ORDINANCE 2009-25
AMENDMENT TO CHAPTER 152, PART III
FLOODWAYS AND FLOODPLAINS

PART III: FLOODWAYS AND FLOODPLAINS

§ 152.147 STATUTORY AUTHORIZATION, FINDINGS OF FACTS, PURPOSE AND OBJECTIVES.

(A) The Legislature of the State of North Carolina has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry in **the North Carolina General Statutes 143-215.54, 143-215.54(a), 143-215.54A, 143-215.56, 143-215.56(c), 143-215.57A, 160A-458.1** ~~Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes., delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.~~ Therefore, the Board of Commissioners of the Town does ordain as follows:

(B) (1) The flood hazard areas of the Town 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 hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood proofed, or otherwise unprotected from flood damages.

(3) Impervious surfaces associated with development in a watershed have the effect of: reducing the watershed's ability to absorb stormwater; increasing the velocity of stormwater runoff; and, creating erosion from uplands and depositing sediments into floodplains; cumulatively increasing the level of flood waters within the town.

(4) Minimizing construction within the flood protection areas in the town within its zoning jurisdiction has been identified as an effective means for minimizing the risk of these losses.

(C) It is the purpose of this chapter to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

(2) Require that uses vulnerable to floods, including facilities which 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 flood waters;

(4) Control filling, grading, dredging, and other development which may increase erosion or flood damage; and,

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

(D) The objectives of this chapter are:

(1) To protect human life and health;

(2) To minimize expenditure of public money for costly flood control projects;

(3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) To minimize prolonged business interruptions;

(5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in floodplains;

(6) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and,

(7) To insure that potential home buyers are notified that property is in a flood area.

(E) The Flood Protection Overlay District is applied in combination with the existing base zoning districts and has the effect of modifying the requirements, regulations and procedures to the extent expressly indicated in this chapter.

(F) (1) Redevelopment of built-upon areas of existing development is allowed if the rebuilding activity does not have a net increase in built-upon area.

(2) Single-family dwellings may be expanded, redeveloped or replaced in accordance with the other requirements of the Flood Protection Overlay District without being subject to the restrictions of this section.

(3) Existing development and land uses as defined herein.

(G) It is the intent that the Town of Zebulon shall apply the Flood Protection Overlay District to all property within the area as delineated on the official Zoning map of the Town of Zebulon. Whenever the provisions of this chapter impose greater restrictive standards than are required in or under any other ordinance, statute or agreement, the regulations and requirements of this chapter shall govern. Whenever the provisions of any other ordinance, statute or agreement require more restrictive standards than are required in this chapter, the provisions of such ordinance, stature or agreement shall govern.

~~(E)~~**(H)** Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application. **The definitions of this subchapter shall be used solely for the purpose of interpreting and administering the Flood Protection Overlay District provisions of this chapter.**

APPEAL. A request from a review of the local administrator's interpretation of any provision of this chapter.

ADDITION (TO AN EXISTING BUILDING). Any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by independent perimeter load-bearing walls is new construction.

AREA OF SHALLOW FLOODING. A designated AO or VO Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet 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 OFF SPECIAL FLOOD HAZARD. The land in the floodplain within a community subject to a one percent or grater chance of being equaled or exceeded in any given year.

BASE FLOOD. The flood having a one percent chance of being equaled or exceeded in any given year.

BASEMENT. That lowest level or story which has its floor subgrade on all sides.

BEST MANAGEMENT PRACTICE (BMP). A structural or nonstructural management-based practice used singularly or in combination to reduced non-point source inputs to receiving waters in order to achieve water quality protection goals.

BREAKAWAY WALL. 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 or the supporting foundation system. A breakaway wall shall have a design safe loading resistance of not less than

ten and no more than 20 pounds per square foot. A wall with loading resistance of more than 20 pounds per square foot requires a professional engineer or architect's certificate.

BUILDING. Any structure built for support, shelter, or enclosure for any occupancy or storage.

DEVELOPMENT. Any man-made change to improved or unimproved real estate, including, but not limited to, **the construction, erection, structural alteration, enlargement, or rehabilitation of any** buildings or other structures**, including farm buildings,** mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, clearing of vegetation; and any use or change in use of any structures or land. **Development shall also include any land disturbing activity on improved or unimproved real estate that changes the amount of impervious or partially impervious surfaces on a parcel, or that otherwise decreases the natural infiltration of precipitation into the soil.**

DIFFUSE FLOW. Water flowing in a thin layer over the ground surface without, and at relatively uniform velocities so as not to create and identifiable channel through erosion.

ELEVATED BUILDING. A non-basement building built, in the case of a building in Zones A1 -A30, Ae, A, A99, Ao, Ah, B, C, or X to have the top of the elevated floor, or in the case of a building in Zones Vi - V30, Ve, or V to have the bottom of the lowest horizontal structural member of the elevated floor above the ground by means of pilings, columns (post and piers), shear walls parallel to the flow of water and, adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. In the case of Zones A1 - A30, Ae, A, A99, Ao, Ah, B, C, and X, ELEVATED BUILDING also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1 - V30, Ve, or V, ELEVATED BUILDING, even though the area below is enclosed by means of breakaway walls if the breakaway walls meet the standards of Article 5, Section B(5) of this chapter.

EXISTING DEVELOPMENT. Existing development is those projects that are built or the projects that at a minimum have established a vested right under North Carolina Zoning Law as of the effective date of the Flood Protection Overlay District or such earlier time that an affected local government's management plans and ordinance shall specify, based on at least one of the following criteria:

(1) Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid approval from the Town of Zebulon to proceed with the project; or upon having an approved preliminary plat or planned development; or

(2) Having an outstanding valid building permit as authorized by the North Carolina General Statutes - GS 153A-344.1 and GS 153A-344.1(f)(3); or

(3) Having an outstanding zoning compliance permit as authorized by the North Carolina General Statutes - GS 153A-344.1 and GS 153A-344.1(f)(3) and/or meeting the requirements for establishing a zoning vested right.

EXISTING MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION. 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 effective date of this chapter.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. The preparation of the additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs).

FLOOD BARRIERS. Any manmade feature, structure, or system that has the effect of interfering with or redirecting the natural down-gradient flow of storm- or flood-water. Flood barriers include dams and levees, artificial channels and concrete banks or enclosures, culverts, and curb and gutter drainage systems.

FLOOD or FLOODING. A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal water; and,

(2) The unusual and rapid accumulation of runoff of surface waters from any source.

FLOOD HAZARD BOUNDARY MAP (FHBM). An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as Zone A.

FLOOD INSURANCE RATE MAP (FIRM). An official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY. The official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.

FLOOD PROTECTION AREAS. Flood Protection Areas are divided into two categories, Flood Protection Zone One (1) and Flood Protection Zone Two (2), as described below.

FLOOD PROTECTION ZONE 1. Zone 1 is the full extent of the FEMA 100-year floodplain as determined by the US Army Corps of Engineers, North Carolina Division of Water Quality, or USGS 7.5-minute topography maps and shall remain undisturbed. Flood Protection Zone 1 is the most dynamic and hazardous zone, carrying debris and other projectiles during times of flooding. No new development is permitted within Flood Protection Zone I except for stream bank or shoreline restoration or stabilization, water dependant structures, and public or private projects such as road crossings and installations, utility crossings and installations, and greenways, where no practical alternatives exist. Flood Protection Zone 1 shall remain undisturbed in its entirety except for exempted activities described herein.

FLOOD PROTECTION ZONE 2. Zone 2 shall be a minimum of 50 feet landward of all sides of perennial and intermittent surface waters, streams, lakes, and ponds as determined by the US Army Corps of Engineers, North Carolina Division of Water Quality, or USGS 7.5-minute topography maps and shall remain undisturbed. A surface water shall be determined present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233(3)(a) or similar site-specific determination made using division-approved methodology. Disturbance of existing vegetation shall be minimized to the greatest extent possible except for the installation of artificial stream bank or shoreline stabilization, water dependent structures and public or private projects such as utility service lines, road crossings or greenways where no practical alternatives exists. No new impervious surface or regular maintenance (e.g. mowing) of vegetation can occur in Zone 2.

FLOODPLAIN. Any land area susceptible to being inundated by water from any source in response to precipitation events.

FLOODWAY. The channel of a river or other watercourse 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 foot.

FLOOR. The top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

FUNCTIONALLY DEPENDENT FACILITY. A facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

HIGHEST ADJACENT GRADE. The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.

HISTORIC STRUCTURE. Any structure that is: 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; 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; individually listed on a state inventory of historic places; individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by an approved state program as determined by the Secretary of Interior, or directly by the Secretary of Interior in states without approved programs.

IMPERVIUS COVERAGE. Any land that is covered by impervious or partially impervious cover including buildings, pavement, gravel roads, recreation facilities (e.g., tennis courts, etc.) (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.) Measurement of impervious coverage shall be based upon net project area excluding land within existing street rights-of-ways.

JURISDICTIONAL WETLAND. Land having the vegetative, soil, and hydrologic characteristics to be regulated under Section 401 and 404 of the Clean Water Act as defined by the United States Army Corps of Engineers and the NC Division of Water Quality.

LEVEE. A man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

LOWEST FLOOR. 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 storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure constructed of flood resistant materials is designed to automatically allow for entry or exit of floodwater in A zones. The definition of lowest floor includes:

(1) The basement (if one exists);

(2) The top of the lowest floor in A zones;

(3) The bottom of or lowest structural member in V zones;

(4) The elevated floor of a building (not the ground floor, provided the ground floor is only used for parking, limited storage, or building access and meets other ordinance criteria).

MANUFACTURED HOME. 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. Parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL. The average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this chapter, the term is synonymous with National Geodetic Vertical Datum (NGVD).

NATIONAL GEODETIC VERTICAL DATUM (NGVD). As corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

NEW CONSTRUCTION. Structures for which the "start of construction" commenced on or after the effective date of this chapter and includes any subsequent improvements to such structures.

NEW MANUFACTURED HOME PARK OR SUBDIVISION. 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 slabs) is completed on or after the effective date of this chapter.

NONCONFORMING BUILDING OR USE. Any legally existing building or use which fails to comply with the provisions of the ordinance.

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

REMEDY A VIOLATION. To bring the structure or other development into compliance with state or local 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.

SEDIMENT. Solid particulate matter, both mineral and organic, that has been or is being transported by water, air or gravity from its site of origin.

SEDIMENTATION. The process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a wetland, stream, or floodplain.

START OF CONSTRUCTION. (For other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348)), includes substantial improvement, and means the date the building permit was issued, rehabilitation, addition, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation of 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 excavation for a basement, footings, piers or 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.

STREAM, INTERMITTENT. Streams that have regular flow only at certain times of the year as determined by the US Army Corps of Engineers, and North Carolina Division of Water Quality. Wake County Soil Survey maps can be used for planning purposes to identify the impact of intermittent streams, but these features must be qualified on the ground following the guidelines set above prior to approval of new developments.

STREAM, PERENNIAL. Streams that have regular flow only at certain times of the year as determined by the US Army Corps of Engineers and North Carolina Division of Water Quality. USGS 7.5-minute topographic maps can be used for planning purposes to identify the impact of perennial streams, but these features must be qualified on the ground following the guidelines set above prior to approval of new developments.

STRUCTURE. For floodplain management purposes, a walled and roofed building, a manufactured home, including a gas or liquid storage tank, or other man-made facilities or infrastructures that are principally above ground.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred. See definition of SUBSTANTIAL IMPROVEMENT.

SUBSTANTIAL IMPROVEMENT. Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% 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: any project of 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 official and which are the minimum necessary to assure safe living conditions; or, any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

SUBSTANTIALLY IMPROVED EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. Where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50% of the value of the streets, utilities and pads before the repair, reconstruction, or improvement commenced.

TOP OF BANK. Top of bank shall mean the landward edge of the stream channel during high water, bankfull conditions at the point where water begins to overflow onto the floodplain.

VARIANCE. A grant of relief to a person from the requirements of this chapter which permits construction in a manner otherwise prohibited by this chapter where specific enforcement would result in unnecessary hardship.

VEGETATIVE COVER. As used in this ordinance, means any native or non-invasive vegetative growth or other material that renders the soil surface stable against accelerated erosion.

VIOLATION. 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. (Ord. passed 9-8-92; Am. Ord. ZA-2000-07, passed 2-7-00)

WATER DEPENDENT STRUCTURE. Any structure or facility which cannot be used for its intended purpose unless it is in close proximity to water, such as a boat dock. The term does not include ancillary parking or boat storage facilities, manufacture, sales, or service facilities.

WATERSHED. The entire land area contributing stormwater drainage to a specific point (i.e. receiving streams and floodplains).

§ 152.148 GENERAL FLOODPLAIN PROVISIONS.

(A) This chapter shall apply to all areas of special flood hazard within the jurisdiction of the Town.

(B) The areas of special flood hazard identified by the Federal Emergency Management Agency in its Flood Insurance Study dated January 1, 1978, with accompanying maps and other supporting data, and any revision thereto are adopted by reference and declared to be a part of this chapter.

(1) Flood Protection Zone 1 is the full extent of the FEMA 100-year floodplain as determined by the US Army Corps of Engineers, North Carolina Division of Water Quality, or USGS 7.5-minute topography maps and shall remain undisturbed. Flood Protection Zone 1 is the most dynamic and hazardous zone, carrying debris and

other projectiles during times of flooding. No new development is permitted within Flood Protection Zone I except for stream bank or shoreline restoration or stabilization, water dependant structures, and public or private projects such as road crossings and installations, utility crossings and installations, and greenways, where no practical alternatives exist. Flood Protection Zone 1 shall remain undisturbed in its entirety except for exempted activities described herein.

(2) Flood Protection Zone 2 shall be a minimum of 50 feet landward of all sides of perennial and intermittent surface waters, streams, lakes, and ponds as determined by the US Army Corps of Engineers, North Carolina Division of Water Quality, or USGS 7.5-minute topography maps and shall remain undisturbed. A surface water shall be determined present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233(3)(a) or similar site-specific determination made using division-approved methodology. Disturbance of existing vegetation shall be minimized to the greatest extent possible except for the installation of artificial stream bank or shoreline stabilization, water dependent structures and public or private projects such as utility service lines, road crossings or greenways where no practical alternatives exists. No new impervious surface or regular maintenance (e.g. mowing) of vegetation can occur in Zone 2.

(C) A development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities.

(D) No structure or land shall hereafter be located, extended, converted, or structurally altered without full compliance with the terms of this chapter and other applicable regulations. **This chapter shall render no valid permitted or conforming structure nonconforming. An existing structure may be rebuilt if damaged or destroyed even if the structure fails to conform to these regulations. However, any increase in prior approved impervious surface area shall be subject to these regulations.**

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

(F) In the interpretation and application of this chapter all provisions shall be: considered as minimum requirements; liberally construed in favor of the governing body; and, deemed neither to limit nor repeal any other powers granted under state statutes.

(G) The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is base on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazard or uses

permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Town or by any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

(H) Violation of the provisions of this chapter 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 misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $50 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town from taking such other lawful action as is necessary to prevent or remedy any violation.
(Ord. passed 9-8-92)

(I) Agriculture is subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990.

(J) Silvicultural activities shall be subject to the provisions of the Forest Practices Guidelines related to Water Quality (15A NCAC 1I .0201-0209). The North Carolina Division of Forest Resources is responsible for implementing these provisions pertaining to silviculture activities.

(K) New nonresidential uses within 200 feet of Flood Protection Areas requiring an erosion/sedimentation control plan under local or State law shall incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials are used, stored, or manufactured on the premises.

(L) The construction of new roads and bridges and nonresidential development shall minimize built upon area, divert storm water away from surface waters and employ best management practices (BMP's) to minimize water quality impacts.

(M) Road construction shall use BMP's outlined in the North Carolina Department of Transportation document, "Best Management Practices for the Protection of Surface Waters."

(N) Diffuse flow of runoff into Flood Protection Areas shall be maintained by dispersing concentrated flow and reestablishing vegetation.

(O) Vegetative cover shall be reestablished for all areas disturbed by development activities on sites adjoining the Flood Protection Area and shall be maintained on a permanent basis.

(P) BMP's shall not be constructed within jurisdictional waters.

§ 152.149 ADMINISTRATION OF FLOOD PROVISIONS.

(A) The land use administrator is hereby appointed to administer and implement the provisions of this chapter.

(B) Application for a development permit shall be made to the local administrator on forms furnished by him or her prior to any development activities. The development permit may include, but not be limited to, plans in duplicate drawn to scale showing: the nature, location, dimensions, and elevations of the area in question; existing or proposed structures; and the location of fill materials, storage areas, and drainage facilities. Specifically, the following information is required:

(1) Where base flood elevation data is provided in accordance with division (C)(10), the application for a development permit within the Zone A on the Flood Insurance Rate Map shall show:

(a) The elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures, and

(b) If the structure has been floodproofed in accordance with § 152.150(B)(2), the elevation (in relation to mean sea level) to which the structure was floodproofed.

(2) Where the base flood elevation data is not provided, the application for a development permit must show construction of the lowest floor at least two feet above the highest adjacent grade.

(3) Where any watercourse will be altered or relocated as a result of proposed development, the application for a development permit shall include: a description of the extent of watercourse alteration or relocation; 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 showing the location of the proposed watercourse alteration or relocation.

(4) When a structure is floodproofed, the applicant shall provide a certificate from a registered professional engineer or architect that the non-residential floodproofed structure meets the floodproofing criteria in § 152.150(B)(2).

(5) A floor elevation or floodproofing certification is required after the lowest floor is completed. Within 21 calendar days of establishment of the lowest floor elevation, or floodproofing by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the local administrator a certification of the elevation of the lowest floor, or floodproofed elevation, whichever is applicable, as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized for a particular building, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work done within the 21 day

calendar period and prior to submission of the certification shall be at the permit holder's risk. The land use administrator shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project, halt further inspections and shall be cause to not issue or revoke the certificate of occupancy of said building.

(6) When a structure requires flood certification, floor elevation or floodproofing certification a zoning inspection will be performed by the land use administrator, or their designee, to insure the proper placement of the foundation in relation to the required setbacks and/or approved site plan prior to the scheduling of a footing or any other type of inspection.

(7) Development of all property within the Flood Protection Area Overlay District shall require that all plans submitted include delineated streams demonstrating compliance with the standards of this section. This plan shall be required to be submitted for all development, planned developments and any other type of development that increases the impervious area of the site except for single family development on a single lot of record created prior to the adoption of this section. No land disturbing activity shall take place prior to issuance of a grading permit.

(8) Prior to issuance of grading permit for any property within the Flood Protection Area Overlay District, except for single family development on a single lot of record created prior to the adoption of this section, a waters/wetlands jurisdictional assessment shall be performed by a US Army Corps of Engineer's qualified environmental professional using Army Corps of Engineers and NC Division of Water Quality criteria.

(C) Duties of the land use administrator shall include, but not be limited to:

(1) Review all development permits to assure that the requirements of this chapter have been satisfied;

(2) Advise permittee that additional federal or state permits may be required, and if specific federal or state permits are known, require that copies of such permits be provided and maintained on file with the development permit.

(3) Notify adjacent communities and the North Carolina Department of Crime Control and 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.

(4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

(5) Prevent encroachments within floodways unless the certification and flood hazard reduction provisions of § 152.150 are met.

(6) Obtain actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, in accordance with subdivision (B)(5).

(7) Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed, in accordance with subdivision (B)(5).

(8) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with § 152.150(B)(2).

(9) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (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 section.

(10) When base flood elevation data or floodway data has not been provided in accordance with § 152.148(B), obtain, review, and reasonably utilize any base flood elevation data and floodway data available from a federal, state, or other source, including data developed pursuant to § 152.150(D)(4), in order to administer the provisions of this chapter.

(11) Make on-site inspections of projects in accordance with division (D).

(12) Serve notices of violations, issue stop-work orders, revoke permits and take corrective actions in accordance with division (D).

(13) Maintain all records pertaining to the administration of this chapter and make these records available for public inspection.

(14) Provide the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program with two copies of the maps delineating new corporate limits within six months from date of annexation or change in corporate boundaries.

(15) The Zoning Administrator or their appointed designee shall report all variances granted each calendar year to the Environmental Management Commission and Wildlife Resources Commission on or before January 1st of the following year.

(16) The Zoning Administrator or their appointed designee may waive the requirements of this section to allow an encroachment into the required Flood Protection Areas for the construction of required public improvements including, water, sewer, and

roadways when a finding of no practical alternative is made. Any waiver of these requirements does not in any way relieve the applicant of the requirements of other Federal, State, or Local regulations applicable to the development area. In making the determination for waivers the Land Use Administrator, or their appointed designee, shall consider: safety; terrain; impact on adjacent properties, accessibility; system function; cost; and, timing.

(D) The following shall be the established administrative procedure:

…… (NO CHANGES)

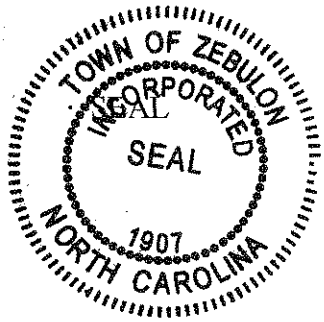
§ 152.150 PROVISIONS FOR FLOOD HAZARD REDUCTION.

…….. (NO CHANGES)

§ 152.151 SUBDIVISIONS WITH SPECIAL FLOOD HAZARD AREAS.

……..(NO CHANGES)

Adopted this the 5th day of January 2009



Robert S. Matheny—Mayor

Lisa M. Markland, CMC—Town Clerk