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**TOWNSHIP OF UPPER
CAPE MAY COUNTY
ORDINANCE**

ORDINANCE NO. 002-2013

**RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE
CHAPTER XVIII (FLOOD DAMAGE CONTROL) AND CHAPTER XX
(ZONING) OF THE CODE OF UPPER TOWNSHIP**

WHEREAS, the Township Planning Board prepared and adopted a Conservation Plan Element Update and Master Plan Reexamination Report on February 17, 2011 in accordance with N.J.S.A.40:55D-89; and

WHEREAS, the Township Committee desires to amend the Flood Damage Control Ordinance to provide additional flood protection to those properties located in the Special Flood Hazard Zone; and

WHEREAS, the Township wishes apply to FEMA to lower the Community Rating System (CRS) class rating which will lower flood insurance premiums; and

WHEREAS, the FEMA has prepared Advisory Base Flood Elevations (ABFE) for New Jersey and the New Jersey Department of Environmental Protection has adopted an emergency rule requiring all new construction located in the Special Flood Hazard Zone in the State of New Jersey to comply with the ABFEs; and

WHEREAS, the Township Committee referred this ordinance amendment to the Upper Township Planning Board; and

WHEREAS, the Township Planning Board discussed the proposed ordinance amendment at their January 17, 2013 meeting and reviewed this proposed ordinance and determined it is consistent with the Upper Township Master Plan Reexamination at their February 21, 2013 meeting; and

WHEREAS, the ordinance revisions and amendment herein are part of those recommended in connection with the periodic general reexamination of the Upper Township Master Plan as evidenced by the Master Plan Reexamination Report and Land Use Plan Amendment of January 2011, as amended; and

WHEREAS, the Township Committee finds that the ordinance revisions herein are substantially consistent with the Land Use Plan Element and Master Plan Reexamination to date;

BE IT ORDAINED by the Township Committee, in the Township of Upper, County of Cape May and State of New Jersey, as follows:

SECTION 1. Chapter 18 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be amended and supplemented as hereinafter provided:

Add the following to **Section 18-2 Definitions**:

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

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

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

Flood Protection Elevation shall mean the elevation that a structure must be elevated to in all Flood Hazard and Advisory Flood Hazard Areas. Said flood protection elevation shall be measured to the lowest horizontal structural member and that said elevation is one (1') foot higher than the base flood elevation or advisory base flood elevation whichever is more restrictive.

Limit of Moderate Wave Action (LiMWA) shall mean inland limit of the area affected by waves greater than 1.5 feet during the base flood. Base flood conditions between the VE Zone and the LiMWA will be similar to, but less severe than those in the VE Zone.

Special Flood Hazard Area (SFHA) shall mean the land in the floodplain within a community subject to flooding from the 1% annual chance event depicted on the Flood Insurance Rate map.

Replace the following **Section 18-2 Definitions** as follows:

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

Base Flood Elevation shall mean the elevation as shown on the approved FIRM for the special Flood Hazard Area of the property as determined by the administrator of this chapter.

Substantial Improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure during a 10 year period the cost of which equals or exceeds 40 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 or "repetitive loss". The term does not, however, include either:

- (a) Any project for improvement of a structure to correct existing violations of State or local health, sanitary or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions; or
- (b) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

Replace the following **Section 18-3.2** as follows:

18-3.2 Basis for Establishing the Areas of Special Flood Hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency are identified and defined on the following documents:

- a. Scientific and engineering report entitled "The Flood Insurance Study (FIS) for the Township of Upper, Cape May County, New Jersey" dated December 1, 1983, with accompanying Flood Insurance Rate Map, revised June 1, 1984, is hereby adopted by reference and declared to be a part of this Chapter. The Flood Insurance Study and the Flood Insurance Rate Map is on file in the office of the Township Clerk, Township Hall, Tuckahoe, New Jersey.
- b. Advisory Base Flood Elevations and Advisory Flood Hazard Maps dated (ABFE effective date of December 14, 2012). These documents shall take precedence over previous panels and FIS in construction and development regulations only.
- c. FEMA is in the process of preparing updated Flood Insurance Rate Maps, when released to the Township they shall be hereby adopted by reference and declared to be part of this Chapter.
- d. Where the Special Flood Hazard Area (SFHA) and the advisory Flood Hazard Area (AFHA) maps conflict or overlap, whichever imposes the more stringent requirement shall prevail.

(Ord. #21-1987, Ord. #02-2013 §3.2)

Replace the following **Section 18-4.3c** as follows:

18-4.3 Duties and Responsibilities of the Construction Official.

c. Information To Be Obtained and Maintained.

1. Obtain and record the actual elevation in relation to 1988 North American Vertical Datum (NAVD) of the lowest habitable floor (including basement) of all new or substantially improved structures and whether or not the structure contains a basement.
2. For all new or substantially improved floodproofed structures:
 - (a) Obtain and record the actual elevation actual elevation in relation to 1988 North American Vertical Datum (NAVD) to which the structure has been floodproofed.
 - (b) Maintain the floodproofing certifications required in subsection 18-4.1, paragraph c.
3. Maintain for public inspection all records pertaining to the provisions of this Chapter.

(Ord. #21-1987; Ord. #14-2012, Ord. #02-2013 §4.3)

Replace the following **Section 18-5.1c** as follows:

18-5.1c General Standards.

c. Utilities.

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters;
3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding. Engineering drawings shall be submitted to show compliance of this section prior to issuance of a building permit. Drawings shall show protection from scour from wave action, flood proofing of tank access which is located below flood protection elevation and protection of electrical components located below flood protection elevation; and
4. Replacement Electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding or one (1') foot above grade if not part of substantial improvement or new construction.

Replace the following **Section 18-5.1d** as follows:

18-5.1d General Standards.

d. Subdivision and Site Plan Proposals.

1. Shall be consistent with the need to minimize flood damage;
2. Shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
3. Shall have adequate drainage provided to reduce exposure to flood damage; and
4. Base flood elevation and flood hazard area data shall be provided for all subdivision proposals, as well as all applications for site plan approval and other proposed development.
5. All subdivision proposals shall construct a sign no smaller than 12"x12" with the following wording "Entering Flood Hazard Area" at a location as directed by the Township Engineer.

(Ord. #21-1987; Ord. #14-2012; Ord. #02-2013§5.1)

Replace the following **Section 18-5.2** as follows:

18-5.2 Specific Standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in subsection 18-4.3, paragraph b, Use of Other Base Flood Data, the following standards are required:

- a. *Residential Construction.* New construction and substantial improvement of any residential structure shall have the lowest floor, including basement and utilities (electrical, heating, ventilation, plumbing, duct work and air conditioning equipment), elevated to the flood protection elevation.
- b. *Nonresidential Construction.* New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall have the lowest floor, including basement and utilities (electrical, heating, ventilation, plumbing, duct work and air conditioning equipment), elevated to the flood protection elevation; or together with attendant utility and sanitary facilities, shall:
 1. Be flood proofed so that below the flood protection elevation the structure is watertight with walls substantially impermeable to the passage of water;
 2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of this subsection. Such certification shall be provided to the official as set forth in subsection 18-4.3, paragraph c, 2.
- c. *Manufactured Homes.*
 1. Manufactured homes shall be anchored in accordance with subsection 18-5.1, paragraph a, 2.
 2. All manufactured homes to be placed or substantially improved within an area of special flood hazard shall be elevated on a permanent foundation at or above the flood protection elevation.

(Ord. #21-1987; Ord. #14-2012; Ord. #02-2013, §5.2)

Replace the following **Section 18-5.3:**

18-5.3 Coastal High Hazard Area.

Coastal high hazard areas (V Zones) are located within the areas of special flood hazard established in subsection 18-3.2. These areas have special flood hazards associated with high

velocity waters from tidal surges and hurricane wave wash; therefore, the following provisions shall apply:

- a. *Location of Structures.* All buildings or structures shall be located landward of the reach of the mean high tide.
- b. *Construction Methods.*
 1. Elevation. All new construction and substantial improvements shall be elevated on pilings or columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the flood protection elevation, with all space below the lowest floor's supporting member open so as not to impede the flow of water, except for breakaway walls as provided for in subsection 18-5.3, paragraph b, 4.

2. Structural Support.
 - (a) All new construction and substantial improvements shall be securely anchored on pilings or columns.
 - (b) The pile or column foundation and structure attached thereto shall be anchored to resist flotation, collapse or lateral movement due to the effects of wind and water loading values each of which shall have a one (1%) percent chance of being equaled or exceeded in any given year (100 year mean recurrence interval).
 - (c) There shall be no fill used for structural support.
3. Certification. A registered professional engineer or architect shall develop or review the structural design specifications and plans for the construction and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for compliance with the provisions of subparagraph 1 and subparagraph 2(a) and (b).
4. Space Below the Lowest Floor.
 - (a) Any alteration, repair, reconstruction or improvement to a structure started after the enactment of this Chapter shall not enclose the space below the lowest floor unless breakaway walls, open wood lattice-work or insect screening are used as provided for in this subsection.
 - (b) Breakaway walls, open wood lattice-work or insect screening shall be allowed below the flood protection elevation provided that they are intended to collapse under wind and water loads without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting foundation system. Breakaway walls shall be designed for a safe loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot. Use of breakaway walls which exceed a design safe loading of twenty (20) pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:
 - (1) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and
 - (2) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement or other structural damage due to the effects of wind and water load acting simultaneously on all building components (structural and non-structural).
 - (c) If breakaway walls are utilized, such enclosed space shall be used solely for parking of vehicles, building access, or storage and not for human habitation.
 - (d) Prior to construction, plans for breakaway walls must be submitted to the Township for approval.
 - (e) All construction below the flood protection elevation as detailed in subsection b.1 shall be anchored and constructed of flood-resistant materials in accordance to NFIP requirements.
- c. *Enclosure conversion.* No enclosure constructed in accordance with subsection b.4 shall be converted to habitable living space and shall not be utilized for any use other than access, utility and storage. The owner shall file a deed restriction for this area agreeing to this subsection and shall be to the benefit of the Township of Upper.

(Ord. #21-1987; Ord. #14-2012; Ord. #02-2013, §5.3)

SECTION 2. Chapter 20 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be amended and supplemented as hereinafter provided:

Add the following to **Section 20-2.1 Definitions of Township Wide Application:**
Advisory Base Flood Elevation (ABFE) shall mean the elevation shown on a community's Advisory Flood Hazard Map that indicates the advisory stillwater

elevation plus wave effect ($ABFE = SWEL + \text{wave effect}$) resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

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

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

Area of special flood hazard shall mean the land in the flood plain within a community subject to a one (1%) percent or greater chance of flooding in any given year.

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

Base Flood Elevation shall mean the elevation as shown on the approved FIRM for the special Flood Hazard Area of the property as determined by the administrator of Chapter 18.

Flood Protection Elevation shall mean the elevation that a structure must be elevated to in all Flood Hazard and Advisory Flood Hazard Areas. Said flood protection elevation shall be measured to the lowest horizontal structural member and that said elevation is one (1') foot higher than the base flood elevation or advisory base flood elevation whichever is more restrictive.

Replace the following to **Section 20-2.1 Definitions of Township Wide Application:**

Building height shall mean the vertical distance measured to the highest point from the mean elevation of the finished grade five (5') feet away from the foundation along the side(s) of building facing a street or a street line, whichever is closer to the foundation. On a corner lot, the height shall be measured on the street having the greatest slope. In all cases where this Chapter provides for height limitations by reference to specified height the intent is to limit height to the specified maximum footage. Properties located in the Special Flood Hazard Area or the Advisory Flood Hazard Area shall have the height measured from the flood protection elevation, but properties in the RR and RC zoning districts shall be limited to two (2) habitable stories above the Flood Protection Elevation.

Delete the following to **Section 20-2.1 Definitions of Township Wide Application:**

Flood hazard area shall mean areas within the Township subject to inundation from tidal flood waters.

Replace the following to **Section 20-4.10e "M" Mining District:**

- e. Area and Yard Requirements. See site plan design standards as noted in Section 19-6.

Replace the following to **Section 20-6.7b Density Transfer Program – Pinelands:**

- b. *Forest Area - F-25 Zone*. Residential dwelling units on 1.0 acre lots existing as of January 14, 1981 shall be permitted in that portion of the F-25 District provided that:
 - 1. The owner of the lot proposed for development acquires sufficient vacant contiguous or noncontiguous land which, when combined with the acreage of the lot proposed for development, equals at least twenty-five (25) acres;
 - 2. All lands acquired pursuant to paragraph a,1. above, which may or may not be developable, are located within the F-25 District;
 - 3. All noncontiguous lands acquired pursuant to paragraphs a,1. and 2. above are permanently dedicated as open space through recordation of a deed to the property with no further development permitted except agriculture, forestry and low intensity recreational uses. Any such deed restrictions shall be in a form to be approved by the Township Solicitor and the Pinelands Commission;
 - 4. Tax assessments for the acquired noncontiguous lands are combined and assigned to the land to be developed; and
 - 5. The lot proposed for development otherwise meets the minimum standards of subsection 20-5.15 of this Chapter.

Add the following to **Section 20-11.1k4 Zoning Officer:**

k. *Enforcement.*

4. The Zoning Officer or the Public Works Department as directed by the Zoning Officer may remove unpermitted yard signs located in the public right-of-way, on utility poles or trees adjacent to the public right-of-way.

Amend **SCHEDULE C AREA AND YARD REQUIREMENTS FOR ZONE DISTRICTS** as follows:

Footnote 8 shall be deleted

Height for Zone RR and RC shall be revised to 35

SECTION 3: EFFECTIVE DATE: This ordinance shall take effect immediately upon adoption and publication as required by law.

SECTION 4: REPEALER: All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency only.

SECTION 5: SEVERABILITY: If any section, paragraph, subdivision, subsection, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

SECTION 6: CODIFICATION: This Ordinance shall be codified as indicated in Chapter 18 of the Upper Township Code.

ATTEST:


BARBARA L. YOUNG, Township Clerk


RICHARD PALOMBO, Mayor

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 25TH DAY OF FEBRUARY, 2013 AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 25TH DAY OF MARCH 2013 AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY.

BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.

BARBARA L. YOUNG, TOWNSHIP CLERK
TOWNSHIP OF UPPER

Legislative History:

Introduced: February 25, 2013

Publication: March 1, 2013

Newspaper(s): The Press of Atlantic City

Second Reading and Public Hearing: March 25, 2013

Final Adoption: March 25, 2013

Final Publication Date: March 28, 2013

I certify that the foregoing Ordinance was finally adopted by the Township Committee of the Township of Upper on March 25, 2013 and notice of adoption was thereafter published pursuant to law in the Press of Atlantic City on March 28, 2013.


BARBARA L. YOUNG, Township Clerk