**TOWNSHIP OF UPPER**

**CAPE MAY COUNTY**

**O R D I N A N C E**

**ORDINANCE NO. 008-2019**

**RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER XIX (LAND SUBDIVISION AND SITE PLAN) AND CHAPTER XX (ZONING) OF THE CODE OF UPPER TOWNSHIP**

**WHEREAS**, the Township Planning Board reviewed and discussed the proposed zoning ordinance amendment and adopted a resolution approving this proposed zoning ordinance amendment finding said amendment is consistent with the Upper Township Master Plan Reexamination; and

**WHEREAS**, the Township Committee finds that the zoning ordinance revisions herein are substantially consistent with the Land Use Plan Element and Master Plan Reexamination; and

**WHEREAS**, the municipal clerk has provided notice of the change in permitted conditional uses in the Resort Commercial (RC) zone pursuant to N.J.S.A. 40:55D-62.1;

**BE IT ORDAINED** by the Township Committee, in the Township of Upper, County of Cape May and State of New Jersey, as follows:

**SECTION 1.** Chapter 19 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be amended and supplemented as hereinafter provided:

Revise the following definition in **Section 19-3b. Definitions**:

*Change of Use* shall mean any change of a commercial property resulting in any enlargement of any building or structure; the addition of any other business entity onto a commercial property; any modification to a commercial property which will result in an increase in required off street parking or sanitary flow.

**SECTION 2.** Chapter 20 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be amended and supplemented as hereinafter provided:

Add the following definitions to **Section 20-2.1 Definitions of Township Wide-Application**:

*Coastal A Zone* shall mean the portion of the Special Flood Hazard Area (SFHA) starting from a Velocity (V) Zone and extending up to the landward Limit of the Moderate Wave Action delineation. Where no V Zone is mapped the Coastal A Zone is the portion between the open coast and the landward Limit of the Moderate Wave Action delineation. Coastal A Zones may be subject to wave effects, velocity flows, erosion, scour, or a combination of these forces. Construction and development in Coastal A Zones is to be regulated the same as V Zones/Coastal High Hazard Areas.

*Cupola* shall mean a decorative roof structure that has a small roof and the shaft that supports it sitting on top of a building. A Cupola shall be decorative only, be no more than 4 feet above the maximum building height (not including spire or weather vane) and contain no more than twenty-five (25) Square Feet of space. If a cupola provides rooftop access in the RR and RC district it shall not exceed the maximum permitted building height.

*Elevated building* shall mean a non-basement building (a) built in the case of a building in an area of special flood hazard to have the top of the elevated floor, or in the case of a building in a coastal high hazard area or Coastal A Zone, to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the base flood elevation plus freeboard by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water; and (b) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood.  In an area of special flood hazard, "elevated building" shall also include a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters.  In areas of coastal high hazard and Coastal A Zones, "elevated building" shall also include a building otherwise meeting the definition of "elevated building" even though the lower area is enclosed by means of breakaway walls.

*Floor Area Ratio (FAR)* shall mean all building area in a principal structure above Flood Protection Area divided by the lot area. In calculating FAR attics, elevators, and decks/ porches shall not be included, Additionally, when located below the Flood Protection Elevation, storage areas and garages shall not be included in the FAR. The value in the FAR numerator shall be the area (in square feet) established by measuring from the exterior faces of exterior walls and shall include all building area having a floor to ceiling joist height of seven feet (7’) and greater (if attics have a floor to ceiling height of seven-feet or greater they shall be included in the total floor area).

*Open Deck* shall mean an exterior part of a building outside of and extending beyond the exterior walls of the building, the exterior boundaries of which are completely and permanently open to the outside air and shall not have any enclosed space below or roof above; provided that an open deck may have a solid wall in lieu of a railing, which wall extends not more than 36 inches above the floor of the deck. Attached frames for screens and/or awnings are not permitted whether permanent or temporary.

*Storage Container* shall mean any container, semi-trailer (with or without wheels), storage unit or portable structure designed to be used on a temporary basis an without a foundation for the purpose of storing tangible property and not for occupancy by persons.

*Tractor Trailer* shall mean any semi-trailer (with or without wheels) to be used for the purpose of storing tangible property.

*Trailer* shall mean any trailer, boat, boat trailer, camper, travel trailer, recreational vehicle, motor home, jet ski, jet ski trailer, utility trailer or equipment trailer.

Revise the following definitions in **Section 20-2.1 Definitions of Township Wide-Application**:

*Area of special flood hazard* shall mean the land in the floodplain within a community subject to a one (1%) percent or greater chance of flooding in any given year. It is shown on the FIRM as Zone V, VE, V1-30, A, AO, A1‑A30, AE, A99, or AH.

*Base flood elevation* shall mean the flood elevation shown on a published Flood Insurance Study (FIS) including the Flood Insurance Rate Map (FIRM). For zones AE, AH, AO, and A1-30 the elevation represents the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year. For zones VE and V1-30 the elevation represents the stillwater elevation (SWEL) plus wave effect (BFE = SWEL + wave effect) resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

*Building coverage* shall mean the square footage or other area measurement by which all buildings occupy a lot as measured on a horizontal plane around the periphery of the foundations and including the area under the roof of any structure supported by columns, but not having walls, as measured around the outside of the outermost extremities of the roof above the columns. In the RR district open decks as defined herein are exempt from building coverage and shall be included in lot coverage.

*Building height* shall mean the vertical distance measured to the highest point from the mean elevation of the finished grade five (5') feet away from the foundation along the side(s) of building facing a street or a street line, whichever is closer to the foundation. On a corner lot, the height shall be measured on the street having the greatest slope. In all cases where this Chapter provides for height limitations by reference to specified height the intent is to limit height to the specified maximum footage.  Properties located in the special flood hazard area or the advisory flood hazard area shall have the height measured from the flood protection elevation, but properties in the RR and RC zoning districts shall be limited to two (2) stories above the flood protection elevation except as provided in Section 20-4.5b2(d)(iii).

*Flood protection elevation* shall mean the elevation that a structure must be elevated to in all special flood hazard areas and advisory flood hazard areas. Said elevation shall be two (2’) foot higher than the best available flood hazard data elevation.

*Story* shall mean that portion of a building included between the surface of any floor and the surface of the next floor above it or, if there is no floor above it, then the space between the floor and the ceiling next above it. For the purpose of this Chapter, the interior of the roof shall not be considered a ceiling. A half-story is the area under a pitched roof at the top of a building, the floor of which is at least four (4') feet, but no more than six (6') feet, below the plate.

Delete the following definition in **Section 20-2.1 Definitions of Township Wide-Application**:

*Habitable space*shall mean a space in a building for living, sleeping, eating or cooking. Garage, storage, stairs, halls or utility and other similar spaces are not considered habitable spaces.

*Story, habitable* shall mean a story that has more than ten (10%) percent of the gross building floor area is considered a habitable story.

Revise **Section 20-4.5 Resort Districts: “RR” Resort Residential and “RC” Resort Commercial** as follows:

**20-4.5 Resort Districts: "RR" Resort Residential and "RC" Resort Commercial.**

a.     *Purpose.*The purpose of the "RR" and "RC" Resort Districts are to provide for development specifically related to the barrier beach community of Strathmere and Whale Beach. The purpose of the "RR" District is to provide for the continuance of single-family dwellings on Strathmere and Whale Beach. Building coverages, Floor Area Ratios and heights are utilized to ensure the scale of the residential structures maintain the charm of Strathmere & Whale Beach and not result in larger structures. The purpose of the "RC" District is to provide locations on Strathmere where relatively small retail and service establishments may be located. It is intended that any development will take place in accordance with the requirements specified under the FEMA Flood Hazard Regulations in recognition of the precarious environmental situation. Additionally, minimum ground floor elevations are established to ensure protection against flooding and allow for the continued improvement of street networks.

b.     *"RR" Resort Residential District.*

1.     Permitted Uses. The permitted uses pertaining to the "RR" Resort Residential District is provided on Schedule A Residential Districts—Permitted Principal, Conditional and Accessory Uses except as modified or supplemented by this section.

2.    Area and Yard Requirements. The area and yard requirements pertaining to all permitted uses in the "RR" District are provided on Schedule C Area and Yard Requirements for Zone Districts\* except as modified or supplemented by the specific standards of the RR district under 20-4.5(b) in its entirety:

(a)     Lot depth: Any existing lot appearing on the Tax Map as of July 1, 1995 which has a depth of ninety-five (95') feet and a minimum frontage of forty (40') feet shall be deemed to meet the requirements of this section. (All lots located in Strathmere on the west side of Commonwealth Avenue generally have a depth of ninety-five (95') feet.

(b) Open decks may encroach into the required rear yard setback a distance of ten (10’) feet. Roof top decks are permitted provided they do not exceed 25% of the total building footprint.

(c) A maximum building coverage of 27% is permitted for lots 8,000 square feet and less. Lots over 8,000 square feet in area shall not exceed a maximum building coverage of 20%. Open decks are excluded from the building coverage in the RR district or in the RC district when developed as single-family detached residential.

(d) A maximum Floor Area Ratio (FAR) of 0.54 is permitted on lots 8,000 square feet and less. Lots over 8,000 square feet in area shall not exceed a maximum Floor Area Ratio (FAR) of 0.40.

(i) In calculating the floor area ratio decks/porches are excluded from the total floor area.

(ii) If a property owner encloses a deck or porch that area shall become part of the calculated floor area and subject to the maximum FAR.

(iii) Foyers, habitable space and storage areas are permitted above the flood protection elevation on the ground floor with two (2) stories above provided such areas do not exceed more than 30% of the total floor area on the ground level. All area above the flood protection elevation shall be included in the FAR calculation as floor area.

(e) Lots over 8,000 square feet in area shall require a twelve (12’) foot side yard setback.

3. Building Height

(a) Buildings shall not be more than thirty-five (35) feet above the Flood Protection Elevation.

(b) Roof structures or cupolas for stairway or elevator access are not permitted above the maximum permitted building height.

(c) No more than eighteen (18) inches of exposed rail is permitted on roof decks.

(d) Any building having a roof slope less than 4:1 for more than 25% of the building shall be considered a flat roof and the prescribed building height limit shall be reduced by four (4') feet

(e) Building height shall be measured from the Flood Protection Elevation.

4.     Minimum Gross Floor Area.Minimum gross floor area for a single-family detached dwelling shall be one thousand (1,000) square feet.

5.    Private residential swimming pools are prohibited in the "RR" District.

6. Garages shall not be converted to storage space.

c.     *"RC" Resort Commercial District.*

1.     Permitted Uses. The permitted uses pertaining to the "RC" Resort Commercial District are provided on Schedule B Commercial and Mixed Use Districts Permitted Principal Conditional and Accessory Uses except as modified or supplemented by this section.

2. Conditional Use. Single-Family Detached Residential uses in the RC district are a permitted conditional use except in Block 850, with the conditions being the standards under Section 20-4.5(b). Any variation from these standards require a variance under N.J.A.C. 40:55D-70d from the Board of Adjustment.

3.    Area and Yard Requirements. The area and yard requirements pertaining to all permitted uses in the "RC" District are provided on Schedule C Area and Yard Requirements for Zone Districts except as modified or supplemented by this section.

4. Building Height

(a) Buildings shall not be more than thirty-five (35’) feet above the Flood Protection Elevation.

(b) Roof structures or cupolas for stairway or elevator access are not permitted above the maximum permitted building height.

(c) No more than eighteen (18) inches of exposed rail is permitted on roof decks.

(d) Any building having a roof slope less than 4:1 for more than 25% of the building shall be considered a flat roof and the prescribed building height limit shall be reduced by four (4') feet.

(e). Building height shall be measured from the Flood Protection Elevation.

5.   General Requirements.

(a) One (1) building may contain more than one (1) use provided that the total building coverage of the combined uses does not exceed the maximum building coverage specified for the district and, further, that each use occupies a minimum gross floor area of five hundred (500) square feet.

(b) No merchandise, products or similar material or objects shall be displayed or stored outside unless appropriately screened and maintained. Any use resulting in the storage of vehicles outside shall have such area entirely enclosed by a fence, wall, plant material or combination thereof in order to provide a visual barrier between the storage areas and any street, residential zoning district or existing residential use. Such outside storage area shall not exceed thirty (30%) percent of the lot area and shall be located in the rear yard only.

(c)    All buildings shall be compatibly designed whether constructed all at one time or in stages over a period of time. All building walls facing any street or residential district line shall be suitably finished for aesthetic purposes which shall not include unpainted or painted cinder block or concrete block walls.

(d)    All areas not utilized for buildings, parking, loading, access aisles and driveways or pedestrian walkways shall be suitably landscaped with shrubs, ground cover, seeding or similar plantings and maintained in good condition.

(e)   Each activity shall provide for off-street loading and unloading with adequate ingress and egress from streets and shall provide for such an area at the side or rear of the building.

(f)     There shall be at least one (1) trash or garbage pickup location provided by each building which shall be separated from the parking spaces by either a location within the building or in a pickup location outside the building. The trash and/or garbage shall be stored in a steel-like, totally enclosed container located in a manner to be obscured from view from parking areas, streets and adjacent residential uses or zoning districts by a fence, wall, planting or combination of three (3). If located within the building, the doorway may serve both the loading and trash/garbage functions. If a container is used for trash/garbage functions and is located outside the building, it may be located adjacent to or within the general loading area(s) provided the container in no way interferes with or restricts loading and unloading functions.

6.      Private residential swimming pools are prohibited in the "RC" District.

1. Stormwater Control
2. Each property shall provide stormwater control to help alleviate the stormwater runoff in the RC and RR zones as set forth below.
3. Stormwater control shall meet Section 19-7.7 for all new development or shall provide the following minimum which the Municipal Engineer has calculated to meet the standards:
4. Provide drywell constructed in accordance with NJAC 7:8-5.9(a)a.iii.

(b) Drywell shall be at least one hundred feet (100’) of 24”x24” clean stone trench with 6” perforated pipe connected to downspouts that direct the runoff from at least 90% of the roof area.

(c) Prior to placement of stone in the drywell the excavation shall be inspected by the Municipal Engineer to verity that the soils meet the permeability standards of NJAC 7:8.

1. Ground Floor Elevation
2. All new construction and substantial improvement to any structure shall have the ground floor or lowest finished floor elevated to Elevation 7.0 N.A.V.D. or higher except if the following conditions are meet:
   1. If the change in slope from the roadway to ground floor Elevation 7.0 N.A.V.D. shall be more than two (2’) feet; and
   2. If the ceiling height of the ground floor and all door jamb headers are constructed to allow for future construction of a ground floor at Elevation 7.0 N.A.V.D. without having to raise the entire structure.

Add the following subsections to **Section 20-5.1 Accessory Buildings**:

e. Storage container. Shall be permitted on a lot by permit from the Zoning Official for a period up to forty-five (45) days during any 365 day period.

f. Tractor trailers shall be prohibited. Existing tractor trailers must show conformance with Section 20-5.6.

Add the following subsection to **Section 20-5.5a Lighting**:

To control light spillage off-premises onto adjacent properties or streets, the maximum vertical illumination, when measured at a point five feet within the adjacent property line at a height of five feet and facing the light fixture(s), shall be no greater than 0.1 vertical footcandles.

Add the following subsection to **Section 20-5.10a Signs**:

15. Temporary signs for advertising contractor services shall be permitted in accordance with the following:

(i). Sign may be placed for a period of thirty (30) days after a Certificate of Occupancy or Approval has been issued (permanent or temporary) or thirty (30) days for work that does not require a construction permit at a residence where the work is being performed.

(ii). No more than five (5) signs may be placed throughout the Township at any given time for a single contractor.

(iii). The sign shall be non- illuminated, not larger than four (4) square feet in area.

(iv). Only one contractor sign may be placed at any given residence unless the work being performed is in conjunction with a construction permit and all signs must be placed on a common sign board no larger than thirty-two (32) square feet in size.

(v). The Zoning Officer shall be notified in writing before the sign is placed at the residence.

16. Flags. Decorative or informational flags such as "open" or "welcome," with a limit of one (1) flag per business.  Flags and flagpoles shall not be in the right-of-way.

Revise the following in **Section 20-6.3 Height Limits**:

* 1. No building shall exceed the height limits as prescribed in Section 20-4.
  2. Roof structures for the housing of stairways, tanks, ventilating fans, air conditioning equipment or similar equipment required to operate and maintain the building; skylights; spires; cupolas; flagpoles; chimneys; or similar structures may be erected above the height limits prescribed by this Chapter, but in no case more than twenty-five (25%) percent more than the maximum height prescribed for the use in the district. Farm silos shall have no height restrictions. Roof structures or cupolas for stairway or elevator access are not permitted above the required building height in the RR and RC Zones.
  3. Any building having a roof slope less than 4:1 for more than 25% of the building shall be considered a flat roof and the prescribed building height limit in Section 20-4 shall be reduced by four (4') feet.

Revise and add the following subsections to **Section 20-11.1b Zoning Permit Required**:

1. Creation, construction, excavation, erection, alteration, conversion or enlargement of any building, structure, land or part thereof.
2. Changing or allowing a change of use as defined by this ordinance.
3. Unchanged.
4. Unchanged.
5. Any change of occupancy from one permitted use to another.

Revise **Section Schedule A** as follows:

Remove Pole Barns and Note #8

Revise Note # 4 – Trailers to be parked or stored in the rear and side yards only. Their dimensions shall not be counted in determining the total building coverage and shall not be used for temporary or permanent living quarters while situate on a lot. Tractor Trailers are not permitted.

**SECTION 3: Effective Date:** This ordinance shall take effect immediately upon the following publication as required by law.

**SECTION 4:** **REPEALER:** All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency only.

**SECTION 5:** **SEVERABILITY:** If any section, paragraph, subdivision, subsection, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

**SECTION 6: CODIFICATION**: This Ordinance shall be codified in the Upper Township Code at the sections referred to above.

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BARBARA L. YOUNG, Township Clerk RICHARD PALOMBO, Mayor

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE **29TH OF APRIL, 2019** AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE **28TH DAY OF MAY, 2019** AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY.

BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.

BARBARA L. YOUNG, TOWNSHIP CLERK

TOWNSHIP OF UPPER

**Legislative History:**

Introduced: April 29, 2019

Publication:

Newspaper(s): The Press of Atlantic City

Second Reading and Public Hearing:

Final Adoption:

Final Publication Date:

I certify that the foregoing Ordinance was finally adopted by the Township Committee of the Township of Upper on and notice of adoption was thereafter published pursuant to law in the Press of Atlantic City on .

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BARBARA L. YOUNG, Township Clerk