

# AGENDA



## NEW HANOVER COUNTY PLANNING BOARD Assembly Room, New Hanover County Historic Courthouse 24 North Third Street, Room 301 Wilmington, NC

ERNEST W. OLDS, CHAIRMAN - THOMAS "JORDY" RAWL, VICE-CHAIRMAN

PAUL D. BONEY, BOARD MEMBER - H. ALLEN POPE, BOARD MEMBER

DONNA GIRARDOT, BOARD MEMBER - EDWARD T. (TED) SHIPLEY, III, BOARD MEMBER

DAVID WEAVER, BOARD MEMBER

WAYNE CLARK, PLANNING DIRECTOR AND LAND USE DIRECTOR - KENNETH VAFIER, PLANNING MANAGER

MAY 3, 2018 6:00 PM

Meeting Called To Order

Pledge of Allegiance

Approval of Regular Meeting Minutes

### **REGULAR ITEMS OF BUSINESS**

*The Planning Board may consider substantial changes in these petitions as a result of objections, debate, and discussion at the meeting, including rezoning to other classifications.*

- 1 Public Hearing  
Text Amendment Request (TA18-01) – Request by Harper Capital, LLC, to amend the Table of Permitted Uses, Article VI and Article VII of the Zoning Ordinance regarding the location and access requirements of high density developments.
- 2 Public Hearing  
Text Amendment Request (TA18-02) – Request by The Dog Club of Wilmington to amend Article V of the Zoning Ordinance to permit kennels in the I-2, Heavy Industrial, zoning district.
- 3 Public Hearing  
Text Amendment Request (TA18-03) - Request by New Hanover County to amend the Flood Damage Prevention Ordinance to incorporate updated Flood Insurance Rate Map data and ordinance requirements to comply with minimum National Flood Insurance Program (NFIP) regulations.

### **TECHNICAL REVIEW COMMITTEE REPORT**

- 1 Technical Review Committee Report - April 2018

### **OTHER ITEMS**

- 1 Other Items of Business

**REQUEST FOR BOARD ACTION**  
**MEETING DATE: May 3, 2018**

**REGULAR**

**DEPARTMENT:** Planning

**PRESENTER(S):** Brad Schuler, Current Planner

**CONTACT(S):** Brad Schuler; Ben Andrea; Current Planning & Zoning Supervisor; Ken Vafier, Planning Manager; and Wayne Clark, Planning & Land Use Director

**SUBJECT:**

**Public Hearing**

**Text Amendment Request (TA18-01) – Request by Harper Capital, LLC, to amend the Table of Permitted Uses, Article VI and Article VII of the Zoning Ordinance regarding the location and access requirements of high density developments.**

**BRIEF SUMMARY:**

The applicant is seeking to amend location and access regulations for high density residential developments. These standards tie high density developments to certain land use classifications (place types) of the Comprehensive Plan and require direct access to a major or minor arterial street. While high density developments have been historically required to locate within certain land use classifications of the effective CAMA land use plan, the adoption of the 2016 Comprehensive Plan and its companion “bridging” text amendment (A-424) resulted in many properties losing the ability to apply for a high density development permit.

This text amendment would provide additional flexibility to the eligibility requirements for these types of developments. Specifically, it would allow for property owners with land near the boundaries of the required place types (Urban Mixed Use, Community Mixed Use, and Employment Center) to apply for a high density development permit. The proposed amendment will also allow high density developments to access an arterial street via a private street or from a variety of public streets. NCDOT as the owner of public streets, is charged with ensuring the access is adequate for the subject development through the driveway permitting process.

Because high density developments are required to be rezoned to a Planned Development or obtain a Special Use Permit, the Planning Board and Board of Commissioners will have the opportunity to review any application for high density development that might become eligible as a result of the proposed amendment. The proposed amendment does not permit any specific high density developments, but only allows for applications to be submitted in areas in close proximity to the subject place types.

The proposed changes, along with staff's recommendations, are detailed in the staff summary.

**STRATEGIC PLAN ALIGNMENT:**

Intelligent Growth and Economic Development

- Implement plans for land use, economic development, infrastructure and environmental programs

- Understand and act on citizen needs

#### **RECOMMENDED MOTION AND REQUESTED ACTIONS:**

Staff recommends approval and suggest the following the motion:

Motion to recommend approval of the amendment as presented by Staff, as the Planning Board finds that this request as described is:

1. Consistent with the purposes and intent of the 2016 Comprehensive Plan because it aligns with the objective of having a non-legally binding Future Land Use Map that is not interpreted as a zoning map.
2. Reasonable and in the public interest because the proposal updates requirements that may hinder mixed use development patterns; which promote business success, maximize the efficient use of land, and support alternative modes of transportation, thereby reducing the dependency on the automobile. In addition, the proposal does not permit specific high density developments, but it only allows for applications for a Special Use Permit or Planned Development to be considered.

#### **Example Motion for Approval:**

Motion to recommend approval, as the Planning Board finds that this request for a zoning ordinance amendment is:

1. Consistent with the purposes and intent of the 2016 Comprehensive Land Use Plan because *[Describe elements of controlling land use plans and how the amendment is consistent]*.
2. Reasonable and in the public interest because *[Briefly explain why. Factors may include public health and safety, applicable plans, or balancing benefits and detriments]*.

#### **Example Motion for Denial:**

Motion to recommend denial, as the Planning Board finds that this request for a zoning ordinance amendment is:

1. Not Consistent with the purposes and intent of the 2016 Comprehensive Land Use Plan because *[Describe elements of controlling land use plans and how the amendment is not consistent]*.
2. Not reasonable or in the public interest because *[Briefly explain why not. Factors may include public health and safety, applicable plans, or balancing benefits and detriments]*.

#### **ATTACHMENTS:**

Script for PB

Applicant Materials Cover Sheet

TA18-01 Application

TA18-01 Staff Summary PB

#### **COUNTY MANAGER'S COMMENTS AND RECOMMENDATIONS: (only Manager)**



# SCRIPT FOR Zoning Ordinance Text Amendment (TA18-01)

**Request by Harper Capital, LLC, to amend the Table of Permitted Uses, Article VI and Article VII of the Zoning Ordinance regarding the location and access requirements of high density developments.**

1. This is a public hearing. We will hear a presentation from staff. Then the applicant and any opponents will each be allowed up to 15 minutes for their presentation and an additional 5 minutes for rebuttal.
2. Conduct Hearing, as follows:
  - a. a. Staff presentation
  - b. b. Applicant's presentation (up to 15 minutes)
  - c. c. Opponent's presentation (up to 15 minutes)
  - d. d. Applicant's rebuttal (up to 5 minutes)
  - e. e. Opponent's rebuttal (up to 5 minutes)
3. Close the Public Hearing
4. Board Discussion
5. **Vote on amending the Zoning Ordinance.** The motion should include a statement saying how the amendment is or is not consistent with the land use plan and why it is or is not reasonable and in the public interest.

## Options for Motions:

- Motion to approve the text amendments as presented in the staff summary or a modified version of the text amendments;
- Motion to "table" the item in order to receive more information; or
- Motion to deny the amendment proposal based on specific reasons, such as the proposal is not consistent with the land use plan and/or the proposal is not reasonable and/or the proposal is not in the public interest.

## **Staff Suggested Motion:**

Motion to recommend approval of the amendment as presented by Staff, as the Planning Board finds that this request as described is:

1. Consistent with the purposes and intent of the 2016 Comprehensive Plan because it aligns with the objective of having a non-legally binding Future Land Use Map that is not interpreted as a zoning map.
2. Reasonable and in the public interest because the proposal updates requirements that may hinder mixed use development patterns; which promote business success, maximize the efficient use of land, and support alternative modes of transportation, thereby reducing the dependency on the automobile. In addition, the proposal does not permit specific high density developments, but it only allows for applications for a Special Use Permit or Planned Development to be considered.

### **Example Motion for Approval:**

Motion to recommend approval, as the Planning Board finds that this request for a zoning ordinance amendment is:

1. Consistent with the purposes and intent of the 2016 Comprehensive Land Use Plan because *[Describe elements of controlling land use plans and how the amendment is consistent]*.
2. Reasonable and in the public interest because *[Briefly explain why. Factors may include public health and safety, applicable plans, or balancing benefits and detriments.]*.

### **Example Motion for Denial:**

Motion to recommend denial, as the Planning Board finds that this request for a zoning ordinance amendment is:

1. Not Consistent with the purposes and intent of the 2016 Comprehensive Land Use Plan because *[Describe elements of controlling land use plans and how the amendment is not consistent]*.
2. Not reasonable or in the public interest because *[Briefly explain why not. Factors may include public health and safety, applicable plans, or balancing benefits and detriments.]*.

# **APPLICANT MATERIALS**





# NEW HANOVER COUNTY

## DEPARTMENT OF PLANNING & LAND USE

230 Government Center Drive, Suite 110

Wilmington, North Carolina

Telephone (910) 798-7165

FAX (910) 798-7053

planningdevelopment.nhcgov.com



## TEXT AMENDMENT Application

Applicant Information		
<b>Name</b> Stephen C. Pritchard, Esq.		
<b>Company</b> Harper Capital, LLC, a North Carolina limited liability company		
<b>Address</b> 804 Green Valley, Suite 200		
<b>City, State, Zip</b> Greensboro, NC 27408		
<b>Phone</b> 336.609.5139		
<b>Email</b> spritchard@iislaw.com		
Application Tracking Information (Staff Only)		
<b>Case Number</b> TA18-01	<b>Date/Time received:</b> 4/5/2018	<b>Received by:</b> BS

Subject Text
<b>Subject Ordinance (Zoning, Subdivision, etc.):</b> Zoning
<b>Chapter and Section(s):</b> Permitted Uses Table, Section 61.3 and Section 72-43

## Proposed Text Amendment

Please provide the proposed amendment to the stated ordinance and section(s) (please provide additional pages if needed):

See attached


## APPLICATION REQUIREMENTS

Staff will use the following checklist to determine the completeness of your application. Please verify all of the listed items are included and confirm by initialing under "Applicant Initial". Applications determined to be incomplete must be corrected in order to be processed for further review.

Required Information		Applicant Initial	Staff Initial
1	Complete Text Amendment application.		BS
2	Application fee – \$400 (\$600 for Land Use Plan amendments).		BS
3	1 hard copy of ALL documents. Additional hard copies may be required by staff depending on the size of the document.		BS
4	1 PDF digital copy of ALL documents on a Compact Disk (CD).		BS

## ACKNOWLEDGEMENT AND SIGNATURES

By my signature below, I understand and accept all of the conditions, limitations and obligations of the text amendment for which I am applying. I understand that I have the burden of proving why this requested change is reasonable and in the public interest, and is consistent with the County's Policies for Growth and Development. I certify that this application is complete and that all information presented in this application is accurate to the best of my knowledge, information, and belief.



Signature of Applicant

Stephen C. Pritchard, Esq.

Print Name

If an applicant requests delay of consideration from the Planning Board or Board of County Commissioners before notice has been sent to the newspaper, the item will be calendared for the next meeting and no fee will be required. If delay is requested after notice has been sent to the newspaper, the Board will act on the request at the scheduled meeting and are under no obligation to grant the continuance. If the continuance is granted, a fee in accordance with the adopted fee schedule as published on the New Hanover County Planning website will be required.

### For Staff Only

#### Application Comments

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## **Text Amendment**

### **Background:**

The applicant is seeking to amend certain regulations related to the location and access requirements for high density developments.

### **Location:**

The future land use plan provides for the following with respect to the location of place types:

“The intent of the Future Land Use Map is not to be legally binding, but to be a general representation of the vision for New Hanover County’s future land use, developed by the citizens and community leaders that participated in the Plan NHC process. The goals of the Future Land Use Map place types are to identify overall areas of applicability for each.

However, the individual place type locations should not be interpreted as being parcel specific like a zoning classification would be. Instead, place type locations are interpretations of future development opportunities within the areas that help create a community. This map will serve as a tool for planners to help reach the goals set by the citizens through future development. This map will also be an important tool when developing the new zoning map and the county’s new unified development ordinance.”

As noted above, the Future Land Use Map is not intended to be legally binding in the same way a zoning map would be however, with respect to High Density Developments, the “Bridging Ordinance” (A-424, 7/16) as applied, provides that they are only permitted in areas classified Employment Center, Urban Mixed Use, or Community Mixed Use place types and the practical effect of Bridging Ordinance is (i) that the Future Land Use Map is now being treated as “legally binding” or legally enforceable and (ii) land owners located in areas, contiguous to or within a close proximity of areas classified as Employment Center, Urban Mixed Use, or Community Mixed Use place types, whose desire their project to be consider for a special use permit for high density development are precluded from applying for the same.

### **Access:**

The thoroughfare direct access requirements for high density projects provide that such projects must either be contiguous to an approved thoroughfare or be connected through a public collector street, built to DOT standards to an approved thoroughfare. The amendment, as proposed, would provide that high density projects may also be connected through private streets built to either DOT or County standards which would provide for more flexibility in development of high density projects that will not be located contiguous to an approved thoroughfare but are designed to be integrated into future or existing projects which are already contiguous to an approved thoroughfare.

**Article V: District Regulations – Table of Permitted Uses**

Permitted Uses
High Density Development (3/22/82) <del>Permitted only within Employment Center, Urban Mixed Use, or Community Mixed Use Place Types</del> (2/16/87, 10/11/95, 9/6/16)

**Article VII: Provisions for Uses Allowed as Special Uses – Section 72-43: High Density Development**

(D) Determination of site capacity

- Each high density development shall be located on a parcel of land that is either totally or primarily in, contiguous to or within 250 feet of, the boundary of areas classified Employment Center, Urban Mixed Use, or Community Mixed Use place types. In cases where a high density development includes primarily Employment Center, Urban Mixed Use, or Community Mixed Use and limited Conservation place type or AE or VE special flood hazard areas or CAMA Estuarine Areas of Environmental Concern, the residential units shall not be clustered at a density greater than 2.5 units per BASE SITE acre in the AE or VE special flood hazard areas or CAMA Estuarine Areas of Environmental Concern. (10/5/95)(9/6/16).

**Article VI: Supplementary District Regulations – Section 61.3: Thoroughfare Requirements**

(A) Access to Thoroughfares – The property to be developed must have direct access to and from an existing major or minor arterial roadway, as indicated on the New Hanover County Thoroughfare Classification Plan. The direct access requirement may be satisfied as follows:

- The property ~~is connected~~ accesses said thoroughfare by a NCDOT-maintained public street or by a private street designed and constructed in accordance with the County's minimum standards for a collector road. This connecting street shall be designed to serve only traffic originating from or going to the development, or other existing Planned Developments or High Density developments, or any future residential development. (2/16/87)

# STAFF SUMMARY OF TA18-01 TEXT AMENDMENT APPLICATION

## APPLICATION SUMMARY

**Case Number:** TA18-01

**Request:**

To amend the location and access requirements for high density residential developments.

**Applicant:**

Stephen C. Pritchard, Esq.  
Harper Capital, LLC

**Subject Ordinance:**

Zoning Ordinance

**Subject Article(s) and Section(s):**

- Article V: District Regulation
  - Table of Permitted Uses
- Article VI: Supplementary District Regulations
  - Section 61.3: Thoroughfare Requirements
- Article VII: Provisions for Uses Allowed as Special Uses
  - Section 72-43: High Density Development

## BACKGROUND

Summary:

The applicant is seeking to amend location and access regulations for high density residential developments. These standards tie high density developments to certain land use classifications (place types) of the Comprehensive Plan and require direct access to a major or minor arterial street. While high density developments have been historically required to locate within certain land use classifications of the effective CAMA land use plan, the adoption of the 2016 Comprehensive Plan and its companion “bridging” text amendment (A-424) resulted in many properties losing the ability to apply for a high density development permit. This text amendment would provide additional flexibility to the eligibility requirements for these types of developments.

Staff has also identified that these specific standards are likely to be modified in the new Unified Development Ordinance (UDO), however this section will not be addressed until a later phase of the project. The applicant prefers not to wait for the UDO to be adopted.

Additional Information:

A high density development is a residential development that exceeds the density limits of the applicable zoning district. These developments are permitted in the R-10, R-15, R-20, and O&I zoning districts with a Special Use Permit (SUP), and in the PD zoning district by-right.

In order to ensure high density developments are located in appropriate locations, where higher density may be appropriate and adequate infrastructure is available, the Zoning Ordinance contains specific regulations for the use. These regulations include location and access standards. Specifically, high density developments are only permitted in the Urban Mixed Use, Community Mixed Use, and Employment Center place types and must have access to a major or minor arterial street.

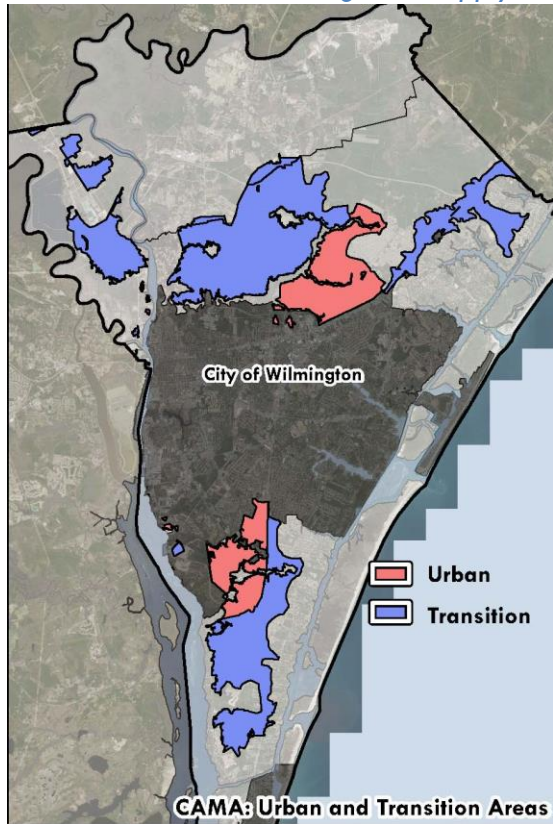
The County has historically limited high density developments to certain land use classifications listed in the effective CAMA land use plan, specifically Urban and Transition areas. Those land use classifications were tied to existing development patterns and intensities, the availability of infrastructure, and desired future density levels. In 2016, the County adopted the 2016 New Hanover County Comprehensive Plan, Plan NHC. This plan included a new Future Land Use Map, which established new land use classifications (place types). These place types, however, are not defined by the current availability of infrastructure, but instead establish a long-term vision of the County's development through the year 2040. The plan states that the intent of the Future Land Use map is not to be legally binding, but a general representation of the vision for the County's future land use. It further states that place types should not be interpreted as being parcel specific like a zoning district.

Because the Zoning Ordinance requirements for high density developments included references to the previous but no longer existing CAMA land use classifications, the Zoning Ordinance needed to be amended. In order to account for the new approach to land classification by place type, a "bridging" text amendment (A-424) was adopted in September 2016 until a more thorough approach could be developed during the UDO process. The intent of that text amendment was to be policy neutral by not making any fundamental changes to the regulatory concepts in the Zoning Ordinance. It sought to replace the former CAMA land use classifications with the most similar place types in terms of intent and recommended levels of density.

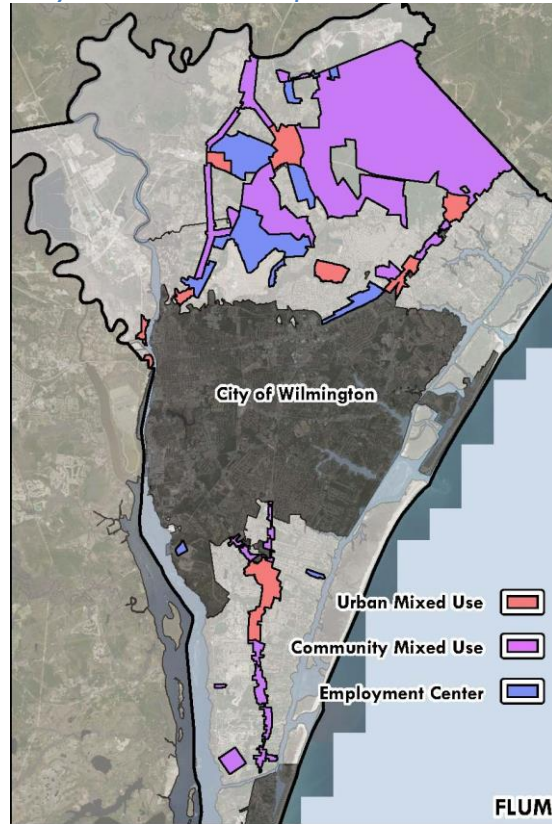
However, because of the differences between the previous CAMA land use classifications and the new place types, the areas of the county where high density development was possible shifted with that text amendment. Prior to the amendment, property owners could apply for high density development permits in most areas of the county where infrastructure was available. With the "bridging" text amendment, high density developments are allowed within the Urban Mixed Use, Community Mixed Use, and Employment Center place types, regardless of existing availability of infrastructure. They cover areas of the county where utilities are not available and do not cover areas that would have been eligible to apply for high density development permits previously. Below are the current Future Land Use Map and the former CAMA Land Use Map, with only the subject land use classifications shown. Approximately, 15,000 acres of land lost the ability to apply for a high density development permit with the adoption of the 2016 Comprehensive Plan and "bridging" text amendment.



*Areas eligible to apply for high density residential developments:*

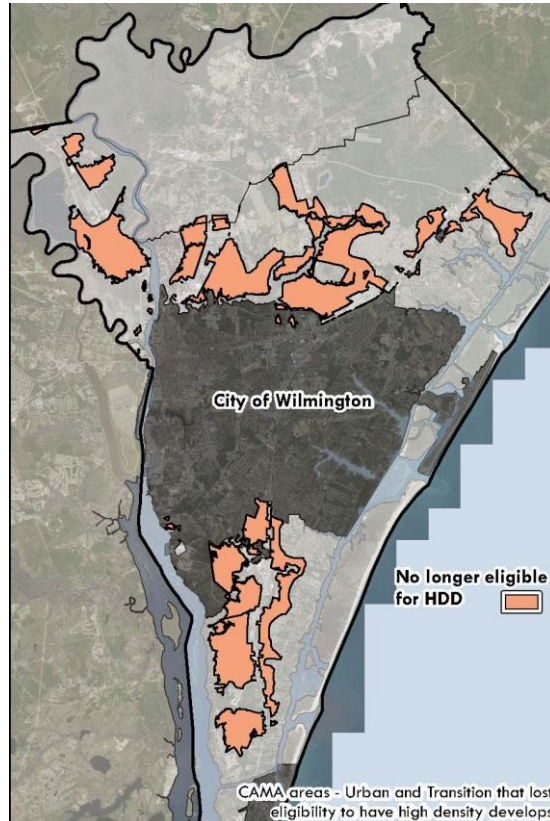


*2006 CAMA Plan*



*2016 Comprehensive Plan*

*Areas that lost eligibility to apply for a high density development permit (subject to all other ordinance requirements, SUP approval or PD zoning):*





This application proposes to modify the standard requiring high density developments to be located within the Urban Mixed Use, Community Mixed Use, and Employment Center place types and the access requirements for the use. Specifically, it seeks to allow applicants to apply for a permit for properties near the boundaries of an Urban Mixed Use, Community Mixed Use, and Employment Center place type. It also seeks to allow high density developments to access arterial streets via a private street. Below, staff examines each requirement individually and offers a recommendation on each.

## Amendment 1 – PLACE TYPE REQUIREMENT

### Proposed Text

Red and Underline/Strikethrough – Petitioner's Proposed Additions/Deletions

#### Article V: District Regulations – Table of Permitted Uses

Permitted Uses	PD	R 20S	R 15	R 10	O & I
High Density Development (3/22/82) <del>Permitted only within Employment Center, Urban Mixed Use, or Community Mixed Use Place Types</del> (2/16/87, 10/11/95, 9/6/16)	P	S	S	S	S

#### Article VII: Provisions for Uses Allowed as Special Uses – Section 72-43: High Density Development

##### (D) Determination of site capacity

1. The maximum number of dwelling units that may be built may be determined by multiplying the BASE SITE AREA by the appropriate density factor from the table below. (1/2/90)(10/5/95).

<u>DISTRICT</u>	<u>DENSITY FACTOR</u>
R-10	17 units/acre
R-15	10.2 units/acre
R-20	4.25 units/acre
O&I	10.2 units/acre
PD (inside Employment Center/Urban Mixed Use/Community Mixed Use/ General Residential place types)	4.25 units/acre

2. Each high density development shall be located on a parcel of land that is either totally or primarily in, contiguous to or within 250 feet of, the boundary of areas classified Employment Center, Urban Mixed Use, or Community Mixed Use place types. In cases where a high density development includes primarily Employment Center, Urban Mixed Use, or Community Mixed Use and limited Conservation place type or AE or VE special flood hazard areas or units shall not be clustered at a density greater than 2.5 units per BASE SITE acre in the AE or VE special flood hazard areas or CAMA Estuarine Areas of Environmental Concern. (10/5/95)(9/6/16).

## **Staff Analysis**

The proposed amendment will remove a use-specific standard from the Table of Permitted Uses and allow for properties located along the mapped boundary of the Community Mixed Use, Urban Mixed Use, and Employment Center place types to be eligible to apply for a high density development SUP.

The Future Land Use Map included in the 2016 Comprehensive Plan is not intended to be a parcel-specific, legally binding map like the County's Zoning Map. Because of these generalized borders, parcels located in proximity to the boundaries between place types could be appropriately developed in accordance with either place type. The intent of the general boundaries is to build flexibility into the plan, allowing site-specific features and evolving development patterns in the surrounding area to be considered during land use decisions. However, as the Zoning Ordinance currently requires high density developments to be located within certain place types, it effectively treats the Future Land Use Map as a zoning map for these types of developments, essentially altering the intent of the Comprehensive Plan and Future Land Use Map.

The land along the County's main thoroughfares provides an example of this. While these areas are mostly classified for high density mixed use development in the Future Land Use Map, in many cases the classification only extends a few hundred feet from the right-of-way before changing to the General Residential classification. As commercial businesses are typically developed along thoroughfares, a strict interpretation of the place types may hinder an orderly transition of using varying density residential to go from the higher intensity commercial uses to the lower intensity single-family developments.

Because high density developments are required to be rezoned to a planned development or obtain an SUP, the Planning Board and Board of Commissioners will have the opportunity to review any application for high density development that might become eligible as a result of the proposed amendment. The proposed amendment does not permit any specific high density developments, but only allows for applications to be submitted in areas in close proximity to the subject place types.

Staff recommends approval of this portion of the proposed amendment. The adoption of the 2016 Comprehensive Plan and the "bridging" amendment resulted in many properties losing the ability to apply for a high density development permit due to the Future Land Use Map being treated similar to a zoning map. This amendment is consistent with the intent of having a non-legally binding Future Land Use Map which will allow some of the properties previously eligible to apply for a high density development permit to again be able to apply once again.

## Amendment 2 – ACCESS REQUIREMENT

### Proposed Text

Red and Underline/~~Strike through~~ – Petitioner's Proposed Additions/Deletions

#### **Article VI: Supplementary District Regulations – Section 61.3: Thoroughfare Requirements**

These requirements shall apply to Planned Developments and High Density developments:

- (A) Access to Thoroughfares – The property to be developed must have direct access to and from an existing major or minor arterial roadway, as indicated on the New Hanover County Thoroughfare Classification Plan. The direct access requirement may be satisfied as follows:
1. One or more property boundary lines is contiguous with and utilizes access to and from said thoroughfare; or
  2. The property ~~is connected to~~ accesses said thoroughfare by a NCDOT-maintained public street or by a private street designed and constructed in accordance with the County's minimum standards for a collector road. ~~public street design and built to the specifications of "Residential Collector Streets" as defined in N.C. Department of Transportation Subdivision Construction Standards, or as thereafter amended. This connecting street shall be designed to serve only traffic originating from or going to the development, or other existing Planned Developments or High Density developments, or any future residential development. (2/16/87)~~

### Staff Analysis

Currently, all high density developments must have a direct driveway access to an arterial street or connect to an arterial street by way of a public street built to NCDOT's residential collector road standards. The proposed amendment will add an option for high density developments to access an arterial street through a private street. Staff supports this request as the County currently allows for residential subdivisions of all sizes and commercial developments to be served by private streets, which must be constructed to the County's minimum standards.

The proposed amendment will also add flexibility to the access requirements by allowing high density developments to access an arterial street by way of a variety of public streets classifications. Staff supports this request as NCDOT as owner of these facilities, is charged with ensuring the access is adequate for the subject development through the driveway permitting process.

Lastly, the proposal removes the standard that restricts the access to the arterial street to only serving the subject development and future residential development. Staff supports the removal of this standard, as it currently restricts interconnectivity with adjacent commercial properties. Multi-family developments are generally an appropriate transition from higher intensity commercial uses to single-family neighborhoods, and shared accessways between the uses are encouraged.

## STAFF RECOMMENDATION

**Staff recommends approval of the requested amendments.** Staff concludes that the application is:

1. Consistent with the purposes and intent of the 2016 Comprehensive Plan because it aligns with the objective of having a non-legally binding Future Land Use Map that is not interpreted as a zoning map.
2. Reasonable and in the public interest because the proposal updates requirements that may hinder mixed use development patterns; which promote business success, maximize the efficient use of land, and support alternative modes of transportation, thereby reducing the dependency on the automobile. In addition, the proposal does not permit specific high density developments, but it only allows for applications for a Special Use Permit or Planned Development to be considered.

**REQUEST FOR BOARD ACTION**  
**MEETING DATE: May 3, 2018**

**REGULAR**

**DEPARTMENT:** Planning

**PRESENTER(S):** Ben Andrea, Current Planning & Zoning Supervisor

**CONTACT(S):** Ben Andrea; Ken Vafier, Planning Manager; and Wayne Clark, Planning & Land Use Director

**SUBJECT:**

**Public Hearing**

**Text Amendment Request (TA18-02) – Request by The Dog Club of Wilmington to amend Article V of the Zoning Ordinance to permit kennels in the I-2, Heavy Industrial, zoning district.**

**BRIEF SUMMARY:**

The Dog Club of Wilmington is requesting to amend the New Hanover County Zoning Ordinance to allow Kennels as a use permitted by-right in the I-2, Heavy Industrial zoning district. The applicant is aware of the current effort to update the county's land use regulations with the Unified Development Ordinance; however, their current business need cannot wait until the anticipated UDO adoption in 2019.

Currently, Kennels are permitted by-right in PD, B-1, B-2, I-1, and Airport Industrial zoning districts, and by special use permit in the R-20S, R-20, R-15, O&I, and the Rural Agricultural zoning districts. Kennels are typically a low traffic generator with minor external impacts including noise that are best suited for business and industrial districts and separated from residential uses. When researching other jurisdictions, including the City of Wilmington, Staff found that kennels are commonly allowed in industrial zoning districts.

Staff concludes that the proposed text amendment is generally **CONSISTENT** with the Comprehensive Plan because it updates the Zoning Ordinance to encourage businesses in appropriate areas. Most of the I-2 zoning in the county is within the Commerce Zone or Employment Center placetypes. In both of these placetypes, the Comprehensive Plan suggests that a mixture of uses is appropriate, including commercial services.

**STRATEGIC PLAN ALIGNMENT:**

Intelligent Growth and Economic Development

- Attract and retain new and expanding businesses
- Implement plans for land use, economic development, infrastructure and environmental programs
- Understand and act on citizen needs

**RECOMMENDED MOTION AND REQUESTED ACTIONS:**

Staff recommends approval and suggests the following motion:

Motion to recommend approval of the amendment, as the Board finds that this request as described is:

1. Consistent with the purposes and intent of the 2016 Comprehensive Plan because it aligns the Zoning Ordinance to encourage businesses in appropriate areas.
2. Reasonable and in the public interest because the proposed amendment would promote business success while not impairing quality of life for existing residential areas.

**ATTACHMENTS:**

TA18-02 Script

TA18-02 Staff Summary

Applicant Materials Cover Page

TA18-02 Application Package

**COUNTY MANAGER'S COMMENTS AND RECOMMENDATIONS: (only Manager)**

## SCRIPT FOR Zoning Ordinance Text Amendment (TA18-02)

**Request by The Dog Club of Wilmington to amend Article V of the Zoning Ordinance to permit kennels in the I-2, Heavy Industrial, zoning district.**

1. This is a public hearing. We will hear a presentation from staff. Then the applicant and any opponents will each be allowed up to 15 minutes for their presentation and an additional 5 minutes for rebuttal.
2. Conduct Hearing, as follows:
  - a. a. Staff presentation
  - b. b. Applicant's presentation (up to 15 minutes)
  - c. c. Opponent's presentation (up to 15 minutes)
  - d. d. Applicant's rebuttal (up to 5 minutes)
  - e. e. Opponent's rebuttal (up to 5 minutes)
3. Close the Public Hearing
4. Board Discussion
5. **Vote on amending Article V.** The motion should include a statement saying how the amendment is or is not consistent with the land use plan and why it is or is not reasonable and in the public interest.

### Options for Motions:

- Motion to approve the text amendment as presented in the staff summary or a modified version of the text amendment;
- Motion to "table" the item in order to receive more information; or
- Motion to deny the amendment proposal based on specific reasons, such as the proposal is not consistent with the land use plan and/or the proposal is not reasonable and/or the proposal is not in the public interest.

### **Staff Suggested Motion:**

Motion to recommend approval of the amendment, as the Board finds that this request as described is:

1. Consistent with the purposes and intent of the 2016 Comprehensive Plan because it aligns the Zoning Ordinance to encourage businesses in appropriate areas.
2. Reasonable and in the public interest because the proposed amendment would promote business success while not impairing quality of life for existing residential areas.

### **Alternative Motion for Approval/Denial:**

Motion to recommend [Approval/Denial], as the Board finds that this request for a text amendment to the Zoning Ordinance as described is:

1. [Consistent/Not Consistent] with the purposes and intent of the 2016 Comprehensive Plan because [Describe elements of controlling land use plans and how the amendment is or is not consistent].
2. [Reasonable/Not Reasonable] and in the public interest because [Briefly explain why. Factors may include public health and safety, applicable plans, or balancing benefits and detriments].

# STAFF SUMMARY OF TA18-02 TEXT AMENDMENT APPLICATION

## APPLICATION SUMMARY

**Case Number:** TA18-02

**Request:**

To amend the Table of Permitted Uses in Article V to add Kennels as a use permitted by right in the I-2, Heavy Industrial Zoning District

**Applicant:**

Dyana Scholz of The Dog Club of Wilmington

**Subject Ordinance:**

Zoning Ordinance

**Subject Article(s) and Section(s):**

- Article V: Table of Permitted Uses

## BACKGROUND

The applicant is seeking to amend the Table of Permitted Uses in Article V to add Kennels as a use permitted by right in the I-2, Heavy Industrial Zoning District. Per the definition in the Zoning Ordinance, "Kennel" includes business such as dog boarding as well as dog day care:

**Kennel** - An establishment wherein any person engages in business or practice, for a fee, of boarding, breeding, grooming, letting for hire, or training of more than three (3) domesticated animals at any one time; or an establishment wherein any person engages in the business or practice, for a fee, of selling more than one (1) litter of domesticated animals at any one time or the selling of any three (3) individual domesticated animals (not defined as litter herein) at any one time. Domesticated animals, for the purpose of this Ordinance, shall be defined as dogs, cats, and other generally acceptable household pets. Litter, for the purpose of this Ordinance, shall be defined as the progeny resulting from the breeding of two domesticated animals. The following shall not constitute the operation of a Kennel as defined above and in no way shall this provision regulate the following:

- A. The ownership of domesticated animals as household pets;
- B. The ownership of domesticated animals for hunting or tracking purposes;
- C. The ownership of domesticated animals for the purpose of exhibiting at shows, obedience or field trials; and
- D. The ownership of domesticated animals for the purpose of protection or guarding of residences or commercial establishments. (4/21/75) (23-49)

Currently, Kennels are permitted by right in PD, B-1, B-2, I-1, and Airport Industrial zoning districts, and by special use permit in the R-20S, R-20, R-15, O&I, and the Rural Agricultural zoning districts. Section 72-26 has additional requirements for Kennels in the R-15 and R-20 zoning districts, including that the number of animals allowed depends on the lot size, structures must meet a minimum side and rear setback of 50', signs are limited to 2.25 sq. ft., and sanitation control and sewage disposal must be reviewed by Environmental Health.

The application proposes to allow Kennels to be a permitted use in the I-2 zoning district. Existing development standards for setbacks, landscaping, parking, etc. will apply to any kennel in I-2. No additional standards or requirements are proposed in the application.



## PROPOSED AMENDMENT

Red and Underline/~~Strike through~~ – Petitioner's Proposed Additions/Deletions

### Article V: Table of Permitted Uses

Permitted Uses	PD	R 20S	R 20	R 15	R 10	R 7	B 1	B 2	I 1	I 2	O & I	A R	A I	S C	R A	R F M U	Supp Regs	NAICS
<b>Agriculture, Forestry, Fishing</b>																		
Kennels	P	S	S	S			P	P	P	<u>P</u>	S		P		S			

## Staff Analysis

Currently, the Zoning Ordinance allows Kennels in several residential districts, the business districts, and also the Light Industrial and Airport Industrial zoning districts. Kennels are typically a low traffic generator with minor external impacts including noise that are best suited for business and industrial districts and separated from residential uses. When researching other jurisdictions, including the City of Wilmington, Staff found that kennels are commonly allowed in industrial zoning districts.

The I-2 district was established to set aside areas of the county for a full range of heavy industrial land uses including manufacturing, warehousing, and distribution uses, and subsequently protect nonindustrial districts situated elsewhere and minimize environmental impacts caused by uses within the district. Although Kennels are not an industrial use, allowing for Kennels to be permitted in I-2 zoning would create opportunity to protect existing residential and commercial areas from the impacts from a kennel such as noise.

Staff concludes that the proposed text amendment is generally **CONSISTENT** with the Comprehensive Plan because it updates the Zoning Ordinance to encourage businesses in appropriate areas. Most of the I-2 zoning in the county is within the Commerce Zone or Employment Center placetypes. In both of these placetypes, the Comprehensive Plan suggests that a mixture of uses is appropriate, including commercial services.

Staff supports the proposed amendment and recommends approval as proposed.

## STAFF RECOMMENDATION

**Staff recommends approval of the requested amendment.** Staff concludes that the amendment is:

1. Consistent with the purposes and intent of the 2016 Comprehensive Plan because it aligns the Zoning Ordinance to encourage businesses in appropriate areas.
2. Reasonable and in the public interest because the proposed amendment would promote business success while not impairing quality of life for existing residential areas.

# **APPLICANT MATERIALS**

# NEW HANOVER COUNTY

DEPARTMENT OF PLANNING & LAND USE  
230 Government Center Drive, Suite 110  
Wilmington, North Carolina  
Telephone (910) 798-7165  
FAX (910) 798-7053  
planningdevelopment.nhcgov.com



## TEXT AMENDMENT Application

Applicant Information		
Name DYANA O. SCHOLZ		
Company THE DOG CLUB OF WILMINGTON		
Address 2907 BLUE CLAY RD.		
City, State, Zip CASTLE HAYNE, NC 28429		
Phone 910-232-5910		
Email DYANASCHOLZ@GMAIL.COM		
Application Tracking Information (Staff Only)		
Case Number TA18-02	Date/Time received: 4-5-18	Received by: BJA

Subject Text
Subject Ordinance (Zoning, Subdivision, etc.): TEXT AMENDMENT
Chapter and Section(s): TABLE OF PERMITTED USES

## Proposed Text Amendment

Please provide the proposed amendment to the stated ordinance and section(s) (please provide additional pages if needed):

[illegible]

## APPLICATION REQUIREMENTS

Staff will use the following checklist to determine the completeness of your application. Please verify all of the listed items are included and confirm by initialing under "Applicant Initial". Applications determined to be incomplete must be corrected in order to be processed for further review.

Required Information		Applicant Initial	Staff Initial
1	Complete Text Amendment application.		
2	Application fee – \$400 (\$600 for Land Use Plan amendments).		
3	1 hard copy of ALL documents. Additional hard copies may be required by staff depending on the size of the document.		
4	1 PDF digital copy of ALL documents on a Compact Disk (CD).		

## ACKNOWLEDGEMENT AND SIGNATURES

By my signature below, I understand and accept all of the conditions, limitations and obligations of the text amendment for which I am applying. I understand that I have the burden of proving why this requested change is reasonable and in the public interest, and is consistent with the County's Policies for Growth and Development. I certify that this application is complete and that all information presented in this application is accurate to the best of my knowledge, information, and belief.

  
Signature of Applicant

  
Print Name

If an applicant requests delay of consideration from the Planning Board or Board of County Commissioners before notice has been sent to the newspaper, the item will be calendared for the next meeting and no fee will be required. If delay is requested after notice has been sent to the newspaper, the Board will act on the request at the scheduled meeting and are under no obligation to grant the continuance. If the continuance is granted, a fee in accordance with the adopted fee schedule as published on the New Hanover County Planning website will be required.

### For Staff Only

#### Application Comments

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# **|| TEXT AMENDMENT PROPOSAL**

## **OBJECTIVE**

Text Amendment Proposal

We would like to add 'P' for Kennels in I-2 in the Table of Permitted Uses.

## **The Opportunity**

- Zoning in and around industrial zoned areas will allow for kennels to be away from residential homes, or businesses where they may prefer a quieter use of business.
- Potentially will add more opportunity for business growth to our county
- Majority of I-2 property is surrounded by like minded property allowing for kennels to operate without interfering with the quiet enjoyment of a private home.

## **The Solution**

- Allow I-2 zoning to permit Kennels

## **Rationale**

- Currently within the county, Kennels are permitted in B-1, B-2, I-2 and Airport Industrial. With special use allowance in Office & Institution and Rural Agriculture.
- Within the county, kennels currently are direct neighbors to residential communities (see Map 1)
- Ample I-2 zoned land, adding kennels as a permitted use would not obstruct other business growth which currently required I-2.

## **Current Uses in I-2**

Zoning in I-2 currently permits a large range of uses.

- Livestock sales
- Stables
- Manufacturing
- Demolition / Landscape Landfill
- Small/Large Collection and processing of recycling

Within current allowed uses, Kennels would not be an abnormal addition.

## Benefits

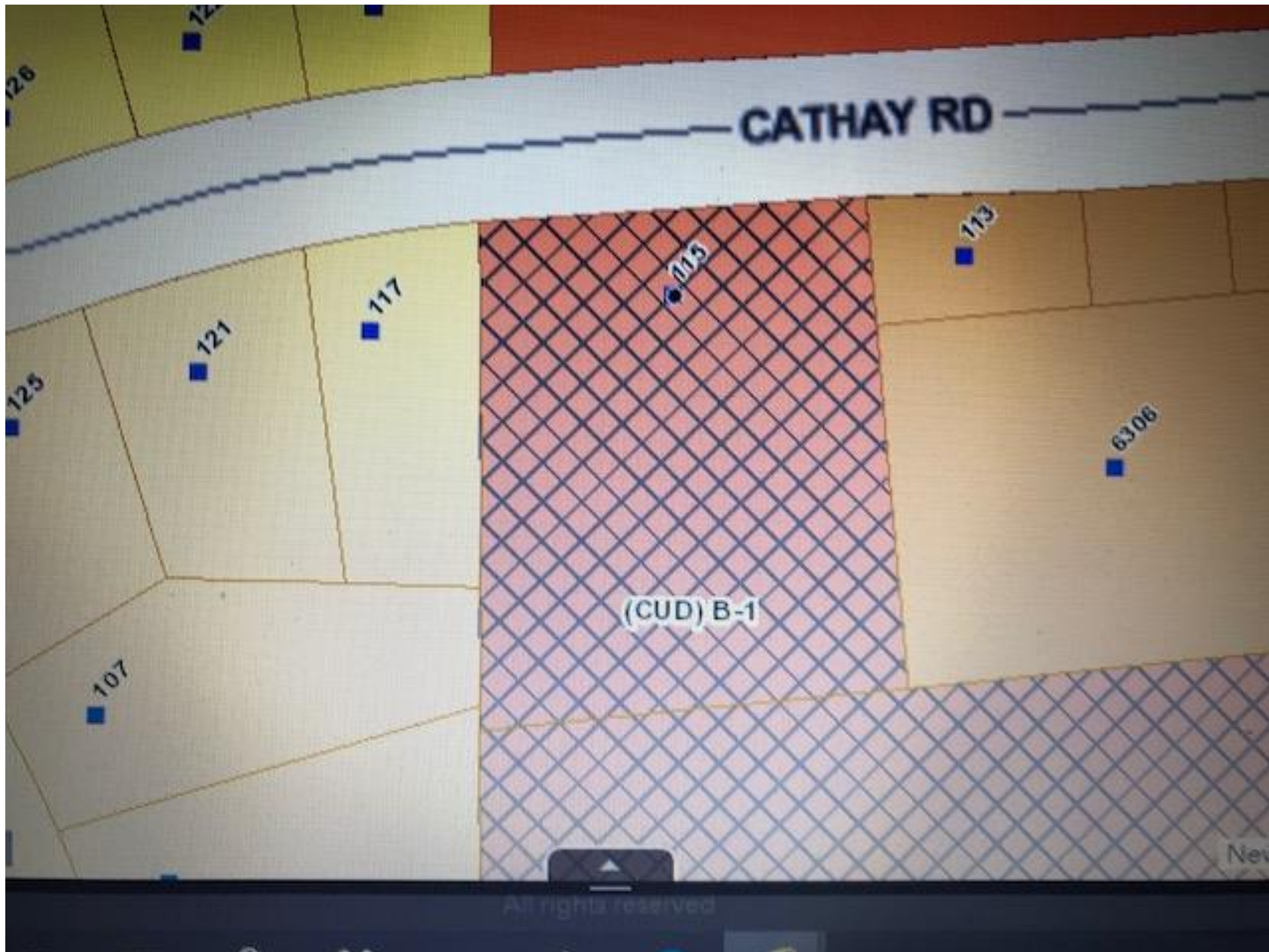
- Business growth without hindering current allowed functions
- Putting Kennels where this type of business would be a more appropriate neighbor
- Where residential is close in proximity, a kennel would be a much better neighbor than many of the already allowed uses.

## CONCLUSION

The Dog Club of Wilmington has been operating in an existing warehouse zones B-2, with a residential neighbor approximately 50' from the property line. As a business we have always been very respectful of our neighbors and only operate within normal waking hours. We believe adding Kennels as Permitted use would ultimately structure this type of business within the confines of areas where noise will not be a factor. However, as a business we do not leave dogs outside unattended for any length of time, and never outside at night. We always try to be good neighbors.

Thank you for your consideration,

Dyana Scholz  
The Dog Club of Wilmington





**REQUEST FOR BOARD ACTION**  
**MEETING DATE: May 3, 2018**

**REGULAR**

**DEPARTMENT:** Planning

**PRESENTER(S):** Ken Vafier, Planning Manager

**CONTACT(S):** Ken Vafier

**SUBJECT:**

**Public Hearing**

**Text Amendment Request (TA18-03) - Request by New Hanover County to amend the Flood Damage Prevention Ordinance to incorporate updated Flood Insurance Rate Map data and ordinance requirements to comply with minimum National Flood Insurance Program (NFIP) regulations.**

**BRIEF SUMMARY:**

In 1968, the National Flood Insurance Program (NFIP) was authorized in order to make flood insurance available to communities, to identify floodplains and areas at risk of flooding, and to provide standards, a framework, and guidance to communities in the management of their floodplains. To be eligible for participation in this program, a community must adopt and enforce floodplain management regulations in flood zones delineated on FIRMs. New Hanover County has participated in the program under these parameters since 1978. Periodically, advances in modeling and cartography require that the FIRMs be updated in order to more accurately depict the flood risks in a given community. Similarly, the incorporation of new floodplain management best practices requires periodic updates to a community's floodplain regulations. The County's FIRMs and ordinance, last updated in 2006, are now being proposed to be updated in order to comply with minimum NFIP requirements and for continued eligibility in the NFIP.

Changes to the delineated flood zones are site specific and vary across the County. However, when analyzed, certain trends do appear. The FIRMs are becoming less restrictive in many areas of the County with reductions in Base Flood Elevation, or designation to a less-restrictive flood zone. For properties adjacent to the Intracoastal Waterway, the general trend appears to be that the VE Zone does not extend as far landward or has a slight reduction in Base Flood Elevations. There are some areas of the County where structures that were not previously designated in a flood zone are being placed in an AE Zone, most notably in the vicinity of Pages Creek in the northeastern portion of the County.

The map changes result in a net increase of approximately 398 total structures in flood zones. There is a reduction of approximately 300 structures in the VE Zone, which is the zone closest to open water where effects from wave action are anticipated. In the AE Zone, which is the zone at risk from floodwaters without associated wave action, the number of structures increases by approximately 698. This data mirrors the trends that are seen in the changes of the delineated flood zones. A series of maps and tables highlighting changes to the flood zones and structures are attached.

The proposed Flood Damage Prevention Ordinance, based on a template provided by FEMA that includes minimum NFIP requirements, is attached. The ordinance largely mirrors the content of the existing ordinance. Changes to the ordinance include updated definitions, code references, reorganization of certain sections, and clarifications to certain construction methods such as pools, concrete slabs, and fill. The ordinance does retain some higher standards that currently exist in the code, such as the existing 2'

minimum freeboard requirement and substantial improvement provisions. Optional provisions which are new to the ordinance are indicated by highlighted text in the attached draft. The maps and ordinance will both contain a new flood zone, the Coastal A Zone, in which non-residential construction must adhere to standards for more restrictive flood zone requirements to be consistent with the NC State Building Code.

As a requirement of the County's participation in the NFIP, adoption and enforcement of floodplain management regulations and FIRMs are required. As all statutory due-process requirements were met and the Letter of Final Determination was issued from FEMA, local adoption must take place prior to August 28, 2018 in order to ensure continued eligibility in the NFIP.

The required updates and optional provisions to the Flood Damage Prevention Ordinance were included in the proposed draft, and it has been reviewed and approved by NC Floodplain Mapping Program staff to ensure all NFIP requirements are met.

The maps and ordinance will be effective immediately upon adoption; however, insurance rates are not anticipated to change until the effective date of August 28.

#### **STRATEGIC PLAN ALIGNMENT:**

Intelligent Growth and Economic Development

- Build and maintain infrastructure
- Implement plans for land use, economic development, infrastructure and environmental programs

#### **RECOMMENDED MOTION AND REQUESTED ACTIONS:**

Staff recommends approval and suggests the following motion:

Motion to recommend approval of the amendment, as the Board finds that this request as described is:

1. Consistent with the purposes and intent of the 2016 Comprehensive Plan because it promotes environmentally responsible growth by identifying those areas most at risk for flooding impacts in the unincorporated County and provides for measures to mitigate the effects of flooding on development in those areas, consistent with minimum NFIP requirements.
2. Reasonable and in the public interest because the proposal incorporates and codifies the most up to date Flood Insurance Rate Maps and Ordinance provisions, providing mitigation measures for those areas determined to be most at risk for flooding impacts in the unincorporated County. Additionally, adoption of the request ensures continued eligibility in the NFIP.

#### **ATTACHMENTS:**

Script for PB

TA 18-03 Staff Summary PB

Structures in SFHA

Structures in Current VE Zone

Structures in Preliminary VE Zone

Structures in Current AE Zone

Structures in Preliminary AE Zone

FDPO Draft

**COUNTY MANAGER'S COMMENTS AND RECOMMENDATIONS: (only Manager)**

## SCRIPT FOR Zoning Ordinance Text Amendment (TA18-03)

**Request by New Hanover County to amend the Flood Damage Prevention Ordinance to incorporate updated Flood Insurance Rate Map data and ordinance requirements to comply with minimum National Flood Insurance Program (NFIP) regulations.**

1. This is a public hearing. We will hear a presentation from staff. Then the applicant and any opponents will each be allowed up to 15 minutes for their presentation and an additional 5 minutes for rebuttal.
2. Conduct Hearing, as follows:
  - a. a. Staff presentation
  - b. b. Applicant's presentation (up to 15 minutes)
  - c. c. Opponent's presentation (up to 15 minutes)
  - d. d. Applicant's rebuttal (up to 5 minutes)
  - e. e. Opponent's rebuttal (up to 5 minutes)
3. Close the Public Hearing
4. Board Discussion
5. **Vote on amendment.** The motion should include a statement saying how the amendment is or is not consistent with the land use plan and why it is or is not reasonable and in the public interest.

### Options for Motions:

- Motion to approve the text amendment as presented in the staff summary or a modified version of the text amendments;
- Motion to "table" the item in order to receive more information; or
- Motion to deny the amendment proposal based on specific reasons, such as the proposal is not consistent with the land use plan and/or the proposal is not reasonable and/or the proposal is not in the public interest.

### **Staff Suggested Motion:**

Motion to recommend approval of the amendment, as the Board finds that this request as described is:

1. Consistent with the purposes and intent of the 2016 Comprehensive Plan because it promotes environmentally responsible growth by identifying those areas most at risk for flooding impacts in the unincorporated County and provides for measures to mitigate the effects of flooding on development in those areas, consistent with minimum NFIP requirements.
2. Reasonable and in the public interest because the proposal incorporates and codifies the most up to date Flood Insurance Rate Maps and Ordinance provisions, providing mitigation measures for those areas determined to be most at risk for flooding impacts in the unincorporated County. Additionally, adoption of the request ensures continued eligibility in the NFIP.

**Alternative Motion for Approval/Denial:**

Motion to recommend [Approval/Denial], as the Board finds that this request for a text amendment to the Zoning Ordinance as described is:

1. [Consistent/Not Consistent] with the purposes and intent of the 2016 Comprehensive Plan because [Describe elements of controlling land use plans and how the amendment is or is not consistent].
2. [Reasonable/Not Reasonable] and in the public interest because [Briefly explain why. Factors may include public health and safety, applicable plans, or balancing benefits and detriments].

# STAFF SUMMARY OF TA18-03

## TEXT AMENDMENT REQUEST

### APPLICATION SUMMARY

**Case Number:** TA18-03

**Request:**

To amend the Flood Damage Prevention Ordinance to incorporate updated Flood Insurance Rate Map data and ordinance requirements to comply with minimum National Flood Insurance Program (NFIP) regulations

**Applicant:**

New Hanover County

**Subject Ordinance:**

Flood Damage Prevention Ordinance

**Subject Article(s) and Section(s):**

- Entirety of Document

### BACKGROUND

In 1968, the National Flood Insurance Program (NFIP) was authorized in order to make flood insurance available to communities, to identify floodplains and areas at risk of flooding, and to provide standards, a framework, and guidance to communities in the management of their floodplains. To be eligible for participation in this program, a community must adopt and enforce floodplain management regulations in flood zones delineated on FIRMs. New Hanover County has participated in the program under these parameters since 1978. Periodically, advances in modeling and cartography require that the FIRMs be updated in order to more accurately depict the flood risks in a given community. Similarly, the incorporation of new floodplain management best practices requires periodic updates to a community's floodplain regulations. The County's FIRMs and ordinance, last updated in 2006, are now being proposed to be updated in order to comply with minimum NFIP requirements and for continued eligibility in the NFIP.

The review process for the preliminary FIRMs has taken place over a 4-year period to allow for public meetings and presentations, comment periods, and revisions. This process formally began on August 29, 2014, when the preliminary data was made available on the Flood Risk Information System website. Following this date, County staff worked with state NFIP staff, local officials, and stakeholders to ensure that several key milestones were met. The most notable of these included:

- September 17, 2014 – Kick-off meeting for local officials in New Hanover and Brunswick Counties;
- June 25, 2015 – Public meeting hosted at New Hanover County Government Center;
- July 15, 2015 – Public meeting hosted at Carolina Beach Town Hall;
- November 16, 2015 – Update provided by staff to NHC Board of Commissioners;
- October 29, 2015 – January 29, 2016 – 90-day comment period;
- August 15 – September 15, 2017 – 30-day follow up comment period on petitions;
- February 28, 2018 – Letter of Final Determination issued by FEMA, initiating start of 6-month period to complete local adoption process.

The opportunity to submit petitions to amend the maps was held during the 90-day comment period from October 29, 2015 to January 29, 2016. County staff reviewed and analyzed the preliminary data and worked with property owners to identify areas where potential corrections may have been warranted. At the conclusion of the comment period, 6 petitions were submitted for review and were resolved accordingly. Upon resolution of these petitions, an additional 30-day comment period was held, where no additional petitions were submitted.

Changes to the delineated flood zones are site specific and vary across the County. However, when analyzed, certain trends do appear. The FIRMs are becoming less restrictive in many areas of the County with reductions in Base Flood Elevation, or designation to a less-restrictive flood zone. For properties adjacent to the Intracoastal Waterway, the general trend appears to be that the VE Zone does not extend as far landward or has a slight reduction in Base Flood Elevations. There are some areas of the County where structures that were not previously designated in a flood zone are being placed in an AE Zone, most notably in the vicinity of Pages Creek in the northeastern portion of the County.

The map changes result in a net increase of approximately 398 total structures in flood zones. There is a reduction of approximately 300 structures in the VE Zone, which is the zone closest to open water where effects from wave action are anticipated. In the AE Zone, which is the zone at risk from floodwaters without associated wave action, the number of structures increases by approximately 698. This data mirrors the trends that are seen in the changes of the delineated flood zones. A series of maps and tables highlighting changes to the flood zones and structures accompany this report.

## **PROPOSED AMENDMENT**

The proposed Flood Damage Prevention Ordinance, based on a template provided by FEMA that includes minimum NFIP requirements, is attached. The ordinance largely mirrors the content of the existing ordinance. Changes to the ordinance include updated definitions, code references, reorganization of certain sections, and clarifications to certain construction methods such as pools, concrete slabs, and fill. The ordinance does retain some higher standards that currently exist in the code, such as the existing 2' minimum freeboard requirement and substantial improvement provisions. Optional provisions which are new to the ordinance are indicated by highlighted text in the attached draft. The maps and ordinance will both contain a new flood zone, the Coastal A Zone, in which non-residential construction must adhere to standards for more restrictive flood zone requirements to be consistent with the NC State Building Code.

## **Staff Analysis**

As a requirement of the County's participation in the NFIP, adoption and enforcement of floodplain management regulations and FIRMs are required. As all statutory due-process requirements were met and the Letter of Final Determination was issued from FEMA, local adoption must take place prior to August 28, 2018 in order to ensure continued eligibility in the NFIP. The required updates and optional provisions to the Flood Damage Prevention Ordinance were included in the proposed draft, and it has been reviewed and approved by NC Floodplain Mapping Program staff to ensure all NFIP requirements are met.

The maps and ordinance will be effective immediately upon adoption; however, insurance rates are not anticipated to change until the effective date of August 28.

## **STAFF RECOMMENDATION**

**Staff recommends approval of the requested amendment.** Staff concludes that the request is:

1. Consistent with the purposes and intent of the 2016 Comprehensive Plan because it promotes environmentally responsible growth by identifying those areas most at risk for flooding impacts in the unincorporated County and provides for measures to mitigate the effects of flooding on development in those areas, consistent with minimum NFIP requirements.
2. Reasonable and in the public interest because the proposal incorporates and codifies the most up to date Flood Insurance Rate Maps and Ordinance provisions, providing mitigation measures for those areas determined to be most at risk for flooding impacts in the unincorporated County. Additionally, adoption of the request ensures continued eligibility in the NFIP.



### Structures in Special Flood Hazard Areas

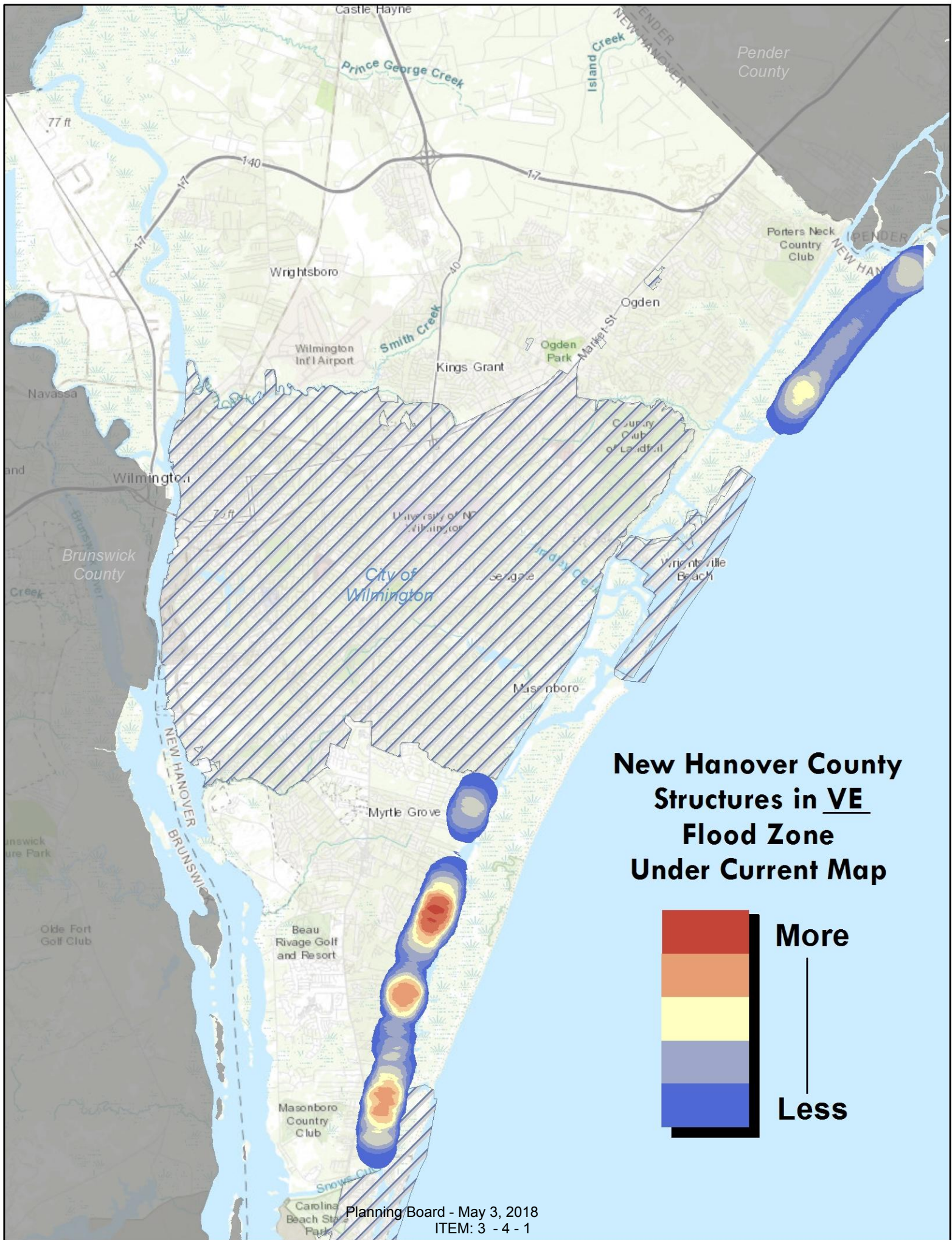
	Current FIRM	Preliminary FIRM	Difference
Structures in VE	797	497	-300
Structures in AE	3002	3700	698
<b>Total</b>	<b>3799</b>	<b>4197</b>	<b>398</b>

### Structures Added or Removed From SFHAs

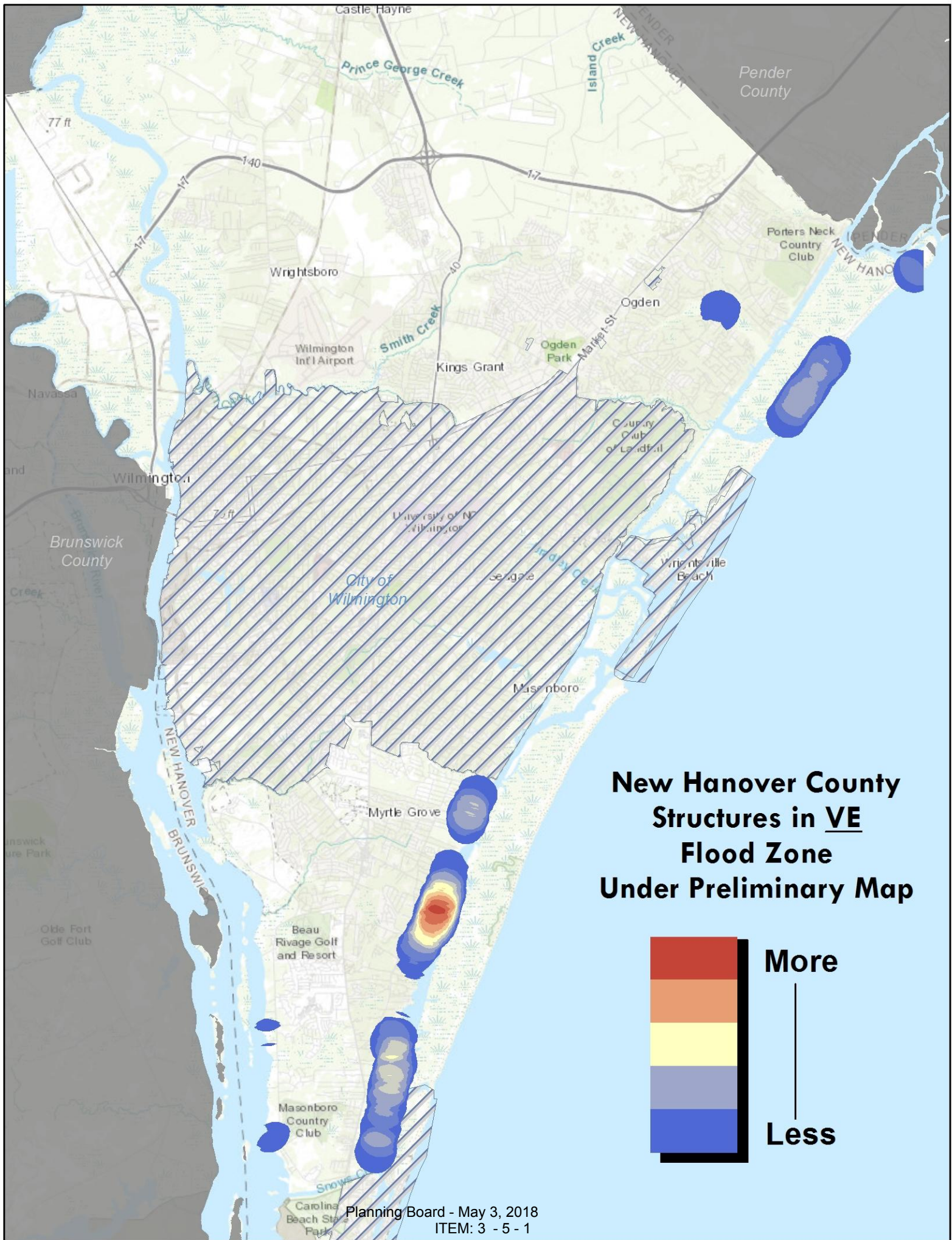
Structures Added to SFHAs	736
Structures Removed From SFHAs	338
Structures to More Restrictive Zone	77
Structures to Less Restrictive Zone	369

AE Zone = land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year.

VE Zone = land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year with high velocity waters from storm surges or seismic activity.















**Highlighted Text** – Indicates new provision included from options within model ordinance

## **FLOOD DAMAGE PREVENTION ORDINANCE**

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

#### **SECTION A. STATUTORY AUTHORIZATION.**

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3 and 4 of Article 18 of Chapter 153A; and Part 121, Article 6 of Chapter 153A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the Board of Commissioners of New Hanover County, North Carolina, does ordain as follows:

#### **SECTION B. FINDINGS OF FACT.**

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

#### **SECTION C. STATEMENT OF PURPOSE.**

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

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

#### **SECTION D. OBJECTIVES.**

The objectives of this ordinance are to:

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

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

## **ARTICLE 2.      DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

"Board of Adjustment" means the New Hanover County Board of Adjustment charged with the responsibility of hearing and deciding appeals and requests for variance from the requirements of this Ordinance.

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

"Building" see "Structure".

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

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

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

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

“Coastal High Hazard Area” means a Special Flood Hazard Area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM, or other adopted flood map as determined in Article 3, Section B of this ordinance, as Zone VE.

“County” means New Hanover County, North Carolina, a political subdivision of the State of North Carolina.

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

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

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

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

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

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

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

“Existing building and existing structure” means any building and/or structure for which the “start of construction” commenced before April 3, 1978.

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

“Expansion to an existing manufactured home park or manufactured home subdivision” means the preparation of additional sites by the construction of facilities for serving the lot on which the manufactured homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets).



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

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

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

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

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

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

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

“Flood Prone Area” see “Floodplain”

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

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

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

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

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

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

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

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

“Floodway” means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water

surface elevation more than one (1) foot.

“Floodway encroachment analysis” means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and models.

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

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

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

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

“Historic Structure” means any structure that is:

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

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

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

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

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

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

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

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

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

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

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

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

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

“Non-Encroachment Area (NEA)” means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

“Otherwise Protected Area (OPA)” see “Coastal Barrier Resources System (CBRS)”.

“Post-FIRM” means construction or other development for which the “start of construction” occurred on or after July 17, 1978, the effective date of the initial Flood Insurance Rate Map.

“Pre-FIRM” means construction or other development for which the “start of construction” occurred before July 17, 1978, the effective date of the initial Flood Insurance Rate Map.

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

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

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

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

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

“Reference Level” is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zones A, AE, AH, AO, A99. The reference level is the bottom of the lowest horizontal structural member of the lowest floor for structures within Special Flood Hazard Areas designated as Zone VE.

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

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

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

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

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

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

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

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

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

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

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

“Substantial Damage” means damage of any origin sustained by a structure during any five-year period whereby the cost of

restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of “substantial improvement.”

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

- (a) Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (b) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to Article 4 Section E of this ordinance.

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

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

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

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

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

### **ARTICLE 3.      GENERAL PROVISIONS.**

#### **SECTION A.      LANDS TO WHICH THIS ORDINANCE APPLIES.**

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction of New Hanover County.

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

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its FIS dated August 28, 2018 for New Hanover County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance. Future revisions to the FIS and DFIRM panels that do not change flood hazard data within the jurisdictional authority of New Hanover County are also adopted by reference and declared a part of this ordinance. Subsequent Letter of Map Revisions (LOMRs) and/or Physical Map Revisions (PMRs) shall be adopted within 3 months.

#### **SECTION C.      ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.**

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

#### **SECTION D.      COMPLIANCE.**

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

## **SECTION E. ABROGATION AND GREATER RESTRICTIONS.**

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

## **SECTION F. INTERPRETATION.**

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

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

## **SECTION G. WARNING AND DISCLAIMER OF LIABILITY.**

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

## **SECTION H. PENALTIES FOR VIOLATION.**

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent New Hanover County from taking such other lawful action as is necessary to prevent or remedy any violation.

## **ARTICLE 4. ADMINISTRATION.**

### **SECTION A. DESIGNATION OF FLOODPLAIN ADMINISTRATOR.**

The Planning Manager, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this ordinance. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this ordinance, the Floodplain Administrator shall be responsible for the coordination and community's overall compliance with the National Flood Insurance Program and the provisions of this ordinance.

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

- (1) **Application Requirements.** Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

- (a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
  - (i) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and

- proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
- (ii) The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Article 3, Section B, or a statement that the entire lot is within the Special Flood Hazard Area;
  - (iii) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Article 3, Section B;
  - (iv) The boundary of the floodway(s) or non-encroachment area(s) as determined in Article 3, Section B;
  - (v) The Base Flood Elevation (BFE) where provided as set forth in Article 3, Section B; Article 4, Section C; or Article 5, Section D;
  - (vi) The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
  - (vii) The boundary and designation date of the Coastal Barrier Resource System (CBRS) area or Otherwise Protected Areas (OPA), if applicable; and
  - (viii) The certification of the plot plan by a registered land surveyor or professional engineer.
- (b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
- (i) Elevation in relation to NAVD 1988 of the proposed reference level (including basement) of all structures;
  - (ii) Elevation in relation to NAVD 1988 to which any non-residential structure in Zones A, AE, AH, AO, A99 will be floodproofed; and
  - (iii) Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed.
- (c) If floodproofing, a Floodproofing Certificate (FEMA Form 086-0-34) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.
- (d) A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
- (i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
  - (ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Article 5, Section B(4)(d) when solid foundation perimeter walls are used in Zones A, AE, AH, AO, A99.
  - (iii) The following, in Coastal High Hazard Areas, in accordance with the provisions of Article 5, Section B(4)(e) and Article 5, Section G and (Article 5, Section H if applicable):
    - (1) V-Zone Certification with accompanying plans and specifications verifying the engineered structure and any breakaway wall designs;
    - (2) Plans for open wood, plastic, or other latticework or insect screening, if applicable; and
    - (3) Plans for non-structural fill, if applicable. If non-structural fill is proposed, it must be demonstrated through coastal engineering analysis that the proposed fill would not result in any increase in the BFE

or otherwise cause adverse impacts by wave ramping and deflection on to the subject structure or adjacent properties.

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

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

- (a) A complete description of all the development to be permitted under the floodplain development permit (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.).
- (b) The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Article 3, Section B.
- (c) The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.
- (d) The Regulatory Flood Protection Elevation required for the protection of all public utilities.
- (e) All certification submittal requirements with timelines.
- (f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse unless the requirements of Article 5, Section F have been met.
- (g) The flood openings requirements, if in Zones A, AE, AH, AO, A99.
- (h) Limitations of below BFE enclosure uses (if applicable). (i.e., parking, building access and limited storage only).
- (i) A statement, if in Zone VE, that there shall be no alteration of sand dunes which would increase potential flood damage.
- (j) A statement, if in Zone VE, that there shall be no fill used for structural support.
- (k) A statement, that all materials below BFE/RFPE must be flood resistant materials.

(3) **Certification Requirements.**

- (a) Elevation Certificates
  - (i) An Elevation Certificate (FEMA Form 086-0-33) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in



relation to NAVD 1988. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

- (ii) A final Finished Construction Elevation Certificate (FEMA Form 086-0-33) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy. The Finished Construction Elevation Certificate certifier shall provide at least 2 photographs showing the front and rear of the building taken within 90 days from the date of certification. The photographs must be taken with views confirming the building description and diagram number provided in Section A. To the extent possible, these photographs should show the entire building including foundation. If the building has split-level or multi-level areas, provide at least 2 additional photographs showing side views of the building. In addition, when applicable, provide a photograph of the foundation showing a representative example of the flood openings or vents. All photographs must be in color and measure at least 3" x 3". Digital photographs are acceptable.

(b) Floodproofing Certificate

- (i) If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
  - (ii) A final Finished Construction Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy.
- (c) If a manufactured home is placed within Zones A, AE, AH, AO, A99 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Article 5, Section B(3)(b).
  - (d) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

- (e) Certification Exemptions. The following structures, if located within Zones A, AE, AH, AO, A99, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:
  - (i) Recreational Vehicles meeting requirements of Article 5, Section B(6)(a);
  - (ii) Temporary Structures meeting requirements of Article 5, Section B(7); and
  - (iii) Accessory Structures that are 150 square feet or less or \$3,000 or less and meeting requirements of Article 5, Section B(8).
- (f) A V-Zone Certification with accompanying design plans and specifications is required prior to issuance of a Floodplain Development permit within coastal high hazard areas. It shall be the duty of the permit applicant to submit to the Floodplain Administrator said certification to ensure the design standards of this ordinance are met. A registered professional engineer or architect shall develop or review the structural design, plans, and specifications for construction and certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this ordinance. This certification is not a substitute for an Elevation Certificate.

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

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

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

**SECTION C. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.**

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

- (1) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.
- (2) Review all proposed development within Special Flood Hazard Areas to assure that all necessary local, state and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (3) Notify adjacent communities and the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying

capacity is maintained.

- (5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Article 5, Section F are met.
- (6) Obtain actual elevation (in relation to NAVD 1988) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Article 4, Section B(3).
- (7) Obtain actual elevation (in relation to NAVD 1988) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Article 4, Section B(3).
- (8) Obtain actual elevation (in relation to NAVD 1988) of all public utilities in accordance with the provisions of Article 4, Section B(3).
- (9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Article 4, Section B(3) and Article 5, Section B(2).
- (10) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (11) When BFE data has not been provided in accordance with the provisions of Article 3, Section B, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a federal, state, or other source, including data developed pursuant to Article 5, Section D(2)(c), in order to administer the provisions of this ordinance.
- (12) When BFE data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of Article 3, Section B, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a federal, state, or other source in order to administer the provisions of this ordinance.
- (13) When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the BFE, advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. However, if the property is to be removed from the V Zone it must not be located seaward of the landward toe of the primary frontal dune. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.
- (14) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- (15) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- (16) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (17) Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.

- (18) Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (19) Follow through with corrective procedures of Article 4, Section D.
- (20) Review, provide input, and make recommendations for variance requests.
- (21) Maintain a current map repository to include, but not limited to, historical and effective FIS Report, historical and effective FIRM and other official flood maps and studies adopted in accordance with the provisions of Article 3, Section B of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
- (22) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

#### **SECTION D. CORRECTIVE PROCEDURES.**

- (1) Violations to be corrected: When the Floodplain Administrator finds violations of applicable state and local laws; it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.
  - (2) Actions in Event of Failure to Take Corrective Action: If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
    - (a) That the building or property is in violation of the floodplain management regulations;
    - (b) That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
    - (c) That following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.
  - (3) Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one-hundred eighty (180) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.
  - (4) Appeal: Any owner who has received an order to take corrective action may appeal the order to the Board of Adjustment by giving notice of appeal in writing to the administrator within thirty (30) days following the written notice. In the absence of an appeal, the order of the floodplain administrator shall be final. The Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- Any person aggrieved by the decision of the Board of Adjustment may appeal such decision to the superior court within thirty (30) days of the signing of the order of the Board. Such appeal shall be in the nature of certiorari.
- (5) Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58 and shall be punished at the discretion of the court.

**SECTION E.      VARIANCE PROCEDURES.**

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

issuance.

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

## **ARTICLE 5.      PROVISIONS FOR FLOOD HAZARD REDUCTION.**

### **SECTION A.      GENERAL STANDARDS.**

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

- (1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the most current version of FEMA Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements*.
- (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood

damages.

- (4) All new electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall be located at or above the RFPE or designed and installed to prevent water from entering or accumulating within the components during the occurrence of the base flood. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, water heaters, and electric outlets/switches.
  - (a) Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.
  - (b) Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.
- (9) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Article 4, Section E(10). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of Article 4, Section B(3).
- (10) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (11) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (12) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (13) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (14) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
- (15) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest BFE shall apply.

## **SECTION B.      SPECIFIC STANDARDS.**

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

- (1) Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance.
- (2) Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance. Structures located in Zones A, AE, AH, AO, A99 may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with Article 5, Section I (2). A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Article 4, Section B(3), along with the operational plan and the inspection and maintenance plan.
- (3) Manufactured Homes.
  - (a) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance.
  - (b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
  - (c) All enclosures or skirting below the lowest floor shall meet the requirements of Article 5, Section B(4).
  - (d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.
- (4) Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor or below the lowest horizontal structural member in VE zones:
  - (a) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
  - (b) Shall not be temperature-controlled or conditioned.
  - (c) Shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and
  - (d) Shall include, in Zones A, AE, AH, AO, A99 flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
    - (i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;



- (ii) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
  - (iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
  - (iv) The bottom of all required flood openings shall be no higher than one (1) foot above the higher of the interior or exterior adjacent grade;
  - (v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
  - (vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.
- (e) Shall, in Coastal High Hazard Areas (Zone VE), either be free of obstruction or constructed with breakaway walls, open wood, plastic or other latticework or insect screening, provided they are not part of the structural support of the building and are designed so as to breakaway, under abnormally high tides or wave action without causing damage to the elevated portion of the building or supporting foundation system or otherwise jeopardizing the structural integrity of the building. The following design specifications shall be met:
- (i) Material shall consist of open wood, plastic, or other latticework or insect screening; or
  - (ii) Breakaway walls shall meet the following design specifications:
    - (1) Breakaway walls may have flood openings that allow for the automatic entry and exit of floodwaters to minimize damage caused by hydrostatic loads, per Article 5, Section B(4)(d)(i-vi); and
    - (2) Design safe loading resistance shall be not less than 10 nor more than 20 pounds per square foot; or
    - (3) Breakaway walls that exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by State or local codes) shall be certified by a registered professional engineer or architect that the breakaway wall will collapse from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). The water loading values used shall be those associated with the base flood. The wind loading values used shall be those required by the North Carolina State Building Code.
  - (iii) Concrete pads, including patios, decks, parking pads, walkways, driveways, pool decks, etc. the following is required:
    - (1) Shall be structurally independent of the primary structural foundation system of the structure and shall not adversely affect structures through redirection of floodwaters or debris; and
    - (2) Shall be constructed to breakaway cleanly during design flood conditions, shall be frangible, and shall not produce debris capable of causing damage to any structure. (The installation of concrete in small segments (approximately 4 feet x 4 feet) that will easily break up during the base flood event, or score concrete in 4 feet x 4 feet maximum segments is acceptable to meet this standard).

- (3) Reinforcing, including welded wire fabric, shall not be used in order to minimize the potential for concreted pads being a source of debris; and
- (4) Pad thickness shall not exceed 4 inches; or
- (5) Provide a Design Professional's certification stating the design and method of construction to be used meet the applicable criteria of this section.
- (6) The provisions above shall not apply to non-residential or multi-family construction that is designed by a professional engineer and constructed with self-supporting structural slabs capable of remaining intact and functional under base flood conditions, including expected erosion.

(f) **Fill/Grading**

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

(5) Additions/Improvements.

- (a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
  - (i) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
  - (ii) A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing structure and the addition must comply with the standards for new construction.
- (b) Additions to pre-FIRM or post-FIRM structures that are a substantial improvement with no modifications/rehabilitations/improvements to the existing structure other than a standard door in the common wall, shall require only the addition to comply with the standards for new construction.
- (c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
  - (i) Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction consistent with the code and requirements for the original structure.
  - (ii) A substantial improvement, both the existing structure and the addition and/or improvements must comply

with the standards for new construction.

(d) Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a five (5) year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the five (5) year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

- (i) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.
- (ii) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

(6) Recreational Vehicles. Recreational vehicles shall either:

(a) Temporary Placement

- (i) Be on site for fewer than 180 consecutive days; or
- (ii) Be fully licensed and ready for highway use. (A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions.)

(b) Permanent Placement. Recreational vehicles that do not meet the limitations of Temporary Placement shall meet all the requirements for new construction.

(7) Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

- (a) A specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;
- (b) The name, address, and phone number of the individual responsible for the removal of the temporary structure;
- (c) The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
- (d) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
- (e) Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.

(8) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

- (a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or

restroom areas);

- (b) Accessory structures shall not be temperature-controlled;
- (c) Accessory structures shall be designed to have low flood damage potential;
- (d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- (e) Accessory structures shall be firmly anchored in accordance with the provisions of Article 5, Section A(1);
- (f) All service facilities such as electrical shall be installed in accordance with the provisions of Article 5, Section A(4); and
- (g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Article 5, Section B(4)(d).

An accessory structure with a footprint less than 150 square feet or that is a minimal investment of \$3,000 or less and satisfies the criteria outlined above is not required to meet the elevation or floodproofing standards of Article 5, Section B (2). Elevation or floodproofing certifications are required for all other accessory structures in accordance with Article 4, Section B(3).

- (9) Tanks. When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
  - (a) Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;
  - (b) Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;
  - (c) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Article 5, Section B (2) of this ordinance shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.
  - (d) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:
    - (i) At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
    - (ii) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.
- (10) Other Development.
  - (a) Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Article 5, Section F of this ordinance.
  - (b) Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Article 5, Section F of this ordinance.
  - (c) Roads and watercourse crossings in regulated floodways and NEAs. Roads and watercourse crossings, including

roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Article 5, Section F of this ordinance.

**SECTION C.        RESERVED.**

**SECTION D.        STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS.**

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Article 3, Section B, where no BFE data has been provided by FEMA, the following provisions, in addition to the provisions of Article 5, Section A, shall apply:

- (1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:
  - (a) When BFE data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Article 5, Sections A and B.
  - (b) When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of Article 5, Sections B and F.
  - (c) All subdivision, manufactured home park and other development proposals shall provide BFE data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such BFE data shall be adopted by reference in accordance with Article 3, Section B and utilized in implementing this ordinance.
  - (d) When BFE data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Article 2. All other applicable provisions of Article 5, Section B shall also apply.

**SECTION E.        STANDARDS FOR RIVERINE FLOODPLAINS WITH BASE FLOOD ELEVATIONS BUT WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS.**

Along rivers and streams where BFE data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

- (1) Standards of Article 5, Sections A and B; and
- (2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

## **SECTION F. FLOODWAYS AND NON-ENCROACHMENT AREAS.**

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Article 3, Section B. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Article 5, Sections A and B, shall apply to all development within such areas:

- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
  - (a) It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood discharge, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit; or
  - (b) A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained within six months of completion of the proposed encroachment.
- (2) If Article 5, Section F(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
- (3) Manufactured homes may be permitted provided the following provisions are met:
  - (a) The anchoring and the elevation standards of Article 5, Section B(3); and
  - (b) The encroachment standards of Article 5, Section F(1).

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

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

- (1) All new construction and substantial improvements shall:
  - (a) Be located landward of the reach of mean high tide;
  - (b) Comply with all applicable CAMA setback requirements.
- (2) All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is no lower than the regulatory flood protection elevation. Floodproofing shall not be utilized on any structures in Coastal High Hazard Areas to satisfy the regulatory flood protection elevation requirements.
- (3) All new construction and substantial improvements shall have the space below the bottom of the lowest horizontal structural member of the lowest floor free of obstruction so as not to impede the flow of flood waters, with the following exceptions:
  - (a) Open wood, plastic or other latticework or insect screening may be permitted below the lowest floor for aesthetic purposes only and must be designed to wash away in the event of wave impact and in accordance with the provisions of Article 5, Section B(4)(e)(i). Design plans shall be submitted in accordance with the provisions of Article 4, Section B(1)(d)(iii)(2); or
  - (b) Breakaway walls may be permitted provided they meet the criteria set forth in Article 5, Section B(4)(a),(b),(c)&(e)(ii). Design plans shall be submitted in accordance with the provisions of Article 4, Section

B(1)(d)(iii)(1).

- (4) All new construction and substantial improvements shall be securely anchored to pile or column foundations. All pilings and columns and the structure attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
  - (a) Water loading values used shall be those associated with the base flood.
  - (b) Wind loading values used shall be those required by the current edition of the North Carolina State Building Code.
- (5) For concrete pads, including patios, decks, parking pads, walkways, driveways, pool decks, etc. the following is required:
  - (a) Shall be structurally independent of the primary structural foundation system of the structure and shall not adversely affect structures through redirection of floodwaters or debris; and
  - (b) Shall be constructed to breakaway cleanly during design flood conditions, shall be frangible, and shall not produce debris capable of causing damage to any structure. (The installation of concrete in small segments (approximately 4 feet x 4 feet) that will easily break up during the base flood event, or score concrete in 4 feet x 4 feet maximum segments is acceptable to meet this standard); and
  - (c) Reinforcing, including welded wire fabric, shall not be used in order to minimize the potential for concreted pads being a source of debris; and
  - (d) Pad thickness shall not exceed 4 inches; or
  - (e) Provide a Design Professional's certification stating the design and method of construction to be used meet the applicable criteria of this section.
  - (f) The provisions above shall not apply to non-residential or multi-family construction that is designed by a professional engineer and constructed with self-supporting structural slabs capable of remaining intact and functional under base flood conditions, including expected erosion.
- (6) For swimming pools and spas, the following is required:
  - (a) Be designed to withstand all flood-related loads and load combinations.
  - (b) Be elevated so that the lowest horizontal structural member is elevated above the RFPE; or
  - (c) Be designed and constructed to break away during design flood conditions without producing debris capable of causing damage to any structure; or
  - (d) Be sited to remain in the ground during design flood conditions without obstructing flow that results in damage to any structure.
  - (e) Registered design professionals must certify to local officials that a pool or spa beneath or near a VE Zone building will not be subject to flotation or displacement that will damage building foundations or elevated portions of the building or any nearby buildings during a coastal flood.

(f) Pool equipment shall be located above the RFPE whenever practicable. Pool equipment shall not be located beneath an elevated structure.

(7) All elevators, vertical platform lifts, chair lifts, etc., the following is required:

(a) Elevator enclosures must be designed to resist hydrodynamic and hydrostatic forces as well as erosion, scour, and waves.

(b) Utility equipment in Coastal High Hazard Areas (VE Zones) must not be mounted on, pass through, or be located along breakaway walls.

(c) The cab, machine/equipment room, hydraulic pump, hydraulic reservoir, counter weight and roller guides, hoist cable, limit switches, electric hoist motor, electrical junction box, circuit panel, and electrical control panel are all required to be above RFPE. When this equipment cannot be located above the RFPE, it must be constructed using flood damage-resistant components.

(d) Elevator shafts/enclosures that extend below the RFPE shall be constructed of reinforced masonry block or reinforced concrete walls and located on the landward side of the building to provide increased protection from flood damage. Drainage must be provided for the elevator pit.

(e) Flood damage-resistant materials can also be used inside and outside the elevator cab to reduce flood damage. Use only stainless steel doors and door frames below the BFE. Grouting in of door frames and sills is recommended.

(f) If an elevator is designed to provide access to areas below the BFE, it shall be equipped with a float switch system that will activate during a flood and send the elevator cab to a floor above the RFPE.

(8) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions of Article 4, Section B and Article 5, Section G(3) and (4), on the current version of the North Carolina V-Zone Certification form or equivalent local version.

(9) Fill/Grading

(a) Minor grading and the placement of minor quantities of nonstructural fill may be permitted for landscaping and for drainage purposes under and around buildings and for support of parking slabs, pool decks, patios and walkways.

(b) The fill material must be similar and consistent with the natural soils in the area.

(c) The placement of site-compatible, non-structural fill under or around an elevated building is limited to two (2) feet. Fill greater than two (2) feet must include an analysis prepared by a qualified registered design professional demonstrating no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent elevated buildings and structures.

(d) Nonstructural fill with finished slopes that are steeper than five (5) units horizontal to one (1) unit vertical shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent elevated buildings and structures.



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

## **SECTION H. STANDARDS FOR COASTAL A ZONES (ZONE CAZ) LiMWA**

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

- (1) All new **non-residential** construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is no lower than the regulatory flood protection elevation. Floodproofing shall not be utilized on any structures in Coastal A Zones to satisfy the regulatory flood protection elevation requirements.
- (2) All new **non-residential** construction and substantial improvements shall have the space below the lowest horizontal structural member free of obstruction so as not to impede the flow of flood waters, with the following exceptions:
  - (a) Open wood, plastic or other latticework or insect screening may be permitted below the lowest floor for aesthetic

purposes only and must be designed to wash away in the event of wave impact and in accordance with the provisions of Article 5, Section B(4)(e)(i). Design plans shall be submitted in accordance with the provisions of Article 4, Section B(1)(d)(iii)(2); or

- (b) Breakaway walls may be permitted provided they meet the criteria set forth in Article 5, Section B(4)(e)(ii). Design plans shall be submitted in accordance with the provisions of Article 4, Section B(1)(d)(iii)(1).
- (3) All new **non-residential** construction and substantial improvements shall include, in Zones CAZ, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the design criteria in Article 5, Section B(4)(d).
- (4) **Concrete pads, including patios, decks, parking pads, walkways, driveways, etc. must meet the provisions of Article 5, Section G(5).**
- (5) All new **non-residential** construction and substantial improvements shall meet the provisions of Article 5, Section G(3)
- (6) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions of Article 4, Section B and Article 5, Section G(3) and (4), on the current version of the North Carolina V-Zone Certification form or a locally developed V-Zone Certification form.
- (7) Recreational vehicles may be permitted in Coastal A Zones provided that they meet the Recreational Vehicle criteria of Article 5, Section B(6)(a).
- (8) Fill/Grading must meet the provisions of Article 5, Section G(11)
- (9) Decks and patios must meet the provisions of Article 5 Section G(15) and (16).
- (10) In coastal high hazard areas, development activities other than buildings and structures must meet the provisions of Article 5, Section G(17)

#### **SECTION I. STANDARDS FOR AREAS OF SHALLOW FLOODING (ZONE AO).**

Located within the Special Flood Hazard Areas established in Article 3, Section B, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Article 5, Sections A and B, all new construction and substantial improvements shall meet the following requirements:

- (1) The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of 2 feet, above the highest adjacent grade; or at least 2 feet above the highest adjacent grade if no depth number is specified.
- (2) Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Article 5, Section I(1) so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with Article 4, Section B(3) and Article 5, Section B(2).
- (3) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

**ARTICLE 6.      LEGAL STATUS PROVISIONS.**

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

This ordinance in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted April 3, 1978 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of New Hanover County enacted on April 3, 1978, as amended, which are not reenacted herein are repealed.

The date of the initial Flood Damage Prevention Ordinance for each municipal jurisdiction within New Hanover County is as follows:

City of Wilmington: April 4, 1978

Town of Carolina Beach: May 12, 1987

Town of Kure Beach: January 6, 1982

Town of Wrightsville Beach: November 21, 1974

**SECTION B.      EFFECT UPON OUTSTANDING FLOODPLAIN DEVELOPMENT PERMITS.**

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

**SECTION C.      SEVERABILITY.**

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

**SECTION D.      EFFECTIVE DATE.**

This ordinance shall become effective (insert date).

**SECTION E.      ADOPTION CERTIFICATION.**

I hereby certify that this is a true and correct copy of the Flood Damage Prevention Ordinance as adopted by the Board of Commissioners of New Hanover County, North Carolina, on the Day (number or text) day of Month, 2018.

WITNESS my hand and the official seal of insert Name, Title, this the Day (number or text) day of Month, 2018.

\_\_\_\_\_  
(signature)

**NEW HANOVER COUNTY BOARD OF COMMISSIONERS  
REQUEST FOR BOARD ACTION  
MEETING DATE: May 3, 2018**

**TECHNICAL REVIEW COMMITTEE REPORT**

**DEPARTMENT:** Planning

**PRESENTER(S):** Brad Schuler, Current Planner

**CONTACT(S):**

**SUBJECT:**

**Technical Review Committee Report - April 2018**

**BRIEF SUMMARY:**

The Technical Review Committee Report for the month of April will be distributed at the June 7, 2018 Planning Board meeting.

**STRATEGIC PLAN ALIGNMENT:**

Intelligent Growth and Economic Development

- Implement plans for land use, economic development, infrastructure and environmental programs
- Understand and act on citizen needs

**RECOMMENDED MOTION AND REQUESTED ACTIONS:**

None.

**COUNTY MANAGER'S COMMENTS AND RECOMMENDATIONS: (only Manager)**

**NEW HANOVER COUNTY BOARD OF COMMISSIONERS**  
**REQUEST FOR BOARD ACTION**  
**MEETING DATE: May 3, 2018**

**OTHER BUSINESS**

**DEPARTMENT:** Planning

**PRESENTER(S):**

**CONTACT(S):**

**SUBJECT:**

**Other Items of Business**

**BRIEF SUMMARY:**

**STRATEGIC PLAN ALIGNMENT:**

Intelligent Growth and Economic Development

- Implement plans for land use, economic development, infrastructure and environmental programs
- Deliver value for taxpayer money

**RECOMMENDED MOTION AND REQUESTED ACTIONS:**

**COUNTY MANAGER'S COMMENTS AND RECOMMENDATIONS: (only Manager)**