

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
ORDINANCE**

ORDINANCE NO. 009-2025

**RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE
CHAPTER 17 (CONSTRUCTION OF BULKHEADS) OF THE
MUNICIPAL CODE OF UPPER TOWNSHIP**

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 17 of the Revised General Ordinance of the Township of Upper, also known as the Code of Upper Township, shall be replaced in its entirety with the following:

§ 17-1. Purpose.

It is the purpose and intent of this chapter to establish uniform regulations for the construction, reconstruction, renovation or repair of existing or new bulkheads within the Township of Upper.

§ 17-2. Compliance.

- A. All bulkheads that are newly constructed, reconstructed, replaced, renovated, and repaired shall be done in accordance with the requirements of this chapter.
- B. Additionally, any property owner that demolishes an existing building or proposes to make a substantial improvement to an existing building shall be required to bring the existing bulkhead into compliance with this chapter. "Substantial improvement" means any reconstruction, rehabilitation, addition or other improvement to a structure, the total cost of which equals or exceeds 40% of the market value of the structure before the start of construction of the improvement.

§ 17-3. Permits.

- A. Permit required. No person or legal entity shall construct, reconstruct, renovate or repair any bulkhead within the Township of Upper without first obtaining and having in possession a valid permit to do such work that has been issued by the office of the Construction Official upon approval of the Township Engineer.
- B. Permit application.
 - (1) Applications for bulkhead permits shall be made on an application form obtained from the Construction Official. Completed applications shall be returned to the

Construction Official with the required fee along with the following items in quadruplicate:

- (a) Plans and specifications of the bulkhead that have been prepared, signed and sealed by a New Jersey licensed professional engineer.
 - (b) A property survey, prepared, signed and sealed by a New Jersey licensed professional land surveyor.
 - (c) Authorization for the New Jersey Department of Environmental Protection and any other state or federal agency having jurisdiction over the property affected by the proposed work.
 - (d) Proof of notice of application to adjoining property owners.
- (2) The Township Engineer may relax or waive any or all of the requirements that are set forth above within the application for a permit pertains to reconstruction, renovation or repair work for which the cost of completion is less than \$5,000; however, in relaxing or waiving any such requirements, the Township Engineer shall have the authority to require the submission of such plans, drawings and contract documents as the Township Engineer, in his sole and absolute discretion, determines will accurately depict the reconstruction, renovations or repair work to be performed.
 - (3) The Township Engineer shall review the application and plans and grant or deny the application within 20 business days upon receipt of a complete application.

C. Notice of application.

- (1) Notice of application for a bulkhead permit, the form of which is to be obtained from the Construction Official, shall be given by the applicant to the owners of all real property, as shown on the current tax duplicate, within 100 feet and whose property is adjacent to the same or similar tidal waters as is the applicant's property; provided that this requirement shall be deemed satisfied by notice to the condominium association, in the case of any unit owner whose unit has a unit above or below it; or horizontal property regime, in the case of any co-owner whose apartment has an apartment above or below it. Notice shall be given by mailing a copy thereof by regular, first-class mail and by certified mail to the property owner at his address as shown on the said current tax duplicate. Notice to a partnership owner may be made by service upon any partner. Notice to a corporate owner may be made by service upon its president, a vice president, secretary or other person authorized by

appointment or by law to accept service on behalf of the corporation. Notice to a condominium association, horizontal property regime, community trust or homeowners' association because of its ownership of common elements or areas located within 100 feet of the property which is the subject of the bulkhead application may be made in the same manner as to a corporation without further notice to unit owners, co- owners or homeowners on account of such common elements or areas.

- (2) Upon written request of an applicant, the Township Tax Assessor, within seven days, shall make and certify a list from said current tax duplicate of names and addresses of owners to whom the applicant is required to give notice pursuant to this section. A sum of \$10.00 shall be charged for the preparation of such list, which shall be issued by the Township Clerk's Office.
- D. Permit issuance. Upon receipt by the Construction Official of an application for a bulkhead permit, the Construction Official immediately shall transmit copies of the application and all accompanying documents to the Township Engineer for review. No permit shall be issued by the Construction Official unless the permit is approved for issuance by the Township Engineer. In the event that, upon review of the permit application, deficiencies are noted by the Township Engineer, the Construction Official shall be informed of the nature of the deficiencies and the Construction Official shall provide written notice, by regular first-class mail, of the deficiencies to the applicant at the address set forth on the application and the applicant then shall be afforded the opportunity to correct any application deficiencies. Permit fee. The permit fee shall be calculated in the following manner: \$250.00 for the first 50 feet of bulkhead to be constructed, and thereafter, \$15.00 per foot or any portion thereof.
- E. Inspection fee escrow. The inspection fee shall be 5% of the estimated project cost (as determined by the Township Engineer) or \$500, whichever is greater. However, said inspection fee escrow shall not be charged if the bulkhead project is part of a Land Use Board approval for which an escrow is already required.
- F. Appeal of permit denial. Any applicant aggrieved by the denial of a bulkhead permit may appeal the permit denial to Township Committee by submitting to the Construction Official written correspondence appealing the permit denial. Such written appeal correspondence briefly shall describe the reason for the appeal. Such written appeal

correspondence shall be submitted to the Construction Official within 20 days of the permit denial. Upon receipt of the appeal correspondence, the Construction Official shall transmit to Township Committee copies of the permit application, all attachments thereto and any copies of any documents that have been generated by the Township Engineer in connection with review of the permit application. Thereafter, the Construction Official shall schedule a date for the hearing of the appeal, and notice of the hearing date shall be provided to the permit applicant. In all instances the Construction Official shall endeavor to schedule the appeal hearing date not later than 30 days after receipt of the appeal correspondence. The hearing of the appeal shall be conducted by the Township Committee at a public meeting. The applicant shall be permitted to produce evidence to Township Committee in support of the permit application. Township Committee may consider evidence presented to it by the Township Engineer or any other individual that Township Committee deems to have relevant information. The decision of Township Committee to approve or deny the permit application shall be through adoption of a formal resolution.

§ 17-4. Notification of commencement of construction; inspections.

- A. The permittee shall provide to the Township Engineer and to the Township Zoning Officer notice of commencement of construction not less than two business days in advance of said commencement of construction. Not less than 14 days in advance of commencement of construction, the permittee shall provide notice of commencement of construction, on a form to be obtained from the Construction Official, to all property owners to whom the permittee would be required to provide notice of bulkhead permit application if the permittee were, at the time, making application for a bulkhead permit. Such notice shall be given in the same manner as is required for notices of permit application.
- B. The Township Engineer shall inspect the materials delivered to the job and verify that they are in conformance with the permit issued for that work, in size, quantity and quality. If such materials do not conform to permit requirements, they shall be marked as "rejected" and removed from the job site by the permittee and shall not be incorporated into the bulkhead construction.

- C. The Township Engineer shall make periodic visits to the job site to verify that the work is proceeding in accordance with permit requirements.

§ 17-5. Final inspection.

Prior to the backfilling of any bulkhead construction, reconstruction, renovation or repair, the Township Engineer shall perform an inspection to ascertain that the bulkhead has been built pursuant to the plans that were submitted with the permit application. Written notice of project completion shall be given to the Township Engineer and to the Township Zoning Official within seven business days of substantial completion of the project, but prior to backfilling, and that written notification shall be accompanied by a certification from a licensed engineer or land surveyor of the elevations of the completed bulkhead height. If the Township Engineer determines that the work that was performed pursuant to the bulkhead permit and the subject bulkhead fail to comply with the plans, drawings or documents that were submitted with the permit application or fail to comply with the provisions of this chapter, then written notice of final inspection failure shall be transmitted by the Township Engineer by regular first-class mail to the permittee at the address set forth on the permit application. The notice of final inspection failure shall detail the reasons for inspection failure. Permittees shall correct all deficiencies that resulted in final inspection failure within 20 days of the date of the written notice of final inspection failure. If, upon the expiration of those 20 days, the bulkhead is not approved upon inspection by the Township Engineer then the permittee is deemed to be in violation of the duty to maintain and repair the subject bulkhead as established by this chapter.

§ 17-6. Bulkhead specification.

All bulkheads constructed, reconstructed, renovated or repaired within the Township of Upper shall conform to the following minimum specifications:

- A. All new bulkheads shall be designed by a New Jersey licensed professional engineer.
- B. All piles shall have a butt diameter of not less than 12 inches and a tip diameter of eight inches.
- C. All piles will be Douglas Fir or Southern Yellow Pine and shall be treated with an acceptable preservative for marine construction according to the latest American Wood Preservers' Association (AWPA) specifications.
- D. Sheet piles shall be wood, steel or vinyl. Wales shall be Douglas Fir or Southern Yellow Pine. Wood sheet piles shall be a minimum of two inches thick. Wood sheet piles shall

be constructed in two rows with staggered joints. All timber materials shall be treated with an acceptable preservative designed for use in a salt-water environment.

- E. All components of the bulkhead system up to the minimum required elevation shall be constructed to be watertight. Bulkheads will be required to be backfilled to within one foot of the top of the bulkhead. In addition to backfilling, water stop sealants for steel and PVC sheet piles, continuous and solid landward capping and any other methods approved by the Township Engineer may be required.
- F. All hardware shall be hot-dipped galvanized steel in accordance with latest standards for saltwater applications.
- G. All outfall piping shall be fitted with a tide-control device that is approved by the Township Engineer.
- H. The means and methods for outfall piping extensions that are required to accommodate the new bulkhead shall be approved by the Township Engineer.
- I. Bulkhead construction, reconstruction, renovation or repair shall not adversely affect adjoining property.
- J. All existing utilities shall be protected from damage during any work performed pursuant to a bulkhead permit. The bulkhead permittee shall be responsible for obtaining current utility mark out from all appropriate state and local agencies prior to commencement of work.
- K. Deviations from construction materials set forth herein are allowed so long as all specifications and technical data concerning the proposed construction material are submitted to the Township of Upper and are approved in writing by the Township Engineer. The use of any construction material that is not specifically set forth above or approved by the Township Engineer is strictly prohibited.
- L. All design materials herein shall be subject to the requirements of the NJDEP and USACOE.

§ 17-7. Height of bulkheads.

The top elevation of any bulkhead to be constructed or reconstructed shall be set at the following heights:

A. Non-Oceanfront Bulkheads

- (1) Along Strathmere Bay (Blocks 825, 826, 841, 842, 849 and 850): 8.0 feet NAVD, 1988 Datum.

- (2) Along Strathmere Bay (Blocks 750, 756, 757 and 762): 8.0 feet NAVD, 1988 Datum.
- (3) Along Great Egg Harbor (Block 479, 682 and 735): 10.0 feet NAVD, 1988 Datum.
- (4) Along Tuckahoe River (Block 12, 15, 19 and 310): one foot above the existing bank along the spring high tide line.
- (5) Along Tuckahoe River (Block 348): 9.0 feet NAVD, 1988 Datum.

B. Oceanfront Bulkheads.

- (1) Oceanfront Bulkheads shall be required when adjacent to the Atlantic Ocean and extending along Corson's Inlet to the Corson's Inlet Bridge.
- (2) The minimum elevation of the top of the bulkhead shall be 11.0 feet NAVD, 1988 datum. The existing timber bulkhead along the oceanfront shall be considered grandfathered as meeting these standards.
- (3) If the proposed construction methods shall require access and/or disturbance of Township property, a detailed plan outlining the proposed limits of disturbance and proposed restoration shall be provided for approval by the Township Engineer. Township property shall be restored to a condition equal to preconstruction conditions.

§ 17-8. Maintenance; duty to repair.

- a. All private bulkheads within the Township of Upper shall be maintained so they shall not pose a danger to the health, safety or welfare of the citizens of the Township of Upper or to property within the Township of Upper. The bulkheads shall be kept in a state of repair to prevent erosion or damage to abutting, adjacent, or adjoining properties. Whenever a bulkhead has deteriorated to such a degree that it poses a danger to the property, or adjoining properties, or a bulkhead has not been constructed in conformance with this Chapter by January 1, 2029 as required by subsection (b) below, the Township Engineer shall notify the property owner, in writing, of the nature of the deterioration or violation and require the owner to make the necessary repairs or construction. Said repairs or construction shall be made in conformance with this Chapter. The property owner shall submit a plan of corrective action to the Township Engineer no later than 30 days from receipt of the notice. Upon approval of the corrective action by the Township Engineer, the property owner shall complete all necessary repairs or construction forthwith. If permits are required from the State of New Jersey or the Federal government, such permits shall be immediately applied for. In the event the property owner fails to submit a

corrective action plan or fails to implement that plan, he shall be liable for the penalties and violations contained herein.

- b. Any property required a bulkhead must have a bulkhead constructed in conformance with this Chapter 17 by January 1, 2029.

§ 17-9. Violations and penalties.

Any person violating any provision of this chapter, upon conviction thereof, shall be punished by a fine not exceeding \$1,250.00 or by imprisonment for a term not exceeding 90 days, or both. A separate offense shall be deemed to be committed on each and every day during or on which a violation occurs or continues.

SECTION 2: EFFECTIVE DATE: This ordinance shall take effect immediately upon the following publication as required by law.

SECTION 3: REPEALER: All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency only.

SECTION 4: 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 5: CODIFICATION: This Ordinance shall be codified in the Upper Township Code at the sections referred to above.

ATTEST:

JOANNE R. HERRON, Township Clerk

VICTOR W. NAPPEN, II, Deputy 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 27TH DAY OF OCTOBER, 2025 AT THE TOWNSHIP HALL, 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 24TH DAY OF NOVEMBER, 2025 AT 5:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY.

JOANNE R. HERRON, TOWNSHIP CLERK
TOWNSHIP OF UPPER

Legislative History:

Introduced: October 27, 2025

Publication: November 1, 2025

Newspaper(s): The Press of Atlantic City

Second Reading and Public Hearing: November 24, 2025

Final Adoption: November 24, 2025

Final Publication Date: November 29, 2025

I certify that the foregoing Ordinance was finally adopted by the Township Committee of the Township of Upper on November 24, 2025 and notice of adoption was thereafter published pursuant to law in the Press of Atlantic City on November 29, 2025.

JOANNE R. HERRON, Township Clerk