

Sponsor: _____
First Reading: _____
Public Hearing: _____
Second Reading: _____

AN ORDINANCE AMENDING THE FLOOD DAMAGE REDUCTION ORDINANCE OF THE TOWN OF BOWERS TO CORRECT CERTAIN ERRORS AND OMISSIONS AND INCORPORATE LANGUAGE SUGGESTED IN THE MOST RECENT MODEL ORDINANCE PRODUCED BY THE DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

WHEREAS, the Town Council of the Town of Bowers adopted the Flood Damage Reduction Ordinance of the Town of Bowers on February 10, 2011; and

WHEREAS, in the opinion of the Town Council of the Town of Bowers, the ordinance should be amended to correct various typographical errors and to incorporate certain suggested language from the most recently approved model ordinance produced by DNREC.

BE IT HEREBY ENACTED by the Town Council of the Town of Bowers, a majority thereof concurring in Council duly met, that the Flood Damage Reduction Ordinance of the Town of Bowers be and hereby is amended as follows:

Section 1. Amend Section 1.4 (“Basis for Establishing Special Flood Hazard Areas”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

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. The FEMA Flood Insurance Study for ~~the Town of Bowers~~ Kent County, Delaware and Incorporated Areas dated ~~May 5, 2003~~ July 7, 2014, and all subsequent amendments and/or the most recent revision thereof.
- B. The FEMA Flood Insurance Rate Map for Kent County, Delaware and Incorporated Areas dated July 7, 2014, ~~(FIRM Panels dated May 5, 2003, and all subsequent amendments and/or the most recent revision thereof).~~

Section 2. Amend Section 2.0 (“Definitions”) by making insertions as shown by underlining and double underlining and deletions as shown by strike through as follows:

~~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.~~

Elevation Certificate: The National Flood Insurance Program, Elevation Certificate (FEMA Form 086-0-33), used to document building elevations and other information about buildings. When required to be certified, the form shall be completed by a licensed professional land surveyor.

FEMA Technical Bulletin: A series of guidance documents published by FEMA to provide guidance concerning building performance standards of the National Flood Insurance Program. See sections where specific technical bulletins are identified.

Flood Damage-Resistant Materials: Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. See FEMA Technical Bulletin #2 – *Flood Damage-Resistant Materials Requirements* and FEMA Technical Bulletin #8 – *Corrosion Protection for Metal Connectors in Coastal Areas*.

Floodproofing, Dry: 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.

Floodproofing Certificate: The *National Flood Insurance Program, Floodproofing Certificate for Non-Residential Structures* (FEMA Form 86-0-34), used by registered professional engineers and architects to certify dry floodproofing designs.

~~**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.~~

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.~~
- ~~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 other development taking place after the effective date of this ordinance or "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. Amend Section 3.2 ("Duties and Responsibilities of the Floodplain Administrator") by making insertions as shown by underlining and deletions as shown by strike through as follows:

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. Review submitted Elevation Certificates for completeness.
- ~~J.~~ 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.
- ~~K.~~ Enforce the provisions of these regulations.
- ~~L.~~ Conduct determinations as to whether existing buildings and structures damaged by any cause and located in flood hazard areas have been substantially damaged.
- ~~M.~~ 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.
- ~~N.~~ 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.
~~O.N.~~ Notify the Federal Emergency Management Agency when the corporate boundaries of the Town of Bowers have been modified.

Section 4. Amend Section 3.3 (“Permits Required”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

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: subdivision of land; 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.

Section 5. Amend Section 3.4 (“Application Required”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

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, the limits of any portion of the site that was previously filled, 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~~ Flood Insurance Rate Map, and an Elevation Certificate that shows the ground elevation and proposed building elevations (identified in Section C of the Elevation Certificate as “Construction Drawings”).
3. Delineation of special 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 special flood hazard areas. If proposed, changes in the delineation of special flood hazard areas shall be submitted to and approved by FEMA in accordance with Section 3.4(B). 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, or elevation of the bottom of the lowest horizontal structural member, as applicable to the flood zone, 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 is started or before the damage occurred.
 - 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 dry 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)(b) 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.~~

Section 6. Amend Section 3.4 (“Application Required”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

C. Requirement to Submit New Technical Data.

The Floodplain Administrator shall notify FEMA of physical changes affecting flood hazard areas and flooding conditions by submitting technical or scientific data as soon as practicable, but not later than six (6) months after the date such information becomes available. The Floodplain Administrator has the authority to require applicants to submit technical data to FEMA for Letters of Map Change.

Section 7. Amend Section 3.5 (“Review, Approval or Disapproval”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

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 completeness accuracy of information submitted. The applicant shall be notified of ~~inaccuracies~~ incompleteness or additional information required to support the application.

Section 8. Amend Section 3.7(B) & (C) (“Submissions Required Prior to Issuance of a Certificate of Occupancy”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

B. For nonresidential structures that have been dry 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~~ shall be provided.

Section 9. Amend Section 3.8 (“Flood Insurance Rate Map Use and Interpretation”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

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.~~

AB. 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.

BC. 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.

CD. 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.

DE. 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 10. Amend Section 4.2(D) (“Subdivisions and Developments”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

~~C.—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.~~

Section 11. Amend Section 4.4(C) (“Buildings and Structures”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

- C. Use flood damage-resistant materials below the elevation of the lowest floor ~~one (1) foot above the base flood elevation.~~ See FEMA Technical Bulletin #2 – Flood Damage-Resistant Materials Requirements and FEMA Technical Bulletin #8 – Corrosion Protection for Metal Connectors in Coastal Areas.

Section 12. Amend Section 4.5(B) (“Fill”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

- B. Where permitted by Section 5 (Zones A, AE, and AO), ~~Fill~~ placed for the purpose of raising the ground level and to support a building or structure shall meet the following

requirements:

Section 13. Amend Section 4.5(C) (“Fill”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

C. Fill placed for a purpose other than to support a building or structure shall meet the requirements of Sections 4.5(B)(2) through (B)(5).

Section 14. Amend Section 4.6 (“Historic Structures”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

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 compliance with these regulations ~~the proposed work will not~~ will preclude the structure's continued designation as a historic structure and a variance is granted in accordance with Section 7 and such variance is the minimum necessary to preserve the historic character and design of the structure. The Floodplain Administrator may require documentation of a structure's continued eligibility and designation as a historic structure.

Section 15. Amend Section 4.9 (“Requirement to submit new technical data within 6 months”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

~~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 16. Amend Section 5.2 (“Residential Structures and Residential Portions of Mixed Use Structures”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

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.~~

2. 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 damage-resistant materials~~below one (1) foot above the base flood elevation. See FEMA Technical Bulletin #2 – Flood Damage-Resistant Materials Requirements.~~
3. Enclosures below the lowest floor (including crawlspaces) shall be provided with flood openings which shall meet the following criteria (see FEMA Technical Bulletin #1 – Openings in Foundation Walls and Walls of Enclosures):
 - 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.
4. Crawlspaces shall have the finished interior ground level equal to or higher than the outside finished ground level on at least one entire side of the foundation wall.

Section 17. Amend Section 5.3 by making insertions as shown by underlining and deletions as shown by strike through as follows:

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 dry 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.~~

2. Enclosures below the lowest floor, if not dry floodproofed, shall meet the requirements of Section 5.2(B).

B. Dry Floodproofing Requirements

Dry 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. Refer to FEMA Technical Bulletin #3 – Non-Residential Floodproofing – Requirements and Certification for guidance.

Section 18. Amend Section 5.4 by making insertions as shown by underlining and deletions as shown by strike through as follows:

5.4 Accessory Structures

Accessory structures shall meet the requirements of these regulations. Accessory structures that have a footprint of no more than ~~600~~200 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, collapse, and lateral movement;
- 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).

For guidance, see FEMA Technical Bulletin #7 – Wet Floodproofing Requirements.

Section 19. Amend Section 5.5 (“Provision of Flood Carrying Capacity”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

~~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 20. Amend Section 6.3 (“Residential and Nonresidential Structures”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

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. The space below the lowest flood shall either be free of obstruction or, if enclosed by walls, shall meet the requirements of Section 6.3(C).
~~Enclosures below the lowest floor shall meet the requirements of Section 6.3(C).~~See FEMA Technical Bulletin #5 – Free of Obstruction Requirements.

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. See FEMA

Technical Bulletin #9 – Design and Construction Guidance for Breakaway Walls.

Section 21. Amend Section 7.1 (“Variances”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

C. Limitations for Variances

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

1. A showing of good and sufficient cause. A “good and sufficient” cause is one that deals solely with the physical characteristics of the property and cannot be based on the character of the planned construction or substantial improvement, the personal characteristics of the owner or inhabitants, or local provisions that regulate standards other than health and public safety standards.
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.
7. Increased cost or inconvenience of meeting the requirements of these regulations is not the only factor creating an exceptional hardship to the applicant.

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, in writing, 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.

Section 22. Amend Section 8.4 (“Savings Clause”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

8.4 Savings Clause

Where any building or structure or other development, 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.

Section 23. The existing “Memorandum of Understanding between the Town of Bowers and Kent County Regarding Enforcement of the ‘Flood Damage Reduction Ordinance of the Town of Bowers’” shall not be affected by this Ordinance.

Section 24. All formatting inconsistencies in the Flood Damage Reduction Ordinance for the Town of Bowers are to be corrected.

Section 25. The amendments outlined herein, and any previous amendments to the ordinance, shall be integrated into the Flood Damage Reduction Ordinance of the Town of Bowers.

Section 26. The effective date of this ordinance shall be July 7, 2014.

SYNOPSIS

This ordinance removes certain provisions from the existing ordinance as they are not applicable in the Town of Bowers. This ordinance clarifies which Flood Insurance Study and Rate Map apply in Bowers and amends the existing Flood Damage Reduction Ordinance of the Town of Bowers to reflect recent changes to the model flood plain ordinance produced by DNREC and other changes suggested by DNREC.

[INTENTIONALLY LEFT BLANK]

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 _____, 2014.

So Certifies:

Attest: _____
Town Secretary

Mayor

This shall certify that the title and synopsis of the foregoing ordinance was posted in the Agenda for the _____2014 Town Council meeting, and was posted beforehand at _____ on _____, 2014.

So Certifies:

Date

Town Secretary