CHAPTER 10
FLOOD DAMAGE PREVENTION ORDINANCE

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N. C. General Statutes Reference: 160A

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FLOOD DAMAGE PREVENTION ORDINANCE

ARTICLE 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

SECTION A. STATUTORY AUTHORIZATION.

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

SECTION B. FINDINGS OF FACT.

1. The flood prone areas of Pittsboro are subject to periodic inundation which may result in the loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
2. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

SECTION C. STATEMENT OF PURPOSE.

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

1. restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
2. require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
3. control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of floodwaters;
4. control filling, grading, dredging and all other development that may increase erosion or flood damage; and
5. prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

SECTION D. OBJECTIVES.

The objectives of this ordinance are:

1. to protect human life and health;

2. to minimize the expenditure of public money for costly flood control projects;
3. to minimize the need for rescue and relief efforts associated with flooding which are generally undertaken at the public expense;
4. to minimize prolonged business losses and interruption;
5. to minimize losses to public facilities and utilities such as water and gas mains, electric, telephone, cable and sewer lines, streets and bridges located in flood prone areas;
6. to help maintain a stable tax base by providing for the sound use and development of flood prone areas;
7. to ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

ARTICLE 2. 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 its most reasonable application.

"Accessory Structure (Appurtenant Structure)" means a structure which is 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 accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms or in agricultural districts and may or may not be located on the same parcel as the farm dwelling or shop building.

"**Addition (to an existing building)**" means an extension or increase in the floor area or height of a building or structure.

"Appeal" means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance.

"Area of Shallow Flooding" means a designated Zone AO on the 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.

"Basement" means any area of a building having its floor subgrade on all sides.

"Base Flood" means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

"Base Flood Elevation (BFE)" means a determination as published in the Flood Insurance Study of the water surface elevations of the base flood. This elevation, when combined with the "Freeboard", establishes the "Regulatory Flood Protection Elevation".

"Building" see "Structure".

"Chemical Storage Facility" means 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" means 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) means 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 it may enter the environment, be emitted into the air or discharged into any waters, including groundwater.

"Elevated Building" means a non-basement building which has its reference level raised above ground level by foundation walls, shear walls, posts, pilings or columns.

"Encroachment" means 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" means 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 effective date of the floodplain management regulations adopted by Pittsboro.

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

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

"Flood Boundary and Floodway Map (FBFM)" means an official map 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.

"Flood Insurance" means the insurance coverage provided under the National Flood Insurance Program.

"Flood Insurance Rate Map (FIRM)" means an official map issued by the Federal Emergency Management Agency on which both the Special Flood Hazard Area and the risk premium zones applicable to Pittsboro are delineated.

"Flood Insurance Study (FIS)" means an examination, evaluation and determination of flood hazard areas, corresponding water surface elevations (if appropriate), flood insurance risk zones and other flood data 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.

"Floodplain" or "Flood Prone Area" means any land area susceptible to being inundated by water from any source.

"Floodplain Administrator" is the individual appointed to administer and enforce the floodplain management regulations.

"Floodplain Development Permit" means 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" means 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, floodplain management regulations, and open space plans.

"**Floodplain Regulations**" means 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**" means any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities, or structures with their contents.

" **Floodway**" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order for discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

"**Flood Zone**" means 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**" means the height added to the Base Flood Elevation (BFE) to account for watershed development as well as limitations of the engineering methodologies for the determination of flood elevations. The freeboard plus the Base Flood Elevation establishes the "Regulatory Flood Protection Elevation".

"**Functionally Dependent Facility**" means 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 Management Facility**" means a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste as defined in NCGS Article 9 of Chapter 130A.

"**Highest Adjacent Grade (HAG)**" means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

"**Historic Structure**" means 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 preliminary 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 are 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 Preservations Act of 1966 as amended in 1980.

"**Lowest Adjacent Grade (LAG)**" means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building. For Zones A and AO, use the natural grade prior to construction.

"Lowest Floor" means the subfloor, top of slab or grade 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" means a structure, transportable on one 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 "recreation vehicle".

"Manufactured Home Park or Subdivision" means a parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale.

"Market Value" means the building value, excluding the land value and that of any accessory structures or other improvements on the lot, established by independent certified appraisal, replacement cost depreciated by age of building and quality of construction (Actual Cash Value), or adjusted tax assessed values.

""Mean Sea Level" means, for purpose of the NFIP, 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" means structures for which the "start of construction" commenced on or after the effective date of the original version of this ordinance and includes any subsequent improvements to such structures.

"Nonconforming Building or Development" means any legally existing building or development which fails to comply with the current provisions of this ordinance.

"Non-Encroachment Area" means 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" means construction or other development which started on or after the effective date of the initial Flood Insurance Rate Map for the area.

"Pre-FIRM" means construction or other development which started before the effective date of the initial Flood Insurance Rate Map for the area.

"Principally Above Ground" means that at least 51% of the actual cash value of the structure is above ground.

"Public Safety" and/or Nuisance" means 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)" means 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) not designed for use as a permanent primary dwelling, but as temporary living quarters for recreational camping, travel, or seasonal use.

"Reference Level" is the portion of a structure or other development that must be compared to the regulatory flood protection elevation to determine regulatory compliance. For structures within Special Flood Hazard Areas designated as Zone A1, A30, AE, A, A99 or AO, the reference level is the top of the lowest attendant utility including ductwork, whichever is lower.

"Regulatory Flood Protection Elevation" means the elevation, in relation to mean sea level, which the reference level of all structures and other development located within Special Flood Areas must be protected. Where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard. Where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.

"Remedy a Violation" means 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" means relating to. Formed by, or resembling a river (including tributaries), stream, brook, etc.

"Salvage Yard" means 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" means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a) (35).

"Solid Waste Disposal Site" as defined in NCGS 130A-290(a)(36) means any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

"Special Flood Hazard Area (SFHA)" means the land in the floodplain subject to a one (1%) percent **or** greater chance of being flooded in any year as determined in Article 3, Section B of this ordinance.

"Start of Construction" includes substantial improvement, and means 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 permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation; 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" means a walled and roofed building, a manufactures home. Or a gas or liquid storage tank that is principally above ground. For floodplain management purposes, principally above ground means that at least 51% of the actual cash value of the structure is above ground.

"Substantial Damage" means damage of any origin sustained by a structure during any one year period whereby the cost of restoring the structure to its before damage condition would 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 ten year period for which the cost of repairs at the time of such flood event, on the average, equals or exceeds twenty five percent of the market value of the structure before the damage occurred.

"Substantial Improvement" means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a 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 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 a continued designation as a historic structure.

"Variance" is a grant of relief from the requirements of this ordinance.

"Violation" means the failure of a structure or other development to be fully complaint with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 presumed to be in violation until such time as that documentation is provided.
"Water Surface Elevation (WSE) means the height, in relation to mean sea level (existing grade in case of Zone AO), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

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

Water Surface Elevation (WSE)" means the height, in relation to mean sea level (existing grade in case of Zone AO), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

ARTICLE 3. GENERAL PROVISIONS.

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES.

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJ) of the Town of Pittsboro.

SECTION B. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS.

The Special Flood Hazard Areas are those identified by the Federal Emergency Management Agency (FEMA) or produced under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Hazard Boundary Map (FHBM) or Flood Insurance Study (FIS) and its accompanying flood maps as the Flood Insurance Rate Map (s) (FIRM) and /or the Flood Boundary Floodway Map(s)(FHBM), for the Town of Pittsboro dated February 2, 2007, which, with

accompanying supporting data, and any revision thereto, including Letters of Map Amendment or Revision, are adopted by reference and declared to be a part of this ordinance. The Special Flood Hazard Areas also include those defined through standard engineering analysis for private developments or by governmental agencies, but which have not yet been incorporated in the FIRM. This includes, but is not limited to:

(1) detailed flood data generated as a requirement of Article 4, Section C(11&12) of this Ordinance;
(2) preliminary FIRMs where more stringent than the effective FIRM; or
(3) post-disaster Flood Recovery Maps.

SECTION C. ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas as determined in Article 3, Section B.

SECTION D. 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.

SECTION E. 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.

SECTION F. 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 statues.

SECTION G. WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by protection 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 the Town of Pittsboro 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.

SECTION H. PENALTIES FOR VIOLATION

Violation of the provision 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 misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fines not more than $50.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Pittsboro from taking such other lawful action as is necessary to prevent or remedy any violation.

ARTICLE 4. ADMINISTRATION.

SECTION A. DESIGNATION OF FLOODPLAIN ADMINISTRATOR.

The Floodplain Administrator is hereby appointed to administer and implement the provisions of this ordinance. The Administrator shall be designated by the Town Manager.

SECTION B. CONSTRUCTION WITHIN FLOODWAYS, NON-ENCROACHMENT AREAS AND FLOODPLAINS RESTRICTED.

(a)No Building, zoning, Special Use or Conditional Use Permit may be issued for any development within a floodway, non-encroachment area or the Special Flood Hazard Area (100 year floodplain). Notwithstanding the foregoing, development may be authorized within the floodplain where either: (1) a valid permit was issued prior to the effective date of this section; or (2) where an existing lot of record is rendered undevelopable due to the prohibition of new development within the floodplain. In situations where development is allowed, the property shall be developed in such a way that has the least impact possible on the floodplain, e.g., a structure shall encroach into the floodplain only to the extent that it must in order to meet setbacks. Any encroachment into the floodplain shall be built at least two (2) feet above BFE. In addition, no permit shall be issued for any development within a floodplain until the permit-issuing authority has reviewed the plans for any such development to assure that:

(1) The proposed development is consistent with the need to minimize flood damage;
(2) All public utilities and facilities such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
(3) Adequate drainage is provided to minimize or reduce exposure to flood hazards;
(4) All necessary permits have been received from those agencies from which approval is required by federal or state law;
(5)With respect to mobile homes or mobile home parks that are non-conforming because they are located within a floodplain; mobile homes may be relocated in such parks only if they comply with the provisions of Subsection (e);
(6) One residential accessory structure shall be allowed within the floodplain provided it is firmly anchored to prevent flotation;
(7) Anchoring of any accessory building may be done by bolting the building to a concrete slab or by means of over-the-top ties providing a minimum of two ties are used with adequate force to secure the building;
(8) The proposed structures are designed or modified and adequately anchored to prevent flotation, collapse or lateral motion;
(9) The structures are constructed with materials and utility equipment resistant to flood damage;

(10) The structures are constructed by methods and practices that minimize flood damage;

(11) 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 the 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, dishwashers, etc.), water heaters and electrical outlets/ switches;

(12) Openings below flood level are required for elevated structures;

(13) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted except by variance. A structure or tank for chemical or fuel storage incidental to an allowed use or 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 this ordinance.

(b) No building may be constructed and no substantial improvement of an existing building may occur within any floodway or non-encroachment area.

(c) No new residential building may be constructed and no substantial improvement of a residential building may take place within any floodplain unless the lowest floor (including basement) of the building or improvement is elevated to two (2) feet above BFE.

(d)No new residential building may be constructed and no substantial improvement of a non-residential building may take place within any floodplain unless the lowest floor (including basement) of the building or improvement is elevated or floodproofed to or above the base flood level. Where floodproofing is used in lieu of elevation, a registered professional engineer or architect shall certify that any new construction or substantial improvement has been designed to withstand the flood depths, pressure, velocities, impact, and uplift forces associated with the base flood at the location of the building and that the walls below the base flood level are substantially impermeable to the passage of water.

(e) Notwithstanding any other provision of this ordinance, no mobile home may be located or relocated within that portion of the floodplain outside the floodway or non-encroachment area unless the following criteria are met:

1. Ground anchors for tie downs are provided.
2. The following tie down requirements are met:
   (i) Over the top ties are required at each of the four corners of the mobile home, with one additional tie per side at an intermediate location for mobile homes less than 50 feet long; two additional ties per side are required for mobile homes more than 50 feet long;
   (ii) Frame ties are required in addition to over-the-top ties;
   (iii) All components of the anchoring must be capable of carrying a force of 4800 pounds.
3. Lots or pads are elevated on compacted fill or by any other method approved by the administrator so that the lowest habitable floor of the mobile home is two feet above the base flood level. However, no new fill may be added to comply with this section.
4. Load-bearing foundation supports such as piers or pilings must be placed on stable soil or concrete footings no more than ten (10) feet apart, and if the support height is greater than 72 inches, the support must contain steel reinforcement.

(f) No fill dirt may be added within any floodway, non-encroachment area or floodplain.
(g) The fully enclosed area of new construction and substantially improved structures which is below the lowest floor:

1. shall not be designed or used for human habitation but shall only be used for the 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 area of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
2. shall be constructed entirely of flood resistant materials below the regulatory flood protection elevation;
3. shall include flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of flood waters. To meet this requirement, the openings must either be certified by a registered professional engineer or architect or meet or exceed the following minimum design criteria:
    (i) There shall be a minimum of two flood openings on different sides of each enclosed area subject to flooding.
    (ii) 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.
    (iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit.
    (iv) The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade.
    (v) Flood openings may be equipped with screens, louvers or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
    (vi) 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.

(h) Recreational vehicles shall either:

1. 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
2. meet all the requirements for new construction.

(i) Additions/Improvements.

1. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements are in combination with any interior modifications to the existing structure are:
    (i) 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.
    (ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

2. Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall comply only the addition to comply with the standards for new construction.
3. 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:
    (i) not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
    (ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
4. 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(s) must comply with the standards for new construction.

SECTION C. SPECIAL PROVISIONS FOR SUBDIVISIONS.

(a)An applicant for a Minor Subdivision or for Final Plat approval for a Major Subdivision shall be informed by the Administrator of the use and construction restrictions contained in this ordinance if any portion of the land to be subdivided lies within a floodway, non-encroachment area or floodplain.
(b)Final Plat approval for any subdivision containing land that lies with a floodway, non-encroachment area or floodplain shall not be given unless the plat shows the boundary of the floodway, non-encroachment area or floodplain and contains in clearly discernable print the following statement: "Use of land within a floodway, non-encroachment area or floodplain is substantially restricted by Chapter 10 of the Codified Ordinances of the Town of Pittsboro and relevant section of the State of North Carolina Building Code."
(c)Subject to the following, approval of a Minor Subdivision or Final Plat approval for a Major Subdivision may not be granted if:

1. The land to be subdivided lies within a zone where residential uses are permissible and it reasonably appears that the subdivision is designed to create residential building lots, and
2. Any portion of one or more of the proposed lots lies within a floodway, non-encroachment area or floodplain, and
3. It reasonably appears that one or more lots described in Subdivisions (1) and (2) of this subsection could not practicably be used as a residential building site because of the restrictions set forth in this Ordinance.

The foregoing provision shall not apply if the developer demonstrates to the reasonable satisfaction of the approving authority that the proposed lots are not intended for sale as residential building lots.
(d) In areas with floodplains without established Base Flood Elevations (BFE), all subdivisions, manufactured home parks and other development proposals shall provide BFE data if the development is greater than five(5) acres or has more than fifty (50) lots or manufactured home sites. Such BFE data shall be adopted by reference to be utilized in implementing this ordinance.

SECTION D. DUTIES AND RESPONSIBILTIES OF THE FLOODPLAIN ADMINISTRATOR

The floodplain administrator shall perform, but not be limited to, the following duties:

(1) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Area to assure that the requirements of this ordinance have been satisfied.

(2) Advise permittee that additional Federal or State permits (Wetlands, Endangered Species, Erosion and Sedimentation Control. Riparian Buffers, Mining, etc.) may be required that copies of such permits be provided and maintained on file with the floodplain development permit.

(3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

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

(5) Prevent encroachment s into floodways and non-encroachment area unless the certification and flood hazard reduction provisions of this ordinance are met.

(6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new or substantially improved structured, in accordance with this ordinance.

(7) Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been floodproofed, in accordance with this ordinance.

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

(10) 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 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 ordinance.

(11) When Base Flood Elevation (BFE) data has not been provided in accordance with Article 3, Section B, obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Article 5, Section D(2)(b), in order to administer the provisions of this ordinance.

(12) When Base Flood Elevation (BFLE) data is provided but not no floodway nor non-encroachment area data has been provided in accordance with Article 3, Section B, obtain, review and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.

(13) When the exact location of boundaries of the Special Flood Hazard Areas conflict with the current, natural topography information at the site, the property owner may apply and be approved for a Letter of Map Amendment (LOMA) by FEMA. Maintain a copy of the Letter of Map Amendment (LOMA) issued by FEMA in the floodplain development permit file.

(14) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection.

(15) 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 purpose of inspection or other enforcement action.

(16) 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 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.

(17) 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.

(18) Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his inspections department shall have a right; upon presentation of paper 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.

(19) Follow through with corrective procedures of Article 4, Section D.

(20) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and/ or other official flood maps/studies adopted under Article 3, Section B of this ordinance, including any revisions thereto including Letters of Map Change, issued by State and/or FEMA. Notify State and FEMA of mapping needs.

SECTION D. CORRECTIVE PROCEDURES

(1) **Violations to be Corrected:** When the floodplain administrator finds violations applicable State and local laws, it shall be his or her duty to notify the owner of occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law pertaining to their property.

(2) **Action 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;

- (a) that the building or property is in violation of the Flood Damage Prevention Ordinance;
- (b) that a hearing will be held before the floodplain administrator at a designated place and time, not later than ten (10) days after 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,
- (c) 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.

(3) **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, he or she 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) days, nor more than 180 days. Where the floodplain administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.

(4) **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.

(5) **Failure to Comply with Order:** If the owner of a building or property fails to comply with an order of the governing body following an appeal, he or she shall be guilty of a misdemeanor and shall be punished at the discretion of the court

SECTION E. VARIAINCE PROCEDURES:

(1) The Board of Adjustments as established by the Town of Pittsboro, hereinafter referred as the "appeal board", shall hear and decide requests for variances from the requirements of this ordinance.

(2) Any person aggrieved by the decision of the appeal board to the Court, as provided in Chapter 7 A of the North Carolina General statues.

(3) Variances may be issued for:

(a) the repair of 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.

(b) functionally dependant facilities if determined to meet the definition as stated in Article 2 of this ordinance.

(c) any other type of development provided it meets requirements stated in this ordinance.

(4) 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:

(a) the danger that materials may be swept onto other lands to the injury of others;

(b) the danger to life and property due to flooding or erosion damage;

(c) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(d) the importance of the services provided by the proposed facility to the community;

(e) the necessity to the facility of a waterfront location as defined under Article 2 of this ordinance as a functionally dependant facility, where applicable;

(f) the availability of alternative locations, not subject and anticipated development;

(g) the compatibility of the proposed use with existing and anticipated development;

(h) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(i) the safety of access to the property in times of flood for ordinary and emergency vehicles;

(j) the expected heights, velocity, duration, rate of rise, and sediment transport of the effects of wave action, if applicable, expected at the site; and

(k) 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.

5. A written report addressing each of the above factors shall be submitted with the application for a variance.

6. 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.

7. Variances shall not be issued within any designated floodway or non-encroachment area if any increase in flood levels during the base flood discharge would result.

8. **Conditions for Variances:**
   (a) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
   (b) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
   (c) Variances shall only be issued upon:
      i) a showing of good and sufficient cause;
      ii) a determination that failure to grant the variance would result in exceptional hardship; and
      iii) 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, caused fraud on or victimization of the public, or conflict with existing local laws or ordinance.
   (d) 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 built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced reference level elevation. Such notification shall be maintained with a record of all variance actions.
   (e) 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.

9. A variance may be issues for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditioned are met.
   (a) The use serves a critical need in the community.
   (b) No feasible locations exist for the use outside the Special Flood Hazard Area.
   (c) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.
   (d) The use complies with all other applicable federal, State and local laws.
   (e) The Town of Pittsboro has notified the Secretary of the North Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

ARTICLE 5. LEGAL STATUS PROVISIONS.

SECTION A. 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 on , 2007 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. All provisions of the flood damage prevention ordinance of the Town of Pittsboro enacted on , 2007, as amended, which are not reenacted herein are repealed.

SECTION B. 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 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 outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

SECTION C. EFFECTIVE DATE.

This ordinance shall become effective upon adoption.

SECTION D. ADOPTION CERTIFICATION.

I hereby certify that this is a true and correct copy of the flood damage prevention ordinance as adopted by the Board of Commissioners of Pittsboro, North Carolina, on the _____day of _____.2007.

WITNESS my hand and the official seal of _____, this the day of , 2007.