New construction and substantial improvement of any residential structure located in an A or AE Zone shall have the lowest floor, including basement together with the attendant utilities and sanitary facilities, elevated

at or above the base flood elevation (published FIS/FIRM) or the best available flood hazard data elevation, whichever is more restrictive, plus two (2') feet;

2. Require within any AO Zone on the municipality's FIRM that all new construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated above the highest adjacent grade two (2') feet above the depth number specified in feet (at least three (3') feet if no depth number is specified) or at or above the best available flood hazard data elevation plus two (2') feet, whichever is more restrictive. And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

- b. *Nonresidential Construction.* In an area of special flood hazard, all new construction and substantial improvement of any commercial, industrial or other nonresidential structure located in an A or AE Zone shall have the lowest floor, including basement together with the attendant utilities and sanitary facilities:

1. Either

- (a) Elevated to or above the base flood elevation (published FIS/FIRM) or the best available flood hazard data elevation whichever is more restrictive, plus one (1') foot; and
- (b) Require within any AO Zone on the municipality's DFIRM that all new construction and substantial improvement of any commercial, industrial or other nonresidential structure shall have the lowest floor, including basement, elevated above the highest adjacent grade one (1') foot above the depth number specified in feet (at least three (3') feet if no depth number is specified) or at or above the best available flood hazard data elevation plus one (1') foot, whichever is more restrictive. And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures;

2. Or

- (a) Be floodproofed so that below the base flood level plus one (1') foot, or the best available flood hazard data elevation plus one (1') foot, (whichever is more restrictive), the structure is watertight with walls substantially impermeable to the passage of water;
- (b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
- (c) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of this subsection. Such certification shall be provided to the official as set forth in subsection 21-4.3c,2(b).

- c. *Manufactured Homes.*

1. Manufactured homes shall be anchored in accordance with subsection 21-5.1a,2.
2. All manufactured homes to be placed or substantially improved within an area of special flood hazard shall be elevated on a permanent foundation such that the top of the lowest floor is at or above the base flood elevation (published FIS/FIRM) or the best available flood hazard data elevation, plus two (2') feet (whichever is more restrictive).

(Ord. #13-31, § 21-5.2)

21-5.3 Floodways.

Located within areas of special flood hazard established in subsection 21-3.2 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- a. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless a technical evaluation demonstrates that encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- b. If subsection 21-5.3a. is satisfied, all new construction and substantial improvements must comply with Section 21-5 Provisions for Flood Hazard Reduction.

- c. In all areas of special flood hazard in which base flood elevation data has been provided and no floodway has been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than 0.2 of a foot at any point.

(Ord. #13-31, § 21-5.3)

21-5.4 Coastal High Hazard Area.

Coastal high hazard areas (V or VE Zones) are located within the areas of special flood hazard established in subsection 21-3.2. These areas have special flood hazards associated with high velocity waters from tidal surges and hurricane wave wash; therefore, the following provisions shall apply:

- a. *Location of Structures.*
1. All buildings or structures shall be located landward of the reach of the mean high tide.
 2. The placement of manufactured homes shall be prohibited, except in an existing manufactured home park or manufactured home subdivision.
- b. *Construction Methods.*
1. Elevation. All new construction and substantial improvements shall be elevated on piling or columns so that:
 - (a) The bottom of the lowest horizontal structural member of the lowest floor (excluding the piling or columns) is elevated to or above the base flood elevation (published FIS/FIRM), the best available flood hazard data elevation or as required by the Uniform Construction Code (N.J.A.C. 5:23), whichever is more restrictive,
 - and
 - (b) With all space below the lowest floor's supporting member open so as not to impede the flow of water, except for breakaway walls as provided for in subsection 21-5.4b,4.
 2. Structural Support.
 - (a) All new construction and substantial improvements shall be securely anchored on piling or columns.
 - (b) The pile or column foundation and structure attached thereto shall be anchored to resist flotation, collapse or lateral movement due to the effects of wind and water loading values each of which shall have a one (1%) percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).
 - (c) There shall be no fill used for structural support.
 3. Certification. A registered professional engineer or architect shall develop or review the structural design specifications and plans for the construction and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for compliance with the provisions of subsection 21-5.4b,1 and 21-5.4b,2(a) and (b).
 4. Space Below the Lowest Floor.
 - (a) Any alteration, repair, reconstruction or improvement to a structure started after the enactment of this Chapter shall not enclose the space below the lowest floor unless breakaway walls, open wood lattice-work or insect screening are used as provided for in this section.
 - (b) Breakaway walls, open wood lattice-work or insect screening shall be allowed below the base flood elevation provided that they are intended to collapse under wind and water loads without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting foundation system. Breakaway walls shall be designed for a safe loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot. Use of breakaway walls which exceed a design safe loading of twenty (20) pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions.
 - (1) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood and,

- (2) 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 load acting simultaneously on all building components (structural and non-structural). Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards.
- (c) If breakaway walls are utilized, such enclosed space shall be used solely for parking of vehicles, building access, or storage and not for human habitation.
- (d) Prior to construction, plans for any breakaway wall must be submitted to the Construction Code Official or Building Subcode Official for approval.
- c. *Sand Dunes.* It shall be unlawful for any person to alter, damage, destroy, disfigure, or walk upon any sand dune as well as for any person to operate, or permit to be operated upon any sand dune any vehicle or construction equipment, without first obtaining the approval of the Construction Code Official. Where a development permit is approved under this Chapter, the Construction Official shall establish standards under which the applicable, or any of his agents or employees may take any action to alter, damage, destroy, disfigure, or walk upon, or permit any vehicles or construction equipment to be operated upon any sand dune on the subject property or adjoining property. In granting such permission, and establishing such standards the Construction Official shall seek to achieve the purpose and intent of this Chapter, which is not to increase the potential flood damage.
- Alternation, removal, cutting or burning of any dune vegetation, sand fence or such other types of dune stabilization devices is prohibited without the prior written approval of the Construction Code Official.
- (Ord. #13-31, § 21-5.4)

21-6 REPEALER, SEVERABILITY CLAUSE AND EFFECTIVE DATE.

21-6.1 Repealer.

Any and all ordinances inconsistent herewith are hereby repealed to the extent of their inconsistency. (Ord. #13-31, § 21-6.1)

21-6.2 Severability Clause.

Should any section or portion of this Chapter be declared illegal or unconstitutional by a Court of competent jurisdiction, said section or portion of this Chapter shall be deleted and the remainder of the Chapter shall to the extent possible remain in full force and effect. (Ord. #13-31, § 21-6.2)

21-6.3 Effective Date.

This Chapter shall take effect in the time and manner prescribed by law. (Ord. #13-31, § 21-6.3)

CHAPTER XXI FLOOD DAMAGE PREVENTION

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