



Ordinance No. **01-07-08-003**

Date: 01-07-08

ORDINANCE

THIS ORDINANCE ESTABLISHES THE TOWN OF CHESWOLD'S RECOGNITION OF THE NEED FOR A PLAN TO IDENTIFY FLOOD PLAIN AREAS WITHIN ITS JURISDICTION AND TO PROMULGATE SUCH RULES AND REGULATIONS THAT IT OR OTHER GOVERNMENT AGENCIES MAY ESTABLISH TO ENSURE THAT CONTROL OF FLOOD PLAIN AREAS WILL NOT BE VIOLATED

ARTICLE I: GENERAL PROVISIONS

Section 1.1 Purpose

The purpose of this Ordinance is to:

- A. Promote the general health, welfare, and safety of the community.
- B. Encourage the utilization of appropriate construction practices to prevent or minimize flood damage in the future.
- C. Minimize damage to public health and safety by protecting water supplies, sanitary sewage disposal systems and natural drainage.
- D. Reduce financial burdens imposed on the communities, its governmental units and its residents, by preventing the unwise design and construction of residential developments, commercial buildings or other structures in areas subject to flooding.

Section 1.2 Abrogation and Greater Restrictions

This Ordinance supersedes any ordinances currently in effect to protect flood prone areas; however, any ordinances shall remain in full force and effect to the extent that their provisions are more restrictive.

Section 1.3 Applicability

All persons, partnerships, businesses, and corporations must obtain a permit for development or relocation of any building or structure located within the Flood Plain areas. They will observe established minimum standards for construction and

Town of Cheswold

set forth special procedures for submission and Town approval of construction plans. Any person who fails to fully comply with the requirements of this Ordinance will be subject to penalties as established by this Ordinance. It shall be unlawful for any person, partnership, business or corporation to undertake or cause to be undertaken any new development or new construction, substantial improvement, the placement or relocation of any structure (including manufactured homes) within the Flood Plain area unless a permit has been obtained from the Building Inspection and Code Enforcement Office. Furthermore, where land is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a site plan must be submitted to and approved by the Building Inspection and Code Enforcement Office prior to any development. Provisions of all other codes, ordinances and regulations shall be applicable insofar as they are consistent with the provisions of this Ordinance and the community's need to minimize hazards and damage resulting from flooding.

Section 1.4 Penalties

Any person or organization that fails to fully comply with the requirements of this Ordinance shall be subject to penalties as defined in this Ordinance.

ARTICLE II: DEFINITIONS

Base Flood

The flood which has been selected to serve as the basis upon which the Flood Plain management provisions of this and other ordinances have been prepared; for purposes of this Ordinance, the One-Hundred-Year Flood.

Basement

Any area of the building having its floor sub-grade below ground level on all sides.

Base Flood Elevations

The One-Hundred-Year Flood elevation. Within the approximated Flood Plain, the Base Flood Elevation shall be established as a point on the boundary of the approximated Flood Plain that is nearest to the construction site in question.

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, excavation or drilling operations.

Flood

A general and temporary inundation of normally dry land areas.

Flood Plain

- A. A relatively flat or lowland area adjoining a river, stream or watercourse which is subject to partial or complete inundation.
- B. An area subject to the unusual and rapid accumulation of runoff of surface waters from any source.

Flood Proofing

Any combination of structural and non-structural additions, changes or adjustments to properties and structures which reduce or eliminate flood damage to lands, water and sanitary facilities, structures and contents of buildings.

Floodway

The channel of a river or other watercourse and the adjacent land area that must be reserved to discharge the Base Flood without increasing the water surface elevation of that flood more than one foot at any point.

Lowest Floor

The lowest floor of the lowest enclosed area including the basement. An unfinished or flood resistant enclosure, useable only 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 to the applicable non-elevation design requirements of this Ordinance.

Manufactured Home

A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers and other vehicles placed on a site for greater than 180 consecutive days.

Manufactured Home Park or Subdivision

A parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale.

New Construction

New Construction, as referred to in the definition of “Start of Construction” which commenced on or after the effective date of this Ordinance.

One-Hundred-Year Flood

A flood that has one chance in one hundred or a one percent chance of being equaled or exceeded in any given year.

Person

Any individual or group of individuals, corporation, partnership, association or other entity, including state and local governments and agencies.

Principally Above Ground

Where at least 51% of the actual cash value of a structure, less land value, is above ground.

Start of Construction

The “actual start” means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or sidewalks; nor does it include excavation for a basement, footing, piers or foundations or the erection of temporary forms; nor does it include the installation of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Structure

A walled and roofed building, including a gas or liquefied storage tank that is principally above ground and any other object which is built or constructed.

Substantial Improvement

- A. Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure, either;
 1. Before the improvement or repair is started, or;
 2. If the structure has been damaged and is being restored before the damage occurred.

- B. For the purpose of this definition “Substantial Improvement” is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however; include either;
1. Any project for improvement of a structure to comply with existing State or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions, or;
 2. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

ARTICLE III: ESTABLISHMENT OF THE FLOOD PLAIN AREAS

Section 3.1 Identification

- A. The Flood Plain Area shall include all areas of the Town of Cheswold subject to inundation by the waters of the One-Hundred-Year Flood. The source of this information shall be the current Flood Insurance Study (FIS) for Kent County, Delaware, or the Flood Insurance Rate Maps (FIRM), as prepared by the Federal Emergency Management Agency (FEMA), available for inspection at the Department of Planning Services, Division of Planning, the Engineer’s Office. Copies of required maps will be available at the Cheswold Building Inspection and Code Enforcement Office.

Section 3.2 Description of the Flood Plain Areas

- A. There shall be three Flood Plain Areas;
1. Floodway (F1) is that portion of the Flood Plain Areas required to carry and discharge waters of the One-Hundred-Year Flood without increasing the water surface elevation at any point more than one foot as demonstrated in the FIS as previously referenced above.
 2. Floodway Fringe (F2) are those portions of land within the Flood Plain Areas subject to inundation by the One-Hundred-Year Flood, lying beyond the Floodway in areas where detailed study data and profiles are available. These areas are shown on the FIRM.
 3. Approximated Flood Plain (F3) are those portions of land within the Flood Plain Areas subject to inundation by the One-Hundred-Year Flood, where a detailed study has not been performed, but where a One-Hundred-Year Flood Plain boundary has been approximated. The approximated areas shall be those areas identified as A Zone on the FIRM and for which no One-Hundred-Year Flood elevations have been provided. For these areas, elevation and floodway information from other Federal, State or other acceptable sources shall be used when available. When other acceptable information is not available, the elevation shall be determined by using the elevation of a point on the

boundary of the identified Flood Plain which is nearest the construction site. The Town of Cheswold may require the applicant to determine the elevation with hydrologic and hydraulic engineering techniques. Hydrologic and Hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Town of Cheswold.

Section 3.3 Revision of the delineation of the Flood Plain Areas

- A. The delineation of the Flood Plain Area may be revised, amended and modified by the Town of Cheswold when:
 - 1. There are changes due to natural or man-made changes that have occurred.
 - 2. Changes are indicated by future detailed hydrologic and hydraulic studies, performed by and documented by a qualified agency. However, prior to any change in the delineation, approval must be obtained from the Federal Insurance Administration (FIA).

ARTICLE IV: UTILIZATION OF THE FLOOD PLAIN AREAS

Section 4.1 Floodway (F1)

- A. In the Floodway, no encroachment, including fill, new construction, substantial improvements and other developments shall be permitted unless it has been shown through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in the Base Flood Elevation during the occurrence of the Base Flood discharge.
- B. Whenever a developer intends to alter or relocate a watercourse within the Floodway, the developer shall notify in writing, by certified mail, all adjacent communities and the State Department of Natural Resources and Environmental Control, Division of Soil and Water Conservation., of all such intended activities prior to any alteration or relocation of the watercourse and shall submit copies of such notification to the FIA. The developer shall also document to the Town of Cheswold that the flood carrying capacity within the altered or relocated portion of the watercourse in question shall be maintained.

- C. All uses, activities and other developments shall be undertaken in strict compliance with the flood proofing and related provisions contained herein, and in all other applicable codes, ordinances and regulations.

Section 4.2 Floodway Fringe (F2) and Approximated Flood Plain (F3)

- A. In the Floodway Fringe area and Approximated Flood Plain, any Development and/or use of land shall be permitted, provided that all such uses, activities and/or development shall be undertaken in strict compliance with the flood proofing and related provisions stated elsewhere in this Ordinance.

ARTICLE V: CRITERIA FOR BUILDING AND SITE PLAN APPROVAL

Section 5.1 General Criteria

- A. No building permits will be issued by the Cheswold Building Inspection and Code Enforcement Office until it has been determined that any new construction or substantial improvements in the Flood Plain areas are:
 1. Designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 2. Constructed with materials and utility equipment resistant to flood damage.
 3. Constructed by methods and practices that minimize flood damage.
 4. Constructed with electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.

Section 5.2 Basic Building Permit Format

- A. Name and address of applicant.
- B. Name and address of the owner of the proposed construction site.
- C. Name and address of the contractor.
- D. Site location.
- E. A brief description of the proposed work and estimated cost.
- F. A plan of the site showing the exact size and location of the proposed construction as well as any existing buildings or structures.

Section 5.3 Required Elevation and Flood Proofing Information

Depending on the type of structure involved, the following information shall be Included in the building permit request for work to be performed within the Flood Plain Area.

A. For structures to be elevated to one foot above the Base Flood Elevation:

1. A plan showing the size of the proposed structure and its relation to the lot where it is to be constructed.
2. A determination of elevations of the existing ground, proposed finished ground and lowest floors, certified by a registered professional engineer, surveyor or architect.
3. Plans showing the method of elevating the proposed structures including details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures and other pertinent details. These plans shall be prepared by a registered professional engineer or architect.
4. Plans showing the methods used to prevent water from entering or accumulating within components of electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities during conditions of flooding.
5. Plans showing the methods used to protect utilities including sewers, water, telephone, electric, gas, etc., from flooding to the Base Flood Elevation at the building site.

B. For structures to be flood proofed to the Base Flood Elevation (non-residential structures only):

1. Plans showing details of all flood proofing measures, prepared by a registered professional engineer or architect, showing the size of the proposed structure and its relation to the lot where its to be constructed.
2. A determination of elevations of existing ground, proposed finished ground, lowest floors and flood proofing certified by a registered professional engineer, surveyor or architect.
3. A certificate prepared by the registered engineer or architect who prepared the plans in Sect. 5.3, Sub.Par B(1) above, that the structure in question, together with attendant utility and sanitary facilities, is designed so that:
 - a. The structure will withstand the hydrostatic, hydrodynamic, buoyant, impact and other forces resulting from the flood depths, velocities, pressures and other factors associated with the Flood Base.

- b. The structure is designed and constructed with accepted standards of practices for meeting the provisions of subsection B(1) of this section. The certificate shall include the specific elevation, in relation to mean sea level, to which the structure is flood proofed.

Section 5.4 Site Plan Specific Data Requirements

- A. The property owner or developer of any proposed subdivision, Manufactured home park or subdivision or other development shall submit to the Cheswold Building Inspection and Code Enforcement Office a site plan which includes the following information:
 1. Name of the engineer, surveyor, or architect or other qualified person responsible for providing the information required in this section.
 2. A map showing the location of the proposed subdivision and/or development with respect to the Town's Flood Plain Areas, proposed lots and site, fills, flood or erosion protective facilities and areas subject to special deed restrictions. Furthermore, it is required that all subdivision proposals and other proposed new developments greater than 50 lots or 5 acres, whichever is the lesser, shall include Base Flood Elevation data.
 3. Where the subdivision and/or development lies partially or completely in the Flood Plain Areas, the plan map shall include detailed information giving the location and elevation of proposed roads, public utilities and building sites. All such maps shall also show contours at intervals of (2) or (5) feet depending upon the slope of the land and identify accurately the boundaries of the Flood Plain Areas.

ARTICLE VI: SPECIFIC REQUIREMENTS

Section 6.1 Minimum Flood Proofing Design and Construction Standards

- A. In order to prevent excessive damage to buildings and other structures, the following restrictions shall apply to all new construction and to construction of substantial improvements to existing structures occurring in the Flood Plain areas.
 1. Basements and lowest floors
 - a. All new construction and substantial improvements of residential structures shall have the lowest floor, including the basement, elevated to one foot above the Base Flood Elevation.

- b. All new construction and substantial improvements to non-residential structures must have the lowest floor, including the basement, elevated to one foot above the Base Flood Elevation, or together with attendant utility and sanitary facilities, be designed so that below the Base Flood Elevation the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- c. 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 the 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 criteria:
 - 1. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding.
 - 2. The bottom of all openings shall be no higher than one foot above grade.
 - 3. Openings may be equipped with screens, louvers, valves or other coverings or devices, provided that they permit the automatic entry and exit of flood waters.

2. Use of Fill:

If Fill is used to raise the finished surface of the lowest floor to one foot above the Base Flood Elevation:

- a. Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally 15 feet beyond the building line from all points. For non-residential structures, fill shall be placed to provide access acceptable for the intended use. At grade access, with fill extending laterally beyond the building line, shall be a minimum of 25% of the perimeter of a non-residential structure.
- b. Fill shall consist of soil or rock materials only. Use of sanitary landfill materials shall not be permitted.
- c. Fill material shall be compacted to provide the necessary stability and resistance to erosion, scouring or setting.

- d. Fill slopes shall be no steeper than one vertical to two horizontal, unless substantial data justifying steeper slopes are submitted and approved by the Cheswold Building Inspection and Code Enforcement Office.
- e. Fill shall only be used to the extent that it does not adversely affect adjacent properties.

3. Placement of buildings, structures and manufactured homes

- a. All buildings and structures shall be constructed and placed on the lot so as to offer minimum obstruction to the flow of water and shall be designed to have minimum obstruction effect upon the flow and height of floodwater.
- b. None of the following shall be placed or cause to be placed in the designated floodway: fences, except two-wire fences, or other matter which may impede, retard or change the direction of the flow of water or that will catch or collect debris which is carried by such water, or that is placed where the natural flow of the stream of floodwaters would carry the same downstream to the damage or detriment of either public or private property adjacent to the flood Plain.
- c. Manufactured homes must be placed on permanent foundations and elevated so that the lowest floor of the homes will be one foot above the Base Flood Elevation.

4. Anchoring

- a. All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse and lateral movement thus reducing the threat to life and property and decreasing the possibility of the blockage of bridge openings and other restricted sections of the watercourses.
- b. All air ducts, large pipes and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation.
- c. All manufactured homes shall be anchored to resist flotation, collapse or lateral movement in addition to applicable State or County anchoring requirements for wind forces.
 - 1. Over-the-Top ties shall be provided at each of the four corners of the manufactured home with two additional ties per side at intermediate locations. Manufactured homes less than 50 feet long require one additional tie per side.

2. Frame ties shall be provided at each corner of the home with five additional ties per side at intermediate points, with manufactured homes less than 50 feet long requiring four additional ties per side.
3. All components of the anchoring system shall be capable of carrying a force of 4,800 pounds.
4. Any additions to a manufactured home shall be similarly anchored.

5. Storage

- a. No new construction which stores materials that are buoyant, flammable, explosive, or at times of flooding could be injurious to humans, animals or plant life shall be stored below Base Flood Elevation.

6. Utility and Facility Requirements

- a. All new or replacement water systems, whether public or private, shall be designed to minimize or eliminate infiltration of flood waters into the system.
- b. All new or replacement sanitary disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of flood waters into the system and discharges from the systems into the flood waters.
- c. All other new or replacement public or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.
- d. Onsite waste disposal systems shall be located so as to avoid impairment to them or contamination from them during flooding.

7. Drainage

- a. Adequate drainage shall be provided to reduce exposure to flood hazard.

B. Site Plan Approval.

1. The owner or developer of a proposed use requiring a site plan review shall include on the plan the following information:
 - a. A map showing the location of the proposed development with respect to the County's flood-prone areas, fills, flood or erosion protective facilities and areas subject to special deed restriction. In addition, all residential subdivisions and planned unit developments or other proposed new developments greater than 50 lots or five acres in area, whichever is less, shall include Base Flood information.

- b. Where the development lies partially or completely in the flood prone areas, the plan shall include detailed information giving the location and elevation of all proposed roads, public utilities and building sites.

C. Manufactured Home Parks.

1. For all new manufactured home parks or expansions to existing manufactured home parks and for existing manufactured home parks where the repair, construction or improvement of streets, utilities and pads equals or exceeds 50% of the value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced, the following requirements shall be met for any construction within the Floodway Fringe or approximated Flood Plain:
 - a. Manufactured home berthing spaces or lots shall be elevated on compacted fill or on pilings so that the lowest floor of each manufactured home will be one foot above the Base Flood Elevation.
 - b. Adequate surface drainage and access for a manufactured home hauler shall be provided.
 - c. When manufactured homes are to be elevated on pilings, lots shall be large enough to permit steps, piles shall be placed in stable soil no more than 10 feet apart, and reinforcement shall be provided for pilings more than six feet above ground level.

D. Utility and Facility Requirements

1. All new or replacement water systems located on Flood Plain Areas, whether public or private, shall be flood proofed to one foot above the base flood elevation, and designed to minimize or eliminate infiltration of flood waters into the systems.
2. All new or replacement sanitary disposal systems located within the Flood Plain Areas, whether public or private, shall be flood proofed to one foot above the base flood elevation, and shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into the flood waters.
3. All other new or replacement public or private utilities and facilities shall be elevated or flood proofed to one foot above the base flood elevation and shall be located and constructed to minimize or eliminate flood damage.
4. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

ARTICLE VII: ADMINISTRATION

Section 7.1 Building Permit and Site Plan Requirements and Approvals

- A. It shall be unlawful for any person, partnership, business, or corporation to undertake or cause to be undertaken, any development, or the new construction, substantial improvement, the placement or relocation of any structure (including manufactured homes) within the Flood Plain Areas, unless a permit has been obtained from the Building Inspection and Code Enforcement Office. In addition, where land is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a site plan must be submitted to, and approved, by the Building Inspection and Code Enforcement Office prior to any development.

Section 7.2 Approval of Permits and Plans

- A. The Building Inspection and Code Enforcement Office shall require copies of all necessary permits from those government agencies from which approval is required by Federal or State law.
- B. All permits and plans shall be approved only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of the State, Kent County and all other applicable codes and ordinances.
- C. A record of all information provided to the Building Inspection and Code Enforcement Office shall be kept on file by the Town of Cheswold.

Section 7.3 Permit Application Procedure

- A. Application for building permit and site plan approvals shall be made in writing to the Building Inspection and Code Enforcement Office and shall include all information stipulated under Article V of this Ordinance.

Section 7.4 Document Changes

- A. After the issuance of a building permit by the Building Inspection and Code Enforcement Office, no changes of any kind shall be made to the application, permit, or any of the plans, specifications or other documents submitted with the application without the written consent and approval of the Building Inspection and Code Enforcement Office.

Section 7.5 Placement of Placards at the Job Site

- A. In addition to the building permit, the Building Inspection and Code Enforcement Office shall issue a placard which shall be displayed on the job site during the time construction is in progress. This placard shall show the number of the building permit, the date of issuance and shall bear the seal and signature of the Building Inspection and Code Enforcement Office.

Section 7.6 Inspection and Permit Revocation

- A. During the construction period, the representative of the Building Inspection and Code Enforcement Office or other authorized official may inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable laws and ordinances. If it is determined that the work does not comply with the permit application or any other applicable laws and ordinances or that there has been a false statement or misrepresentation by any applicant, the Building Inspection and Code Enforcement Office shall revoke the building permit and report such findings to the Town of Cheswold for whatever action it considers necessary to correct the situation.

Section 7.7 Permit Fees

- A. An application fee shall be paid at the time of submission of the application to the Building Inspection and Code Enforcement Office. This fee covers the application review and Town administrative expenses. Upon approval of the application, a permit fee shall be paid at the time of issuance of the building permit. All fees must be paid by check that is made payable to "The Town of Cheswold."

ARTICLE VIII: Appeals

Section 8.1 The Appeals Process.

- A. Whenever any person is aggrieved by an administrative decision with respect to the provisions of this Ordinance/Regulations, it is the right of that person to appeal to the Town of Cheswold Board of Adjustment. Such appeals must be filed in accordance with the procedures of the Board as stated in Article 3, Section 3.3 of the Cheswold Land Use Ordinance

B. All decisions on appeals to the provisions of this Ordinance/Regulations shall adhere to the following criteria:

1. All grievances shall first be presented to the Building Inspection and Code Enforcement Office for reconciliation. If the aggrieved isn't satisfied with the decision of this Office, the matter may be submitted to the Board of Adjustment.
2. An appeal to the Board of Adjustment must be filed, in writing, within 30 days after the finding of the Building Inspection and Code Enforcement Office..
3. Upon receipt of such appeal, the Board of Adjustment shall set a time and place not less than 10 days or more than 30 days for the purpose of hearing the appeal. All parties shall be notified in writing of the time and place of the hearing. Also, proper public notice shall be posted. The determination by the Board of Adjustment shall be final in all cases.
4. Affirmative decisions shall only be issued by the Board of Adjustment upon showing of a good and sufficient cause, a determination that failure to grant the appeal would result in exceptional hardship to the applicant, and a determination that the granting of an appeal would not result in increased flood heights, additional threats to public safety, create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances.
5. Affirmative decisions shall only be issued upon determination that it is the minimum necessary, considering the flood hazard, to afford relief.
6. The Board of Adjustment shall notify the applicant in writing that the issuance of a decision to allow construction of a structure below the Base Flood Elevation will result in increased premium rates for flood insurance, and that such construction below the Base Flood Elevation increases risk to life and property. Such notification shall be maintained with a record of all decisions as required in Subsection B (7) of this Section.
7. The Town shall maintain a record of all decisions, including justification for their issuance, and report such decisions issued in its annual report that must be submitted to the Federal Insurance Administration.
8. No variance shall be granted for any construction, development, use or other activity within any Floodway area that would cause any increase in the One-Hundred-Year Flood elevation.

Section 8.2 Violations and Penalties

- A. Any person, firm or corporation that fails to comply with any or all of the requirements of this Ordinance or direction from a representative of the Cheswold Building Inspection and Code Enforcement Office or any other authorized employee of the Town shall be guilty of an offense.
- B. A Building Inspection and Code Enforcement Office Official is authorized To serve a notice of violation or order on the person or entity responsible for the violation of the requirements of this Ordinance, or which is in violation of a detail statement or a plan approved there under, or in violation of a permit or other certificate issued under the provisions of this Ordinance. Such notice of violation or order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.
- C. If the notice of violation is not complied with promptly, the Building Inspection and Code Enforcement Office Official is authorized to request The legal counsel of the Town to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal of such illegal construction or termination of such illegal action that is in violation of the provisions of this Ordinance or of the order or direction made pursuant thereto.
- D. Any person or entity that fails to comply with the provisions of this Ordinance or direction from a Building Inspection and Code Enforcement Official, shall be charged with a violation and shall be fined according to the following schedule: \$100 for any first offense; \$250 for any second offense; \$500 for any third and subsequent offense, or by imprisonment not exceeding ten (10) days, or both such fine and imprisonment. Repeat offenders shall not receive continued warnings and shall instead be subject to progressively increasing fines according to the afore mentioned schedule. Each day that any violation continues shall constitute a separate offense. The \$100.00 minimum fine is mandatory and not subject to suspension.

ARTICLE IX: Liability and Separability

Section 9.1 Town of Cheswold, its officials or employee liability.

- A. The granting of a permit or approval of a site plan in an identified flood prone area shall not constitute a representation, guaranty or warranty of any kind by the Kent County, the Town of Cheswold or by any Town official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the Town of Cheswold, its officials

or employees.

Section 9. Separability

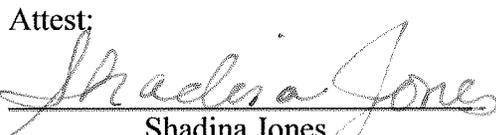
- A. If any provision, section, sub-section, paragraph, sentence or clause of this Ordinance shall be held to be unconstitutional or invalid by any court of competent jurisdiction, such holding shall not be deemed to invalidate remaining provisions, sections, sub-sections, paragraphs, sentences or clauses of this Ordinance.

Whereas, This Ordinance has had a first and second Public reading and Public hearing, and has been duly adopted by the Cheswold Mayor and Town Council by a majority vote of all Council Members at the Town Council Meeting held on the 7 day JANUARY, 2008, therefore:

Be it *ORDAINED* that all of the provisions of this Ordinance become fully effective the 7 day of JANUARY, 2008.


Donald F. Tinari, Mayor
Town of Cheswold

Date: 01-07-08

Attest:

Shadina Jones
Town Clerk

Date: 01-07-08