



Ordinance 665

AN ORDINANCE AMENDING CHAPTER 76 OF THE CODE OF THE TOWN OF ELSMERE REGARDING BUILDING CONSTRUCTION

Sponsored By: 5th District Councilwoman Joann I. Personti

First and Second Reading: July 14, 2022

Results:

Third and Final Reading: August 11, 2022

Results:

Ordinance 665

AN ORDINANCE AMENDING CHAPTER 76 OF THE CODE OF THE TOWN OF ELSMERE REGARDING BUILDING CONSTRUCTION

WHEREAS, The Town of Elsmere adopts the International Code Council (ICC) Building Codes as the Building Codes of the Town of Elsmere; and

WHEREAS, The 2000 ICC Building Codes are the current adopted codes; and

WHEREAS, the Mayor and Council recognize that these codes are in need of updating; and

WHEREAS, the Mayor and Council wish to adopt the 2021 ICC Building Codes with amendments, as the Building Codes of the Town of Elsmere.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF ELSMERE, AS FOLLOWS:

Effective immediately Chapter 76 of the Code of the Town of Elsmere is hereby repealed in its entirety and a new Chapter 76 be inserted as follows:

Chapter 76. Building Construction

Article I. Maintenance of Building Sites

§ 76-1. Definitions.

As used in this article, the following terms shall have the meanings indicated:

BUILDING SITE

All land owned by the builder and all land used in conjunction with construction, including all public and private rights-of-way and easements.

§ 76-2. Building sites to remain clean and free of waste.

All building sites within the Town of Elsmere shall be maintained clean, safe, sanitary and free from any accumulation of rubbish, trash, garbage, filth, junk, discarded materials or equipment, unrepaired ground, debris of any kind, toxic or hazardous wastes or other waste material.

§ 76-3. Runoff of soil or other materials.

All building sites within the Town of Elsmere shall be maintained in such a manner that runoff of soil or other materials from the building site on to lands adjacent to the building site does not occur.

§ 76-4. Inspection prior to temporary closing of building site.

All building sites which are to be closed or unattended for a period exceeding five days shall be inspected and approved by the Code Enforcement Officer of the Town of Elsmere prior to the building site being left closed or unattended for a period exceeding five days.

§ 76-5. Violations and penalties.

Any person violating the provisions of this article and who shall fail to comply with any notice or order issued by the Code Enforcement Officer relating to the provisions of this article shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not less than \$100 nor more than \$300, or imprisonment for not more than 30 days, or both such fine and imprisonment. Each day that each violation continues shall be deemed a further offense punishable by a further sum of \$50 per day, per violation. The imposition of a penalty for any violation of this article shall not excuse the violation nor permit it to continue.

Article II. Adoption of Building, Residential, Plumbing, Mechanical, Fuel Gas, Energy Conservation and Existing Building Standards

§ 76-6. Adoption of Building Code.

A certain document, a copy of which is on file in the office of the Town Manager of the Town of Elsmere being marked and designated "International Building Code, 2021 Edition" ~~and the "2001 Supplement to the International Codes"~~ and all appendices therein, with the exception of "Appendix A", "Appendix B" and "Appendix D", "Appendix L" and "Appendix M" as published by International Code Council, Inc., be and is hereby adopted as the Building Code of the Town of Elsmere for the control of buildings and structures as herein provided; and each and all regulations, provisions, penalties, conditions and terms of said International Building Code are hereby adopted and made a part hereof as if fully set out in this article, with the additions, insertions, deletions and changes, if any, prescribed in § 76-7 of this article.

~~**§ 76-7. Inconsistent provisions repealed. —RESERVED**~~

~~The BOCA National Building Code, Thirteenth Edition, 1996, and the CABO One and Two Family Dwelling Code, 1995 Edition, adopted by reference as Chapter 76 of the Elsmere Town Code, together with all supplements thereto and amendments to the same, and all other chapters or parts of chapters in conflict herewith are hereby repealed.~~

§ 76-8. Additions, insertions and changes to Building Code.

A. Chapter 1 Scope and Administration.

Section 101.1 Title, is amended by deleting "[Name of Jurisdiction]" and inserting "Town of Elsmere".

B. Chapter 1 Scope and Administration.

Section 103.1 Code Compliancy Agency, is amended by deleting [Insert name of Department] and insert "Town of Elsmere, Code Enforcement Department"

C. Chapter 1 Scope and Administration.

Section 105.1.1 Annual permit, shall be deleted in its entirety.

D. Chapter 1 Scope and Administration.

Section 105.1.2 Annual permit records, shall be deleted in its entirety.

E. Chapter 1 Scope and Administration.

Section 105.2 Work exempt from permit, Building, Item 6 “Sidewalks and driveways not more than 30 inches (762mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route” shall be deleted in its entirety.

F. Chapter 1 Scope and Administration.

Section 109.2 Schedule of permit fees, shall be deleted in its entirety and insert in lieu thereof a new Section 109.2 to read as follows:

“109.2 Schedule of permit fees: The fees shall be calculated in accordance with the current permit fee schedule as adopted in Resolution 21-03 by Mayor and Council on June 10, 2021.”

G. Chapter 1 Scope and Administration.

Section 113

APPEALS

113.1 Application for appeal. Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the Board of Adjustments of the Town of Elsmere, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted or the provisions of this code do not fully apply. Additionally, an application for appeal may be based on a claim that an action other than what is required by the code: 1) provides the same or better protections than what the code requires; and 2) will not cost the Town of Elsmere any more money than enforcing the code as written. If the appellant proves that an action other than what is required by the code meets these two requirements, the Board of Adjustments may, in its discretion, either enforce the code as written or permit the proposed alternative action.

113.2 Notice of meeting. The Board of Adjustments shall meet upon notice from the chairman, and conduct the appeal hearing within 20 days of the filing of an appeal.

113.3 Open hearing. All hearings before the Board of Adjustments shall be open to the public. The appellant, the appellant's representative, the code official and any person who has been called as a witness or whose interests are affected shall be given an opportunity to be heard.

113.4 Procedure. The Board of Adjustments shall set and make available the procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

113.5 Postponed hearing. Either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

113.6 Board decision. After hearing the evidence provided at the hearing, the Board of Adjustments shall modify or reverse the decision of the code official only by a concurring vote of a majority board members present.

113.7 Records and copies. The decision of the board shall be recorded. Copies shall be furnished to the appellant and to the code official.

113.8 Administration. The code official shall take immediate action in accordance with the decision of the Board of Adjustments.

113.9 Court review. Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the decision of the Board of Adjustments.

113.10 Stays of enforcement. Appeals of notice and orders (other than Imminent Danger notices) shall stay the enforcement of the notice and order until the appeal is heard by the Board of Adjustments.

H. Chapter 16, Structural Design

Section 1612.3 Establishment of flood hazard areas, is amended by deleting “[Insert name of jurisdiction] dated [Insert Date of Issuance]” and insert “Town of Elsmere dated January 22, 2020, or current flood hazard maps pursuant to the Federal Emergency Management Agency of Delaware.”

§ 76-9. Adoption of Residential Code.

A certain document, a copy of which is on file in the office of the Town Manager of the Town of Elsmere being marked and designated "International Residential Code, 2021 Edition" ~~and the "2001 Supplement to the International Codes"~~ and all appendices therein, with the exception of “Appendix AL”, “Appendix AM” and “Appendix AV”, as published by International Code Council, Inc., be and is hereby adopted as the Building Code of the Town of Elsmere for the control of buildings and structures as herein provided; and each and all regulations, provisions, penalties, conditions and terms of said International Residential Code are hereby adopted and made a part hereof as if fully set out in this article, with the additions, insertions, deletions and changes, if any, prescribed in § 76-10 of this article.

§ 76-10. Additions, insertions and changes to Residential Code.

A. Chapter 1 Scope and Administration.

Section R101.1 Title, is amended by deleting “[Name of Jurisdiction]” and inserting “Town of Elsmere”

B. Chapter 1 Scope and Administration.

Section R112

APPEALS

R112.1 Application for appeal. Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the Board of Adjustments of the Town of Elsmere, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted or the provisions of this code do not fully apply. Additionally, an application for appeal may be based on a claim that an action other than what is required by the code: 1) provides the same or better protections than what the code requires; and 2) will not cost the Town of Elsmere any more money than enforcing the code as written. If the appellant proves that an action other than what is required by the code meets these two requirements, the Board of Adjustments may, in its discretion, either enforce the code as written or permit the proposed alternative action.

R-112.1(a) Notice of meeting. The Board of Adjustments shall meet upon notice from the chairman, and conduct the appeal hearing within 20 days of the filing of an appeal.

R112.1(b) Open hearing. All hearings before the Board of Adjustments shall be open to the public. The appellant, the appellant's representative, the code official and any person who has been called as a witness or whose interests are affected shall be given an opportunity to be heard.

R112.1(c) Procedure. The Board of Adjustments shall set and make available the procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

R112.1(d) Postponed hearing. Either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

R112.1(e) Board decision. After hearing the evidence provided at the hearing, the Board of Adjustments shall modify or reverse the decision of the code official only by a concurring vote of a majority board members present.

R112.1(f) Records and copies. The decision of the board shall be recorded. Copies shall be furnished to the appellant and to the code official.

R112.1(g) Administration. The code official shall take immediate action in accordance with the decision of the Board of Adjustments.

R112.1(h) Court review. Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the decision of the Board of Adjustments.

R112.1(i) Stays of enforcement. Appeals of notice and orders (other than Imminent Danger notices) shall stay the enforcement of the notice and order until the appeal is heard by the Board of Adjustments.

C. Chapter 3 Building and Planning

Table R301.2(1) "CLIMATE AND GEOGRAPHIC DESIGN CRITERIA

GROUND SNOW LOAD	WIND DESIGN				SEISMIC DESIGN CATEGORY	SUBJECT TO DAMAGE FROM			ICE BARRIER UNDERLAYMENT REQUIRED	FLOOD HAZARDS	AIR FREEZING INDEX	MEAN ANNUAL TEMP
	Speed (mph)	Topographic effects	Special wind region	Windborne debris zone		Weathering	Frost line depth	Termite				
25 lbs/sq. ft. NO	115	NO	NO	NO	B	Severe	32 in.	YES Mod. – Heavy	NO	January 22, 2020 or more current	596	54°F
MANNUAL J DESIGN CRITERIA												
Elevation		Altitude correction factor	Coincident wet bulb	Indoor winter design dry-bulb temperature	Indoor winter design dry-bulb temperature		Outdoor winter design dry-bulb temperature		Heating temperature difference			
74 feet		ACCA Manual J Table 10	74	ACCA Manual J Table 1a	ACCA Manual J Table 1a		ACCA Manual J Table 1a		58°F			
Latitude		Daily range	Indoor summer design relative humidity	Indoor summer design relative humidity	Indoor summer design dry-bulb temperature		Outdoor summer design dry-bulb temperature		Cooling temperature difference			
ACCA Manual J Table 1a & 1b		ACCA Manual J Table 1a & 1b	ACCA Manual J Table 1a & 1b	ACCA Manual J Table 1a & 1b	ACCA Manual J Table 1a & 1b		ACCA Manual J Table 1a & 1b		ACCA Manual J Table 1a & 1b		ACCA Manual J Table 1a & 1b	

§ 76-11. Adoption of Plumbing Code.

A certain document, a copy of which is on file in the office of the Town Manager of the Town of Elsmere being marked and designated "International Plumbing Code, 2021 Edition," and the "~~2001 Supplement to the International Codes~~" and all appendices therein, with the exception of "Appendix F", as published by International Code Council, Inc., be and is hereby adopted as the Building Code of the Town of Elsmere for the control of buildings and structures as herein provided; and each and all regulations, provisions, penalties, conditions and terms of said International Plumbing Code are hereby adopted and made a part hereof as if fully set out in this article, with the additions, insertions, deletions and changes, if any, prescribed in § 76-12 of this article.

§ 76-12. Additions, insertions and changes to Plumbing Code.

A. Chapter 1 Scope and Administration.

Section 101.1 Title, is amended by deleting “[Name of Jurisdiction]” and inserting “Town of Elsmere”.

B. Chapter 1 Scope and Administration.

Section 103.1 Code Compliancy Agency, is amended by deleting [Insert name of Department] and insert “Town of Elsmere, Code Enforcement Department”

C. Chapter 1 Scope and Administration.

Section 106.1.1 Annual permit, shall be deleted in its entirety.

D. Chapter 1 Scope and Administration.

Section 106.1.2 Annual permit records, shall be deleted in its entirety.

E. Chapter 1 Scope and Administration.

Section 109.2 Schedule of permit fees, shall be deleted in its entirety and insert in lieu thereof a new Section 109.2 to read as follows:

“109.2 Schedule of permit fees: The fees shall be calculated in accordance with the current permit fee schedule as adopted in Resolution 21-03 by Mayor and Council on June 10, 2021.”

F. Chapter 1 Scope and Administration.

Section 114

APPEALS

114.1 Application for appeal. Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the Board of Adjustments of the Town of Elsmere, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted or the provisions of this code do not fully apply. Additionally, an application for appeal may be based on a claim that an action other than what is required by the code: 1) provides the same or better protections than what the code requires; and 2) will not cost the Town of Elsmere any more money than enforcing the code as written. If the appellant proves that an action other than what is required by the code meets these two requirements, the Board of Adjustments may, in its discretion, either enforce the code as written or permit the proposed alternative action.

114.2 Notice of meeting. The Board of Adjustments shall meet upon notice from the chairman, and conduct the appeal hearing within 20 days of the filing of an appeal.

114.3 Open hearing. All hearings before the Board of Adjustments shall be open to the public. The appellant, the appellant's representative, the code official and any person who has been called as a witness or whose interests are affected shall be given an opportunity to be heard.

114.4 Procedure. The Board of Adjustments shall set and make available the procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

114.5 Postponed hearing. Either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

114.6 Board decision. After hearing the evidence provided at the hearing, the Board of Adjustments shall modify or reverse the decision of the code official only by a concurring vote of a majority board members present.

114.7 Records and copies. The decision of the board shall be recorded. Copies shall be furnished to the appellant and to the code official.

114.8 Administration. The code official shall take immediate action in accordance with the decision of the Board of Adjustments.

114.9 Court review. Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the decision of the Board of Adjustments.

114.10 Stays of enforcement. Appeals of notice and orders (other than Imminent Danger notices) shall stay the enforcement of the notice and order until the appeal is heard by the Board of Adjustments.

G. Chapter 3 General Regulations

1. Section 305.4.1 Sewer depth, is amended by deleting [NUMBER] and insert “32 inches (812.8mm)”

2. Section 305.4.1 Sewer depth, is amended by deleting [NUMBER] and insert “32 inches (812.8mm)”

H. Chapter 9 Vents

1. Section 903.1.1 Vent Terminals, is amended by deleting [NUMBER] and insert “6 inches (150mm)”

§ 76-13. Adoption of Mechanical Code.

A certain document, a copy of which is on file in the office of the Town Manager of the Town of Elsmere being marked and designated "International Mechanical Code, 2021 Edition," ~~and the "2001 Supplement to the International Codes"~~, as published by International Code Council, Inc., be and is hereby adopted as the Building Code of the Town of Elsmere for the control of buildings and structures as herein provided; and each and all regulations, provisions, penalties, conditions and terms of said International Mechanical Code are hereby adopted and made a part hereof as if fully set out in this article, with the additions, insertions, deletions and changes, if any, prescribed in § 76-14 of this article.

§ 76-14. Additions, insertions and changes to Mechanical Code.

A. Chapter 1 Scope and Administration.

Section 101.1 Title, is amended by deleting “[Name of Jurisdiction]” and inserting “Town of Elsmere”.

B. Chapter 1 Scope and Administration.

Section 103.1 Code Compliancy Agency, is amended by deleting [Insert name of Department] and insert “Town of Elsmere, Code Enforcement Department”

C. Chapter 1 Scope and Administration.

Section 106.1.1 Annual permit, shall be deleted in its entirety.

D. Chapter 1 Scope and Administration.

Section 106.1.2 Annual permit records, shall be deleted in its entirety.

E. Chapter 1 Scope and Administration.

Section 109.2 Schedule of permit fees, shall be deleted in its entirety and insert in lieu thereof a new Section 109.2 to read as follows:

“109.2 Schedule of permit fees: The fees shall be calculated in accordance with the current permit fee schedule as adopted in Resolution 21-03 by Mayor and Council on June 10, 2021.”

F. Chapter 1 Scope and Administration.

Section 114

APPEALS

114.1 Application for appeal. Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the Board of Adjustments of the Town of Elsmere, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted or the provisions of this code do not fully apply. Additionally, an application for appeal may be based on a claim that an action other than what is required by the code: 1) provides the same or better protections than what the code requires; and 2) will not cost the Town of Elsmere any more money than enforcing the code as written. If the appellant proves that an action other than what is required by the code meets these two requirements, the Board of Adjustments may, in its discretion, either enforce the code as written or permit the proposed alternative action.

114.2 Notice of meeting. The Board of Adjustments shall meet upon notice from the chairman, and conduct the appeal hearing within 20 days of the filing of an appeal.

114.3 Open hearing. All hearings before the Board of Adjustments shall be open to the public. The appellant, the appellant's representative, the code official and any person who has been called as a witness or whose interests are affected shall be given an opportunity to be heard.

114.4 Procedure. The Board of Adjustments shall set and make available the procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

114.5 Postponed hearing. Either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

114.6 Board decision. After hearing the evidence provided at the hearing the Board of Adjustments shall modify or reverse the decision of the code official only by a concurring vote of a majority board members present.

114.7 Records and copies. The decision of the board shall be recorded. Copies shall be furnished to the appellant and to the code official.

114.8 Administration. The code official shall take immediate action in accordance with the decision of the Board of Adjustments.

114.9 Court review. Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the decision of the Board of Adjustments.

114.10 Stays of enforcement. Appeals of notice and orders (other than Imminent Danger notices) shall stay the enforcement of the notice and order until the appeal is heard by the Board of Adjustments.

§ 76-15. Adoption of Fuel Gas Code.

A certain document, a copy of which is on file in the office of the Town Manager of the Town of Elsmere being marked and designated "International Fuel Gas Code, 2021 Edition," ~~and the "2001 Supplement to the International Codes"~~ and all appendices therein, with the exception of "Appendix E", -as published by International Code Council, Inc., be and is hereby adopted as the Fuel Gas Code of the Town of Elsmere for the control of buildings and structures as herein provided; and each and all regulations, provisions, penalties, conditions and terms of said International Fuel Gas Code are hereby adopted and made a part hereof as if fully set out in this article, with the additions, insertions, deletions and changes, if any, prescribed in § 76-16 of this article.

§ 76-16. Additions, in insertions and changes to Fuel Gas Code.

A. Chapter 1 Scope and Administration.

Section [A] 101.1 Title, is amended by deleting "[Name of Jurisdiction]" and inserting "Town of Elsmere".

B. Chapter 1 Scope and Administration.

Section [A] 103.1 Code Compliancy Agency, is amended by deleting [Insert name of Department] and insert "Town of Elsmere, Code Enforcement Department"

C. Chapter 1 Scope and Administration.

Section 106.1.1 Annual permit, shall be deleted in its entirety.

D. Chapter 1 Scope and Administration.

Section 106.1.2 Annual permit records, shall be deleted in its entirety.

E. Chapter 1 Scope and Administration.

Section 109.2 Schedule of permit fees, shall be deleted in its entirety and insert in lieu thereof a new Section 109.2 to read as follows:

"109.2 Schedule of permit fees: The fees shall be calculated in accordance with the current permit fee schedule as adopted in Resolution 21-03 by Mayor and Council on June 10, 2021."

F. Chapter 1 Scope and Administration.

Sections 113 and 114 (IFGC)

APPEALS

113/114.1 Application for appeal. Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the Board of Adjustments of the Town of Elsmere, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted or the provisions of this code do not fully apply. Additionally, an application for appeal may be based on a claim that an action other than what is required by the

code: 1) provides the same or better protections than what the code requires; and 2) will not cost the Town of Elsmere any more money than enforcing the code as written. If the appellant proves that an action other than what is required by the code meets these two requirements, the Board of Adjustments may, in its discretion, either enforce the code as written or permit the proposed alternative action.

113/114.2 Notice of meeting. The Board of Adjustments shall meet upon notice from the chairman, and conduct the appeal hearing within 20 days of the filing of an appeal.

113/114.3 Open hearing. All hearings before the Board of Adjustments shall be open to the public. The appellant, the appellant's representative, the code official and any person who has been called as a witness or whose interests are affected shall be given an opportunity to be heard.

113/114.4 Procedure. The Board of Adjustments shall set and make available the procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

113/114.5 Postponed hearing. Either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

113/114.6 Board decision. After hearing the evidence provided at the hearing, the Board of Adjustments shall modify or reverse the decision of the code official only by a concurring vote of a majority of board members present.

113/114.7 Records and copies. The decision of the board shall be recorded. Copies shall be furnished to the appellant and to the code official.

113/114.8 Administration. The code official shall take immediate action in accordance with the decision of the Board of Adjustments.

113/114.9 Court review. Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the decision of the Board of Adjustments.

113/114.10 Stays of enforcement. Appeals of notice and orders (other than Imminent Danger notices) shall stay the enforcement of the notice and order until the appeal is heard by the Board of Adjustments.

§ 76-17. Adoption of Energy Conservation Code.

A certain document, a copy of which is on file in the office of the Town Manager of the Town of Elsmere being marked and designated "International Energy Conservation Code, 2021 Edition," and all appendices therein, with the exception of "Appendix RA" and "Appendix CA" as published by International Code Council, Inc., be and is hereby adopted as the Energy Conservation Code of the Town of Elsmere for the control of buildings and structures as herein provided; and each and all regulations, provisions, penalties, conditions and terms of said International Energy Conservation Code are hereby adopted and made a part hereof as if fully set out in this article, with the additions, insertions, deletions and changes, if any, prescribed in § 76-18 of this article.

§ 76-18. Additions, in insertions and changes to Energy Conservation Code.

A. Chapter 1 [CE & RE] Scope and Administration.

Section C101.1 & R101.1 Title, is amended by deleting "[Name of Jurisdiction]" and inserting "Town of Elsmere".

B. Chapter 1 [CE & RE] Scope and Administration.

Section C104.2 & R104.2 Schedule of permit fees, shall be deleted in its entirety and insert in lieu thereof a new Section C104.2 & R104.2 to read as follows:

“C104.2 Schedule of permit fees: The fees shall be calculated in accordance with the current permit fee schedule as adopted in Resolution 21-03 by Mayor and Council on June 10, 2021.”

AND

“R104.2 Schedule of permit fees: The fees shall be calculated in accordance with the current permit fee schedule as adopted in Resolution 21-03 by Mayor and Council on June 10, 2021.”

C. Chapter 1 [CE & RE] Scope and Administration.

Section C110 & R110

APPEALS

C110.1 Application for appeal. Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the Board of Adjustments of the Town of Elsmere, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted or the provisions of this code do not fully apply. Additionally, an application for appeal may be based on a claim that an action other than what is required by the code: 1) provides the same or better protections than what the code requires; and 2) will not cost the Town of Elsmere any more money than enforcing the code as written. If the appellant proves that an action other than what is required by the code meets these two requirements, the Board of Adjustments may, in its discretion, either enforce the code as written or permit the proposed alternative action.

C110.2 Notice of meeting. The Board of Adjustments shall meet upon notice from the chairman, and conduct the appeal hearing within 20 days of the filing of an appeal.

C110.3 Open hearing. All hearings before the Board of Adjustments shall be open to the public. The appellant, the appellant's representative, the code official and any person who has been called as a witness or whose interests are affected shall be given an opportunity to be heard.

C110.4 Procedure. The Board of Adjustments shall set and make available the procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

C110.5 Postponed hearing. Either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

C110.6 Board decision. After hearing the evidence provided at the hearing, the Board of Adjustments shall modify or reverse the decision of the code official only by a concurring vote of a majority of board members present.

C110.7 Records and copies. The decision of the board shall be recorded. Copies shall be furnished to the appellant and to the code official.

C110.8 Administration. The code official shall take immediate action in accordance with the decision of the Board of Adjustments.

C110.9 Court review. Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the decision of the Board of Adjustments.

C110.10 Stays of enforcement. Appeals of notice and orders (other than Imminent Danger notices) shall stay the enforcement of the notice and order until the appeal is heard by the Board of Adjustments.

§ 76-19. Adoption of Existing Building Code.

A certain document, a copy of which is on file in the office of the Town Manager of the Town of Elsmere being marked and designated "International Energy Existing Building Code, 2021 Edition," and all appendices therein, with the exception of "Appendix D" as published by International Code Council, Inc., be and is hereby adopted as the Existing Building Code of the Town of Elsmere for the control of buildings and structures as herein provided; and each and all regulations, provisions, penalties, conditions and terms of said International Existing Building Code are hereby adopted and made a part hereof as if fully set out in this article, with the additions, insertions, deletions and changes, if any, prescribed in § 76-20 of this article.

§ 76-20. Additions, in insertions and changes to the Existing Building Code.

A. Chapter 1 Scope and Administration.

Section [A] 101.1 Title, is amended by deleting "[Name of Jurisdiction]" and inserting "Town of Elsmere".

B. Chapter 1 Scope and Administration.

Section [A] 103.1 Creation of Agency, is amended by deleting [Insert name of Department] and insert "Town of Elsmere, Code Enforcement Department"

C. Chapter 1 Scope and Administration.

Section 105.1.1 Annual permit, shall be deleted in its entirety.

D. Chapter 1 Scope and Administration.

Section 105.1.2 Annual permit records, shall be deleted in its entirety.

E. Chapter 1 Scope and Administration.

Section 105.2 Work exempt from permit, Building, Item 1 "Sidewalks and driveways not more than 30 inches (762mm) above grade, and not over any basement or story below and that are not part of an accessible route" shall be deleted in its entirety.

F. Chapter 1 Scope and Administration.

Section 108.2 Schedule of permit fees, shall be deleted in its entirety and insert in lieu thereof a new Section 108.2 to read as follows:

"108.2 Schedule of permit fees: The fees shall be calculated in accordance with the current permit fee schedule as adopted in Resolution 21-03 by Mayor and Council on June 10, 2021."

G. Chapter 1 Scope and Administration.

Section 112

APPEALS

112.1 Application for appeal. Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the Board of Adjustments of the Town of Elsmere, provided that a written application for appeal is filed within 20 days after

the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted or the provisions of this code do not fully apply. Additionally, an application for appeal may be based on a claim that an action other than what is required by the code: 1) provides the same or better protections than what the code requires; and 2) will not cost the Town of Elsmere any more money than enforcing the code as written. If the appellant proves that an action other than what is required by the code meets these two requirements, the Board of Adjustments may, in its discretion, either enforce the code as written or permit the proposed alternative action.

112.2 Notice of meeting. The Board of Adjustments shall meet upon notice from the chairman, and conduct the appeal hearing within 20 days of the filing of an appeal.

112.3 Open hearing. All hearings before the Board of Adjustments shall be open to the public. The appellant, the appellant's representative, the code official and any person who has been called as a witness or whose interests are affected shall be given an opportunity to be heard.

112.4 Procedure. The Board of Adjustments shall set and make available the procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

112.5 Postponed hearing. Either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

112.6 Board decision. After hearing the evidence provided at the hearing, the Board of Adjustments shall modify or reverse the decision of the code official only by a concurring vote of a majority board members present.

112.7 Records and copies. The decision of the board shall be recorded. Copies shall be furnished to the appellant and to the code official.

112.8 Administration. The code official shall take immediate action in accordance with the decision of the Board of Adjustments.

112.9 Court review. Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the decision of the Board of Adjustments.

112.10 Stays of enforcement. Appeals of notice and orders (other than Imminent Danger notices) shall stay the enforcement of the notice and order until the appeal is heard by the Board of Adjustments.

First and Second Reading
July 14, 2022

Third and Final Reading
August 10, 2022

Eric Thompson, Mayor

Sally Jensen, Secretary

Approved as to form:

Town Solicitor

ORDINANCE 665

SYNOPSIS

This Ordinance adopts and makes amendments to the 2021 International Code Council Building Codes. This would update the Town from the 2000 ICC Building Codes to the 2021 ICC Building Codes.

FISCAL IMPACT

This Ordinance is anticipated to have no Fiscal Impact.