

U.S. Department of Homeland Security
Region III
615 Chestnut Street
Philadelphia, PA 19106-4404



FEMA

May 10, 2011

The Honorable Ronald N. Hunsicker
Mayor, Town of Bowers
3231 Main Street
Frederica, DE 19946

RE: Town of Bowers, Kent County, Delaware

CID # 100002

Dear Mayor Hunsicker:

I am pleased to inform you that the revisions to the Town of Bowers Flood Plain Management Ordinance, as amended - brought the Ordinance into compliance with the National Flood Insurance Program (NFIP) as required for Kent County's participation in the National Flood Insurance Program. When providing DNREC with your next update to the Town of Bowers Corrective Action Plan, please be sure to include the approval of the Town of Bowers Floodplain Management Ordinance.

Your efforts toward reducing future flood losses in the Town of Bowers are commendable. Please feel free to contact me by calling 215-931-5568 if you have any questions regarding ordinance enforcement or any other aspect of the program.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Harel", written in a cursive style.

Michelle Harel
Mitigation Planner
Mitigation Division

cc: Greg Williams, DE State Flood Mitigation Program
Sarah E. Keifer, AICP, Director of Planning Services, Kent County, DE
Leslie Persans, CBO, Division of Inspection and Enforcement, Kent County, DE

Sponsor: RNH
First Reading: 12/19/10
Second Reading: 01/13/10
Hearing: 01/13/10
Final Reading: 02/10/11

AN ORDINANCE TO REPEAL THE EXISTING FLOOD PLAIN ORDINANCE NUMBER 460 AS AMENDED THROUGH 04/08/1993 AND TO ENACT A NEW ORDINANCE ENTITLED "FLOOD DAMAGE REDUCTION ORDINANCE OF THE TOWN OF BOWERS" MODELED UPON THE FEMA AND DNREC MODEL ORDINANCE

WHEREAS, the Town Council of the Town of Bowers has determined that the current Flood Plain Ordinance as amended through 04/08/1993 has become outdated and no longer complies with the ordinance requirements promulgated by the Federal Emergency Management Agency;

WHEREAS, the Town residents' ability to participate in the National Flood Insurance Program is dependent on the Town having and enforcing flood plain regulations that comply with the regulations of the Federal Emergency Management Agency;

BE IT HEREBY ENACTED by the Town Council of the Town of Bowers, a majority thereof concurring in Council duly met, that the Town's existing Flood Plain Ordinance (Ordinance No. 460 as amended through 4/8/1993) be and hereby is repealed in its entirety, and the following ordinance "Flood Damage Reduction Ordinance of the Town of Bowers" be and hereby is enacted:

FLOOD DAMAGE REDUCTION ORDINANCE OF THE TOWN OF BOWERS

SECTION 1.0 GENERAL PROVISIONS

1.1 Findings

The Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the Town of Bowers. Special flood hazard areas are subject to periodic inundation which may result 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. Structures that are inadequately elevated, improperly floodproofed, or otherwise unprotected from flood damage also contribute to the flood loss.

The Town of Bowers' original Flood Plain Ordinance was adopted April 9, 1980. Subsequent to the adoption of this ordinance, the town joined the National Flood Insurance Program ("NFIP") on July 2, 1980. The town agreed to meet the requirements of the NFIP and as of a letter dated June 18, 1993 from Robert J. Adamcik, Chief of Natural and Technological Hazards Division for FEMA, the Town had a Flood Plain Ordinance approved by FEMA. This ordinance is being adopted to update the town's flood plain regulations and as of the effective date of this ordinance, all development and new construction as defined herein, shall comply with this ordinance.

1.2 Statement of Purpose

It is the purpose of these regulations to promote the public health, safety and general welfare, and to:

- A. Protect human life, health and welfare;
- B. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future;
- C. Minimize flooding of water supply and sanitary sewage disposal systems;
- D. Maintain natural drainage;
- E. Reduce financial burdens imposed on the community, its governmental units and its residents, by discouraging unwise design and construction of development in areas subject to flooding;
- F. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- G. Minimize prolonged business interruptions;
- H. Minimize damage to public facilities and other utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges;
- I. Reinforce that those who build in and occupy special flood hazard areas should assume responsibility for their actions;
- J. Minimize the impact of development on adjacent properties within and near flood prone areas;
- K. Provide that the flood storage and conveyance functions of the floodplain are maintained;
- L. Minimize the impact of development on the natural and beneficial functions of the floodplain;
- M. Prevent floodplain uses that are either hazardous or environmentally incompatible; and
- N. Meet community participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.21.

1.3 Areas to Which These Regulations Apply

These regulations shall apply to all special flood hazard areas within the jurisdiction of the Town of Bowers, as identified in Section 1.4.

1.4 Basis for Establishing Special Flood Hazard Areas

For the purposes of these regulations, the following are adopted by reference as a part of these regulations and serve as the basis for establishing special flood hazard areas:

- A. Flood Insurance Study for the Town of Bowers dated May 5, 2003, or the most recent revision thereof.
- B. Flood Insurance Rate Map (FIRM Panels dated May 5, 2003, or the most recent revision thereof).
- C. Other hydrologic and hydraulic engineering studies and/or maps prepared pursuant to these regulations or for other purposes, and which establish base flood elevations, delineate 100-year floodplains, floodways or other areas of special flood hazard.
- D. Where field surveyed topography indicates that ground elevations are below the closest applicable base flood elevation, even in areas not delineated as a special

flood hazard area on a flood hazard map, the area shall be considered as special flood hazard area.

Maps and studies that establish special flood hazard areas within the Town of Bowers are on file at the Kent County Department of Inspections and Enforcement, located at the Kent County Levy Court Administrative Complex, 555 Bay Road, Dover, Delaware and on file with the Town of Bowers.

1.5 Abrogation and Greater Restrictions

These regulations are not intended to repeal or abrogate any existing ordinances including subdivision regulations, zoning ordinances or building codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern. These regulations shall not impair any deed restriction, covenant or easement, but the land subject to such interests shall also be governed by these regulations.

1.6 Interpretation

In the interpretation and application of these regulations, 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. Where a provision of these regulations may be in conflict with a state or Federal law, such state or Federal law shall take precedence.

1.7 Warning and Disclaimer of Liability

The degree of flood protection required by these regulations 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 man-made or natural causes. These regulations do not imply that land outside of the special flood hazard areas or uses that are permitted within such areas will be free from flooding or flood damage. These regulations shall not create liability on the part of the Town of Bowers, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made there under.

1.8 Severability

Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 2.0 DEFINITIONS

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

Accessory Structure: A structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure.

Area of Shallow Flooding: A designated Zone AO on a community's Flood Insurance Rate Map with a one percent annual chance or greater of flooding to an average depth of one to three 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.

Base Flood: The flood having a one percent chance of being equaled or exceeded in any given year; the base flood also is referred to as the 100-year flood (or the 1%-annual-chance flood).

Base Flood Elevation: The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. In areas of shallow flooding, the base flood elevation is the natural grade elevation plus the depth number specified in feet on the Flood Insurance Rate Map, or at least 2 feet if the depth number is not specified.

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

Coastal High Hazard Area: 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. Coastal high hazard areas also are referred to as "V Zones" and are designated on FIRMs as flood insurance risk Zones VE or V1-30.

Development: Any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, placement of manufactured homes, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Enclosure Below the Lowest Floor: See "Lowest Floor."

Federal Emergency Management Agency (FEMA): The federal agency with the overall responsibility for administering the National Flood Insurance Program.

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

1. The overflow of inland or tidal waters, and/or
2. The unusual and rapid accumulation or runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM): An official map on which the Federal Emergency Management Agency has delineated special flood hazard areas to indicate the magnitude and nature of flood hazards, and to designate applicable flood zones.

Zone A: Special flood hazard areas inundated by the 100-year flood; base flood elevations are not determined.

Zones AE and Zone A1-30: Special flood hazard areas subject to inundation by the 100-year flood; base flood elevations are determined; floodways may or may not be determined.

Zone AO: Areas of shallow flooding, with or without a designated average flood depth.

Zone B and Zone X (shaded): Areas subject to inundation by the 500-year flood (0.2% annual chance); areas subject to the 100-year flood with average depths of less than 1 foot or with contributing drainage area less than 1 square mile; and areas protected by levees from the base flood.

Zone C and Zone X (unshaded): Areas determined to be outside the 100-year floodplain and outside the 500-year floodplain.

Zone VE and Zone V1-30: Special flood hazard areas subject to inundation by the 100-year flood and subject to high velocity wave action (also referred to as coastal high hazard areas).

Flood Insurance Study: The official report in which the Federal Emergency Management Agency has provided flood profiles, floodway information, and the water surface elevations.

Floodplain: Any land area susceptible to being inundated by water from any source (see "Flood" or "Flooding").

Floodproofing: 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 sanitary 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 pass the base flood discharge such that the cumulative increase in the water surface elevation of the base flood discharge is no more than a designated height.

Freeboard: A factor of safety usually expressed in feet above a flood elevation for the purposes of floodplain management. Freeboard tends to compensate 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, obstructed bridge openings, debris and ice jams, and the hydrologic effect of urbanization in a watershed.

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

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

Historic Structure: Any structure that is:

1. Individually listed in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listings on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on the State of Delaware's inventory of historic places maintained by the Delaware Historic Preservation Office; or
4. Individually listed on the inventory of historic places maintained by the Town of Bowers whose historic preservation program has been certified by the Delaware Historic Preservation Office.

Hydrologic and Hydraulic Engineering Analysis: An analysis performed by a professional engineer, licensed in the State of Delaware, in accordance with standard engineering practices as accepted by FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

Letter of Map Change: A Letter of Map Change is an official FEMA determination, by letter, to amend or revise an effective Flood Insurance Rate Map, Flood Boundary and Floodway Map, and Flood Insurance Study. Letters of Map Change include:

Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was inadvertently included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property is not located in a special flood hazard area.

Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. One common type of LOMR, a Letter of Map Revision Based on Fill (LOMR-F), is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood; in order to qualify for this determination, the fill must have been permitted and placed in accordance with these regulations.

Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project complies with the minimum National Flood Insurance Program requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies; upon submission to and approval of certified as-built documentation, a Letter of Map Revision may be issued.

Lowest Floor: The lowest floor of the lowest enclosed area (including basement) of a structure. This definition excludes an "enclosure below the lowest floor" which is an unfinished or flood resistant enclosure usable solely for parking of vehicles, building access or storage, in an area other than a basement area, provided that such enclosure is built in accordance with the applicable design requirements specified in these regulations for enclosures below the lowest floor.

Manufactured Home: 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 connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

New Construction: Buildings and structures, including additions, and the placement of manufactured homes, for which the "start of construction" commenced on or after the effective date of this ordinance's adoption by the Town, including any subsequent improvements to such structures.

Person: An individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.

Recreational Vehicle: A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Special Flood Hazard Area: The land in the floodplain subject to a one percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency in Flood Insurance Studies and on Flood Insurance Rate Maps as Zones A, AE, AO, A1-30, and A99, and Zones VE and V1-30. The term includes areas shown on other flood hazard maps that are specifically listed or otherwise described in Section 1.4.

Start of Construction: 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 structures, 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: For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial Damage: Damage of any origin sustained by a structure 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.

Substantial Improvement: Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which 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:

1. 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 prior to the application for a development permit by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure".

Violation: The failure of "new construction" to be fully compliant with the community's flood plain management regulations. "New construction" without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance unless and until the time that such documentation is provided.

SECTION 3.0 ADMINISTRATION

3.1 Designation of the Floodplain Administrator

The Town of Bowers or any other department, agency, or government entity duly authorized by the Town of Bowers to administer and enforce this ordinance is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator.

3.2 Duties and Responsibilities of the Floodplain Administrator

The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

- A. Review applications for permits to determine whether proposed activities will be located in flood hazard areas.
- B. Interpret floodplain boundaries and provide flood elevation and flood hazard information.
- C. Advise applicants for new construction or substantial improvement of structures that are located on any coastal barrier within the Coastal Barrier Resources System established by the Coastal Barrier Resources Act that federal flood insurance is not available on such structures. Areas subject to this limitation are shown on Flood Insurance Rate Maps as identified undeveloped coastal barriers or Otherwise Protected Areas.
- D. Review applications to determine whether proposed activities will be reasonably safe from flooding.
- E. Review applications to determine whether all necessary permits have been obtained from those Federal, state or local agencies from which prior or concurrent approval is required.
- F. Verify that applicants proposing to alter or relocate a watercourse have notified adjacent communities and the Delaware Department of Natural Resources and Environmental Control (Division of Watershed Stewardship), and have submitted copies of such notifications to the Federal Emergency Management Agency.
- G. Issue permits to develop in flood hazard areas when the provisions of these regulations have been met, or disapprove the same in the event of noncompliance.
- H. Inspect buildings and lands and review the elevation certificate to determine compliance with these regulations or to determine if noncompliance has occurred or violations have been committed.
- I. Maintain and permanently keep all records for public inspection that are necessary for the administration of these regulations including Flood Insurance Rate Maps, Letters of Map Amendment and Revision, records of issuance and denial of permits, determinations of whether development is in or out of special flood hazard areas for the purpose of issuing permits, elevation certificates, other required certifications, variances, and records of enforcement actions taken for violations of these regulations.

- J. Enforce the provisions of these regulations.
- K. Conduct determinations as to whether existing buildings and structures damaged by any cause and located in flood hazard areas have been substantially damaged.
- L. Make reasonable efforts to notify owners of substantially damaged buildings and structures of the need to obtain a permit prior to repair, rehabilitation, or reconstruction, and to prohibit the non-compliant repair of substantially-damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a structure to prevent additional damage.
- M. Undertake, as determined appropriate by the Floodplain Administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other Federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures materials and other information related to the proper repair of damaged structures in special flood hazard areas; and assisting owners with National Flood Insurance Program claims for Increased Cost of Compliance payments.
- N. Notify the Federal Emergency Management Agency when the corporate boundaries of the Town of Bowers have been modified.

3.3 Permits Required

It shall be unlawful for any person to begin construction or other development which is wholly within, partially within, or in contact with any identified flood hazard area, as established in Section 1.4, including but not limited to: filling; grading; construction; alteration, remodeling, or expanding any structure; placement or replacement of a manufactured home; or alteration of any watercourse, until a permit is obtained from the Town of Bowers or any other department, agency, or government entity duly authorized by the Town of Bowers to administer and enforce this ordinance as the Floodplain Administrator for the Town of Bowers. No such permit shall be issued until the requirements of these regulations have been met.

3.4 Application Required

Application for a permit shall be made by the owner of the property or his/her authorized agent, herein referred to as the applicant, prior to the actual start of construction. The application shall be on a form furnished for that purpose.

A. Application Contents.

At a minimum, applications shall include:

1. Site plans drawn to scale showing the nature, location, dimensions, and existing and proposed topography of the area in question, and the location of existing and proposed structures, excavation, filling, storage of materials, drainage facilities, and other proposed activities.
2. Elevation of the existing, natural ground where structures are proposed, referenced to the datum on the flood hazard map.

3. Delineation of flood hazard areas, floodway boundaries, flood zones, and base flood elevations. Where surveyed natural ground elevations are lower than the base flood elevations, base flood elevations shall be used to delineate the boundary of flood hazard areas. Where flood hazard areas are not delineated or base flood elevations are not shown on the flood hazard maps, the Floodplain Administrator has the authority to require the applicant to use information provided by the Floodplain Administrator, information that is available from other sources, or to determine such information using accepted engineering practices.
4. Hydrologic and hydraulic engineering analyses, performed in accordance with FEMA's specifications, that determine base flood elevations and floodway information for subdivision proposals and developments with at least 50 lots or at least 5 acres, whichever is the lesser, where base flood elevations are not shown on the flood hazard maps.
5. Elevation of the lowest floor, including basement, of all proposed structures, referenced to the datum on the flood hazard maps.
6. Such other material and information as may be requested by the Floodplain Administrator necessary to determine conformance with these regulations.
7. For work on an existing structure, including any improvement, addition, repairs, alterations, rehabilitation, or reconstruction, sufficient information to determine if the work constitutes substantial improvement, including:
 - a. Documentation of the market value of the structure either before the improvement.
 - b. Documentation of the actual cash value of all proposed improvement work, or the actual cash value of all work necessary to repair and restore damage to the before damaged condition, regardless of the amount of work that will be performed.
8. Certifications and/or technical analyses prepared or conducted by an appropriate design professional licensed in the State of Delaware, as appropriate to the type of development activity proposed and required by these regulations:
 - a. Floodproofing certification for floodproofed non-residential structures, as required in Section 5.3.
 - b. Certification that flood openings that do not meet the minimum requirements of Section 5.2(B)(3) are designed to automatically equalize hydrostatic flood forces.
 - c. Certification that the structural design, specifications and plans, and the methods of construction to be used, are in accordance with accepted standards of practice and meet the requirements of Section 6.3(E).
 - d. Technical analyses to document that the flood carrying capacity of any watercourse alteration or relocation will not be diminished, and documentation of maintenance assurances as required in Section 5.5(C).
 - e. Hydrologic and hydraulic engineering analyses demonstrating that the cumulative effect of proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood by more than one foot in special flood hazard areas where the Federal Emergency Management Agency has provided base flood elevations but has not delineated a floodway, as required by Section 5.5(B).
 - f. Hydrologic and hydraulic engineering analyses of any development proposed to be

located in an identified floodway, as required by Section 5.5(A).

- g. Hydrologic and hydraulic engineering analyses to develop base flood elevations for subdivisions and large-lot developments, as required by Section 4.2(D) or otherwise required by the Floodplain Administrator.
9. For new or substantially improved residential structures or nonresidential structures that have been elevated, an initial *Federal Emergency Management Agency Elevation Certificate* (FEMA Form 81-31) completed by a professional land surveyor licensed in the State of Delaware or a professional engineer licensed in the State of Delaware interpreting the floodplain boundaries and providing flood elevation and flood hazard information. A “finished construction” elevation certificate shall also be required pursuant to Section 3.7(a) below.

B. Data Submission Requirement; Right to Submit New Technical Data

1. Applicants shall submit to FEMA data and information necessary to maintain flood hazard maps, including hydrologic and hydraulic engineering analyses prepared by or for the Town of Bowers, corrections to labeling or planimetric details, etc.
2. The applicant has the right to seek a Letter of Map Change and to submit new technical data to FEMA regarding base maps, topography, floodplain and floodway boundaries, and base flood elevations. Such submissions shall be prepared in a format acceptable by FEMA and the Floodplain Administrator shall be notified of such submittal.

3.5 Review, Approval or Disapproval

A. Review.

The Floodplain Administrator shall:

1. Review applications for development in special flood hazard areas to determine the accuracy of information submitted. The applicant shall be notified of inaccuracies or additional information required to support the application.
2. Review applications for compliance with these regulations after all information required in Section 3.4 or identified and required by the Floodplain Administrator has been received.
3. Review all permit applications to assure that all necessary permits have been received from those federal, state or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits, including:
 - a. Permits issued by the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, and the Delaware Environmental Protection Agency under Section 401 of the Clean Water Act.
 - b. Permits required by the State of Delaware.

B. Approval or Disapproval

The Floodplain Administrator shall issue a permit upon finding that the applicant has satisfactorily met the requirements specified herein for a permit to be issued. If a permit application does not meet the requirements specified herein, the

Floodplain Administrator shall issue a written notice of the denial to the applicant specifying the reasons for which the application was denied. The Floodplain Administrator shall approve or deny a permit within 10 days of receiving the permit application. Should an application be denied and/or require corrections, the Floodplain Administrator shall not be bound to the same time limitation in conducting any additional reviews of the permit application.

C. Expiration of Permit

A permit is valid for the time specified therein, provided the actual start of construction is within 180 days of the date of permit issuance. Requests for extensions shall be submitted in writing prior to the expiration of the permit. After the start of construction, the Floodplain Administrator may grant, in writing, one or more extensions of time, for periods not more than 180 days each.

3.6 Inspections

The Floodplain Administrator shall make periodic inspections of development permitted in special flood hazard areas, at appropriate times throughout the period of construction in order to monitor compliance. Such inspections may include:

- A. Stake-out inspection, to determine location on the site relative to the flood hazard area and floodway.
- B. Foundation inspection, upon placement of the lowest floor and prior to further vertical construction, to collect information or certification of the elevation of the lowest floor.
- C. Enclosure inspection, including crawlspaces, to determine compliance with applicable provisions.
- D. Utility inspection, upon installation of specified equipment and appliances, to determine appropriate location with respect to the base flood elevation.

3.7 Submissions Required Prior to Issuance of a Certificate of Occupancy

The following certifications are required to be submitted for development that is permitted in special flood hazard areas prior to issuance of a Certificate of Occupancy:

- A. For new or substantially improved residential structures or nonresidential structures that have been elevated, the applicant shall have a "finished construction" *Federal Emergency Management Agency Elevation Certificate* (FEMA Form 81-31) completed by a professional land surveyor licensed in the State of Delaware or a professional engineer licensed in the State of Delaware.
- B. For nonresidential structures that have been floodproofed, a *Federal Emergency Management Agency Floodproofing Certificate* (FEMA Form 81-65) completed by a professional engineer licensed in the State of Delaware or a professional architect licensed in the State of Delaware.
- C. Where a Letter of Map Revision is sought for development activities subject to the requirements of Section 3.4, the Letter of Map Revision must be obtained.

3.8 Flood Hazard Map Use and Interpretation

The Floodplain Administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of special flood hazard maps and data:

- A. In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified special flood hazard areas, any other flood hazard data available from a federal, state, or other source shall be reviewed and reasonably used.
- B. Base flood elevations and floodway boundaries on FEMA maps and in FEMA studies shall take precedence over base flood elevations and floodway boundaries by any other source that reflect a reduced floodway width and/or lower base flood elevations.
- C. Other sources of data shall be reasonably used if they show increased base flood elevations and/or larger floodway areas than are shown on FEMA flood maps and studies.
- D. When Preliminary Flood Insurance Rate Maps and/or Flood Insurance Study have been provided by FEMA:
 1. Upon the issuance of a Letter of Final Determination by FEMA, the preliminary flood hazard data shall be used and shall replace all flood hazard data previously provided from FEMA for the purposes of administering these regulations.
 2. Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall be required only where no base flood elevations and/or floodway areas were determined or where the preliminary base flood elevations or floodway areas exceed the base flood elevations and/or floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.
- E. Where field surveyed topography indicates that ground elevations are below the base flood elevation, even in areas not delineated as a special flood hazard on a flood hazard map, the area shall be considered a special flood hazard area.

SECTION 4.0 REQUIREMENTS IN ALL FLOOD HAZARD AREAS

4.1 Application of Requirements

The general requirements of this section apply to all development proposed within special flood hazard areas identified in Section 1.4.

4.2 Subdivisions and Developments

- A. All subdivision and development proposals shall be consistent with the need to minimize flood damage and are subject to all applicable standards in these regulations.
- B. All subdivision and development proposals shall have utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- C. All subdivision and development proposals shall have adequate drainage provided to reduce exposure to flood damage.
- D. All subdivision proposals and development proposals containing at least 50 lots or at least 5 acres, whichever is the lesser, in flood hazard areas where base flood elevation data are not available, shall be supported by hydrologic and hydraulic engineering analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a professional engineer licensed in the State of Delaware in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant.

4.3 Protection of Water Supply and Sanitary Sewage Systems

- A. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- B. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into systems and discharges from systems into floodwaters.
- C. On-site waste disposal systems shall be located to avoid impairment to or contamination from them during conditions of flooding.

4.4 Buildings and Structures

All new construction of buildings and structures, including placement of manufactured homes and substantial improvements to existing buildings and structures, that are to be located, in whole or in part, in flood hazard areas shall meet the following requirements.

- A. Be designed (or modified) and constructed to safely support flood loads. The construction shall provide a complete load path capable of transferring all loads from their point of origin through the load-resisting elements to the foundation. Buildings and structures shall be designed, connected and anchored to resist flotation, collapse or permanent lateral movement due to structural loads and stresses from flooding equal to the design flood elevation, including hydrodynamic and hydrostatic loads and the effects of buoyancy.

- B. Be constructed by methods and practices that minimize flood damage.
- C. Use flood-resistant materials below one (1) foot above the base flood elevation.
- D. Have electrical systems, equipment and components, and heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment that are located at least one (1) foot above the base flood elevation. Electrical wiring systems are permitted to be located below one (1) foot above the base flood elevation provided they conform to the provisions of the electrical part of this code for wet locations. If replaced as part of a substantial improvement, electrical systems, equipment and components, and heating, ventilation, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment shall meet the requirements of this section.
- E. As an alternative to Section 4.4(D), electrical systems, equipment and components, and heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment are permitted to be located below one (1) foot above the base flood elevation provided that they are designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of the base flood.
- F. In all flood hazard areas other than coastal high hazard areas (A Zones), meet the specific requirements of Section 5.0.
- G. In all coastal high hazard areas (V Zones), meet the specific requirements of Section 6.0.
- H. In a flood hazard area with more than one designation (A Zone, floodway, V Zone), meet the requirements of the most restrictive designation.

4.5 Fill

- A. Disposal of fill, including but not limited to rubble, construction debris, woody debris, and trash, shall not be permitted in special flood hazard areas.
- B. Fill placed for the purpose of raising the ground level and to support a building or structure shall meet the following requirements:
 - 1. Extend laterally from the building footprint to provide for adequate access, as a function of use; the Floodplain Administrator may seek advice from the State Fire Marshal's Office and/or the local fire services agency.
 - 2. Placed and compacted to provide for stability under conditions of rising and falling floodwaters and resistance to erosion, scour, and settling.
 - 3. Consisting of soil or rock materials only.
 - 4. Sloped no steeper than one (1) vertical on two (2) horizontal, unless approved by the Floodplain Administrator.
 - 5. Designed with provisions for adequate drainage and no adverse affect on adjacent properties.

4.6 Historic Structures

Repair, alteration, or rehabilitation of historic structures shall be subject to the requirements of these regulations unless a determination is made that the proposed work will not preclude the structure's continued designation as a historic structure. The Floodplain Administrator may require documentation of a structure's continued eligibility and designation as a historic structure.

4.7 Recreational Vehicles

- A. Recreational vehicles in flood hazard areas shall be fully licensed and ready for highway use, and shall be placed on a site for less than 180 consecutive days.
- B. Recreational vehicles that are not fully licensed and ready for highway use, or that are to be placed on a site for more than 180 consecutive days, shall meet the requirements of Section 5.2(C) for manufactured homes or Section 6.3(D), as applicable.

4.8 Gas or Liquid Storage Tanks

- A. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.
- B. Above-ground tanks in flood hazard areas shall be elevated at least one (1) foot above the base flood elevation or shall be anchored or otherwise designed and constructed to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.
- C. In flood hazard areas, tank inlets, fill openings, outlets and vents shall be:
 - 1. At or above the base flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the base flood.
 - 2. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.

4.9 Requirement to submit new technical data within 6 months

A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Federal Emergency Management Agency's (FEMA) Regional Office of the changes by submitting technical or scientific data in accordance with this part. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.

A community may require that the technical data be submitted to FEMA for a Letter of Map Change (LOMC).

SECTION 5.0 REQUIREMENTS IN FLOOD HAZARD AREAS OTHER THAN COASTAL HIGH HAZARD AREAS (A ZONES)

5.1 General Requirements

In addition to the general requirements of Section 4.0, the requirements of this section apply to all development proposed in flood hazard areas other than coastal high hazard areas, also referred to collectively as "A Zones".

5.2 Residential Structures and Residential Portions of Mixed Use Structures

A. Elevation Requirements

1. Lowest floors shall be elevated at least as high as one (1) foot above the base flood elevation.
2. In areas of shallow flooding (Zone AO), the lowest floor (including basement) shall be elevated at least as high above the highest adjacent grade as the depth number specified in feet on the FIRM plus one (1) foot, or at least 2 feet if a depth number is not specified. Structures are required to have adequate drainage paths around them on slopes, to guide floodwaters around and away from the structure.
3. Enclosures below the lowest floor shall meet the requirements of Section 5.2(B).

B. Enclosures Below the Lowest Floor

1. Enclosures below the lowest floor shall be used solely for parking of vehicles, building access, crawlspaces, or limited storage.
2. Enclosures below the lowest floor shall be constructed using flood-resistant materials below one (1) foot above the base flood elevation.
3. Enclosures below the lowest floor shall be provided with flood openings which shall meet the following criteria:
 - a. There shall be a minimum of two openings on different sides of each enclosed area; if a building has more than one enclosed area below the design flood elevation, each area shall have openings on exterior walls.
 - b. The total net area of all openings shall be at least 1 square inch for each square foot of enclosed area, or the openings shall be designed and the application shall include a certification statement that the design and installation will provide for equalization of hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwaters.
 - c. The bottom of each opening shall be 1 foot or less above the adjacent ground level.
 - d. Any louvers, screens or other opening covers shall allow the automatic flow of floodwaters into and out of the enclosed area.

- e. Openings installed in doors and windows that meet requirements of 5.2(B)(3)(a)-(d) are acceptable; however, doors and windows without installed openings do not meet the requirements of this section.

C. Manufactured Homes

New or replacement manufactured homes, including substantial improvement of existing manufactured homes, shall:

1. Be elevated on a permanent, reinforced foundation in accordance with Section 5.2(A).
2. Be installed in accordance with the anchor and tie-down requirements of the building code or the manufacturer's written installation instructions and specifications.
3. Have enclosures below the elevated manufactured home, if any, meet the requirements of Section 5.2(B).

For the purpose of this requirement, the lowest floor of a manufactured home is the bottom of the lowest horizontal supporting member of the lowest floor.

5.3 Nonresidential Structures and Nonresidential Portions of Mixed Use Structures

A. Elevation Requirements

1. The lowest floor (including basement) shall be elevated at least one (1) foot above the base flood elevation or the structure shall be floodproofed in accordance with Section 5.3(B).
2. In areas of shallow flooding (Zone AO), if not floodproofed, the lowest floor (including basement) shall be elevated at least as high above the highest adjacent grade as the depth number specified in feet on the FIRM plus one (1) foot, or at least 2 feet if a depth number is not specified. Structures are required to have adequate drainage paths around them on slopes, to guide floodwaters around and away from the structure.
3. Enclosures below the lowest floor shall meet the requirements of Section 5.2(B).

B. Floodproofing Requirements

Floodproofed structures, together with attendant utility and sanitary facilities, shall:

1. Be designed to be dry floodproofed such that the structure is watertight with walls and floors substantially impermeable to the passage of water to the level of one (1) foot above the base flood elevation.
2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyance.
3. Be certified by a professional engineer licensed in the State of Delaware or professional architect licensed in the State of Delaware, through execution of the *Federal Emergency Management Agency Floodproofing Certificate* (FEMA Form 81-65), that the design and methods of construction meet the requirements

of this section.

5.4 Accessory Structures

Accessory structures shall meet the requirements of these regulations. Accessory structures that have a footprint of no more than 600 square feet may be allowed without requiring elevation or floodproofing provided such structures meet all of the following requirements:

- A. Useable only for parking or limited storage;
- B. Constructed with flood-resistant materials below the base flood elevation;
- C. Constructed and placed to offer the minimum resistance to the flow of flood waters;
- D. Firmly anchored to prevent flotation;
- E. Electrical service and mechanical equipment elevated at least one (1) foot above the base flood elevation; and
- F. Equipped with flood openings that meet the requirements of Section 5.2(B).

5.5 Provision of Flood-Carrying Capacity

A. Development in Floodways

For development activities that encroach into a designated floodway, the applicant shall develop hydrologic and hydraulic engineering analyses and technical data reflecting such changes and submit such technical data to the Floodplain Administrator and to FEMA. The analyses shall be prepared by a professional engineer licensed in the State of Delaware in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant.

The proposed development activity may be permitted if the analyses demonstrate that the activity:

1. Will not result in any increase in the base flood elevation; or
2. Will result in an increase in the base flood elevation, provided a Conditional Letter of Map Revision has been issued by FEMA and the applicant completes all of the following:
 - a. Submits technical data required in Section 3.4(A)(8)(e);
 - b. Evaluates alternatives which would not result in increased base flood elevations and an explanation why these alternatives are not feasible;
 - c. Certifies that no structures are located in areas which would be impacted by the increased base flood elevation;
 - d. Documents that individual legal notices have been delivered to all impacted property owners to explain the impact of the proposed action on their properties;
 - e. Requests and receives concurrence of the Mayor of the Town of Bowers and the Chief Executive Officer of any other community impacted by the proposed actions; and

- f. Notifies the Delaware Department of Natural Resources and Environmental Control (Division of Watershed Stewardship).

B. Development in Areas with Base Flood Elevations but No Floodways

For development activities in a flood hazard area with base flood elevations but no designated floodways, the applicant shall develop hydrologic and hydraulic engineering analyses and technical data reflecting the proposed activity and shall submit such technical data to the Floodplain Administrator and to FEMA. The analyses shall be prepared by a professional engineer licensed in the State of Delaware in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant.

The proposed development activity may be permitted if the analyses demonstrate that the cumulative effect of the proposed development activity, when combined with all other existing and potential flood hazard area encroachments will not increase the base flood elevation more than one (1) foot at any point.

C. Deliberate Alterations of a Watercourse

For the purpose of these regulations, a watercourse is deliberately altered when a person causes a change to occur within its banks. Deliberate changes to a watercourse include, but are not limited to: widening, deepening or relocating of the channel; installation of culverts; construction of bridges, and excavation or filling of the channel or watercourse banks.

For any proposed development deliberate alteration of a watercourse, the applicant shall develop hydrologic and hydraulic engineering analyses and technical data reflecting such changes and submit such technical data to the Floodplain Administrator and to FEMA. The analyses shall be prepared by a professional engineer licensed in the State of Delaware in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant.

The proposed alteration of a watercourse may be permitted upon submission, by the applicant, of the following:

1. A description of the extent to which the watercourse will be altered or relocated as a result of the proposed development.
2. A certification by a professional engineer licensed in the State of Delaware that the bankfull flood-carrying capacity of the watercourse will not be diminished.
3. Evidence that adjacent communities, the U.S. Army Corps of Engineers, and the Delaware Department of Natural Resources and Environmental Control (Division of Watershed Stewardship) have been notified of the proposal and evidence that such notifications have been submitted to the Federal Emergency Management Agency.
4. Evidence that the applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of the watercourse so that the flood carrying capacity will not be diminished. The Floodplain Administrator

may require the permit holder to enter into an agreement with the Town of Bowers specifying the maintenance responsibilities; if an agreement is required, the permit shall be conditioned to require that the agreement be recorded on the deed of the property which shall be binding on future owners.

SECTION 6.0 REQUIREMENTS IN COASTAL HIGH HAZARD AREAS (V ZONES)

6.1 General Requirements

In addition to the general requirements of Section 4.0, the requirements of this section apply to all development proposed in coastal high hazard areas, also referred to collectively as "V Zones".

6.2 Location and Site Preparation

- A. The placement of structural fill for the purpose of elevating buildings is prohibited.
- B. Buildings shall be located landward of the reach of mean high tide.
- C. Generally, any reduction in the dimensions of dunes increases the potential for flood damage. Site preparations shall not alter sand dunes unless an engineering analysis demonstrates that the potential for flood damage is not increased.

6.3 Residential and Nonresidential Structures

A. Foundations

1. Buildings and structures shall be supported on pilings or columns and shall be adequately anchored to such pilings or columns. Piling shall have adequate soil penetrations to resist the combined wave and wind loads (lateral and uplift). Water loading values used shall be those associated with the design flood. Wind loading values shall be those required by applicable building standards. Pile embedment shall include consideration of decreased resistance capacity caused by scour of soil strata surrounding the piling.
2. Slabs, pools, pool decks and walkways shall be located and constructed to be structurally independent of buildings and structures and their foundations to prevent transfer of flood loads to the buildings and structures during conditions of flooding, scour or erosion from wave-velocity flow conditions, and shall be designed to minimize debris impacts to adjacent properties and public infrastructure.

B. Elevation Requirements

1. The bottom of the lowest horizontal structural member supporting the lowest floor piling, pile caps, columns, grade beams and bracing, shall be located at least one (1) foot above the base flood elevation.
2. Basement floors that are below grade on all sides are prohibited.
3. Enclosures below the lowest floor shall meet the requirements of Section 6.3(C).

C. Enclosures Below the Lowest Floor

1. Enclosures below the lowest floor shall be used solely for parking of vehicles, building access or storage.
2. Walls and partitions are permitted below the elevated floor, provided that such walls and partitions are designed to break away under flood loads and are not

part of the structural support of the building or structure.

3. Electrical, mechanical, and plumbing system components shall not be mounted on or penetrate through walls that are designed to break away under flood loads.
4. Walls intended to break away under flood loads shall be constructed with insect screening or open lattice, or shall be designed to break away or collapse without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting foundation system. Such walls, framing and connections shall have a design safe loading resistance of not less than 10 pounds per square foot and no more than 20 pounds per square foot; or
5. Where wind loading values of the local building requirements exceed 20 pounds per square foot, the applicant shall submit a certification prepared and sealed by a professional engineer licensed in the State of Delaware or professional architect licensed in the State of Delaware that:
 - a. The walls and partitions below one (1) foot above the base flood elevation have been designed to collapse from a water load less than that which would occur during the base flood.
 - b. The elevated portion of the building and supporting foundation system have been designed to withstand the effects of wind and flood loads acting simultaneously on all building components (structural and nonstructural). Water loading values used shall be those associated with the base flood; wind loading values used shall be those required by the local building requirements.

D. Manufactured Homes

New or replacement manufactured homes, including substantial improvement of existing manufactured homes, shall:

1. Meet the foundation requirements of Section 6.3(A), the elevation requirements of Section 6.3(B), and the enclosure requirements of Section 6.3(C).
2. Be installed in accordance with the anchor and tie-down requirements of the building code or the manufacturer's written installation instructions and specifications.

E. Certification of Design

The applicant shall include in the application a certification prepared by a professional engineer licensed in the State of Delaware or a professional architect licensed in the State of Delaware that the design and methods of construction to be used meet the applicable criteria of these regulations.

SECTION 7.0 VARIANCES AND APPEALS

7.1 Variances

The Town of Bowers Board of Adjustment shall have the power to authorize, in specific cases, such variances from the requirements of these regulations, not inconsistent with Federal regulations, as will not be contrary to the public interest where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations would result in unnecessary hardship. All variance applicants shall be entitled to a public hearing, which shall be held in accordance with the provisions of Section 16 (“Board of Adjustment”) of the Town of Bowers Zoning Code. Any conflict between this ordinance and Section 16 of the Zoning Code shall be resolved in favor of this ordinance.

A. Application for a Variance

1. Any owner, or agent thereof, of property for which a variance is sought shall submit an application for a variance to the Bowers Board of Adjustment.
2. At a minimum, such application shall contain the following information: Name, address, and telephone number of the applicant; legal description of the property; parcel map; description of the existing use; description of the proposed use; location of the floodplain; description of the variance sought; ordinance section for which a variance is sought; and reason for the variance request. Each variance application shall specifically address each of the considerations in Section 7.1(B) and the limitations and conditions of Section 7.1(C).

B. Considerations for Variances

In considering variance applications, the Board of Adjustment shall consider and make findings of fact on all evaluations, all relevant factors, requirements specified in other sections of these regulations, and the following factors:

1. The danger that materials may be swept onto other lands to the injury of others.
2. The danger to life and property due to flooding or erosion damage.
3. The susceptibility of the proposed development and its contents (if applicable) to flood damage and the effect of such damage on the individual owner.
4. The importance of the services provided by the proposed development to the community.
5. The availability of alternative locations for the proposed use which are not subject to, or are subject to less, flooding or erosion damage.
6. The necessity to the facility of a waterfront location, where applicable, or if the facility is a functionally dependent use.
7. The compatibility of the proposed use with existing and anticipated development.
8. The relationship of the proposed use to the comprehensive plan for that area.
9. The safety of access to the property in times of flood for ordinary and emergency vehicles.
10. The expected heights, velocity, duration, rate of rise, and sediment transport of

the flood waters and the effects of wave action, if applicable, expected at the site.

11. 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.

C. Limitations for Variances

An affirmative decision on a variance request shall only be issued upon:

1. A showing of good and sufficient cause.
2. A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property.
3. A determination that the granting of a variance for development within any designated floodway, or flood hazard area with base flood elevations but no floodway, will not result in increased flood heights beyond that which is allowed in these regulations.
4. A determination that the granting of a variance will not result in additional threats to public safety, extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws.
5. A determination that the structure or other development is protected by methods to minimize flood damages.
6. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Upon consideration of the individual circumstances, the limitations and conditions, and the purposes of these regulations, the Board of Adjustment may attach such conditions to variances as it deems necessary to further the purposes of these regulations.

The Board of Adjustment shall notify any applicant to whom a variance is granted for a building or structure with a lowest floor elevation below the base flood elevation that the variance is to the floodplain management requirements of these regulations only, and that the cost of federal flood insurance will be commensurate with the increased risk.

7.2 Appeals

(a) Any person aggrieved by a decision taken by the Town of Bowers or any other department, agency, or government entity duly authorized by the Town of Bowers to administer and enforce this ordinance as the Floodplain Administrator (collectively referred to herein as "administrative entity") in the administration and enforcement of this ordinance may file a written notice of appeal with the Bowers Board of Adjustment within thirty (30) days after the giving or posting of notice of such decision. An appeal under this section shall stay the effect of the decision made by the administrative entity until a decision has been rendered by the Bowers Board of Adjustment. The written appeal shall include the name of the property owner(s), the address of the property, the decision of the

administrative entity that is being appealed, the code provision in question, and the manner in which the applicant believes the code should be interpreted.

(b) The Board of Adjustment shall hear such appeal at a public hearing, with notice of the hearing being posted in at least two public places at least fifteen (15) days prior to the hearing, which is to be held within a reasonable period of time after the filing of an appeal. The administrative entity whose decision is being appealed may present testimony at the hearing as to the justification for the decision made. By a concurring vote of the majority of its members, the Board of Adjustment may reverse or affirm wholly or partly, or may modify the decision being appealed, and shall make such other order or determination as it deems just. Failure to secure such concurring votes shall be deemed a confirmation of the decision of the administrative entity.

(c) A member of the Board of Adjustment shall not participate in any hearings or vote on any appeal in which that member has a direct or indirect financial interest.

(d) The Board of Adjustment shall keep a written or recorded record of each meeting showing clearly the basis for each decision made by the board.

7.3 Municipal Liability

The granting of a permit or approval of a subdivision or development plan in an identified floodplain area, or the granting of a variance or appeal in an identified floodplain area shall not constitute a representation, guarantee, or warranty of any kind by the town, or by any official or employee thereof, of the practicability or safety of the proposed use, and shall create no liability upon the town, its officials or employees.

SECTION 8.0 ENFORCEMENT

8.1 Compliance Required

- A. No structure or land development shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged or altered without full compliance with these regulations and all other applicable regulations which apply to uses within the jurisdiction of these regulations.
- B. Failure to obtain a permit shall be a violation of these regulations and shall be punishable in accordance with Section 8.3.
- C. Permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the specific activities set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction of such specific activities that is contrary to that authorized shall be deemed a violation of these regulations.

8.2 Notice of Violation

- A. Whenever the Floodplain Administrator determines that there has been a violation of this ordinance or has reasonable grounds to believe that a violation has occurred, notice shall be given to the owner of record and the responsible party for the property who shall be legally responsible for such violation. All notices shall:
 - 1. Be in writing;
 - 2. Contain the address of the property or a description of the property sufficient for identification;
 - 3. Include a clear statement of the reason or reasons why the notice is being issued; and
 - 4. Include a correction order allowing reasonable time to achieve compliance with the ordinance, which shall in no case be greater than 30 days, unless an extension for cause is approved by the Floodplain Administrator.
- B. Method of service. Notice required by this section shall be satisfied where a copy of the notice required by this section is:
 - 1. Delivered to the owner of record and any responsible party personally; or
 - 2. Mailed by certified United States mail, return receipt requested, and addressed to the owner of record and responsible party at his or her last known address as reflected by the Town's or the Floodplain Administrator's records and posted in a conspicuous place on the property affected by such notice.
 - 3. Delivered by overnight courier service (e.g. Federal Express, UPS).
- C. Exceptions to this section. In the event that a violation exists or is reasonably believed to exist, and creates or is reasonably believed to create an imminent threat to the health, safety or welfare of the public, or work is being done (or was done) in the absence of

necessary approval(s), plan(s), or permit(s), no notice of violation and correction order is required by this section.

8.3 Violations and Penalties

- A. **Civil enforcement.** Any violation of this ordinance may be enforced by the Town of Bowers or any aggrieved person by filing an action for injunctive relief in the Court of Chancery. The violator may be ordered, in the discretion of the Court, to pay the court costs and reasonable attorney's fees if determined to be in violation. Any person violating the provisions of this ordinance shall be subject to a civil proceeding instituted by the Town Solicitor at the direction of the Town Council. The Town may apply to the Court of Chancery for injunctive relief against the person to prevent, abate, or enjoin any continuing violation of the provisions of this ordinance. The violator shall be responsible for any cost incurred in preventing, abating or enjoining such violations, including reasonable attorney fees.
- B. **Criminal enforcement.** Any person violating the provisions of this ordinance shall be subject to a criminal proceeding instituted by any code enforcement officer and/or the Town Solicitor. It is unnecessary to prove the defendant's state of mind with regard to offenses which constitute violations hereunder as the legislative purpose of this ordinance is to impose strict liability for such offenses. If a penalty is not otherwise provided for, violators will be subject to a fine of not less than \$100 nor more than \$500. Each day that a continuing violation is maintained or permitted shall constitute a separate offense. All notices given prior to criminal enforcement shall comply with constitutional due process requirements.

8.4 Savings Clause

Where any building or structure, including accessory structures and manufactured homes, has been constructed, re-constructed, improved, modified, or altered (all hereinafter referred to as "construction") in violation of Flood Plain Ordinance 460 (as amended through 4/8/1993) and either (a) such construction was performed without a building permit having been issued by Kent County or (b) a certificate of occupancy was never issued by Kent County, such violation(s) may be remedied and a correction order issued in accordance with Section 8.2 and 8.3(a) of this ordinance.

SYNOPSIS

This ordinance repeals the Town's existing Flood Plain Ordinance (Ord. No. 460 as amended through 4/8/1993) and adopts a new ordinance entitled "Flood Damage Reduction Ordinance of the Town of Bowers." This ordinance shall be administered by the Town of Bowers or another department, agency, or government entity authorized by the Town to administer and enforce the ordinance as the Floodplain Administer. The Floodplain Administer shall be responsible for reviewing permit applications, interpreting floodplain boundaries, determining whether all necessary permits have been obtained, reviewing elevation certificates, and conducting other related tasks. The requirements of this ordinance must be met before a permit will be issued for any development within the special flood hazard areas identified by this ordinance. An application for a permit must include, among other things, site plans, a delineation of flood hazard areas, hydrologic and hydraulic engineering analyses, required certifications and

technical analyses, and an Elevation Certificate. This ordinance requires the Floodplain Administrator to review applications for accuracy and compliance with the regulations of this ordinance. A permit is valid for the time specified in the permit as long as construction begins within 180 days of the issuance of the permit. This ordinance requires the Floodplain Administrator to make periodic inspections of development and provides examples of what the Floodplain Administrator may inspect.

Prior to a Certificate of Occupancy being issued, this ordinance requires certain structures to have a “finished construction” Elevation Certificate, while other structures are required to have a Floodproofing Certificate. This ordinance authorizes the Floodplain Administrator to make interpretations regarding special flood hazard areas and floodplain boundaries.

In order to minimize flood damage, this ordinance imposes requirements on subdivisions and developments, such as requiring adequate drainage and constructing utilities in a manner that will mitigate flood damage. This ordinance requires water and sewage systems to be constructed in a manner that eliminates infiltration of floodwaters into both systems and eliminates discharges of sewage systems into floodwaters. This ordinance outlines specific building requirements for structures in special flood hazard areas. Among other requirements, this ordinance requires the use of flood-resistant materials below one foot above the base flood elevation and requires that electrical systems, heating, ventilating, air conditioning, and plumbing systems either be located one foot above the base flood elevation or be floodproofed. This ordinance regulates the use and disposal of fill, along with which types of fill can be used. This ordinance regulates the placement of recreational vehicles and gas or liquid storage tanks in flood hazard areas.

In addition to general building requirements, this ordinance also creates building requirements specific to structures in Coastal High Hazard Areas and requirements specific to structures located in all other flood hazard areas. Among other requirements, residential structures in flood hazard areas that are not Coastal High Hazard Areas must have the lowest floor elevated at least one foot above the base flood elevation and may only make limited use (based on specific requirements) of enclosures below the lowest floor. Manufactured homes in the same areas, among other requirements, must be elevated on a permanent foundation and be installed pursuant to anchor and tie-down requirements. Nonresidential structures in areas other than Coastal High Hazard Areas, among other requirements, must also have the lowest floor elevated at least one foot above the base flood elevation and must comply with requirements for floodproofing. This ordinance regulates accessory structures, development in floodways, and development in areas with base flood elevations but no floodways. This ordinance outlines procedures and requirements for proposed development that will deliberately alter a watercourse.

This ordinance regulates the locations of structures in Coastal High Hazard Zones, and prohibits using fill to elevate a building. In addition to other requirements, residential and nonresidential structures must be supported on pilings or columns, have all slabs, pools, pool decks and walkways constructed so as to be structurally independent from buildings and structures, have the lowest horizontal structural member supporting the lowest floor located at least one foot above the base flood elevation, and have enclosures beneath the lowest floor be constructed pursuant to specific requirements and for specific purposes.

This ordinance authorizes the Bowers Board of Adjustment to hear requests for variances from the provisions of this ordinance. This ordinance outlines the application process, the factors to be considered in reviewing variance requests, and the standards based upon which a variance

can be granted. This ordinance also outlines procedures that should be used to appeal a decision of the Floodplain Administrator. This ordinance clarifies that granting a permit, variance, or appeal is not a representation or warranty by the town as to the safety of a proposed use or structure, and such approvals shall create no liability upon the town, its officials or employees.

All development and new construction must comply with this ordinance. New construction includes all construction where permits were issued after the effective date of this ordinance. This ordinance outlines the procedures used to issue ordinance violations, including issuing a notice and correction order and proper service to the owner of record and any responsible party. A notice of violation and correction order are not required when work is being done without the necessary approval, plan, or permit or there is an imminent threat to health, safety, or welfare of the public. Penalties for violations of this ordinance may be enforced through injunctive relief in the Court of Chancery or through criminal proceedings in which a fine of not less than \$100 nor more than \$500 shall be imposed (unless a penalty is otherwise provided for). This ordinance provides that any construction in violation of Flood Plain Ordinance 460 (as amended through 04/08/1993) may be enforced pursuant to the enforcement provisions of this ordinance where the construction was performed without a building permit being issued by Kent County or where a certificate of occupancy was never issued by Kent County.

Note: The foregoing is a short synopsis of the "Flood Damage Reduction Ordinance of the Town of Bowers." It does not set out all of the provisions of the ordinance nor was it intended to. For additional details, please review the text of the ordinance itself, which is available from the Town.

This shall certify that this is a true and correct copy of the ordinance duly adopted by the Town Council of the Town of Bowers at a duly-noticed and convened meeting at which a quorum was present on February 10, 2011.

Attest:

Shirley A. Rennington
Town Secretary

So Certifies:

[Signature]
Mayor

This shall certify that the title and synopsis of the foregoing ordinance was posted in the Agenda for the January 13, 2011 Town Council meeting, and was posted beforehand at the Town Bulletin Board, Bowers Fire Company, and the Town Website, on January 5, 2011. Notice of final vote was posted in the agenda for February 10, 2011 and was posted beforehand at the Town Bulletin Board, Bowers Fire Company, and the Town Website, on February 2, 2011.

2/10/11
Date

So Certifies:

[Signature]
Mayor

R-2011-02-10-02

RESOLUTION DIRECTING THE TOWN TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH KENT COUNTY REGARDING ENFORCEMENT OF THE "FLOOD DAMAGE REDUCTION ORDINANCE OF THE TOWN OF BOWERS"

Whereas, the Town of Bowers adopted flood plain regulations (Ordinance No. 460 as amended through 4/8/1993) in order to comply with the Federal Emergency Management Agency regulations that are required for the Town to participate in the National Flood Insurance Program;

Whereas, in an agreement dated December 11, 1990, the Commissioners of Kent County agreed to enforce the Town of Bowers Flood Plain Ordinance within the town limits;

Whereas, the Town of Bowers Flood Plain Ordinance is outdated and needs to be amended in order to comply with the requirements of the Federal Emergency Management Agency;

Whereas, the Town Council of the Town of Bowers has repealed Ordinance No. 460 and adopted a new flood plain ordinance entitled, "Flood Damage Reduction Ordinance of the Town of Bowers";

Whereas, the Town of Bowers has determined that the Town has insufficient funds and staffing to administer and enforce the flood plain regulations;

Whereas, Kent County has agreed to enter into a new agreement entitled, "Memorandum of Understanding Between the Town of Bowers and Kent County Regarding Enforcement of the 'Flood Damage Reduction Ordinance of the Town of Bowers'";

BE IT HEREBY RESOLVED, by the Town Council of the Town of Bowers, a majority thereof concurring in Council duly met, that the Town of Bowers shall enter into the "Memorandum of Understanding Between the Town of Bowers and Kent County Regarding Enforcement of the 'Flood Damage Reduction Ordinance of the Town of Bowers'";

AND BE IT FURTHER RESOLVED, that the Mayor of the Town of Bowers is authorized to sign the Memorandum of Understanding on behalf of the Town Council of the Town of Bowers;

This shall certify that this is a true and correct copy of the Resolution that was duly adopted by the Town Council of the Town of Bowers at its regular meeting held on February 10, 2011.

So certifies:

Attest: Shirley A. Pennington
Secretary


Ronald Hunsicker, Mayor

**MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN OF BOWERS AND
KENT COUNTY REGARDING ENFORCEMENT OF THE “FLOOD DAMAGE
REDUCTION ORDINANCE OF THE TOWN OF BOWERS”**

WHEREAS, the Town Council of the Town of Bowers has authority under Section 20(i) of the Town Charter to adopt ordinances “as they may deem necessary and proper for the good government, protection or preservation of persons and property, or for the preservation of the public health of the City and its inhabitants”;

WHEREAS, the Town of Bowers adopted flood plain regulations (Ordinance No. 460 as amended through 4/8/1993) in order to comply with the Federal Emergency Management Agency regulations that are required for the Town to participate in the National Flood Insurance Program;

WHEREAS, in an agreement dated December 11, 1990, the Commissioners of Kent County agreed to enforce the Town’s Flood Plain Ordinance within the limits of the Town;

WHEREAS, in the opinion of the Town Council of the Town of Bowers, the Flood Plain Ordinance has become outdated and needs to be amended in order to comply with the requirements of the Federal Emergency Management Agency;

WHEREAS, the Town therefore intends to repeal Ordinance No. 460 as amended through 4/8/1993 and enact a new ordinance entitled “Flood Damage Reduction Ordinance of the Town of Bowers”;

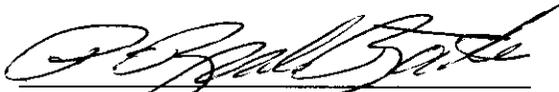
WHEREAS, the Town of Bowers has determined that the Town has insufficient funds and staffing to administer and enforce the flood plain regulations; and

WHEREAS, the Town of Bowers and Kent County both desire that Kent County continue to enforce the Town’s flood plain regulations upon the Town’s adoption of the “Flood Damage Reduction Ordinance of the Town of Bowers” as the same is needed for the Town to continue to participate in the National Flood Insurance Program.

NOW, THEREFORE, IT IS HEREBY AGREED AND UNDERSTOOD by and between the Town of Bowers, Delaware and Kent County, Delaware as follows:

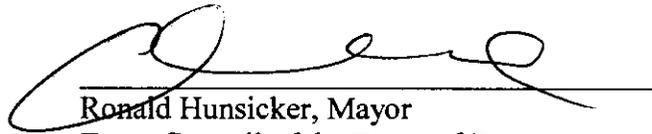
1. That by signing this Memorandum of Understanding, the Town Council of the Town of Bowers duly authorizes Kent County to administer and enforce the “Flood Damage Reduction Ordinance of the Town of Bowers”;
2. That the authority to administer and enforce the “Flood Damage Reduction Ordinance of the Town of Bowers” be, and hereby is, delegated to the Kent County government, its agents and/or employees;
3. That the Kent County government, its agents and/or employees, shall have all authority granted to the Floodplain Administrator under the “Flood Damage Reduction Ordinance of the Town of Bowers”;

4. That the Kent County government hereby agrees to administer and enforce the "Flood Damage Reduction Ordinance of the Town of Bowers" within the Town of Bowers;
5. That the Town of Bowers shall, as soon as reasonably possible after its adoption, provide Kent County with a signed copy of the "Flood Damage Reduction Ordinance of the Town of Bowers", and that the Town of Bowers shall thereafter provide Kent County with any subsequent amendments thereto;
6. That this Memorandum of Understanding may be revised at any time, as circumstances warrant, only with the concurrence of both the Town of Bowers and the Kent County Levy Court;
7. Either the Town of Bowers or Kent County may terminate this Memorandum of Understanding provided written notice is given to the other party within six (6) months of the termination date.
8. The effective date of this Memorandum of Understanding shall be the date the "Flood Damage Reduction Ordinance of the Town of Bowers" is adopted.



The Honorable P. Brooks Banta
President, Kent County Levy Court
Kent County, Delaware

1/25/11
Date



Ronald Hunsicker, Mayor
Town Council of the Town of Bowers
Bowers, Delaware

2/10/11
Date



Michael Petit de Mange, AICP
County Administrator
Kent County, Delaware

2-4-11
Date



Sarah E. Keifer, AICP
Director of Planning Services
Kent County, Delaware

2-7-11
Date

Floodplain Application Permitting

Process

1. Check the parcel on ArcReader for any impact of floodplain. If shown to be in the flood zone, ask the applicant for a Flood Elevation Certificate based on Construction Drawings.
2. Copy the permit jacket onto blue paper. (For a more recognizable way to notice the flood zone has an impact on the structure)
3. Submit the permit application and all documents for plan review.
4. Create an aerial photograph of the parcel with the floodplain overlay applied to show the affect of the floodplain on the parcel and add it to the permit application.
5. Create a plot plan of the parcel with the floodplain overlay applied to show the affect of the floodplain on the parcel and add it to the permit application.
6. Create a FIRMette of the area where the parcel is located and add it to the permit application.
7. Verify the current licensure of the design professional hired to complete the Flood Elevation Certificates and add it to the permit application.
8. Complete first review of the construction drawings for compliance with the appropriate floodplain ordinance.
9. Complete first review of the Flood Elevation Certificate for completion and compliance with the appropriate floodplain ordinance.
10. Submit entire permit application to second Plans Reviewer for review.
11. Complete second review of the construction drawings for compliance with the appropriate floodplain ordinance.
12. Complete second review of the Flood Elevation Certificate for completion and compliance with the appropriate floodplain ordinance.
13. Once approved by both Plans Reviewers, the permit can than be priced out by a Permit Tech, the structural information put into the system including a line that states the parcel/permit is in a flood zone.

14. Upon completion of the foundation, a Flood Elevation Certificate based on Building Under Construction is to be supplied to the Division of Inspections and Enforcement and reviewed for completion and compliance by both Plans Reviewers.
15. Two inspectors perform the final inspection to ensure compliance with all floodplain regulations.
16. Upon completion of the structure, a Flood Elevation Certificate based on Finished Construction is to be supplied to the Division of Inspections and Enforcement and reviewed for completion and compliance by both Plans Reviewers and approved prior to issuance of a Certificate of Occupancy.
17. Both the permit file and the construction plans shall be scanned and the plans retained within the file.