

# CHAPTER 4. ZONING DISTRICTS

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# Chapter 4 – Zoning Districts

## 4.1 GENERAL PROVISIONS

### A. TYPES OF ZONING DISTRICTS

All land within the Town of Wallace is classified by this Ordinance to be within one of the several Base Zoning Districts, Conditional Zoning Districts, or Special Use Zoning Districts listed in *Sections 4.2, 4.5 and 4.7* respectively.

### B. OVERLAY ZONING AREAS AND RELATIONSHIP TO ZONING DISTRICTS

Land within any base, conditional, or special use zoning district may also be classified into one or more Overlay Zoning areas, as listed in *Section 4.6, OVERLAY ZONING DISTRICTS*. Regulations governing development in an overlay area shall apply in addition to the regulations governing development in the underlying district. If the standards governing a zoning district expressly conflict with those governing an overlay zoning area, the standards governing the overlay area shall control.

### C. COMPLIANCE WITH DISTRICT STANDARDS

No land within the Town shall be developed except in accordance with the zoning district use, development standards and requirements of this chapter and all other regulations of this Ordinance, as applicable.

## 4.2 BASE ZONING DISTRICTS ESTABLISHED

*Table 4.2.1, BASE ZONING DISTRICTS*, sets out the base zoning districts established by this Ordinance.

TABLE 4.2.1 BASE ZONING DISTRICTS	
Abbreviation	Zoning District
R-20MH	Residential/Manufactured Housing
RA-20	Residential/Agricultural
R-15	Residential
R-10	Residential
R-8	Residential
R-6MH	Residential/Manufactured Housing
R-6	Residential
NB	Neighborhood Business
CB	Central Business
HB	Highway Business
I	Industrial

## 4.3 RESIDENTIAL BASE ZONING DISTRICTS

### A. LOW INTENSITY RESIDENTIAL DISTRICTS (R-20 MH, R-15, R-10)

#### 1. INTENT

The purpose of these (R-20 MH, R-15, R-10) districts are to provide locations for moderate to low intensity residential neighborhoods that include opportunities for development of supporting recreational, community service, and educational uses proximate to neighborhoods. These districts are created to encourage development of neighborhoods comprised chiefly of single-family detached units.

2. APPLICATION CRITERIA

These districts will usually be applied where the following conditions exist:

- (a) Water and sewer lines exist at the site or are to be installed as part of the development process.
- (b) There is direct vehicular access to a street classified as either collector or local.

**B. HIGH INTENSITY RESIDENTIAL DISTRICTS (R-8, R-6, R-6 MH)**

1. INTENT

The purpose of these (R-8, R-6, R-6 MH) districts are to provide locations for higher intensity residential neighborhoods that include opportunities for development of supporting recreational, community service, and educational uses proximate to neighborhoods. These districts are created to encourage development of neighborhoods comprised chiefly of single-family detached units.

2. APPLICATION CRITERIA

These districts will usually be applied where the following conditions exist:

- (a) Water and sewer lines exist at the site or are to be installed as part of the development process.
- (b) There is direct vehicular access to a street classified as either collector or local.

**C. RESIDENTIAL AGRICULTURAL DISTRICT (RA-20)**

1. INTENT

The purpose of the RA-20 District is to accommodate rural uses, including agricultural uses, uses that complement or support agricultural uses, and moderate density residential uses. The RA-20 District is intended to encourage residential development that preserves farmland and other open space.

2. APPLICATION CRITERIA

This district will usually be applied where the following conditions exist:

- (a) Adjacent to land already designated on the adopted Zoning Map as Agricultural/Residential.
- (b) The average lot size should be a minimum of 20,000 square feet within the proposed district.

## **4.4 BUSINESS BASE ZONING DISTRICTS**

**A. NEIGHBORHOOD BUSINESS DISTRICT (NB)**

1. INTENT

The purpose of the NB District is to accommodate small-scale, low-intensity, and convenience retail and service uses that provide goods and services to residents of the immediately surrounding neighborhood. Development in this district should not be out of character or scale with a residential neighborhood, nor should it attract traffic from outside the surrounding neighborhood. Performance standards shall be used to insure the absence of adverse impacts beyond the immediate space occupied by the building.

2. APPLICATION CRITERIA

This district will usually be applied where the following conditions exist:

- (a) Normally located at the intersection of either sub-collector or local streets.
- (b) Uses would generally not serve commuters or persons outside the surrounding neighborhood.
- (c) Water and sewer lines exist at the site or are to be installed as part of the development process.
- (d) Normally, the maximum amount of land zoned NB at any intersection shall not exceed one acre.

**B. CENTRAL BUSINESS DISTRICT (CB)**

1. INTENT

The purpose of the CB District is to encourage the urban form and character found in the traditional downtown area, and to promote redevelopment that will make the historic core a more diverse and vibrant mixed-use center. The district is intended to accommodate a well-balanced mix of uses (commercial, office, service, and residential uses) within the historic central core of the Town. The core commercial areas are to be preserved and enhanced over the long term and should provide mixed-use opportunities that combine second floor

residential units with ground floor non-residential uses. Performance standards shall be used to insure the absence of adverse impacts beyond the zoning district boundaries.

2. APPLICATION CRITERIA

This district will usually be applied where the following conditions exist:

- (a) Adjacent to existing central business district designation.
- (b) Uses would serve a market area population of major segments of the Town and through traffic.
- (c) Water and sewer lines exist at the site or are to be installed as part of the development process.
- (d) All property to be designated for new development under this classification shall have direct access to a paved public street.

**C. HIGHWAY BUSINESS DISTRICT (HB)**

1. INTENT

The purpose of the HB District is to accommodate a diverse range of retail, service, and office uses that provide goods and services to the residents and businesses in the community at large – e.g., shopping centers, convenience stores, and retail sales establishments. Performance standards shall be used to insure the absence of adverse impacts beyond the zoning district boundary.

2. APPLICATION CRITERIA

This district will usually be applied where the following conditions exist:

- (a) Water and sewer lines exist at the site or are to be made available as part of the development process.
- (b) All property to be designated for new development under this classification shall have direct access to arterial streets.

**D. INDUSTRIAL DISTRICT (I)**

1. INTENT

The purpose of the Industrial District is to accommodate manufacturing, assembly, fabrication, processing, distribution, storage, research and development, and other industrial uses that may be large-scale or otherwise have extensive exterior movement of vehicles, materials, and goods, but that achieve high environmental quality standards and have minimal impacts on adjacent uses.

2. APPLICATION CRITERIA

This district will generally be applied where the following conditions exist:

- (a) Water and sewer lines exist at the site or are to be made available as a part of the development process.
- (b) Direct vehicular access is to a public street with immediate and convenient access to a street classified as an arterial. Immediate and convenient shall in this case mean traffic would not travel through or adjacent to an existing residential neighborhood to get from the site to the arterial road.
- (c) Rail access is desirable, but not required.

## **4.5 CONDITIONAL ZONING DISTRICT**

**A. INTENT**

The rezoning of land to a conditional zoning district is intended to provide a landowner and the town an alternative to rezoning the land to a base zoning district, where the base zoning district allows certain uses and development that may be appropriate but also allows uses and development that may not conform to town plans or would have adverse impacts on public facilities or surrounding lands. Reclassification of land to a conditional zoning district allows a landowner to propose, and the Town Council to consider, additional conditions or restrictions on the range of allowable uses, use standards, development intensities, development standards, and other regulations applicable in the parallel base zoning district. This enables the town to tailor a zoning classification to accommodate desirable

development while avoiding or addressing anticipated problems that may arise from development otherwise allowed by the zoning classification.

**B. ESTABLISHMENT OF CONDITIONAL ZONING DISTRICTS**

Table 4.5.1, *CONDITIONAL ZONING DISTRICTS*, sets out the conditional zoning districts established by this ordinance. There is a conditional zoning district paralleling each base zoning district set forth in Table 4.2.1, *BASE ZONING DISTRICTS*.

<b>TABLE 4.5.1      CONDITIONAL ZONING DISTRICTS</b>	
<b>Abbreviation</b>	<b>Zoning District</b>
R-20MH-C	Conditional Residential/Manufactured Housing
RA-20-C	Conditional Residential/Agricultural
R-15-C	Conditional Residential
R-10-C	Conditional Residential
R-8-C	Conditional Residential
R-6MH-C	Conditional Residential/Manufactured Housing
R-6-C	Conditional Residential
NB-C	Conditional Neighborhood Business
CB-C	Conditional Central Business
HB-C	Conditional Highway Business
I-C	Conditional Industrial

**C. CLASSIFICATION OF CONDITIONAL ZONING DISTRICTS**

Land shall be classified into a conditional zoning district only in accordance with the procedures and requirements set forth in Section 3.14, *CONDITIONAL REZONING*.

**D. APPLICABLE REGULATIONS**

1. Development in a conditional zoning district shall be subject to all the use and development standards and requirements that apply to development in the parallel base zoning district, plus the conditions imposed as part of the Conditional Rezoning approval, which may not be less restrictive than the regulations for the parallel base zoning district.
2. Conditions embodied in a previously-approved Special Use Permit shall continue to apply unless modified in accordance with the procedures and requirements set forth in Section 3.14, *CONDITIONAL REZONING*.

**E. RELATIONSHIP TO OVERLAY ZONING DISTRICTS**

Regulations governing development in an overlay zoning district shall apply in addition to the regulations governing development in the underlying conditional zoning district. If the standards governing a conditional zoning district expressly conflict with those governing an overlay zoning district, the standards governing the overlay district shall control.

**F. APPLIED TO ENTIRE LOT**

After the effective date of this Ordinance, no application for Conditional Rezoning (See Section 3.14) may split an existing site or lot of record into a conditional zoning district and a base zoning district. Nothing in this subsection shall limit a conditional rezoning that splits a lot or site into two or more conditional zoning district designations.

## 4.6 OVERLAY ZONING DISTRICTS

### A. HISTORIC OVERLAY DISTRICT (HDO)

#### 1. INTENT

The purpose of the Historic District is to provide criteria to insure that new buildings, structures and uses of land within the Historic District shall be consistent with the character of the existing buildings, structures and uses of land in the Historic District. Applicants must seek approval of a Certificate of Appropriateness for projects within this district, in accordance with *Section 3.11, CERTIFICATE OF APPROPRIATENESS*. Criteria for evaluating projects in the Historic District are provided in the Wallace Historic District Commission Design Guidelines as referenced in *Section 3.11(C), STANDARDS OF EVALUATION*. It is not the intent of this Ordinance to require the reconstruction or restoration of individual or original buildings, or to impose any particular architectural style.

#### 2. APPLICATION CRITERIA

The area defined by the official Zoning Map has been designated as having historic significance, and having need of additional regulation to protect and preserve its historic significance and character.

### B. BILLBOARD OVERLAY DISTRICT (BDO)

#### 1. INTENT

- (a) It is recognized that billboards provide the opportunity to advertise products, services, and ideas; however, because of their sheer size, location in proximity to buildings, and potential for storm damage, billboards can be aesthetically undesirable, create traffic hazards, and present dangers to adjoining lands. Due to their size and prominence upon the landscape, billboards constitute a separate and distinct land use subject to the standards in this section and *Section 5.2(C), BILLBOARDS*.
- (b) The Billboard Overlay (BDO) District is established to provide an appropriate location for billboards as defined in *Section 10.2, DEFINITIONS*.

#### 2. INCORPORATED BY REFERENCE

The BDO, as set forth on a map entitled Billboard Overlay Zone, as amended, is hereby adopted and incorporated by reference into this UDO and the official zoning map.

#### 3. GENERAL REQUIREMENTS

All billboards (including all parking, landscaping, and all other associated site improvements) shall be located within the BDO.

## 4.7 RESERVED

## 4.8 AIRPORT ZONING CODE

### A. DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

*AIRPORT*: The Town Municipal Airport.

*AIRPORT ELEVATION*: The established elevation of the highest point on the usable landing area.

*AIRPORT HAZARD*: Any structure, tree or use of land which obstructs the airspace required for or is otherwise hazardous to the flight of aircraft in landing or taking-off at the airport.

*AIRPORT REFERENCE POINT*: The point established as the approximate geographic center of the airport landing area and so designated.

*BOARD OF ADJUSTMENT:* A board consisting of five members appointed by the Town Council, as provided in the general statutes.

*HEIGHT:* For the purpose of determining the height limits in all zones set forth in this chapter and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.

*INSTRUMENT RUNWAY:* A runway equipped or to be equipped with electronic or visual air navigation aids adequate to permit the landing of aircraft under restricted visibility conditions.

*LANDING AREA:* The area of the airport, used for the landing, take-off or taxiing of aircraft.

*NONCONFORMING USE:* Any structure, tree or use of land which is lawfully in existence at the time the regulation is prescribed in the chapter or an amendment thereto becomes effective and does not then meet the requirements of the regulation.

*NONINSTRUMENT RUNWAY:* A runway other than an instrument runway.

*PERSON:* An individual, firm, partnership, corporation, company, association, joint stock association or body politic, and includes a trustee, receiver, assignee, administrator, executor, guardian or other representative.

*RUNWAY:* The paved surface of an airport landing strip.

*STRUCTURE:* An object constructed or installed by humans, including, but without limitation, buildings, towers, smokestacks and overhead transmission lines

## **B. ZONES**

In order to carry out the provisions of this chapter, there are created and established certain zones which include all of the land lying within the instrument approach zones, noninstrument approach zones, transition zones, horizontal zones and conical zone. The areas and zones are shown on the town municipal airport zoning map, which is incorporated by reference and made a part hereof. The various zones are established and defined as follows.

### **1. INSTRUMENT APPROACH ZONE**

An instrument approach zone is established at each end of the instrument runway for instrument landings and take-offs. The instrument approach zones shall have a width of 1,000 feet at a distance of 200 feet beyond each end of the runway, widening thereafter uniformly to a width of 16,000 feet at a distance of 50,200 feet beyond each end of the runway, its centerline being the continuation of the centerline of the runway.

### **2. NONINSTRUMENT APPROACH ZONE**

A noninstrument approach zone is established at each end of all noninstrument runways on the town municipal airport for noninstrument landings and take-offs. The noninstrument approach zone shall have a width of 250 feet at a distance of 200 feet beyond each end of the runway, widening thereafter uniformly to a distance of 10,200 feet beyond each end of the runway, its centerline being the continuation of the centerline of the runway.

### **3. TRANSITION ZONES**

Transition zones are established adjacent to each instrument and noninstrument runway and approach zone as indicated on the zoning map. Transition zones symmetrically located on either side of runways, have variable widths as shown on the zoning map. Transition zones extend outward from a line 125 feet on either side of the center line of the noninstrument runway, for the length of the runway plus 200 feet on each end; and 500 feet on either side of the center line of the instrument runway, for the length of the runway plus 200 feet on each end, and are parallel and level with the runway center lines. The transition

zones along the runways slope upward and outward one foot vertically for each seven feet horizontally to the point where they intersect the surface of the horizontal zone. Further, transition zones are established adjacent to both instrument and noninstrument approach zones for the entire length of the approach zones. These transition zones have variable widths, as shown on the zoning map. The transition zones flare symmetrically with either side of the runway approach zones from the base of the zones and slope upward and outward at the rate of one foot vertically for each seven feet horizontally to the points where they intersect the surfaces of the horizontal and conical zones. Additionally, transition zones are established adjacent to the instrument approach zone where it projects through and beyond the limits of the conical zone, extending a distance of 5,000 feet measured horizontally from the edge of the instrument approach zones at right angles to the continuation of the center line of the runway.

4. HORIZONTAL ZONE

A horizontal zone is established as the area within a circle with its center at the airport reference point and having a radius of 5,000 feet. The horizontal zone does not include the instrument and noninstrument approach zones and the transition zones.

5. CONICAL ZONE

A conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward there from a distance of 3,000 feet. The conical zone does not include the instrument approach zones and transition zones.

**C. HEIGHT LIMITATIONS**

1. Except as otherwise provided in this chapter, no structure or tree shall be erected, altered, allowed to grow or maintained in any zone created by this chapter to a height in excess of the height limit established for the zone. The height limitations are computed from the established airport elevation and are established for each of the zones in question as follows.

a) INSTRUMENT APPROACH ZONE

One foot in height for each 50 feet in horizontal distance beginning at a point 200 feet from the end of the instrument runway and extending to a distance of 10,200 feet from the end of the runway; thence one foot in height for each 40 feet in horizontal distance to a point 50,200 feet from the end of the runway; thence one foot in height for each 40 feet.

b) NONINSTRUMENT APPROACH ZONES

One foot in height for each 40 feet in horizontal distance beginning at a point 200 feet from the end of the noninstrument runway and extending to a point 10,200 feet from the end of the runway.

c) TRANSITION ZONES

One foot in height for each seven feet in horizontal distance beginning at any point 125 feet normal to and at the elevation of the centerline of noninstrument runways extending 200 feet beyond each end thereof, and 500 feet normal to and at the elevation of the centerline of the instrument runway, extending 200 feet beyond each end thereof, extending to a height of 150 feet above the airport elevation which is 37.50 feet above mean sea level. In addition to the foregoing, there are established height limits of one foot vertical height for each seven feet horizontal distance measured from the edges of all approach zones for the entire length of the approach zones and extending upward and outward to the points where they intersect the horizontal or conical surfaces. Further, where the instrument approach zone projects through and beyond the conical zone, a height limit of one foot for each seven feet of horizontal distance shall be maintained beginning at the edge of the instrument approach zone and extending a distance of 5,000 feet from the edge of the instrument approach zone measured normal to the centerline of the runway extended.



d) HORIZONTAL ZONE

One hundred fifty feet above the airport elevation or a height of 187.50 feet above mean sea level.

e) CONICAL ZONE

One foot in height for each 20 feet of horizontal distance beginning at the periphery of the horizontal zone, extending to a height of 337.3 feet above the airport elevation.

2. Where an area is covered by more than one height limitation, the more restrictive limitation shall prevail.
3. Nothing in this chapter shall be construed as prohibiting the growth, construction or maintenance of any tree or structure to a height up to 45 feet above the surface of the land.

**D. USE RESTRICTIONS**

Notwithstanding any other provisions of this chapter, no use may be made of land within any zone established by this chapter in such a manner as to create electrical interference with radio communication between the airport and aircraft, make it difficult for flyers to distinguish between airport lights and others, result in glare in the flyers using the airport, impair visibility in the vicinity of the airport or otherwise endanger the landing, taking-off and maneuvering of aircraft.

**E. NONCONFORMING USES**

1. REGULATIONS NOT RETROACTIVE

The regulations prescribed by this chapter shall not be construed to require the removal, lowering or other changes or alteration of any structure or tree not conforming to the regulations as of the effective date of this chapter, or otherwise interfere with the continuance of any nonconforming use. Nothing herein contained shall require and change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this chapter, and is diligently prosecuted.

2. MARKING AND LIGHTING

Notwithstanding the preceding provision of this section, the owner of any nonconforming structure or tree is required to permit the installation, operation and maintenance thereon of the markers and lights as shall be deemed necessary by the airport engineers, to indicate to the operators of aircraft in the vicinity of the airport, the presence of the airport hazards. The markers and lights shall be installed, operated and maintained at the expense of the town.

**F. PERMITS**

1. FUTURE USES

- a) Except as specifically provided in Subsections (i-iii) hereunder, no material change shall be made in the use of land and no structure or tree shall be erected, altered, planted or otherwise established in any zone created unless a permit therefore shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure or tree would conform to the regulations herein prescribed. If the determination is in the affirmative, the permit shall be granted.
  - i) In the area lying within the limits of the horizontal zone and the conical zone, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, except when because of terrain, land contour or topographic features the tree or structure would extend above the height limits prescribed for the zone.
  - ii) In areas lying within the limits of the instrument and noninstrument approach zones but at a horizontal distance of not less than 4,200 feet from each end of the runways, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground except when the tree or structure would extend above the height limit prescribed for the instrument or noninstrument approach zone.

iii) In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground except when the tree or structure, because of terrain, land contour or topographic features would extend above the height limit prescribed for the transition zones.

b) Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, alteration or growth of any structure or tree in excess of any of the height limits established by this chapter, except as set forth in *Section 4.8(C), HEIGHT LIMITATIONS*.

**2. EXISTING USES**

No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming use, structure or tree to be made or become higher, or become a greater hazard to air navigation, than it was on the effective date of this chapter or any amendments thereto or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.

**3. NONCONFORMING USES ABANDONED OR DESTROYED**

Wherever the Town Council determines that a nonconforming structure or tree has been abandoned or more than 80% torn down, physically deteriorated or decayed, no permit shall be granted that would allow the structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.

**4. VARIANCES**

Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use his or her property, not in accordance with the regulations prescribed in this chapter, may apply to the Board of Adjustment for a variance from the regulations. The variances shall be allowed where it is duly found that a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest, but will do substantial justice and be in accordance with the spirit of this chapter.

**5. HAZARD MARKING AND LIGHTING**

Any permit or variance granted may, if the action is deemed advisable to effectuate the purpose of this chapter and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to permit the town at its own expense, to install, operate and maintain thereon the markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

**G. ENFORCEMENT**

It shall be the duty of the Planning Director to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the Planning Director upon a form furnished by him or her. Applications required by this chapter to be submitted to the Planning Director shall be promptly considered and granted or denied by him or her. Applications for action by the Board of Adjustment shall be forthwith transmitted by the Planning Director.

**H. APPEALS**

1. Any person aggrieved, or any taxpayer affected, by any decision of the Planning Director made in his or her administration of this chapter, if of the opinion that a decision of the Planning Director is an improper application of these regulations, may appeal to the Board of Adjustment.
2. All appeals hereunder must be taken within a reasonable time as provided by the rules of the Board of Adjustment, by filing with the Planning Director a notice of appeal specifying the grounds thereof. The Planning Director shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

3. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Planning Director certifies to the Board of Adjustment, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by the order of the Board of Adjustment on notice to the agency from which the appeal is taken and on due cause shown.
4. The Board of Adjustment shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.
5. The Board of Adjustment may, in conformity with the provisions of this chapter, reverse or affirm, in whole or in part, or modify the order, requirement, decision or determination appealed from and may make the order, requirement, decision or determination, as may be appropriate under the circumstances.

**I. JUDICIAL REVIEW**

Any person aggrieved, or any taxpayer affected, by any decision of the Board of Adjustment, may appeal to the County Superior Court as provided in G.S. § 160D-1402 of the Public Laws of the state.

**J. PENALTY**

Each violation of this chapter or of any regulation, order or rules, promulgated hereunder shall be remedied and/or punished under *Chapter 9, ENFORCEMENT*.

## **4.9 FLOOD DAMAGE PREVENTION**

**A. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES**

**1. STATUTORY AUTHORIZATION**

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Chapter 160D; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental the responsibility units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

**2. FINDINGS OF FACT**

- (a) The flood prone areas within the jurisdiction of Wallace are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (b) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

**3. STATEMENT OF PURPOSE**

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- (a) restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- (b) require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (c) control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;

- (d) control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (e) prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

#### 4. OBJECTIVES

The objectives of this chapter are:

- (a) to protect human life and health;
- (b) to minimize expenditure of public money for costly flood control projects;
- (c) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (d) to minimize prolonged business losses and interruptions;
- (e) to minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- (f) to help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (g) to ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

#### B. DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance it's most reasonable application.

**ACCESSORY STRUCTURE (APPURTENANT STRUCTURE):** a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

**ADDITION (TO AN EXISTING BUILDING):** an extension or increase in the floor area or height of a building or structure.

**APPEAL:** a request for a review of the floodplain administrator's interpretation of any provision of this ordinance.

**AREA OF SHALLOW FLOODING:** a designated Zone AO on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

**AREA OF SPECIAL FLOOD HAZARD:** see "Special Flood Hazard Area (SFHA)"

**BASEMENT:** any area of the building having its floor subgrade (below ground level) on all sides.

**BASE FLOOD:** the flood having a one (1) percent chance of being equaled or exceeded in any given year.

**BASE FLOOD ELEVATION (BFE):** a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area", it may be obtained from engineering studies available from a Federal or State or other source using FEMA approved engineering

methodologies. This elevation, when combined with the “Freeboard”, establishes the “Regulatory Flood Protection Elevation”.

BUILDING: see “Structure”

CHEMICAL STORAGE FACILITY: a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

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, or storage of equipment or materials.

DISPOSAL: as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

ELEVATED BUILDING: a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

ENCROACHMENT: the advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

EXISTING MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION: a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the original effective date of the floodplain management regulations adopted by the community.

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

- (1) the overflow of inland or tidal waters; and/or
- (2) the unusual and rapid accumulation of runoff of surface waters from any source.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM): an official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

FLOOD HAZARD BOUNDARY MAP (FHBM): an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

FLOOD INSURANCE means the insurance coverage provided under the National Flood Insurance Program.

FLOOD INSURANCE RATE MAP (FIRM): an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

FLOOD INSURANCE STUDY (FIS): an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

FLOOD PRONE AREA see “Floodplain”

**FLOODPLAIN:** any land area susceptible to being inundated by water from any source.

**FLOODPLAIN ADMINISTRATOR:** the individual appointed to administer and enforce the floodplain management regulations.

**FLOODPLAIN DEVELOPMENT PERMIT:** any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

**FLOODPLAIN MANAGEMENT:** the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

**FLOODPLAIN MANAGEMENT REGULATIONS:** this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

**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 sanitation facilities, 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 one (1) foot.

**FLOOD ZONE:** a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

**FREEBOARD:** the height added to the Base Flood Elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization on the watershed. The Base Flood Elevation plus the freeboard establishes the Regulatory Flood Protection Elevation.

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

**HAZARDOUS WASTE FACILITY:** as defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

**HIGHEST ADJACENT GRADE (HAG):** the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

**HISTORIC STRUCTURE:** any structure that is:

- (a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (b) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

- (c) individually listed on a local inventory of historic landmarks in communities with a Certified Local Government (CLG) Program; or
- (d) certified as contributing to the historical significance of a historic district designated by a community with a Certified Local Government (CLG) Program

**CERTIFIED LOCAL GOVERNMENT (CLG) PROGRAMS:** approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

**LOWEST ADJACENT GRADE (LAG):** the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

**LOWEST FLOOR:** lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of 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 designed to be used with or without a permanent foundation when connected to the required utilities. The term manufactured home does not include a recreational vehicle.

**MANUFACTURED HOME PARK OR SUBDIVISION:** a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MARKET VALUE:** the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

**MEAN SEA LEVEL:** for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

**NEW CONSTRUCTION:** structures for which the start of construction commenced on or after the effective date of the original version of the community's Flood Damage Prevention Ordinance and includes any subsequent improvements to such structures.

**NON-ENCROACHMENT AREA:** the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

**POST-FIRM:** construction or other development for which the start of construction occurred on or after the effective date of the initial Flood Insurance Rate Map for the area.

**PRE-FIRM:** construction or other development for which the start of construction occurred before the effective date of the initial Flood Insurance Rate Map for the area.

**PRINCIPALLY ABOVE GROUND:** that at least 51% of the actual cash value of the structure is above ground.

**PUBLIC SAFETY AND/OR NUISANCE:** anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

RECREATIONAL VEHICLE (RV): a vehicle, which is:

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

Reference Level is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zone A1-A30, AE, A, A99 or AO.

REGULATORY FLOOD PROTECTION ELEVATION: the Base Flood Elevation plus the Freeboard. In Special Flood Hazard Areas where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard. In Special Flood Hazard Areas where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.

REMEDY A VIOLATION: to bring the structure or other development into compliance with State and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

RIVERINE: relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

SALVAGE YARD: any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

SOLID WASTE DISPOSAL FACILITY: as defined in NCGS 130A-290(a)(35), any facility involved in the disposal of solid waste.

SOLID WASTE DISPOSAL SITE: as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

SPECIAL FLOOD HAZARD AREA (SFHA): the land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year, as determined in *Section 4.9(C)(2)* of this ordinance.

START OF CONSTRUCTION INCLUDES SUBSTANTIAL IMPROVEMENT: the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE: a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.



**SUBSTANTIAL DAMAGE:** damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of substantial improvement. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT:** any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- (a) any correction of existing violations of State or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or,
- (b) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

**VARIANCE:** a grant of relief from the requirements of this ordinance.

**VIOLATION:** the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in *Section 4.9(D)-(E)* is presumed to be in violation until such time as that documentation is provided.

**WATER SURFACE ELEVATION (WSE):** the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

**WATERCOURSE:** a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

## **C. GENERAL PROVISIONS**

### **1. LANDS TO WHICH THIS ORDINANCE APPLIES**

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJs) if applicable, of Wallace and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

### **2. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS**

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying, most current, Flood Insurance Rate Maps (FIRM), which are adopted by reference and declared to be a part of this ordinance.

### **3. DEVELOPMENT RESTRICTIONS**

In general, no development is allowed in the Special Flood Hazard Area unless one or more of the following are met:

- (a) The site has an approved, valid site specific vesting plan triggering a vested right and the plan was approved prior to the effective date of this ordinance, including any subsequent amendments thereto.
- (b) The development is for roads, greenways, pedestrian crossings, park-related equipment, or public utilities and facilities such as wastewater, gas, electrical, and water systems that are located and

constructed to minimize flood damage. Structures for pedestrian crossings (e.g. footbridges, etc.), playground equipment, and other similar items are also permitted.

4. COMPLIANCE

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

5. ABROGATION AND GREATER RESTRICTIONS

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

6. INTERPRETATION

In the interpretation and application of this ordinance, all provisions shall be:

- (a) considered as minimum requirements;
- (b) liberally construed in favor of the governing body; and
- (c) deemed neither to limit nor repeal any other powers granted under State statutes.

7. WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Wallace or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

8. PENALTIES FOR VIOLATION

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a violation under this ordinance, remedies and punishments described in *Chapter 9, Enforcement* shall be applied.

**D. ADMINISTRATION**

1. DESIGNATION OF FLOODPLAIN ADMINISTRATOR

The Zoning Officer, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this ordinance.

2. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

The Floodplain Administrator shall perform, but not be limited to, the following duties:

- (a) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.
- (b) Advise permittee that additional Federal or State permits (Wetlands, Endangered Species, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.) may be required, and require that copies of such permits be provided and maintained on file with the floodplain development permit.
- (c) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

- (d) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (e) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of *Section 4.9(E)(4)* are met.
- (f) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Section.
- (g) When the lowest ground elevation of a parcel or structure in a Special Flood Hazard Area is above the Base Flood Elevation, advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the Letter of Map Amendment (LOMA) issued by FEMA in the floodplain development permit file.
- (h) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection.
- (i) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- (j) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (k) Revoke floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- (l) Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (m) Follow through with corrective procedures of *Section 4.9(D)(3)*.
- (n) Review, provide input, and make recommendations for variance requests.

- (o) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with *Section 4.9(C)(2)* of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
- (p) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-F) and Letters of Map Revision (LOMR).

3. CORRECTIVE PROCEDURES

- (a) VIOLATIONS TO BE CORRECTED: When the floodplain administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.
- (b) ACTIONS IN EVENT OF FAILURE TO TAKE CORRECTIVE ACTION: If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner’s last known address or by personal service, stating:
  - i. that the building or property is in violation of the Flood Damage Prevention Ordinance;
  - ii. that a hearing will be held before the floodplain administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,
  - iii. that following the hearing, the floodplain administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.
- (c) ORDER TO TAKE CORRECTIVE ACTION: If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one-hundred-eighty (180) calendar days. Where the floodplain administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser period as may be feasible.
- (d) APPEAL: Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the floodplain administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- (e) FAILURE TO COMPLY WITH ORDER: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

4. VARIANCE PROCEDURES

- (a) The Board of Adjustment as established by Wallace, hereinafter referred to as the “appeal board”, shall hear and decide requests for variances from the requirements of this ordinance.
- (b) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.

- (c) Variances may be issued for:
  - i. the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure.
  - ii. functionally dependent facilities if determined to meet the definition as stated in *Section 4.9(B)* of this ordinance, provided provisions of *Section 4.9(D)(4)(i)(ii, iii, & v)* have been satisfied, and such facilities are protected by methods that minimize flood damages.
  - iii. any other type of development, provided it meets the requirements stated in this section.
  
- (d) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
  - i. the danger that materials may be swept onto other lands to the injury of others;
  - ii. the danger to life and property due to flooding or erosion damage;
  - iii. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - iv. the importance of the services provided by the proposed facility to the community;
  - v. the necessity to the facility of a waterfront location as defined under *Section 4.9(B)* of this ordinance as a functionally dependent facility, where applicable;
  - vi. the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - vii. the compatibility of the proposed use with existing and anticipated development;
  - viii. the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - ix. the safety of access to the property in times of flood for ordinary and emergency vehicles;
  - x. the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - xi. the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
  
- (e) A written report addressing each of the above factors shall be submitted with the application for a variance.
  
- (f) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
  
- (g) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the Base Flood Elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the Base Flood Elevation will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
  
- (h) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
  
- (i) Conditions for Variances:
  - i. Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.

- ii. Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
- iii. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- iv. Variances shall only be issued prior to development permit approval.
- v. Variances shall only be issued upon:
  - (a) a showing of good and sufficient cause;
  - (b) a determination that failure to grant the variance would result in exceptional hardship; and
  - (c) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

## E. PROVISIONS FOR FLOOD HAZARD REDUCTION

### 1. GENERAL STANDARDS

If development is permitted in a Special Flood Hazard Areas the following provisions are required:

- (a) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- (b) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (c) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (d) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, appliances (washers, dryers, refrigerators, freezers, etc.), hot water heaters, and electric outlets/switches.
- (e) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (f) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- (g) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (h) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance.
- (i) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.

- (j) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to Section 4.9(D)(2)(c) of this ordinance.
- (l) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (m) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (n) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (o) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

## 2. SPECIFIC STANDARDS

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in *Section 4.9(C)(2)*, the following provisions, in addition to *Section 4.9(E)(1)*, are required:

- (a) **RESIDENTIAL CONSTRUCTION.** New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in *Section 4.9(B)* of this ordinance.
- (b) **NON-RESIDENTIAL CONSTRUCTION.** New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in *Section 4.9(B)* of this ordinance. Structures located in A, AE and A1-30 Zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with *Section 4.9(E)(8)(c)*. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in *Section 4.9(D)(2)(c)*, along with the operational and maintenance plans..
- (c) **MANUFACTURED HOMES**
  - i. New or replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in *Section 4.9(B)* of this ordinance.
  - ii. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by engineer certification, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by

reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.

- iii. All enclosures or skirting below the lowest floor shall meet the requirements of *Section 4.9(E)(2)(d)(i-iii)*.
- iv. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the floodplain administrator and the local Emergency Management coordinator.

(d) ELEVATED BUILDINGS. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

- i. shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
- ii. shall be constructed entirely of flood resistant materials below the regulatory flood protection elevation;
- iii. shall include, in Zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria;
  - (a) A minimum of two flood openings on different sides of each enclosed area subject to flooding;
  - (b) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
  - (c) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
  - (d) The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;
  - (e) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
  - (g) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

(e) ADDITIONS/IMPROVEMENTS

- i. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
  - (a) not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
  - (b) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- ii. Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.



- iii. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
    - (a) not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
    - (b) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
  - iv. Where an independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for new construction.
- (f) RECREATIONAL VEHICLES. Recreational vehicles shall either:
- i. be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or
- (g) ACCESSORY STRUCTURES. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
- i. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
  - ii. Accessory structures shall not be temperature-controlled;
  - iii. Accessory structures shall be designed to have low flood damage potential;
  - iv. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
  - v. Accessory structures shall be firmly anchored in accordance with *Section 4.9(E)(1)(a)*;
  - vi. All service facilities such as electrical shall be installed in accordance with *Section 4.9(E)(1)(d)*; and
  - vii. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with *Section 4.9(E)(2)(d)(iii)*.

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with *Section 4.9(D)(2)(c)*.

### 3. RESERVED

### 4. FLOODWAYS AND NON-ENCROACHMENT AREAS

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in *Section 4.9(C)(2)*. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in *Section 4.9(E)(1 & 2)*, shall apply to all development within such areas:

- (a) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless it has been demonstrated that:
  - i. the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the floodplain administrator prior to issuance of floodplain development permit, or

- ii. a Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.
- (b) If *Section 4.9(E)(6)(a)* is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
- (c) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
  - i. the anchoring and the elevation standards of *Section 4.9(E)(2)(c)*; and
  - ii. the no encroachment standard of *Section 4.9(E)(6)(a)*.

**F. LEGAL STATUS PROVISIONS**

**1. EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING FLOOD DAMAGE PREVENTION ORDINANCE**

This ordinance in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted January 8, 1987 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of Wallace enacted on January 8, 1987, as amended, which are not reenacted herein are repealed.

**2. EFFECT UPON OUTSTANDING FLOODPLAIN DEVELOPMENT PERMITS**

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the floodplain administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.