

## TITLE IV

### CHAPTER 4

#### AN ORDINANCE TO AMEND TITLE IV, CHAPTER 4, ORDINANCE NO. 25-1, "FLOOD ZONE ORDINANCE" OF THE TOWN OF SLAUGHTER BEACH

WHEREAS, Section 4.5.2 of the municipal Charter of the Town of Slaughter Beach authorizes and empowers the Town Council to enact ordinances or resolutions relating to any subject within the powers and functions of the Town, or relating to the government of the Town, its peace and order, its sanitation, beauty, health, safety, convenience and property;

WHEREAS, Section 4.5.2 provides that the Town Council may, by ordinance, adopt or amend any code or comprehensive set of rules or regulations and/or amend or repeal any ordinances previously adopted;

WHEREAS, Section 6.2.24 authorizes and empowers the Town Council to, regulate and control, by ordinance, the manner of building and to provide for granting permits for same,

WHEREAS, Section 6.2.34 of the Municipal Charter of the Town authorizes and empowers the Town Council to, make, adopt and establish, alter and amend all such ordinances, regulations, rules, and bylaws not contrary to the laws of this state and the United States, as the Town Council may deem necessary to carry into effect any of the provisions of this Charter or any other law of the state relating generally to municipal corporations or which they may deem proper and necessary for the order, protection and good government of the Town, the protection and preservation of persons and property, and of the public health and welfare of the Town and its inhabitants.

WHEREAS, the Town Council has found and determined that the Town of Slaughter Beach exists on a narrow thread of habitable land and that the Town's unique character is, and has always been, a largely seasonal, residential recreational resort or fishing village;

WHEREAS, the Town Council of the Town of Slaughter Beach has found and determined that the existence of the Town in the one-hundred year floodplain requires it impose significant restrictions on the type and nature of permissible construction within the Town;

WHEREAS, the Town because of its small and unique character, have found it difficult, in terms of funds and personnel, to strictly enforce the requirements of its Flood Zone Ordinance and that of the Federal Emergency Management Agency, in conjunction with its participation in the National Flood Insurance Program (NFIP);

WHEREAS, the Town Council has determined it is in the public interest and will best protect the public health, welfare, safety and convenience of the Town and the property lying within the Town, to delegate the review,

administration and enforcement of flood zone building requirements to Sussex County.

NOW, THEREFORE, BE IT HEREBY ENACTED, by the Town Council of the Town of Slaughter Beach, majority thereof concurring in Council duly met, that Title IV, Chapter IV, "Flood Insurance Ordinance", of the Town be and hereby is amended by repealing the same in its entirety, and in place thereof; inserting the following:

Section 1. Intent.

The intent of this ordinance is to:

- a. Promote the general health, welfare, and safety of the community;
- b. Incurs the use of appropriate construction practices in order to prevent or minimize flood damage in the future;
- c. Minimize the danger to public health and safety by protecting water supply, sanitary sewage disposal and natural drainage;
- d. Reduce financial burdens imposed on the community, its governmental units, and its residents, by preventing the unwise design and construction or development in areas subject to flooding to be in force as in conjunction with any and all Town, County, State and/or Federal laws, regulations and ordinances that are in effect as of this date or could be in the future.

Section 2. Applicability.

The provisions of this ordinance shall apply to all lands within the jurisdiction of the Town of Slaughter Beach and shown as being located within the boundaries of the Coastal Floodplain Area as designated in the current Flood Insurance Rate Map as published by the Federal Emergency Management Agency or any amendments thereto, and as defined in Section 4 of this Ordinance.

Section 3. Abrogation and Greater Restrictions.

This Ordinance supercedes any ordinances currently in effect in the Coastal Floodplain Area. However, any underlying ordinance shall remain in full force and effect to the extent that those provisions are more restrictive.

Section 4. Identification.

The Coastal Flood Plain Area of the Town of Slaughter Beach shall include all areas subject to inundation by the flood waters of the base flood level. The source of this delineation shall be the current Flood Insurance Study for the Town of Slaughter Beach prepared by the Federal Emergency Management Agency and depicted on the current FIRM, or any

amendment or new map and/or study issued by same.

The Coastal Flood Plain Area shall be further subdivided into the two following areas:

- A. Coastal High Hazard Area - that area as defined by Article II. Such areas are delineated on the FIRM as Zone VE.
- B. General Flood Plain Area - those areas of the base flood plain not included in the Coastal High Hazard Area. These areas are delineated on the FIRM as Zone AE.

Section 5. Flood Prone Area Boundary Changes.

The delineation of the Coastal Flood Plain Area may be revised, amended and modified by the Town Council in compliance with the National Flood Insurance Program when:

- A. There are changes through natural or other causes;
- B. Changes are indicated by future detailed hydrologic and hydraulic studies.

All changes shall be subject to the review and approval of the Federal insurance Administrator.

Section 6. Coastal Flood District.

The Coastal Flood District shall be an overlay to any Flood Plain District.

Section 7. Elevation, Flood-proofing, Construction Standards and Enforcement/Adoption.

That the sections of the Sussex County Zoning Ordinance, current edition, set forth below in Section 8 of this Ordinance, as amended hereafter from time to time, be and hereby are adopted as part of the Flood Zone Ordinance of the Town; for the control of land development, and the construction or substantial improvement of buildings and structures as herein provided; and each and all of the regulations, provisions, penalties, conditions and terms of said Sections are hereby referred to, adopted and made a part of hereof as is fully set out in this Ordinance with the additions, insertions, deletions and changes, if any prescribed in Section 8 of this Code.

Section 8. Additions, Insertions, Deletions and Changes.

The following sections and subsections of the Zoning Ordinance of Sussex County, Delaware are hereby added, deleted, amended, changed and clarified; if at all, as set forth below.

§115-4.C [Amended 12-27-1983 by Ord. No. 163] Definitions for flood-prone districts shall be as follows:

AREA OF SHALLOW FLOODING - A designated AO, AH or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one-percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow. [Added 6-6-1995 by Ord. No. 1032]

BASE FLOOD - The flood having a one-percent chance of being equaled or exceeded in any given year. [Added 6-6-1995 by Ord. No. 1032]

BASEMENT - Any area of a building having its floor subgrade (below ground level) on all sides. [Added 10-15-1991 by Ord. No. 795]

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 supporting foundation system. [Added 6-6-1995 by Ord. No. 1032]

COASTAL FLOODPLAIN - An area of land adjoining a stream, river, estuary, ocean or other watercourse which has been or may hereafter be covered by floodwaters of the one-hundred-year flood or subject to shoreline erosion caused by a one-hundred-year flood.

COASTAL HIGH-HAZARD AREA - An area of special flood hazard 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. [Amended 6-6-1995 by Ord. No. 1032]

CONSTRUCTION - Any new construction, reconstruction, modification, extension or expansion of buildings or structures; placement of fill; dumping; storage of materials; land excavation, land clearing; or any combination thereof. Included shall be the affixing of any prefabricated structure to a permanent site or foundation.

DEVELOPMENT - Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating or drilling operations or storage of equipment or materials. [Amended 6-6-1995 by Ord. No. 1032]

FILL - Any nonstructural composition, which is used to artificially alter the contours of the original land surface.

FLOOD INSURANCE RATE MAP (FIRM) - A map published by the Federal Emergency Management Agency that delineates the special hazard areas and the risk premium zones for the community of Slaughter Beach.

FLOODPROOFING - Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, all other facility and utility systems, structures and their contents.

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 a designated height. [Amended 6-6-1995 by Ord. No. 1032]

HISTORIC STRUCTURE - [Added by 10-15-1991 by Ord. No. 795]  
-Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the 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;
- (3) Individually listed on a State Inventory of Historic Places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - (a) By an approved state program as determined by the Secretary of the Interior; or
  - (b) Directly by the Secretary of the Interior in states without approved programs.

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 is not built so as to render the structure in violation of the applicable nonelevation design requirements. [Added 6-6-1995 by Ord. No. 1032]

MANUFACTURED HOME - A structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle." [Added 10-15-1991 by Ord. No. 795]

ONE-HUNDRED-YEAR FLOOD - The highest level of flooding that, on the average, is likely to occur once every one hundred (100) years (i.e., that has a one-percent chance of occurring each year.) It does not imply, however, that no greater flood is likely to occur or that such a flood will not happen more often than once every one hundred (100) years.

- (1) In the approximate areas of the Coastal Floodplain, the Director shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source until such other data has been provided by the Administrator in order to determine the required elevation for conformance to §115-189. [Amended 10-15-1991 by Ord. No. 795]
- (2) In addition, for all subdivision proposals and other proposed developments greater than fifty (50) lots or five (5) acres, whichever is the lesser, the developer shall include within such proposals base flood elevation data utilizing hydrologic and hydraulic engineering techniques undertaken only by professional engineers or others of demonstrated qualifications.

RECREATIONAL VEHICLE - A vehicle which is built on a single chassis; four hundred (400) square feet or less when measured at the largest horizontal projections; 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. [Added 10-15-1991 by Ord. No. 795]

STRUCTURE (for floodplain management purposes) - A walled and roofed building, including a gas or liquid storage tank that is principally above ground. [Added 6-6-1995 by Ord. No. 1032]

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 fifty percent (50%) of the market value of the structure before the damage occurred. [Added 10-15-1991 by Ord. No. 795]

SUBSTANTIAL IMPROVEMENT [Amended 10-15-1991 by Ord. No. 795] - Any reconstruction rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds fifty percent (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:

- (1) Any project or 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
- (2) Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

§ 115-18 Effect on governmental functions. [Amended 9-13-1983 by Ord. No. 145; 3-13-1984 by Ord. No. 174; 4-3-1990 by Ord. No. 674]

Governmental functions of federal, state and municipal governments are subject to the provisions of this chapter. Governmental functions of the Sussex County government are considered exempt from the provisions of this chapter except where these functions are located within the flood-prone districts. Governmental functions of municipal governments in which Sussex County government participates financially and/or contractually are exempt from the provisions of this chapter.

§ 115-189 Coastal and Flood-Prone Area Protection. [Amended 12-17-1983]

- A. The purpose of this section is to assist in the preservation and restoration of the primary coastal dune, thereby contributing to the safety and welfare of the occupants of lands adjacent to and landward thereof to provide for construction control and land development measures for all new construction and substantial improvement occurring within the flood-prone districts, to limit the visual obstruction of beach and berm by structures erected thereon and to limit the encroachment of shadow on the beach by structures located adjacent thereto.

- B. At locations where the primary dune exists as a continuous and clearly defined natural coastal formation, the center of the same shall for purposes of this section, be the "dune line." Where the primary dune as a natural coastal formation has ceased to exist or only broken remnants remain, then the dune line shall be as established by the Department of Natural Resources and Environmental Control Beach Preservation Section or its successor.
- C. No primary dune material may be removed or displaced, except that the driving of piling shall not be considered displacement of dune material. No material from the berm or beach may be moved or displaced prior to the completion of all buildings and structures on a given lot.
- D. The lowest floor for a building located within the Town limits of the Town of Slaughter Beach shall comply with the requirements of the flood zone.
- E. Buildings located within the Town limits of the Town of Slaughter Beach shall comply with the following requirements;
  - (1) The lowest floor shall be at or above the minimum elevation required for the site by the flood zone.
  - (2) Height regulation for the zoning districts of the Town of Slaughter Beach as set forth in Article IV, Chapter 2 of the Town's Zoning Ordinance, shall apply with height measurement being measured from the required elevation by the flood zone, where applicable. All other areas shall be measured from grade.
- F. All buildings, parking areas and unloading areas of any townhouse and/or multifamily dwelling shall be a minimum of 30 feet landward from the dune line.
- G. [Amended 9-17-1988 by Ord. No. 540; 10-15-1991 by Ord. No. 795] No land below the level of the one-hundred-year flood in a Coastal High-Hazard Area may be developed unless the new construction or substantial improvement:
  - (1) Is located landward of the reach of mean high tide.
  - (1) Does not result in the alteration of sand dunes, which would increase potential flood damage.
  - (3) Does not use fill for structural support and does not use slab or other at-grade foundations.
  - (4) Shall be elevated on piling and columns so that:
    - (a) The bottom of the lowest horizontal structural



member of the lowest floor (excluding the pilings or columns) is elevated to one foot above the base flood elevation.

- (b) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components (water loading values used shall be those associated with the one-hundred-year flood; wind loading values shall be those required by state or local building standards); and
  - (c) 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 meeting these provisions.
- (5) Has no basement and shall have the space below the lowest floor either free of obstruction or constructed with nonsupporting breakaway walls, open wood lattice or insect screening 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. A breakaway wall shall have a design 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 resistance 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 proposed design meets the following conditions:
- (a) Breakaway wall collapse shall result from a water load less than that which would occur during the one-hundred-year flood.
- (6) Shall use any enclosed space below the lowest floor solely for the parking of vehicles, building access or storage. [Amended 3-5-1992 by Ord. No. 818]
- H. The following construction controls shall be in effect throughout the flood prone districts wherever more stringent controls do not prevail:
- (1) Floor elevation. [Amended 10-15-1991 by Ord. No. 795]

- (a) The lowest floor, including basement, of new construction or substantial improvements of residential structures shall be elevated to the level or above the level of the one-hundred-year flood.
  - (b) The lowest floor, including basement, of new construction or substantial improvement of nonresidential structures shall be:
    - {1) Elevated to the level or above the level of the one-hundred-year flood; or
    - [2) Together with attendant utility and sanitary facilities, designed so that below the one-hundred-year flood level the structure is watertight and has structural components capable of withstanding hydrostatic and hydrodynamic loads and effects of buoyancy.
- (2) Placement of structures. Any new structure erected within the flood-prone districts shall be aligned to offer minimum resistance or obstruction to the flow of the one-hundred-year floodwaters.
- (3) Anchoring.
- (a) All new structures shall be firmly anchored to prevent lateral movement, flotation or collapse.
  - (b) All air ducts, large pipes and storage tanks located at or below the first-floor level shall be firmly anchored to prevent lateral movement, flotation or collapse.
- (4) [Amended 9-27-1988 by Ord. No. 540] For all new construction and substantial improvements, those fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
- (a) A minimum of two openings having a total net area of no less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
  - (b) The bottom of all openings shall be no higher than one foot above grade.

- (c) Openings may be equipped with screens, louvers, valves or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

(5) Interior floors, walls and ceilings.

- (a) Wood flooring used at or below the first-floor level shall be installed to accommodate a lateral expansion of the flooring perpendicular to the flooring grain without incurring structural damage to the building.
- (b) All finished flooring used at or below the first-floor level shall be made of materials, which are stable and resistant to water damage.
- (c) All carpeting or carpet cushions employed as a finished flooring surface at or below the first-floor level shall be made of materials which are resistant to water damage.
- (d) Plywood used at or below the first-floor level shall be of an exterior or marine grade and of a water-resistant or waterproof variety.
- (e) Basement ceilings in nonresidential structures shall have sufficient wet strength and be so installed as to survive inundation.

(6) Electrical systems.

- (a) All electric water heaters, electric furnaces and other permanent electrical installations shall be permitted only at or above the level of the one-hundred-year flood.
- (b) All electrical distribution panels and breaker boxes shall be elevated to or above the level of the one-hundred-year flood (base flood elevation). [Amended 9-9-1997 by Ord. No. 1174]
- (c) Separate electrical circuits shall serve lower levels and shall be dropped from above.

(7) Plumbing, Water heaters, furnaces and other permanent mechanical installations shall be permitted only at or above the level of the one-hundred-year flood.

(8) Storage. No materials that are buoyant, flammable, explosive or, in times of flooding, could be injurious to human, animal or plant life shall be stored below the level of the one-hundred-year flood.

I. Manufactured homes. [Added 10-15-1991 by Ord. No. 795]

- (1) No manufactured homes shall be placed within the Coastal Flood Plain District.
- (2) Existing manufactured homes, which have incurred "substantial damage" as the result of flood shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation collapse and lateral movement.
- (3) Manufactured homes to be substantially improved which are not subject to subsection (2) shall be elevated so that either (i) the lowest floor of the manufactured home is at or above the base flood elevation, or (ii) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(4) Anchoring.

- (a) All manufactured homes shall be anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include but are not limited to the over-the-top and frame ties to ground anchors, such as the following:
  - [1] Over-the-top ties shall be provided at each of the four (4) corners of the manufactured home, with two (2) additional ties per side for manufactured homes less than fifty (50) feet long.
  - [2] Frame ties shall be provided at each corner of the home, with five (5) additional ties per side at intermediate points, with manufactured homes less than fifty (50) feet long requiring four (4) additional ties per side.
  - [3] All components of the anchoring system shall be capable of carrying a force of four thousand eight hundred (4,800) pounds.

(b) Any additions to a manufactured home shall be similarly anchored.

(c) This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

J. Recreational vehicles placed on sites in any Coastal Flood Zone shall (1) be on the site for fewer than 180 consecutive days; and (2) be fully licensed and ready for highway use.

A recreational vehicle is ready for highway use if it is on wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

K. Floodway Requirements [Added 6-6-1995 by Ord. No. 1632]

(1) Within the floodway portion of the flood-prone district, no construction or development shall be permitted which would result in any increases in flood levels within the community during the one-hundred-year flood.

(2) Encroachments, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway shall be prohibited, unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(3) Notwithstanding any other provisions of the floodplain management criteria for flood-prone areas by the Federal Emergency Management Agency, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional Federal Insurance Rate Map and floodway revision, fulfills the requirements for such revisions and receives the approval of the Federal Insurance Administrator.

L. Area of shallow flooding regulations. Added 6-6-1995 by Ord. No. 1032]

(1) Require within any AO zone on the community's Federal Insurance Rate Maps that all new construction and substantial improvements of residential structures

have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's Federal Insurance Rate Map [at least two (2) feet if no depth number is specified]

- (2) Require within any AO zone on the community's Federal Insurance Rate Map that all new construction and substantial improvements of nonresidential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's Federal Insurance Rate Map [at least two (2) feet if no depth number is specified] or, together with attendant utility and sanitary facilities, be completely flood proofed to that level to meet the flood proofing standard specified by the Federal Insurance Administrator.

§ 115-195. Construction of Pre-existing Uses.

Structures existing in any coastal floodplain area prior to the enactment of this Ordinance, but which are not in compliance with these provisions, may continue to remain subject to the following:

- (1) Existing structures located seaward of the reach of mean high tide shall not be expanded or enlarged.
- (2) Any modification, alteration, reconstruction, or improvement of any kind to an existing structure that is a substantial improvement shall be undertaken only in full compliance with the provisions of this Ordinance.

§ 115-198. Discontinuance.

No building, land or portion thereof used in whole or in part for a nonconforming use in any district which remains idle or unused for a continuous period of two years, whether or not the equipment or fixtures are removed, shall again be used except in conformity with the regulations of the district in which such building or land is located.

§ 115-202. Determination of Existence.

Whether a nonconforming-use exists shall be a question of fact and shall be decided by the Board of Adjustment after public notice and hearing and in accordance with the rules of the Board.

§ 115-205. Nonconforming Uses Not In Compliance with Former Provisions.

A nonconforming use in violation of a provision of the ordinance, which this chapter amends or replaces, shall not be validated by adoption of this chapter unless such use complies

with the terms of this chapter.

§ 115-206. Uses in Coastal High-Hazard Area.

All nonconforming uses located on land below the elevation of the one-hundred-year flood in the Coastal High-Hazard Area shall not be expanded.

§ 115-207. Establishment; membership; officers; meetings.

- A. A Board of Adjustment is hereby created, which shall hereafter be referred to as the "Board."
- B. The Board shall consist of five (5) members, whose selection, terms and qualifications shall be as indicated in 9 Del. C. § 6803(c), and any subsequent amendments thereto.
- C. The Board shall select a Chairman from its membership, shall appoint a Secretary and shall prescribe rules for the conduct of its affairs. The Chairman or, in his absence, the Acting Chairman shall have the power to issue subpoenas for the attendance of witnesses and the production of records and may administer oaths and take testimony.
- D. For the conduct of any hearing, a quorum shall not be less than three (3) members, and an affirmative vote of three (3) members of the Board shall be required to overrule any decision, ruling or determination of the official charged with enforcement of this chapter or to approve any special exception or variance.
- E. All meetings of the Board shall be open to the public.

§115-208. Procedures and Records.

- A. Applications for special exceptions, interpretations and variances may be made by any property owner, tenant, government official, department, board or bureau. Such application shall be made to the Director in accordance with rules adopted by the Board. The application and accompanying maps, plans or other information shall be transmitted promptly to the Secretary of the Board, who shall place the matter on the docket, advertise a public hearing thereon and give written notice of such hearing to the parties in interest. The Director shall also transmit a copy of the application to the Planning and Zoning Commission, which may send a recommendation to the Board or appear as a party at the hearing.
- B. An appeal to the Board may be taken by any person aggrieved or by any officer, department, board or bureau of the county affected by any decision of the Director. Such

appeal shall be taken within thirty (30) days after the decision appealed from by filing with the Director a notice of appeal, specifying the grounds thereof. The Director shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the Director certifies to the Board that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the Board or by a court

of record, on application and on notice to the Director and on due cause shown.

- C. The Board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest and decide the same within thirty (30) days following the hearing. Upon the hearing, any party may appear in person or by agent or by attorney. Public notice of a hearing shall consist of publication at least fifteen (15) days prior to the hearing in a newspaper of general circulation in the county, specifying the time, place and nature of the hearing. In addition, the Board may cause the date, time, place and nature of the hearing to be posted conspicuously on the property, in accordance with the rules of the Board. In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as ought to be made and, to that end, shall have all the powers of the Director.
- D. The Board shall keep minutes of its proceedings and other official actions, showing the vote of each member upon each questions or, if absent or failing to vote, indicating such fact and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the Board and shall be a public record.
- E. The Chairman of the Board or, in his absence, the Acting Chairman may administer oaths and compel the attendance of witnesses.
- F. An application or appeal to the Board may not be withdrawn within two (2) business days prior to the day of the holding of the public hearing before the Board; provided, however, that an application or appeal may be withdrawn thereafter for good cause shown if a majority of the members of the Board shall vote to allow such withdrawal. [Added 11-26-1991 by Ord. No. 804]
- G. Any applicant or appellant to the Board who fails to appear, or appear by agent, for a hearing before the Board



shall be considered to have withdrawn its application or appeal. Whenever an applicant or appellant fails to withdraw an application or appeal as provided in Subsection F hereof or fails to appear, or appear by agent, for a hearing before the Board, an application or appeal substantially similar shall not be reconsidered sooner than one (1) year after the previous failure to withdraw or failure to appear. [Added 11-26-1991 by Ord. No. 804]

§115-209. Powers and Duties.

The Board of Adjustment shall have the following powers:

- A. To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of this chapter.
- B. To hear and decide on applications for special exceptions upon which the Board is specifically authorized to pass under this chapter.
- C. To authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, the enforcement of the provisions of this chapter will result in unwarranted hardship and injustice, but which will most nearly accomplish the purpose and intent of this chapter.
- D. To hear and decide applications for interpretation of the Zoning District Map where there is any uncertainty as to the location of a district boundary.

§115-211. Variances.

- A. Subject to the provisions of § 115-209, the Board shall have the power to grant the following variances:
  - (1) A variation in the yard requirements in any district so as to relieve practical difficulties or particular hardships in cases when and where, by reason of exceptional narrowness, shallowness or other unusual characteristic of size or shape of a specific piece of property at the time of the enactment of such regulation or restriction or by reason of exceptional topographical conditions or other extraordinary situation or condition of such piece of property or by reason of the use or development of property immediately adjacent thereto, the strict application of each regulation or restriction would result in peculiar and exceptional practical difficulties to or exceptional hardship upon the owner of such property.

Such granting of variance shall comply, as nearly as possible, in every respect with the spirit, intent and purpose of this chapter, it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable and exceptional hardship as distinguished from variations sought by applicants for purposes or reasons of convenience, profit or caprice.

B. No such variance shall be authorized by the Board unless it finds:

- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not to circumstances or conditions generally created by the provisions of the Zoning Ordinance or code in the neighborhood or district in which the property is located.
- (2) That, because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance or code and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- (3) That such unnecessary hardship has not been created by the appellant.
- (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located and will not substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare.
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

C. Variances to the provisions of § 115-189G and H of Article 10 shall only be issued in conformance with the following criteria:

- (1) A showing of good and sufficient cause.
- (2) A determination that failure to grant the appeal would result in exceptional hardship to the applicant.

- (3) A determination the granting of an appeal will not result in increased flood heights, additional threats to the public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- (4) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

D. The Secretary of the Board shall notify the applicant, in writing, that the issuance of a decision to allow construction of a structure below the one-hundred-year flood level will result in increased premium rates for flood insurance and that such construction below the one-hundred-year flood level increases risks to life and property. Such notification shall be maintained along with a record of all decisions, including justification for their issuance. A report of such decisions shall be submitted in the annual report to the Federal Insurance Administrator.

E. Conditions.

- (1) The Board shall attach the following conditions to all variances, which may be granted;
  - (a) The structure shall be elevated to the maximum extent possible.
  - (b) That any of the flood proofing techniques contained in the publication

Flood-Proofing

Regulations, Office of the Chief of  
Engineers, United States Army, June 1972,  
shall be utilized.

- (2) The Secretary of the Board shall notify the applicant, in writing, of these conditions.

F. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonable practicable the formulation of a general regulation to be adopted as an amendment to the chapter.

G. No variance shall be granted for any construction, development, use or activity within any Floodway Area that would cause any increase in the one-hundred-year flood elevation. [Added 12-27-1983 by Ord. No. 163]

§115-212. Conditions Attached to Approvals.

Where, in these regulations, special exceptions are permitted, provided that they are approved by the Board, and where the Board is authorized to decide appeals or approve certain uses and where the Board is authorized to approve variances, such approval, decision or authorization shall be limited by such conditions as the case may require, including the imposition of any of the following specifications:

- A. No outside signs or advertising structures except professional or directional signs.
- B. Limitations of signs as to size, type, color, location or illumination.
- C. Amount, direction and location of outdoor lighting.
- D. Amount and location of off-street parking and loading space.
- E. Cleaning or painting.
- F. Gable roof or other type.
- G. Construction and materials.
- H. Connected or disconnected with other buildings.
- I. Exits or entrances, doors and windows.
- J. Paving, shrubbery, landscaping or ornamental or screening fences, walls or hedges.
- J. Time of day or night for operating.
- K. No storefronts.
- M. No structural changes.
- N. Control or elimination of smoke, dust, gas, noise or vibration by operations.
- O. Requirements for termination of a use based on lapse of time or such other conditions as the Board may specify.
- P. Such other conditions as are necessary.

§115-213. Lapse of Special Exception or Variance.

After the Board of Adjustment has approved a special exception

or granted a variance, the special exception or variance so approved or granted shall lapse after the expiration of one (1) year if no substantial construction or change of use has taken place in accordance with the plans for which such special exception or variance was granted or if the Board does not specify some longer period than one (1) year, for good cause shown, and the provisions of these regulations shall thereafter govern.

§115-214. Amendment of Special Exception or Variance.

The procedure for amendment of a special exception or variance already approved or a request for a change of conditions attached to an approval shall be the same as for a new application, except that, where the Director determines the change to be minor relative to the original approval, he may transmit the same to the Board with the original record without requiring that a new application be filed.

§115-215 Judicial Review.

Appeals to courts from a decision of the Board may be filed in a manner prescribed by law.

§115-224 Permits.

- A. [Amended 12-12-1989 by Ord. No. 642] No building and/or manufactured home shall be erected, constructed, altered, moved, converted, placed, extended or enlarged without the owner or owners first having obtained a zoning permit therefore from the Director, and such permit shall require conformity with the provisions of this chapter; provided, however, that the Director, at his discretion, may issue an emergency permit for a manufactured home not in conformity with the provisions of this chapter when:
- (1) A dwelling has been made uninhabitable by fire, wind, flood or impact by motor vehicle or airplane or similar natural or man-made disaster; provided, however, that no such emergency permit shall be issued if placement of a manufactured home shall be in violation of applicable recorded private deed restrictions or covenants. [Amended 1-4-1994 by Ord. No. 947]
  - (2) A written statement by the applicant and a written statement by a zoning inspector have been filed certifying the dwelling to be uninhabitable due to fire, wind, flood, impact or similar natural or man-made disaster.
  - (3) A limitation of one (1) year or less is placed on the permit. Any extension of any emergency permit shall

be made only by the Board of Adjustment [§ 115-210A(1)]. Upon a failure to begin repairs to an existing dwelling or construction of a new dwelling within one hundred eighty (180) days following issuance of an emergency permit, such permits shall become void. [Amended 1-4-1994 by Ord. No. 947]

- B. A filing fee shall accompany each application for a zoning permit, in such amount as may be determined by the County Council, a schedule of such fees to be filed with the Director. Any building permit lawfully in force at the effective date of this chapter, pursuant to which actual construction has not begun prior to that effective date, requires payment of such filing fees prior to the start of construction.
- C. A zoning permit issued in accordance with the provisions of this chapter shall become void twelve (12) months after the date of its issuance if the construction for which it was issued has not been started or has been substantially discontinued.
- D. No zoning permit lawfully issued by the Director prior to the effective date of this chapter shall be invalidated by the passage of this chapter, provided that actual construction, pursuant to the permit's own terms and provisions and ordinances and regulations thereto, shall have begun within the effective date of the permit.
  - (1) Grading of a lot and/or staking shall not be construed as actual construction.
  - (2) One (1) permit issued to cover more than one (1) building remains valid for all of the buildings covered by the permit if actual construction as provided above shall have commenced prior to the expiration of the permit, subject only to Subsection D(3) below.
  - (3) In any event, the permit shall be invalidated if actual construction is discontinued for any reasons other than those beyond the permit holder's control.
- E. The exemptions listed under Subsection A, above do not apply to new construction or substantial improvements in the flood-prone districts.
- F. All zoning permit applications for new construction or substantial improvements in the flood-prone districts shall include the elevation, in relation to mean sea level, of the lowest floor, including basement, and whether or not such new construction or substantial improvement contains a basement and whether or not the new construction or substantial improvement has been flood proofed and, if the

reply is affirmative, the elevation, in relation to mean sea level, to which it was flood proofed. [Amended 10-15-1991 by Ord. No. 795]

- G. If any subdivision or other new developments are proposed within the flood-prone districts, a zoning permit shall be issued only after the following items are submitted and approved:
- (1) A plan, which accurately locates the construction proposal with respect to the flood-prone area boundaries, stream channel and existing flood-prone developments. Included shall be all plans for proposed subdivision and/or land development to assure that:
    - (a) All such proposals are consistent with the need to minimize flood damage.
    - (b) All public and private utilities and facilities, such as sewer, water, on-site waste disposal, gas and electrical systems, are located and constructed to minimize or eliminate flood damage and designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
    - (c) Adequate drainage is provided so as to reduce exposure to flood hazards.
  - (2) Such a plan shall also include existing and proposed contours and elevations of the ground, storage elevations, structure, size, locations and elevations of streets, water supply, sanitary facilities, soil types and flood proofing measures.
  - (3) A document certified by a registered professional engineer or architect that adequate precautions against flood damage have been taken with respect to the design of any building or structure and that the plans for the development of the site adhere to the requirements and provisions of § 115-189. [Amended 10-15-1991 by Ord. No. 795; 3-5-1992 by Ord. No. 818]
- H. If a watercourse is to be altered or relocated as a result of any development, no permit shall be issued by the Director until the Director has received from the developer the following:
- (1) Evidence that the carrying capacity of the watercourse will be maintained; and

- (2) Evidence that the adjacent communities and the Delaware Department of Natural Resources and Environmental Control, Division of Soil and Water Conservation, have received prior notification of the proposed relocation/alteration and that copies of such notifications shall be submitted to the Federal Insurance Administrator. [Amended 10-15-1991 by Ord. No. 795]

H. Any permitted development in the flood-prone districts is subject to all applicable state and federal codes and regulations.

§115-225 Drawings or Plats.

All applications for zoning permits shall be accompanied by a drawing or plat in duplicate or as required by the Director, showing, with dimensions, the lot lines, the building or buildings, the location of buildings on the lot and such other information as may be necessary to provide for the enforcement of these regulations, including, if necessary, a boundary survey and a staking of the lot by a competent surveyor and complete construction plans. The drawings shall contain suitable notations indicating the proposed use of all land and buildings. A careful record of the original copy of such applications and plats shall be kept in the office of the Director, and a duplicate copy shall be kept at the building at all times during construction.

§115-226 Fees.

- A. All persons, firms or corporations appealing to the Board of Adjustment shall be required to pay, in advance, such amount as may be required by the County Council.
- B. All persons, firms or corporations applying for the conditional use permits under the provisions of Article XXIV of this chapter or applying for an amendment to the Zoning Ordinance or a change in the classification of a district or a portion thereof shall be required to pay, in advance, such amount as may be required by the County Council.
- C. The payment of such money in advance shall be deemed a conditional precedent to the consideration of such appeal, conditional use permit or amendment. Fees shall be refunded on request if an application is withdrawn before publication of required notices in the newspaper.

§115-227 Interpretation.

In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirement for the promotion of the public safety, health, convenience, comfort,



prosperity or general welfare. It is not intended by this chapter to interfere with or abrogate or annul any easement, covenants or other agreement between parties; provided, however, that where this chapter imposes a greater restriction upon land development or construction or the use of buildings or premises or upon the height of buildings or requires larger open spaces than are imposed or required by other resolutions, ordinances, rules or regulations or by easements, covenants or agreements, the provisions of this chapter shall govern. If, because of error or omission in the Zoning District Map, any property in the jurisdiction of this chapter is not shown as being in a zoning district, the classification of such property shall be classified AR, until changed by amendment.

§115-228 Enforcement.

- A. It shall be the duty of the Director to enforce the provisions of this chapter and to refuse to issue any permit for any building or for the use of any premises, which would violate any of the provisions of said chapter. It shall be the duty of all officers and employees of the county to assist the enforcing officer by reporting to him any seeming violation in new construction, reconstruction or land uses.
- B. In case any building is erected, constructed, reconstructed, altered, repaired or converted or any building or land is used in violation of this chapter, the Director is authorized and directed to institute any appropriate action to put an end to such violation.

§ 115-229 Violations and Penalties.

Any person or corporation who shall violate any of the provisions of this chapter or who shall fail to comply therewith or with any of the requirements thereof or who shall build or alter any building in violation of any detailed statement or plan submitted and approved hereunder shall be guilty of a misdemeanor and shall be liable to a fine of not more than one hundred dollars (\$100.), and each day such violation shall be permitted to exist shall constitute a separate offense. The owner or owners of any building or premises or part thereof where anything in violation of this chapter shall be placed or shall exist and any architect, builder, contractor, agent, person or corporation employed in connection therewith and who has assisted in the commission of any such violation shall be guilty of a separate offense and, upon conviction thereof, shall be fined as hereinbefore provided.

SYNOPSIS

This Ordinance amends the Town's "Flood Zone Ordinance", to affect the delegation of authority to administer and enforce the Flood Zone Ordinance, to Sussex County. The Ordinance Amendment repeals the current Ordinance in its entirety and in its place adopts an Ordinance which includes introductory paragraphs relative to the Town of Slaughter Beach, and relevant administration and enforcement portions of the Sussex County Zoning Ordinance amended to accommodate the fact administration and enforcement will occur in the Town of Slaughter Beach.

This will certify that this is a true and correct copy of the ordinance duly adopted by the Town Council of the Town of Slaughter Beach at a meeting at which a quorum was present on November 12, 2002.

Attest

Secretary

Mayor

This will certify that:

- (a) Notice was posted on \_\_\_\_\_ at the Slaughter Beach Volunteer Fire Company Fire Hall.
  
- (b) Notice was mailed, via regular mail, on \_\_\_\_\_ to all tax payers and property owners at their addresses as shown on the Town's tax records and to non-property owning resident at their last known addresses as provided to the Town.

So Certifies:

Date: \_\_\_\_\_

Mayor

A RESOLUTION DELEGATING THE AUTHORITY FOR ADMINISTRATION AND ENFORCEMENT OF ORDINANCE NO. 25-1, "FLOOD ZONE ORDINANCE" OF THE TOWN OF SLAUGHTER BEACH TO SUSSEX COUNTY

WHEREAS, Section 4.5.2 of the municipal Charter of the Town of Slaughter Beach authorizes and empowers the Town Council to enact ordinances or resolutions relating to any subject within the powers and functions of the Town, or relating to the government of the Town, its peace and order, its sanitation, beauty, health, safety, convenience and property;

WHEREAS, Section 4.5.2 provides that the Town Council may, by ordinance, adopt or amend any code or comprehensive set of rules or regulations and/or amend or repeal any ordinances previously adopted;

WHEREAS, Section 6.2.24 authorizes and empowers the Town Council to regulate and control, by ordinance, the manner of building and to provide for granting permits for same;

WHEREAS, Section 6.2.34 of the Municipal Charter of the Town authorizes and empowers the Town Council to, make, adopt and establish, alter and amend all such ordinances, regulations, rules, and bylaws not contrary to the laws of this state and the United States, as the Town Council may deem necessary to carry into effect any of the provisions of this Charter or any other law of the state relating generally to municipal corporations or which they may deem proper and necessary for the Order, protection and good government of the Town, the protection and preservation of persons and property, and of the public health and welfare of the Town and its inhabitants.

WHEREAS, the Town Council has found and determined that the Town of Slaughter Beach exists on a narrow thread of habitable land lying between the waters of the Delaware Bay to the east and tidal marshes and creeks to the west, and that the Town's unique character is, and has always been, a largely seasonal, residential recreational resort or fishing village;

WHEREAS, the Town Council of the Town of Slaughter Beach has found and determined that the existence of the Town in the one-hundred year floodplain requires it impose significant restrictions on the type and nature of permissible construction within the Town;

WHEREAS, the Town Council has determined that because of the Town's small and unique character, it is difficult in terms of funds and personnel, to strictly enforce the requirements of its Flood Zone Ordinance and the requirements of the Federal Emergency Management Agency, in conjunction with its participation in the National Flood Insurance Program (NFIP);

WHEREAS, the Town Council has determined it is in the public interest and will best protect the public health, welfare, safety and convenience of the Town and the property lying within the Town, to delegate the review, administration and enforcement of flood zone building requirements to Sussex County;

WHEREAS, in furtherance of the transfer of the authority of administration and enforcement of the Town Flood Zone Ordinance the Town has, contemporaneous with the adoption of this Resolution, adopted an Ordinance Amendment repealing its current Ordinance in its entirety and adopting a new Ordinance No. 25-1 "Flood Zone Ordinance" of the Town of Slaughter Beach;

WHEREAS, to accommodate the fact that administration and enforcement of the Town's "Flood Zone Ordinance" will occur only within the limits of the Town of Slaughter Beach, and by agents and/or employees of Sussex County, the Ordinance adopted contemporaneous with this Resolution, contains portions of the current Town Ordinance setting forth the intent and applicability of the Flood Zone Ordinance, and identification of the Coastal Floodplain area, together with the administration and enforcement provisions of the Sussex County Ordinance, amended for applicability to the Town.

NOW, THEREFORE, BE IT HEREBY RESOLVED:

1. That the authority regarding the administration and enforcement of Ordinance No. 25-1, "Flood Zone Ordinance" of the Town of Slaughter Beach be delegated to the Sussex County government, its agents and/or employees;
2. That the authority delegated mentioned above, shall include inspection, administration and enforcement of the Town's Flood Zone Ordinance, including all flood zone building restrictions and/or requirements, and the enforcement of those building restrictions and/or requirements contained within;
3. That contemporaneous with the adoption of this Resolution will be the adoption of an Ordinance to amend Ordinance No. 25-1, "Flood Zone Ordinance" of the Town of Slaughter Beach which repeals the current Town Flood Zone Ordinance, in its entirety, and in its place, adopts a revised Ordinance, containing portions of the current Ordinance, together with portions of the Sussex County Zoning Ordinance, amended to accommodate the fact that administration and enforcement of the Ordinance will occur only within the limits of the Town of Slaughter Beach;
4. That this Resolution be adopted contemporaneous with the

adoption of the Ordinance Amendment to Amend Ordinance No. 25-1, "Flood Zone Ordinance";

5. That, once the aforementioned Ordinance Amendment and Resolution have been adopted by the Town Council of the Town of Slaughter Beach, and signed on behalf of the Town by the Mayor, that the above-mentioned delegation of authority, become effective upon the counter signature of Robert L. Stickels, County Administrator, Sussex County, Delaware;

The delegation of authority for administering and enforcing the Town of Slaughter Beach Flood Zone Ordinance (as it may from time to time hereinafter be amended) is hereby accepted by the Sussex County government.

(Seal)

\_\_\_\_\_  
WITNESS  
Administrator

\_\_\_\_\_  
ROBERT L. STICKELS, Sussex County

State of Delaware  
                                  sS  
County of Sussex

BE IT REMEMBERED that on this \_\_\_\_\_day of \_\_\_\_\_ 2002, personally came before me, a Notary Public for the State of Delaware, Robert L. Stickels, Sussex County Administrator, known to me personally to be such, stating he is duly authorized to act on behalf of Sussex County, and acknowledged the signing of this Resolution to be the act and deed of the Sussex County government, and that the signature of the Sussex County Administrator thereto is in his proper handwriting.

GIVEN under my hand and seal of office the day and year aforesaid.

NOTARY PUBLIC

Robin A. Griffith  
Notary Public  
State of Delaware  
Commission Expires 4-10-2005

ROBERT C. CLENDANIEL, MAYOR

This is a true and correct copy of the Resolution adopted by Mayor and Council at the regular meeting on

GERRY MAHER, COUNCIL SECRETARY

State of Delaware

sS

County of Sussex

BE IT REMEMBERED that on this 11th day of DECEMBER, 2002, personally came before me, a Notary Public for the State of Delaware, Robert C. Clendaniel, Mayor of the Town of Slaughter Beach, a municipal corporation existing under the laws of the State of Delaware, known to me personally to be such, and acknowledge this Resolution to be the act and deed of the Town Council of the Town of Slaughter Beach, that the signature of the Mayor thereto is in his proper handwriting and the seal affixed is the seal of the Town of Slaughter Beach.

GIVEN under my hand and seal of office the day and year aforesaid.

NOTARY PUBLIC