

2021

UDO

Unified Development Ordinance

The UDO is an ordinance that addresses contemporary development and zoning practices and written to be easily understood by administrators, the public and the development community. The UDO supports goals and policies expressed in the 2021 CAMA Land Use Plan and implements related action items. The UDO addresses all elements of the Town's zoning and subdivision ordinance, in addition to other regulations and applicable policies.



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of the
TOWN OF
NORTH TOPSAIL BEACH, NORTH CAROLINA

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UNIFIED DEVELOPMENT ORDINANCE

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ARTICLE 1. GENERAL PROVISIONS

§1.01 OFFICIAL TITLE.

(A) This ordinance is officially titled as the “Unified Development Ordinance of Town of North Topsail Beach, North Carolina”, and shall be known as the Unified Development Ordinance (UDO) or the ordinance.

(B) The official map designating the various zoning districts shall be titled “Town of North Topsail Beach Zoning Map”, and shall be known as the zoning map.

(Ord. passed 11-2-2011)

(1) The zoning map shall be maintained for public inspection in the office of the town clerk. The maps may be in paper or a digital format approved by the local government.

(2) Development regulations adopted pursuant to this ordinance may reference or incorporate by reference flood insurance rate maps, watershed boundary maps, or other maps officially adopted or promulgated by State and federal agencies. For these maps, a regulation text or zoning map may reference a specific officially adopted map or may incorporate by reference the most recent officially adopted version of such maps. When zoning district boundaries are based on these maps, the regulation may provide that the zoning district boundaries are automatically amended to remain consistent with changes in the officially promulgated State or federal maps, provided a copy of the currently effective version of any incorporated map shall be maintained for public inspection as provided in subsection (a) of this section.

(3) Copies of the zoning map may be reproduced by any method of reproduction that gives legible and permanent copies and, when certified by the town clerk in accordance with G.S. 160A-79 or G.S. 153A-50, shall be admissible into evidence and shall have the same force and effect as would the original map.

§1.02 EFFECTIVE DATE.

(A) This ordinance and its provisions governing the use of land and buildings, the height of buildings and other matters as hereinafter set forth are hereby established and declared to be in full force and effect from and after its passage and any zoning ordinance previously adopted is hereby repealed.

(B) This ordinance shall become effective November 2, 2011.

(Ord. passed 11-2-2011)

§1.03 AUTHORITY.

(A) This ordinance is adopted pursuant to the statutory authority provided in the state statutes. The legislature of the state has in G.S. Ch. 143, Art. 21, Part 6; G.S. Ch. 160D-103, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety and general welfare.

(Ord. passed 11-2-2011)

(B) Zoning provisions enacted herein are under the authority of NCGS 160D, Article 7 Zoning, which extends to towns the authority to enact regulations which promote the health, safety, morals, or the general welfare of the community. It is further authorized under NCGS 160A-382 which authorizes towns to regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. This section further authorizes the establishment of overlay districts in which additional regulations may be imposed upon properties that lie within the boundary of the district. The statutes also require that all such

regulations shall be uniform for each class or type of building throughout each district, but that the regulations in one district may differ from those in other districts.

(C) Subdivision provisions enacted herein are under the authority of NCGS 160D, Article 8 Subdivision Regulations, which provide for the coordination of streets within proposed subdivisions with existing or planned street and with other public facilities, the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision, or alternatively, for the provision of funds to be used to acquire recreation areas serving residents of more than one neighborhood in the immediate area, and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding.

§1.04 REFERENCES TO NORTH CAROLINA GENERAL STATUTES.

(A) Whenever any provision of this ordinance refers to or cites a section of the state statutes, and that section is later amended or superseded, this ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

(Ord. passed 11-2-2011)

(B) As of July 1, 2021, to the extent that this ordinance may conflict with North Carolina General Statutes Chapter 160D, North Carolina General Statutes Chapter 160D controls.

§1.05 JURISDICTION.

These regulations govern the development and use of all land, waters and structures within the corporate limits of the town. No building, premises or structure shall be constructed, erected, modified, converted, occupied, placed, maintained or moved, and no land use shall be commenced, maintained or modified, except as authorized by this ordinance.

(Ord. passed 11-2-2011) Penalty, see § 10.06

§1.06 ENACTMENT.

This ordinance is hereby enacted and shall be the unified development ordinance for the town. Upon date of adoption, these regulations shall supersede, repeal and replace Chapter 7 Planning and Zoning, Chapter 8 Flood Damage Prevention Ordinance and Chapter 9 Environmental Control.

(Ord. passed 11-2-2011)

§1.07 PURPOSE.

In order to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provisions of transportation, sewerage, schools, parks and other public requirements; to conserve the value of buildings and encourage the most appropriate use of land throughout the corporate area, there is hereby adopted and established an official zoning plan of the town.

(Ord. passed 11-2-2011)

§1.07.01 RELATIONSHIP TO EXISTING ORDINANCES.

This ordinance is not intended to repeal, abrogate, annul, impair or interfere with any existing easements, covenants, deed restrictions, agreements, rules, regulations or permits previously adopted or issued pursuant to law.

(Ord. passed 11-2-2011)

§1.07.02 RELATIONSHIP TO CAMA LAND USE PLAN.

This Unified Development Ordinance is intended to coordinate with a comprehensive plan, referred to as the CAMA Land Use Plan. The administration, enforcement and amendment of this ordinance shall be carried out consistently with plans and documents comprising the town’s CAMA Core Land Use Plan (hereinafter sometimes referred to as “LUP” or “plan”) as adopted by the Board of Aldermen on March 4, 2021, and certified by the Coastal Resources Commission on May 17, 2021, as amended. No permits shall be issued for applications inconsistent with the policies included in this plan. If any provisions of this ordinance are inconsistent with any of the policies of the plan, the more restrictive provision shall control.

(Ord. passed 11-2-2011)

§1.08 RULES OF CONSTRUCTION AND INTERPRETATION.

(A) Numbering style: the provisions of this ordinance are organized into the following hierarchical structure:

- Articles
 - Divisions
 - Sections
 - Subsections
 - Paragraphs
 - Subparagraphs

(B) The word “Article” precedes all article numbers.

(C) The first numerals in a section number (before the first period) identify the article in which the section is located. The numerals following the period identify the section number. Thus, “1.10” indicates § 10 of Article 1.

(D) Subsections follow the numbering scheme of section numbers. The first numerals in a section number (before the first period) identify the article. The numerals following the first period identify the section number, and the numerals after the second period identify the subsection. Thus, “1.10.1” identifies subsection 1 of § 10 of Article 1.

(E) Paragraphs within subsections are identified by capital letters within parentheses.

(F) Arabic numerals within parentheses are used to identify subparagraphs.

(G) Small letters in parenthesis identify sub-subparagraphs.

(H) Interpretation and conflict: in interpreting and applying the provisions of this ordinance, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity and general welfare. It is not intended by this ordinance to interfere with, abrogate or annul any easements, covenants or other agreements between parties; provided, however, that where this ordinance imposes a greater restriction upon the use of buildings or premises or upon the height of buildings, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations, or by easements, covenants or agreements, the provisions of this ordinance shall govern.

(I) Italicized paragraphs within quotation marks are to be considered sample text for illustrative purposes. Italicized words and phrases without quotation marks throughout this ordinance are defined in Article 11, Definitions.

(Ord. passed 11-2-2011)

§1.09 SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid by the courts, such decision shall not affect the validity of the remaining portions of this ordinance.

(Ord. passed 11-2-2011)

§1.10 CHANGES AND AMENDMENTS.

(A) The Board of Aldermen may, on its own motion, upon recommendation of the Planning Board, or upon petition by any interested person, amend, supplement, change, modify or repeal the regulations or district boundaries established by this ordinance.

(B) A petition by an interested person shall be submitted to the Board of Aldermen through and reviewed by the Planning Board, which shall consider its merit and make a recommendation to the Board of Aldermen.

(C) In no case shall final action by the Board of Aldermen be taken on amending, changing, supplementing, modifying or repealing the regulations or district boundaries hereby established until a legislative hearing has been held by the Board of Aldermen at which parties in interest and citizens shall have an opportunity to be heard.

(Ord. 7-6-06, passed - -; Ord. passed 11-2-2011)

§1.11 DEVELOPMENT APPROVALS RUN WITH THE LAND.

Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to this Chapter attach to and run with the land. 160D-104.

§1.12 REFUND OF ILLEGAL FEES.

If the town is found to have illegally imposed a tax, fee, or monetary contribution for development or a development approval not specifically authorized by law, the town shall return the tax, fee, or monetary contribution plus interest of six percent (6%) per annum to the person who made the payment or as directed by a court if the person making the payment is no longer in existence. 160D-106.

§1.13 APPOINTMENTS TO BOARDS.

Unless specified otherwise by statute or local ordinance, all appointments to boards authorized by G. S. 160D shall be made by the Board of Aldermen. The Board of Aldermen may establish reasonable procedures to solicit, review, and make appointments.

§1.14 OATH OF OFFICE

All members appointed to boards under this Article shall, before entering their duties, qualify by taking an oath of office as required by G.S. 153A-26 and G.S. 160A-61.

§1.15 RULES OF PROCEDURE.

Rules of procedure that are consistent with the provisions of this Chapter may be adopted by the Board of Aldermen for any or all boards created under this Article. In the absence of action by the Board of Aldermen, each board created under this Article is authorized to adopt its own rules of procedure that are consistent with the provisions of this Chapter. A copy of any adopted rules of procedure shall be maintained by the local government clerk or such other official as designated by ordinance and posted on the local government web site if one exists. Each board shall keep minutes of its proceedings.

§1.16 CONFLICTS OF INTEREST

(A) **Board of Aldermen.** A Board of Aldermen member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A Board of Aldermen member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(B) **Appointed Boards.** Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(C) **Administrative Staff.** No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

(D) No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the town to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

(E) **Quasi-Judicial Decisions.** A member of any board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

(F) **Resolution of Objection.** If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

(G) **Familial Relationship.** For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

ARTICLE 2. ADMINISTRATION

§2.01 APPLICATION § 160D-401.

(A) The provisions of this Article shall apply to all development regulations adopted pursuant to this Chapter. The Town may apply any of the definitions and procedures authorized by this Article to any ordinance adopted under the general police power of cities and counties, Article 8 of Chapter 160A of the General Statutes, and Article 6 of Chapter 153A of the General Statutes, respectively, and may employ any organizational structure, board, commission, or staffing arrangement authorized by this Article to any or all aspects of those ordinances. The provisions of this Article also apply to any other local ordinance that substantially affects land use and development.

(B) The provisions of this Article are supplemental to specific provisions included in other Articles of this Chapter. To the extent there is a conflict between the provisions of this Article and other Articles, the more specific provision shall control. This Article does not expand, diminish, or alter the scope of authority for development regulations authorized by this Chapter.

§2.02 § PLANNING BOARD.

§2.02.01 CREATION.

The Town of North Topsail Beach Planning Board is created under the authority of the G.S. §§ 160D-301 et seq.

(Ord. passed 3-5-1992; Ord. passed 11-2-2011)

§2.02.02 COMPOSITION.

(A) The Planning Board shall consist of seven members, who shall be citizens and residents of the town. In considering the appointment of members to the Planning Board, the Board of Aldermen shall avoid appointments which may create the appearance of a conflict of interest or an incompatible position in office holding.

(B) In addition to the seven members of the Planning Board, there shall be two alternates. These alternates are appointed by the Board of Aldermen, and should adhere to the same qualifications and term durations as members of the Planning Board. These alternates shall be designated by the Board of Aldermen as first and second alternates. The role of alternates is as follows.

(1) The alternates shall attend all Planning Board meetings and other Planning Board functions.

(2) If a primary member of the Planning Board is absent from a meeting, the first alternate shall, for the duration of the meeting, function as a primary member of the Planning Board, with full voting responsibilities. If a second primary member is absent, the second alternate shall, for the duration of the meeting, function as a primary member of the Planning Board, with full voting responsibilities.

(3) If all primary members of the Planning Board are in attendance at a meeting, the alternate members may participate in discussions, questioning presenters and the like, but are not voting members.

(C) The Chairperson of the Planning Board must be a primary member, not an alternate.

(Ord. passed 3-5-1992; Ord. passed 6-6-2006; Ord. passed 11-2-2011)

§2.02.03 APPOINTMENTS.

Members of the Planning Board and successors in office to the Planning Board shall be appointed by the Board of Aldermen. Appointments of any non-Planning Board member to any subcommittee or advisory committee of the Planning Board must first be approved by the Board of Aldermen.

(Ord. passed 3-5-1992; Ord. passed 11-2-2011)

§2.02.04 TERMS.

(A) The initial Planning Board members, under this article, shall be appointed in the following manner: three members shall be appointed for a one-year term; two members shall be appointed for two-year terms and two members shall be appointed for three-year terms. Thereafter, the successors shall be appointed for terms of three years at the expiration of the initial terms in order that members' terms of office do not expire contemporaneously. Terms are to expire on the May 15.

(B) Vacancies occurring for reasons other than expiration of terms prior to May 1 of the third year, shall be filled by the Board of Aldermen as such vacancies occur, for the period of the unexpired term. At the discretion of the Board of Aldermen, a vacancy may exist on the Planning Board if a member is absent from one-third or more of the Planning Board's regularly scheduled monthly meetings within a one-year period.

(Ord. passed 3-5-1992; Ord. passed 11-2-2011)

§2.02.05 COMPENSATION.

All members of the Planning Board and any subcommittee thereof shall serve as such without compensation.

(Ord. passed 3-5-1992; Ord. passed 11-2-2011)

§2.02.06 CHAIRPERSON.

Within 30 days after appointment, the Planning Board shall meet and elect a Chairperson from among the appointed members, and create and fill such offices as it may determine. The term of office for the position of Chairperson shall be for a period of one year, with eligibility for reelection. The Chairperson shall be entitled to vote on all matters, as long as a conflict of interest does not exist.

(Ord. passed 3-5-1992; Ord. passed 11-2-2011)

§2.02.07 MEETINGS.

The Planning Board shall adopt rules for the transaction of its business and shall keep minutes which shall contain a record of its members' attendance and of its resolutions, discussions, findings and recommendations, which record shall be a public record. The Planning Board shall hold at least one regular meeting each month, which shall be open to the public.

(Ord. passed 3-5-1992; Ord. passed 12-2-2004; Ord. passed 11-2-2011)

§2.02.08 VOTING

A quorum of the Planning Board shall consist of a majority of the Board membership (excluding vacant seats). A quorum is necessary for the Board to take official action.

(Ord. passed 3-5-1992; Ord. passed 12-2-2004; Ord. passed 11-2-2011)

§2.02.09 DUTIES AND RESPONSIBILITIES.

Pursuant to G.S. § 160D-301, it shall be the duty of the Planning Board, in general, to:

(A) To prepare, review, maintain, monitor, and periodically update and recommend to the Board of

Aldermen a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.;

(B) To facilitate and coordinate citizen engagement and participation in the planning process.

(C) To develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.

(D) To advise the Board of Aldermen concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604.

(E) To exercise any functions in the administration and enforcement of various means for carrying out plans that the Board of Aldermen may direct.

(F) To provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board.

(G) Perform any other related duties that the Board of Aldermen may direct.

§2.03 BOARD OF ADJUSTMENT.

§2.03.01 ESTABLISHMENT OF THE BOARD OF ADJUSTMENT.

A Board of Adjustment is hereby established. The Board of Adjustment consists of five regular members and up to four alternate members, each to be appointed for a term of three years by the Board of Aldermen. Terms expire on May 1.

(A) The Board of Adjustment must adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this ordinance. If any provisions of the rules are inconsistent with this ordinance, then the provision in the ordinance shall control.

(B) Except as otherwise provided in this ordinance, the rules adopted by the Board of Adjustment must at least provide for selection of the officers of the Board of Adjustment, and procedures for the conduct of evidentiary hearings and voting.

(C) The rules and minutes of the Board of Adjustment must be maintained in the office of the Town Clerk.

(Ord. passed 11-2-2011)

§2.03.02 DUTIES

The board shall hear and decide all matters upon which it is required to pass under any statute or development regulation adopted under this ordinance. The board shall comply with all of the procedures and the process applicable in making quasi-judicial decisions for appeals and variances, as stipulated in § 1.17 and G. S. 160D-102(28) and 160D-406.

§2.03.03 QUASI-JUDICIAL DECISIONS AND JUDICIAL REVIEW. § 160D-406.

(A) Process Required. Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision.

(B) Notice of Hearing. Notice of evidentiary hearings conducted pursuant to NCGS 160D shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the local development regulation. In the absence of evidence to the contrary,

the local government may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the local government shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.

(C) Administrative Materials. The administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

(D) Presentation of Evidence. The applicant, the local government, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.

(E) Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review. Even if there is no objection before the board, opinion testimony from a lay witness shall not be considered competent evidence for technical matters such as property value and traffic impacts.

(F) Appearance of Official New Issues. The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the local government would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

(G) Oaths. The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

(H) Subpoenas. The board making a quasi-judicial decision under this Chapter through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the local government, and any person with standing under G.S. 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

(I) Appeals in Nature of Certiorari. When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below, and the scope of review shall be as provided in G.S. 160D-1402(j).

(J) Voting. The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

(K) Decisions. The board shall determine contested facts and make its decision within a reasonable time. Be aware that even if there is no objection before the board, opinion testimony from a lay witness shall not be considered competent evidence for technical matters such as property value and traffic impacts. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

(L) Judicial Review. - Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d).

§2.03.04 VARIANCES.

(A) When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the Board of Adjustment shall vary any of the provisions of the zoning regulation upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.

(4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that

public safety is secured and substantial justice is achieved.

(B) No change in permitted uses may be authorized by variance.

(C) Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

(D) Any other development regulation that regulates land use or development may provide for variances from the provisions of those ordinances consistent with the provisions of this subsection.

(Ord. 2013-7, passed 10-3-2013)

§2.03.05 APPEALS OF ADMINISTRATIVE DECISIONS. § 160D-405.

(A) Except as provided by G.S. 160D-1403.1, appeals of administrative decisions made by the staff under this Chapter shall be made to the board of adjustment unless a different board is provided or authorized otherwise by statute or an ordinance adopted pursuant to this Chapter. If this function of the board of adjustment is assigned to any other board pursuant to G.S. 160D-302(b), that board shall comply with all of the procedures and processes applicable to a board of adjustment hearing appeals. Appeal of a decision made pursuant to an erosion and sedimentation control regulation, a stormwater control regulation, or a provision of the housing code shall not be made to the board of adjustment unless required by the Town ordinance or code provision.

(B) Standing. Any person who has standing under G.S. 160D-1402(c) or the local government may appeal an administrative decision to the board. An appeal is taken by filing a notice of appeal with the town clerk. The notice of appeal shall state the grounds for the appeal.

(C) Time to Appeal. The owner or other party has 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

(D) Record of Decision. The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(E) Stays. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom, unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after such a request is filed.

(F) Notwithstanding any other provision of this section, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation does not stay the further review of an application for development approvals to use the property; in these

situations, the appellant or local government may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

(G) Alternative Dispute Resolution. The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution. The development regulation may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

(H) No Estoppel. G.S. 160D-1403.2, limiting the Town's use of the defense of estoppel. Applies to proceedings under this section.

§2.04 OTHER ADVISORY BOARDS § 160D-306.

The Board of Aldermen may by ordinance establish additional advisory boards as deemed appropriate. The ordinance establishing such boards shall specify the composition and duties of such boards.

§2.05 ADMINISTRATIVE STAFF. § 160D-402.

(A) Authorization. The Town may appoint administrators, inspectors, enforcement officers, planners, technicians, and other staff to develop, administer, and enforce development regulations authorized by this Chapter.

(B) Duties. Duties assigned to staff may include, but are not limited to, drafting and implementing plans and development regulations to be adopted pursuant to this Chapter; determining whether applications for development approvals are complete; receiving and processing applications for development approvals; providing notices of applications and hearings; making decisions and determinations regarding development regulation implementation; determining whether applications for development approvals meet applicable standards as established by law and local ordinance; conducting inspections; issuing or denying certificates of compliance or occupancy; enforcing development regulations, including issuing notices of violation, orders to correct violations, and recommending bringing judicial actions against actual or threatened violations; keeping adequate records; and any other actions that may be required in order adequately to enforce the laws and development regulations under their jurisdiction. A development regulation may require that designated staff members take an oath of office. The Town shall have the authority to enact ordinances, procedures, and fee schedules relating to the administration and the enforcement of this ordinance. The administrative and enforcement provisions related to building permits set forth in G. S. 160D Article 11 shall be followed for those permits.

(C) The Town may make alternative staff arrangements pursuant to G. S. 160D-402 (c).

(D) Financial Support. The Town shall fix reasonable fees for support, administration, and implementation of programs authorized by G. S. 160D, and all such fees shall be used for no other purposes.

§2.05.02 PLANNING DIRECTOR.

The Planning Director is generally responsible for administration of this unified development ordinance, and serves as the Zoning Administrator for the town, except in cases where authority for the implementation of this ordinance has been specifically delegated to another town official or body. Administration and enforcement duties of the Planning Director shall include, but not be limited to:

(A) Administration all provisions of this ordinance for which administrative responsibilities are not otherwise expressly assigned.

(B) Interpretation of the provisions of this ordinance.

(C) Assigning all address numbers for properties and buildings.

(D) Maintaining address records of each property and building.

(E) Recommending change of existing addresses when necessary to facilitate sequential building numbers along a road.

(F) Designating the address for individual units within multiple housing units in conformity with this ordinance.

(G) Coordinating address system changes and adjustments with emergency service organizations and the County GIS.

(H) Assisting the public in complying with the requirements of this ordinance.

(I) Review all applications made pursuant to the requirements of this ordinance to ensure compliance with the provisions of this ordinance.

(J) Coordination of the reviews of other town staff in fulfilling their duties and responsibilities under this ordinance.

(K) Preparation of reports to the Planning Board for all matters for which this ordinance requires review and approval by the Planning Board.

(L) Record maintenance of the Planning Board's meetings and actions.

(M) Amendment of the text of this ordinance and the zoning map to reflect any amendments approved by the Board of Aldermen and maintaining up-to-date originals and copies of these documents.

(N) On-going regular reviews of the text of this ordinance and proposing amendments deemed necessary to implement and ensure consistency with the policy objectives of the town.

(O) Record maintenance of the Board of Adjustment's meetings and actions.

(P) Report on any variances or interpretations of the location of the boundary of an area of special flood hazard to the Federal Insurance Administration upon request; and

(Q) When in the opinion of the Town Manager, the Planning Director is incapacitated or otherwise unavailable, the Town Manager will assume the above duties.

(Ord. passed 11-2-2011)

§2.05.03 BUILDING INSPECTOR.

The Building Inspector is generally responsible for administration and enforcement of the State Building Codes and for any portions of this unified development ordinance that have been specifically delegated to him or her.

(Ord. passed 11-2-2011)

§2.05.04 FLOODPLAIN ADMINISTRATOR.

The Town Manager shall designate an employee to hold the position of Floodplain Administrator and implement the provisions of this ordinance related to floodplains. Duties and responsibilities of the Floodplain Administrator are described in Article 7, Flood Damage Prevention.

(Ord. passed 11-2-2011)

§2.06 SUMMARY PROCEDURES.

The various types of approval required for the administration of this ordinance, the review and decision-making bodies responsible for each type of approval, the appeals bodies assigned to hear various types of

appeals, requirements for public hearings, and public notice required for various types of approvals are summarized in Table 2-1, Summary Procedures, and are explained in more detail in the remaining sections of this Article 2. In the event of any inconsistency between Table 2-1, Summary Procedures, and other provisions of this Article 2, the other provisions shall govern.

(Ord. passed 11-2-2011; Ord. 2013-7, passed 10-3-2013)

Table 2-1 Summary Procedures

R = REVIEW BODY; D = DECISION-MAKING BODY; A = APPEALS BODY; H = PUBLIC HEARING REQUIRED N = NEWSPAPER NOTICE; M = MAILED NOTICE-; P = POSTED NOTICE					
APPLICATION TYPE	REVIEW, DECISION-MAKING AND APPEAL BODIES				PUBLIC NOTICE REQUIRED for Hearing
	STAFF	PB	ZBA	BOA	
<i>Zoning Text Amendment (Sec. 2.07.01)</i>	R	R		D/H	N
<i>Zoning Map Amendment (Sec. 2.07.02)</i>	R	R		D/H	N,M,P
Planned Unit Developments (Sec. 2.18)	R	R		D/H	N,M,P
<i>Special Use Permit (Sec. 2.19)</i>	R	R		D/H	,M,P
Subdivision of Land (Sec. 2.20 and Art.6)					
Sketch plan	R	D			
Preliminary	R	R		D/H	N,M,P
Final	R	R		D/H	N,M,P
Subdivision Exceptions (NCGS 160D-802)	D				
Special <i>Plat</i> Approval (Sec. 2.21)					
Preliminary	R	R		D/H	N,M,P
Final	R	R		D/H	N,M,P
Commercial Plan Review (Sec. 2.22)	R	R		D/H	N, M, P
<i>Sign Permit (Sec. 2.06.10)</i>	D		A/H		N
Wireless Telecommunications Permit (Sec. 4.03.17)	R	R		D/H	N,M,P
Wireless Telecommunications Collocation	D				
Statutory Vested Rights (Sec. 2.11)	Same as for application				
<i>CAMA Permit (Sec. 2.13.01)</i>	<i>NCDCM permit authority</i>				
<i>Flood Permit (Sec. 2.13.02)</i>	D			A/H	N,M,P
<i>Zoning Permit (Sec. 2.13.03)</i>	D		A/H		
<i>Building permit (Sec. 2.13.04)</i>	D				
<i>Variance (Sec. 2.03.04)</i>	R		D/H		, M, P

§2.07 TEXT AND MAP AMENDMENT.

§2.07.01 PROCEDURE FOR ADOPTING, AMENDING, OR REPEALING THIS ORDINANCE § 160D-601.

(A) Hearing with Published Notice. - Before adopting, amending, or repealing any ordinance or

development regulation authorized by NCGS 160D, the Board of Aldermen shall hold a legislative hearing. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(B) Notice to Military Bases. - If the adoption or modification would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the local government shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the hearing. If the commander of the military base provides comments or analysis regarding the compatibility of the proposed development regulation or amendment with military operations at the base, the Board of Aldermen of the local government shall take the comments and analysis into consideration before making a final determination on the ordinance.

(C) Ordinance Required. A development regulation adopted pursuant to this Chapter shall be adopted by ordinance.

(D) Down-Zoning. – No amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment unless the down-zoning amendment is initiated by the local government. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:

(1) By decreasing the development density of the land to be less dense than was allowed under its previous usage.

(2) By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage."

§2.07.02 NOTICE OF HEARING ON PROPOSED ZONING MAP AMENDMENTS. § 160D-602.

(A) Mailed Notice. – Subject to the limitations of this Chapter, an ordinance shall provide for the manner in which zoning regulations and the boundaries of zoning districts are to be determined, established, and enforced, and from time to time amended, supplemented, or changed, in accordance with the provisions of this Chapter. The owners of affected parcels of land and the owners of all parcels of land abutting that parcel of land shall be mailed a notice of the hearing on a proposed zoning map amendment by first-class mail at the last addresses listed for such owners on the county tax abstracts. For the purpose of this section, properties are "abutting" even if separated by a street, railroad, or other transportation corridor. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the hearing. If the zoning map amendment is being proposed in conjunction with an expansion of municipal extraterritorial planning and development regulation jurisdiction under G.S. 160D-202, a single hearing on the zoning map amendment and the boundary amendment may be held. In this instance, the initial notice of the zoning map amendment hearing may be combined with the boundary hearing notice and the combined hearing notice mailed at least 30 days prior to the hearing.

(B) Optional Notice for Large-Scale Zoning Map Amendments. - The first-class mail notice required under subsection (A) of this section is not required if the zoning map amendment proposes to change the zoning designation of more than 50 properties, owned by at least 50 different property owners, and the local government elects to use the expanded published notice provided for in this subsection. In this instance, a local government may elect to make the mailed notice provided for in subsection (a) of this section or, as an

alternative, elect to publish notice of the hearing as required by G.S. 160D-601, provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement is effective only for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (A) of this section.

(C) Posted Notice. - When a zoning map amendment is proposed, the local government shall prominently post a notice of the hearing on the site proposed for the amendment or on an adjacent public street or highway right-of-way. The notice shall be posted within the same time period specified for mailed notices of the hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required but the local government shall post sufficient notices to provide reasonable notice to interested persons.

(D) Citizen comments. § 160D-603.

Subject to the limitations of this Chapter, zoning regulations may from time to time be amended, supplemented, changed, modified, or repealed. If any resident or property owner in the local government submits a written statement regarding a proposed amendment, modification, or repeal to a zoning regulation, including a text or map amendment that has been properly initiated as provided in 160D-601, to the clerk to the board at least two business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to the Board of Aldermen. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160D-705 or any other statute, the clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the board shall not disqualify any member of the board from voting.

(E) Planning board review and comment. § 160D-604.

(1) Initial Zoning. - In order to exercise zoning powers conferred by this Chapter for the first time, a local government shall create or designate a planning board under the provisions of this Article or of a special act of the General Assembly. The planning board shall prepare or shall review and comment upon a proposed zoning regulation, including the full text of such regulation and maps showing proposed district boundaries. The planning board may hold public meetings and legislative hearings in the course of preparing the regulation. Upon completion, the planning board shall make a written recommendation regarding adoption of the regulation to the Board of Aldermen. The Board of Aldermen shall not hold its required hearing or take action until it has received a recommendation regarding the regulation from the planning board. Following its required hearing, the Board of Aldermen may refer the regulation back to the planning board for any further recommendations that the board may wish to make prior to final action by the Board of Aldermen in adopting, modifying and adopting, or rejecting the regulation.

(2) Zoning Amendments. - Subsequent to initial adoption of a zoning regulation, all proposed amendments to the zoning regulation or zoning map shall be submitted to the planning board for review and comment. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the Board of Aldermen may act on the amendment without the planning board report. The Board of Aldermen is not bound by the recommendations, if any, of the planning board.

(3) Review of Other Ordinances and Actions. - Any development regulation other than a zoning regulation that is proposed to be adopted pursuant to this Chapter may be referred to the planning board for review and comment. Any development regulation other than a zoning regulation may provide that future proposed amendments of that ordinance be submitted to the planning board for review and comment. Any

other action proposed to be taken pursuant to this Chapter may be referred to the planning board for review and comment.

(4) Plan Consistency. - When conducting a review of proposed zoning text or map amendments pursuant to this section, the planning board shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the Board of Aldermen that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Aldermen. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the planning board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made.

(5) Separate Board Required. - Notwithstanding the authority to assign duties of the planning board to the Board of Aldermen as provided by this Chapter, the review and comment required by this section shall not be assigned to the Board of Aldermen and must be performed by a separate board.

(F) The applicant and landowner must provide written consent to conditions related to a conditional zoning approval to ensure enforceability. (S. L. 2019-111 Pt. 1)

§2.07.03 GOVERNING BOARD STATEMENT. § 160D-605.

(A) Plan Consistency. - When adopting or rejecting any zoning text or map amendment, the Board of Aldermen shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the Board of Aldermen that at the time of action on the amendment the Board of Aldermen was aware of and considered the planning board's recommendations and any relevant portions of an adopted comprehensive plan. If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required. For a future land use map that is deemed amended, if it is a CAMA plan, then such amendment is not effective until it goes through the CAMA plan-amendment process. (G.S. 160D-501.) A plan amendment and a zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Board of Aldermen statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.

(B) Additional Reasonableness Statement for Rezoning. - When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the Board of Aldermen. This statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Board of Aldermen statement on reasonableness may address the overall rezoning.

(C) Single Statement Permissible. - The statement of reasonableness and the plan consistency statement

required by this section may be approved as a single statement.

(D) Voting. – A simple majority on the first reading permits adoption of a legislative decision for development regulation (NCGS 160A-75, S. L. 2019-111 Sec. 2.5 (n)).

§2.08 COMMON REVIEW PROCEDURES.

The town may from time to time establish regulations or guidelines related to the following topics, and such regulations or guidelines shall govern all applications under this unified development ordinance after their adoption:

- (A) Application contents;
- (B) Application review procedures and schedules;
- (C) Application and review fees;
- (D) Pre-application conference requirements; and
- (E) Determinations of application completeness.

(Ord. passed 11-2-2011)

§2.09 SIMULTANEOUS PROCESSING OF APPLICATIONS.

Whenever two or more forms of review and approval are required under this ordinance, the applications for those permits or approvals may, at the option of the Planning Director, be processed simultaneously, so long as all applicable state and local requirements are satisfied.

(Ord. passed 11-2-2011)

§2.10 CONDITIONS OF APPROVAL.

(A) General. When a review body or the Planning Director approves a development application, such body or the Planning Director may impose restrictions or conditions on the approval. The conditions may be imposed to:

- (1) Ensure compliance with the general goals and policies of this ordinance or with particular standards of this ordinance;
- (2) Prevent or minimize adverse effects from the proposed development on surrounding lands;
- (3) Protect the health, safety and welfare of workers and residents of the community; or
- (4) Protect the value, use and enjoyment of property in the general neighborhood.

(B) Limitations. The restrictions and conditions imposed must be related in both type and amount to the impact that the proposed development would have on the public and surrounding development. All conditions imposed shall be expressly set forth in the permit approval.

(Ord. passed 11-2-2011)

§2.11 STATUTORY VESTED RIGHTS AND PERMIT CHOICE

(A) Findings. - The General Assembly recognizes that local government approval of development typically follows significant investment in site evaluation, planning, development costs, consultant fees, and related expenses. The General Assembly finds that it is necessary and desirable to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the development

regulation process, to secure the reasonable expectations of landowners, and to foster cooperation between the public and private sectors in land-use planning and development regulation. The provisions of this section and G.S. 160D-108.1 strike an appropriate balance between private expectations and the public interest.

(B) Permit Choice. - If a land development regulation is amended between the time a development permit application was submitted and a development permit decision is made or if a land development regulation is amended after a development permit decision has been challenged and found to be wrongfully denied or illegal, G.S. 143-755 applies.

(C) Vested Rights. – Amendments in land development regulations are not applicable or enforceable without the written consent of the owner with regard to any of the following:

(1) Buildings or uses of buildings or land for which a development permit application has been submitted and subsequently issued in accordance with G.S. 143-755.

(2) Subdivisions of land for which a development permit application authorizing the subdivision has been submitted and subsequently issued in accordance with G.S. 143-755.

(3) A site-specific vesting plan pursuant to G.S. 160D-108.1.

(4) A multi-phased development pursuant to subsection (f) of this section.

(5) A vested right established by the terms of a development agreement authorized by NCGS 160D Article 10. The establishment of a vested right under any subdivision of this subsection does not preclude vesting under one or more other subdivisions of this subsection or vesting by application of common law principles. A vested right, once established as provided for in this section or by common law, precludes any action by the Town that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property allowed by the applicable land development regulation or regulations, except where a change in State or federal law mandating local government enforcement occurs after the development application is submitted that has a fundamental and retroactive effect on the development or use.

(D) Duration of Vesting.

(1) Upon issuance of a development permit, the statutory vesting granted by subsection (c) of this section for a development project is effective upon filing of the application in accordance with G.S. 143-755, for so long as the permit remains valid pursuant to law. Unless otherwise specified by this section or other statute, local development permits expire one year after issuance unless work authorized by the permit has substantially commenced. A local land development regulation may provide for a longer permit expiration period. For the purposes of this section, a permit is issued either in the ordinary course of business of the applicable governmental agency or by the applicable governmental agency as a court directive.

(2) Except where a longer vesting period is provided by statute or land development regulation, the statutory vesting granted by this section, once established, expires for an uncompleted development project if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, and the statutory vesting period granted by this section for a nonconforming use of property expires if the use is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months. The 24-month discontinuance period is automatically tolled during the pendency of any board of adjustment proceeding or civil action in a State or federal trial or appellate court regarding the validity of a development permit, the use of the property, or the existence of the statutory vesting period granted by this section. The 24-month discontinuance period is also tolled during the pendency of any litigation involving the development project or property that is the subject of the vesting.

(E) Multiple Permits for Development Project. – Subject to subsection (d) of this section, where multiple

local development permits are required to complete a development project, the development permit applicant may choose the version of each of the local land development regulations applicable to the project upon submittal of the application for the initial development permit. This provision is applicable only for those subsequent development permit applications filed within 18 months of the date following the approval of an initial permit. For purposes of the vesting protections of this subsection, an erosion and sedimentation control permit or a sign permit is not an initial development permit.

(F) Multi-Phased Development. – A multi-phased development is vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this subsection remains vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development.

(G) Continuing Review. – Following issuance of a development permit, the Town may make subsequent inspections and reviews to ensure compliance with the applicable land development regulations in effect at the time of the original approval.

(H) Process to Claim Vested Right. – A person claiming a statutory or common law vested right may submit information to substantiate that claim to the zoning administrator or other officer designated by a land development regulation, who shall make an initial determination as to the existence of the vested right. The decision of the zoning administrator or officer may be appealed under G.S. 160D-405. On appeal, the existence of a vested right shall be reviewed de novo. In lieu of seeking such a determination or pursuing an appeal under G.S. 160D-405, a person claiming a vested right may bring an original civil action as provided by G.S. 160D-1403.1.

(I) Miscellaneous Provisions. – The vested rights granted by this section run with the land except for the use of land for outdoor advertising governed by G.S. 136-136.1 and G.S. 136-131.2 in which case the rights granted by this section run with the owner of the permit issued by the North Carolina Department of Transportation. Nothing in this section precludes judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

(J) As used in this section, the following definitions apply:

(1) Development. – As defined in G.S. 143-755(e)(1).

(2) Development permit. – As defined in G.S. 143-755(e)(2).

(3) Land development regulation. – As defined in G.S. 143-755(e)(3).

(4) Multi-phased development. – A development containing 25 acres or more that is both of the following:

(a) Submitted for development permit approval to occur in more than one phase.

(b) Subject to a master development plan with committed elements showing the type and intensity of use of each phase.

§2.12 VESTED RIGHTS – SITE-SPECIFIC VESTING PLANS. §160D-108.1.

(A) Site-Specific Vesting Plan. – A site-specific vesting plan consists of a plan submitted to the Town in which the applicant requests vesting pursuant to this section, describing with reasonable certainty on the plan the type and intensity of use for a specific parcel or parcels of property. The plan may be in the form of, but

not be limited to, any of the following plans or approvals: a planned unit development plan, a subdivision plat, a preliminary or general development plan, a special use permit, a conditional district zoning plan, or any other land-use approval designation as may be utilized by the Town. Unless otherwise expressly provided by the local government, the plan shall include the approximate boundaries of the site; significant topographical and other natural features affecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. What constitutes a site-specific vesting plan under this section that would trigger a vested right shall be finally determined by the local government pursuant to a development regulation, and the document that triggers the vesting shall be so identified at the time of its approval. A variance does not constitute a site-specific vesting plan, and approval of a site-specific vesting plan with the condition that a variance be obtained does not confer a vested right unless and until the necessary variance is obtained. If a sketch plan or other document fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property, it may not constitute a site-specific vesting plan.

(B) Establishment of Vested Right. – A vested right is established with respect to any property upon the valid approval, or conditional approval, of a site-specific vesting plan as provided in this section. Such a vested right confers upon the landowner the right to undertake and complete the development and use of the property under the terms and conditions of the site-specific vesting plan, including any amendments thereto.

(C) Approval and Amendment of Plans. – If a site-specific vesting plan is based on an approval required by a local development regulation, the local government shall provide whatever notice and hearing is required for that underlying approval. A duration of the underlying approval that is less than two years does not affect the duration of the site-specific vesting plan established under this section. If the site-specific vesting plan is not based on such an approval, a legislative hearing with notice as required by G.S. 160D-602 shall be held.

(D) A local government may approve a site-specific vesting plan upon any terms and conditions that may reasonably be necessary to protect the public health, safety, and welfare. Conditional approval results in a vested right, although failure to abide by the terms and conditions of the approval will result in a forfeiture of vested rights. A local government shall not require a landowner to waive the landowner's vested rights as a condition of developmental approval. A site-specific vesting plan is deemed approved upon the effective date of the local government's decision approving the plan or another date determined by the Board of Aldermen upon approval. An approved site-specific vesting plan and its conditions may be amended with the approval of the owner and the local government as follows: any substantial modification must be reviewed and approved in the same manner as the original approval; minor modifications may be approved by staff if such are defined and authorized by local regulation.

(E) Continuing Review. – Following approval or conditional approval of a site-specific vesting plan, the Town may make subsequent reviews and require subsequent approvals by the local government to ensure compliance with the terms and conditions of the original approval, provided that these reviews and approvals are not inconsistent with the original approval. The local government may, pursuant to G.S. 160D-403(f), revoke the original approval for failure to comply with applicable terms and conditions of the original approval or the applicable local development regulations.

(F) Duration and Termination of Vested Right. –

(1) A vested right for a site-specific vesting plan remains vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site-specific vesting plan unless expressly provided by the local government.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, the Town may provide for rights to be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. These determinations are in the sound discretion of the local government and shall be made following the process specified for the particular form of a site-specific vesting plan involved in accordance with subsection (a) of this section.

(3) Upon issuance of a building permit, the provisions of G.S. 160D-1111 and G.S. 160D-1115 apply, except that a permit does not expire and shall not be revoked because of the running of time while a vested right under this section is outstanding.

(4) A right vested as provided in this section terminates at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

(F) Subsequent Changes Prohibited; Exceptions. –

(1) A vested right, once established as provided for in this section, precludes any zoning action by the Town which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site-specific vesting plan, except under one or more of the following conditions:

(a) With the written consent of the affected landowner.

(b) Upon findings, by ordinance after notice and an evidentiary hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific vesting plan.

(c) To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consulting fees incurred after approval by the local government, together with interest as provided under G.S. 160D-106. Compensation shall not include any diminution in the value of the property which is caused by the action.

(d) Upon findings, by ordinance after notice and an evidentiary hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the local government of the site-specific vesting plan or the phased development plan.

(e) Upon the enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the site-specific vesting plan or the phased development plan, in which case the local government may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, by ordinance after notice and an evidentiary hearing.

(2) The establishment of a vested right under this section does not preclude the application of overlay zoning or other development regulations which impose additional requirements but do not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to development regulation by a local government, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations become effective with respect to property which is subject to a site-specific vesting plan upon the expiration or termination of the vesting rights period provided for in this section.

(3) Notwithstanding any provision of this section, the establishment of a vested right does not preclude, change, or impair the authority of the Town to adopt and enforce development regulations governing nonconforming situations or uses.

(G) Miscellaneous Provisions. –

(1) A vested right obtained under this section is not a personal right, but attaches to and runs with the applicable property. After approval of a site-specific vesting plan, all successors to the original landowner are entitled to exercise these rights.

(2) Nothing in this section precludes judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

(3) In the event the Town fails to adopt a development regulation setting forth what constitutes a site-specific vesting plan triggering a vested right, a landowner may establish a vested right with respect to property upon the approval of a zoning permit, or otherwise may seek appropriate relief from the Superior Court Division of the General Court of Justice.

§2.13 DEVELOPMENT AGREEMENTS.

§2.13.01 AUTHORIZATION. § 160D-1001.

(A) The General Assembly finds the following:

(1) Development projects often occur in multiple phases over several years, requiring a long-term commitment of both public and private resources.

(2) Such developments often create community impacts and opportunities that are difficult to accommodate within traditional zoning processes.

(3) Because of their scale and duration, such projects often require careful coordination of public capital facilities planning, financing, and construction schedules and phasing of the private development.

(4) Such projects involve substantial commitments of private capital, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development.

(5) Such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas.

(6) To better structure and manage development approvals for such developments and ensure their proper integration into local capital facilities programs, local governments need flexibility to negotiate such developments.

(B) Local governments may enter into development agreements with developers, subject to the procedures of this Article. In entering into such agreements, a local government may not exercise any authority or make any commitment not authorized by general or local act and may not impose any tax or fee not authorized by otherwise applicable law.

(C) This Article is supplemental to the powers conferred upon local governments and does not preclude or supersede rights and obligations established pursuant to other law regarding development approvals, site-

specific vesting plans, or other provisions of law. A development agreement shall not exempt the property owner or developer from compliance with the State Building Code or State or local housing codes that are not part of the local government's development regulations. When the Board of Aldermen approves the rezoning of any property associated with a development agreement executed and recorded pursuant to this Article, the provisions of G.S. 160D-605(a) apply.

(D) Development authorized by a development agreement shall comply with all applicable laws, including all ordinances, resolutions, regulations, permits, policies, and laws affecting the development of property, including laws governing permitted uses of the property, density, intensity, design, and improvements.

§2.13.02 DEFINITIONS. § 160D-1002.

The following definitions apply in this Article:

(A) Development. - The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. When appropriate to the context, "development" refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

(B) Public facilities. - Major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

§2.13.03 APPROVAL OF GOVERNING BOARD REQUIRED. § 160D-1003.

(A) A local government may establish procedures and requirements, as provided in this Article, to consider and enter into development agreements with developers. A development agreement must be approved by the Board of Aldermen of a local government following the procedures specified in G.S. 160D-1005.

(B) The development agreement may, by ordinance, be incorporated, in whole or in part, into any development regulation adopted by the local government. A development agreement may be considered concurrently with a zoning map or text amendment affecting the property and development subject to the development agreement. A development agreement may be concurrently considered with and incorporated by reference with a sketch plan or preliminary plat required under a subdivision regulation or a site plan or other development approval required under a zoning regulation. incorporated into a conditional district, the provisions of the development agreement shall be treated as a development regulation in the event of the developer's bankruptcy.

§2.13.04 SIZE AND DURATION. § 160D-1004.

A local government may enter into a development agreement with a developer for the development of property as provided in this Article for developable property of any size. Development agreements shall be of a reasonable term specified in the agreement.

§2.13.05 HEARING. § 160D-1005.

Before entering into a development agreement, a local government shall conduct a legislative hearing on the proposed agreement. The notice provisions of G.S. 160D-602 applicable to zoning map amendments shall be followed for this hearing. The notice for the hearing must specify the location of the property

subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained.

§2.13.06 CONTENT AND MODIFICATION. § 160D-1006.

(A) A development agreement shall, at a minimum, include all of the following:

(1) A description of the property subject to the agreement and the names of its legal and equitable property owners.

(2) The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.

(3) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.

(4) A description of public facilities that will serve the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development. In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development, such as meeting defined completion percentages or other performance standards.

(5) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions agreed to by the developer that exceed existing laws related to protection of environmentally sensitive property.

(6) A description, where appropriate, of any conditions, terms, restrictions, or other requirements for the protection of public health, safety, or welfare.

(7) A description, where appropriate, of any provisions for the preservation and restoration of historic structures.

(B) A development agreement may also provide that the entire development or any phase of it be commenced or completed within a specified period of time. If required by ordinance or in the agreement, the development agreement shall provide a development schedule, including commencement dates and interim completion dates at no greater than five-year intervals; provided, however, the failure to meet a commencement or completion date does not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. 160D-1008 but must be judged based upon the totality of the circumstances. The developer may request a modification in the dates as set forth in the agreement.

(C) If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement. A local or regional utility authority may also be made a party to the development agreement.

(D) The development agreement also may cover any other matter, including defined performance standards, not inconsistent with this Chapter. The development agreement may include mutually acceptable terms regarding provision of public facilities and other amenities and the allocation of financial responsibility for their provision, provided any impact mitigation measures offered by the developer beyond those that could be required by the local government shall be expressly enumerated within the agreement, and provided the agreement may not include a tax or impact fee not otherwise authorized by law.

(E) Consideration of a proposed major modification of the agreement shall follow the same procedures as

required for initial approval of a development agreement. What changes constitute a major modification may be determined by ordinance adopted pursuant to G.S. 160D-1003 or as provided for in the development agreement.

(F) Any performance guarantees under the development agreement shall comply with G.S. 160D-804.1.

§2.13.07 VESTING. § 160D-1007.

(A) Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.

(B) Except for grounds specified in G.S. 160D-108(c) or G.S. 160D-108.1(f), a local government may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement.

(C) In the event State or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the local government may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the development agreement.

(D) This section does not abrogate any vested rights otherwise preserved by law.

§2.13.08 BREACH AND CURE. § 160D-1008.

(A) Procedures established pursuant to G.S. 160D-1003 may include a provision requiring periodic review by the zoning administrator or other appropriate officer of the local government, at which time the developer shall demonstrate good-faith compliance with the terms of the development agreement.

(B) If the local government finds and determines that the developer has committed a material breach of the agreement, the local government shall notify the developer in writing setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination and providing the developer a reasonable time in which to cure the material breach.

(C) If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement, provided the notice of termination or modification may be appealed to the board of adjustment in the manner provided by G.S. 160D-405.

(D) An ordinance adopted pursuant to G.S. 160D-1003 or the development agreement may specify other penalties for breach in lieu of termination, including, but not limited to, penalties allowed for violation of a development regulation. Nothing in this Article shall be construed to abrogate or impair the power of the local government to enforce applicable law.

(E) A development agreement shall be enforceable by any party to the agreement notwithstanding any changes in the development regulations made subsequent to the effective date of the development agreement. Any party to the agreement may file an action for injunctive relief to enforce the terms of a development agreement.

§2.13.09 AMENDMENT OR TERMINATION. § 160D-1009.

Subject to the provisions of G.S. 160D-1006(e), a development agreement may be amended or terminated by mutual consent of the parties.

§2.13.10 CHANGE OF JURISDICTION. § 160D-1010.

(A) Except as otherwise provided by this Article, any development agreement entered into by a local government before the effective date of a change of jurisdiction shall be valid for the duration of the agreement or eight years from the effective date of the change in jurisdiction, whichever is earlier. The parties to the development agreement and the local government assuming jurisdiction have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the previous jurisdiction.

(B) A local government assuming jurisdiction may modify or suspend the provisions of the development agreement if the local government determines that the failure of the local government to do so would place the residents of the territory subject to the development agreement or the residents of the local government, or both, in a condition dangerous to their health or safety, or both.

§2.13.11 RECORDATION. § 160D-1011.

The developer shall record the agreement with the register of deeds in the county where the property is located within 14 days after the local government and developer execute an approved development agreement. No development approvals may be issued until the development agreement has been recorded. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

§2.13.12 APPLICABILITY OF PROCEDURES TO APPROVE DEBT. § 160D-1012.

In the event that any of the obligations of the local government in the development agreement constitute debt, the local government shall comply, at the time of the obligation to incur the debt and before the debt becomes enforceable against the local government, with any applicable constitutional and statutory procedures for the approval of this debt.

§2.14 REQUIRED DEVELOPMENT PERMITS

§2.14.01 CAMA PERMIT.

No development regulated by North Carolina CAMA regulations shall occur, unless the CAMA permitting officer shall first issue a CAMA permit.

(Ord. passed 11-2-2011)

§2.14.02 FLOODPLAIN DEVELOPMENT PERMIT.

No development shall occur in special flood hazard areas, as defined in Article 7, Flood Damage Prevention, unless the Floodplain Administrator shall first issue a floodplain development permit pursuant to § 7.04(B), or unless a variance has been approved pursuant to § 7.04(E).

(Ord. passed 11-2-2011)

§2.14.03 ZONING PERMIT.

(A) Zoning permit required.

(1) A valid zoning permit shall be presented with any application for a building permit.

(2) No building permit shall be issued for any activity in a zoned area until such zoning permit is approved.

(3) It shall be unlawful to commence the excavation for or the construction of any building or other structure including accessory structures or to commence the moving, alteration or repair of any structure or the use of any land or building including accessory structures, until the Zoning Administrator has issued a zoning permit for such work or use including a statement that the plans, specifications and intended use of such land, or structure, in all respects conforms with the provisions of this ordinance.

(4) The Zoning Administrator may withhold a zoning permit for lots or structures that do not meet minimum requirements.

(5) Application for a zoning permit shall be made in writing to the Zoning Administrator on forms provided for that purpose.

(6) Zoning permits shall be void after six months from date of issue unless substantial progress on the project has been made by that time.

(B) Approval of plans. It shall be unlawful for the Zoning Administrator to approve any plans or issue a zoning permit for any purpose regulated by this ordinance until he or she has inspected such plans in detail and found them in conformity with this ordinance. To this end, the Zoning Administrator may require that every application for a zoning permit be accompanied by a plan or plat drawn to scale and showing the following in sufficient detail to enable the Zoning Administrator to ascertain whether the proposed activity is in conformance with this ordinance.

(1) The actual shape, location and dimensions of the lot.

(2) The shape, size and location of all buildings or other structures to be erected, altered or moved and of any building or other structures already on the lot.

(3) The existing and intended use of all such buildings or other structures.

(4) Such other information concerning the lot or adjoining lots as may be essential for determining whether the provisions of this ordinance are being observed.

(C) Issuance of zoning permits.

(1) If the proposed activity as set forth in the application is in conformity with the provisions of this ordinance, the Zoning Administrator shall issue a zoning permit.

(2) If any application for a zoning permit is not approved, the Zoning Administrator shall state in writing on the application the cause for such disapproval.

(3) Issuance of a permit shall, in no case, be construed as waiving any provision of this or any other ordinance or regulation.

(D) Zoning compliance and certificates of occupancy.

(1) No new building or part thereof shall be occupied, and no addition or enlargement of any existing building shall be occupied, and no existing building after being altered or moved shall be occupied, and no change of occupancy shall be made in any existing building or part thereof, until the Zoning Administrator has issued a certificate of compliance and the Building Inspector has issued a certificate of occupancy. The change of occupancy provision shall not apply to rooms intended for transient rental.

(2) Application for a certificate of occupancy may be made by the owner or his or her agent at the same time as submitting an application for a building permit, if needed, or for a zoning permit. Upon approval of a certificate of zoning compliance, the certificate of compliance shall be issued if the Building Inspector after all final inspections have been made provided he or she finds compliance.

(3) In the case of existing buildings or other uses not requiring a building permit, after supplying the information and data necessary to determine compliance with this ordinance and appropriate regulatory codes of the town for the occupancy intended, the Zoning Administrator shall issue a certificate of compliance when, after examination and inspection, it is found that the building or use in all respects conforms to the provisions of this ordinance and appropriate regulatory codes of the town for the occupancy intended.

(4) No certificate of compliance shall be issued until address numbers are properly displayed.

(E) Other permits. The Zoning Administrator shall be authorized to issue other permits as required by this ordinance or the Board of Aldermen.

(Ord. passed 12-2-2004; Ord. passed 11-2-2011; Ord. 2014-5, passed 6-5-2014) Penalty, see § 10.06

(F) Incomplete applications. The Planning Director may refuse to process any application that the Planning Director determines to be incomplete unless and until the applicant has submitted any missing information or materials. If the Planning Director determines that an application is incomplete, he or she shall notify the applicant of the specific missing information or materials.

(G) Pre-application conference:

(1) Before submitting an application for development approval, it is recommended that each applicant schedule a pre-application conference with the Planning Director or designee to discuss the procedures, standards and regulations required for development approval in accordance with of this ordinance; and

(2) A mandatory pre-application conference with the Planning Director or designee shall be required for the following development reviews:

(a) CAMA land use plan amendment;

(b) Special use permits;

(c) Zoning map change; and

(d) Conservation subdivision (after preparation of site analysis map).

(H) A mandatory pre-application conference with the Public Works Director or designee shall be required for the following development reviews:

(1) Traffic impact analysis; and

(2) Traffic impact analysis major special use permit.

(Ord. passed 11-2-2011)

§2.14.04 BUILDING PERMIT.

(A) Before the erection, construction or alteration of any building or structure, or part of the same, there shall be submitted to the Building Inspector by the owner or authorized agent, an application for a building permit on appropriate blanks to be furnished by the town.

(B) Each application for a building permit shall be accompanied by all other required permits. No building permit shall be issued until an official building number has been assigned for a lot. If it shall appear to the Building Inspector that the provisions of this article and all requirements of fees have been paid, if any, he will then issue the building permit.

(C) All plans, permit applications and supporting documentation submitted to the Building Inspector shall be maintained by the town in perpetuity.

(Ord. passed 11-2-2011)

§2.15 ADMINISTRATIVE DEVELOPMENT APPROVALS AND DETERMINATIONS. § 160D-403.

(A) Development Approvals. - To the extent consistent with the scope of regulatory authority granted by NCGS 160D, no person shall commence or proceed with development without first securing any required development approval from the Town. A development approval shall be in writing and may contain a provision requiring that the development comply with all applicable State and local laws. The Town may issue development approvals in print or electronic form. Any development approval issued exclusively in electronic form shall be protected from further editing once issued. Applications for development approvals may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.

(B) Determinations and Notice of Determinations. – The development regulation enacted under the authority of NCGS 160D designates the Planning Director with making determinations under the development regulation.

(1) The officer making the determination shall give written notice to the owner of the property that is the subject of the determination and to the party who sought the determination, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner.

(2) It is conclusively presumed that all persons with standing to appeal have constructive notice of the determination from the date a sign providing notice that a determination has been made is prominently posted on the property that is the subject of the determination, provided the sign remains on the property for at least 10 days. The sign shall contain the words "Zoning Decision" or "Subdivision Decision" or similar language for other determinations in letters at least 6 inches high and shall identify the means to contact the Town staff member for information about the determination.

(3) Posting of signs is not the only form of constructive notice. Any such posting is the responsibility of the landowner, applicant, or person who sought the determination. Verification of the posting shall be provided to the staff member responsible for the determination. Absent an ordinance provision to the contrary, posting of signs shall not be required.

(C) Duration of Development Approval. - Unless a different period is specified by this Chapter or other specific applicable law, including for a development agreement, a development approval issued pursuant to this Chapter expires one year after the date of issuance if the work authorized by the development approval has not been substantially commenced. Local development regulations may provide for development approvals of shorter duration for temporary land uses, special events, temporary signs, and similar development. Local development regulations may also provide for development approvals of longer duration for specified types of development approvals. Nothing in this subsection limits any vested rights secured under G.S. 160D-108 or G.S. 160D-108.1.

(D) Changes. - After a development approval has been issued, no deviations from the terms of the application or the development approval shall be made until written approval of proposed changes or deviations has been obtained. A local government may define by ordinance minor modifications to development approvals that can be exempted or administratively approved. The local government shall follow the same development review and approval process required for issuance of the development

approval in the review and approval of any major modification of that approval.

(E) Inspections. - Administrative staff may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State and local laws and of the terms of the approval. In exercising this power, staff are authorized to enter any premises within the jurisdiction of the local government at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

(F) Revocation of Development Approvals. - In addition to initiation of enforcement actions under G.S. 160D-404, development approvals may be revoked by the local government issuing the development approval by notifying the holder in writing stating the reason for the revocation. The local government shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked. The revocation of a development approval by a staff member may be appealed pursuant to G.S. 160D-405. If an appeal is filed regarding a development regulation adopted by a local government pursuant to this Chapter, the provisions of G.S. 160D-405(e) regarding stays apply.

(G) Certificate of Occupancy. - A local government may, upon completion of work or activity undertaken pursuant to a development approval, make final inspections and issue a certificate of compliance or occupancy if staff finds that the completed work complies with all applicable State and local laws and with the terms of the approval. No building, structure, or use of land that is subject to a building permit required by G.S. 160D Article 11 shall be occupied or used until a certificate of occupancy or temporary certificate pursuant to G.S. 160D-1114 has been issued.

§2.16 LAPSE OF APPROVAL.

Lapse of approval ("expiration") shall occur as provided by this ordinance for the various types of development applications. If no provision for lapse is given by this ordinance for a particular type of development permit or approval, and if no lapse period is imposed as part of an approval by the decision-making body, lapse shall occur if development is not commenced or a subsequent permit is not obtained within one year.

(Ord. passed 11-2-2011)

§2.17 ENFORCEMENT. § 160D-404.

§2.17.01 NOTICES OF VIOLATION.

When staff determines work or activity has been undertaken in violation of a development regulation adopted pursuant to this Chapter or other local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State or in violation of the terms of a development approval, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the local

government that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1123 or G.S. 160D-1206 or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to G.S. 160D-405.

§2.17.02 STOP WORK ORDERS.

Whenever any work or activity subject to regulation pursuant to this Chapter or other applicable local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, staff may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail. The person or persons delivering the stop work order shall certify to the local government that the order was delivered and that certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1112 and G.S. 160D-1208, a stop work order may be appealed pursuant to G.S. 160D-405. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor and subject to a civil fine of five hundred dollars (\$ 500.00).

§2.17.03 REMEDIES.

(A) Subject to the provisions of the development regulation, any development regulation adopted pursuant to authority conferred by this Chapter may be enforced by any remedy provided by G.S. 160A-175. If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used or developed in violation of this Chapter or of any development regulation or other regulation made under authority of this Chapter, the local government, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use, or development; to restrain, correct or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises.

(B) The Town shall have power to impose fines and penalties adopted by the Board of Aldermen in the Annual Budget Fee Schedule for violation of this ordinance, and may secure injunctions and abatement orders to further ensure compliance with its ordinances as provided by this section.

(C) A violation of this ordinance is a misdemeanor as provided by G.S. 14-4.

(D) A violation shall subject the offender to a civil penalty to be recovered by the Town in a civil action in the nature of debt if the offender does not pay the penalty within seven (7) days after he or she has been cited for violation of the ordinance.

(E) This ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the Town for equitable relief that there is an adequate remedy at law.

(F) An unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement, and the General Court of Justice shall have jurisdiction to issue such orders. When a violation of such an ordinance occurs, the town may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to

correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

(G) In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture, or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the Town may execute the order of abatement. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(H) This ordinance may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section.

(I) Pursuant to G.S. 1-51 & 49, the Town must bring a court action in advance of the applicable five and seven-year statutes of limitation.

(J) Each day's continuing violation shall be a separate and distinct offense.

§2.18 SPECIFIC DEVELOPMENT APPROVALS.

The provisions of this section supplement the common review procedures of § 2.08. These provisions do not replace the common review procedures, but in case of any direct conflict between the requirements of this section and a requirement of § 2.08, the provisions of this section shall govern.

(Ord. passed 11-2-2011)

§2.19 PLANNED UNIT DEVELOPMENTS (PUDS).

(A) General description and purpose. Planned unit developments are planned developments in which the principal use of land within a development is for both attached and detached single-family dwellings and/or condominiums, townhouses other multi-family dwellings and commercial development. A planned unit development is an alternative procedure for development that may be utilized by owners and developers with regard to the development of any parcel of land in those districts where planned unit developments are special uses listed in Table 4-1, Use Table. The purposes of a planned unit development are as follows:

(1) To provide for the preservation of large areas of open space for recreation and preservation of natural amenities;

(2) To provide flexibility in design to take the greatest advantage of natural land, water, trees and environmental and historical features;

(3) To provide for the creation of compatible neighborhood arrangements that give the home buyer greater choice in selecting his or her living environment;

(4) To provide sufficient freedom for the developer to submit plans that embody a creative approach

to the use of lands and related physical development, as well as utilizing innovative techniques to enhance the visual character of the development;

(5) To provide for the efficient use of land that may result in smaller street and utility networks, better maintenance and upkeep of sewage disposal systems, and reduced development and maintenance costs;

(6) To establish criteria for the inclusion of compatible or associated uses to complement the residential area within the planned unit development;

(7) To simplify the procedures for obtaining approval of proposed development through expeditious review of proposed land use, site layout, public needs and health and safety factors;

(8) To minimize expenditures of public funds for services and maintenance of streets, roads, central sewage systems and similar utilities, and to promote the efficient investment of community resources; and

(9) To improve the level of amenities such as open space, appropriate and harmonious variety, creative design and a better environment.

(B) Location. Planned developments may be established in those zoning districts in which a planned unit development is shown as a special use in Table 4-1. Single-family dwellings, townhouses, condominiums, multi-family dwellings and commercial development or combinations thereof may be located within a planned unit development.

(C) Preliminary and final review procedures and approvals. The procedure for both preliminary and final approval by the Planning Board and the Board of Aldermen as described in § 2.06.04, Special Use Permits and § 2.06.05, Subdivision of Land, shall also be applicable to planned unit developments. The preliminary and final plats and documents shall meet the requirements of § 6.02, Planned Unit Developments and, in addition thereto, the following additional information and documents shall be submitted to the Planning Board and Board of Aldermen simultaneously with the final plat:

(1) A copy of the proposed declaration of unit ownership and the proposed bylaws meeting the requirements of G.S. Ch. 47A, in the event condominiums are involved in the planned unit development.

(2) If the proposed planned unit development is to consist of townhouses or other attached single-family dwellings other than condominiums, a copy of the proposed restrictions, covenants and easements shall be provided. The proposed annual budget for the homeowners' association shall also be included.

(Ord. passed 11-2-2011)

§2.20 SPECIAL USE PERMITS.

(A) Objectives and purpose. Permitting special uses adds flexibility to the unified development ordinance. Subject to high standards of planning and design, certain uses are allowed in districts where they are compatible but where adverse impacts need to be minimized. By means of controls exercised through the special use permit procedures, these uses can be developed to minimize any bad effects they might have on surrounding properties.

(B) Granting authority.

(1) Special use permits must be approved by the Board of Aldermen.

(2) Requests for special use permits granted by the Board of Aldermen shall be initially reviewed by the Planning Board. The Planning Board shall pay particular attention to consistency of the proposed use with the CAMA Land Use Plan. At the meeting set by the Board of Aldermen for a evidentiary hearing, the Planning Board's written comments shall be presented, along with the staff report and are not subject to the rules of

sworn evidence.

(C) Application submission.

(1) The owner(s) or anyone with a possessory interest entitled to exclusive possession or anyone with a contractual interest soon to be a freehold interest in the property included in the petition for a special use permit shall submit an application to the Zoning Administrator at least 30 days before the meeting of the Board of Aldermen at which it is to be heard.

(2) It is recommended that the applicant or his or her representative meet with the Zoning Administrator before beginning the application process to discuss the proposed plans and the special use process.

(3) The application shall include all of the requirements pertaining to it in this ordinance. In addition, the application shall demonstrate compliance with the provisions identified for each special use identified in this ordinance. Without complete information, the application shall not be processed by the Zoning Administrator.

(4) The applicant shall submit sufficient information in order to provide a full and accurate description of the proposed use including its appearance and operational characteristics. The burden is on the applicant to present sufficient evidence to allow the appropriate board to make a finding that all the standards will be met.

(5) At the time of submission, applicants shall pay a fee according to the fee schedule approved by the Board of Aldermen to partially defray the costs of processing the application.

(D) Review procedures for special use permit.

(1) Notice of public evidentiary hearing. Upon receipt of a complete application for a special use permit, a public hearing shall be scheduled for an upcoming meeting of the Board of Aldermen. Notice of a public hearing shall be provided in the following manner.

(a) The Zoning Administrator shall provide written notice by first class mail at least ten days before the hearing to all parties to the proceeding and to owners of all parcels of land abutting the parcel for which the special use permit is sought. Names and addresses of property owners shall be obtained from property tax listings.

(b) Notice shall also be provided by newspaper publication of the location and subject of the request. Such notice shall run at least once each week for two successive weeks before the Board of Aldermen meeting at which the hearing is set for consideration of the request. The notice shall be published for the first time not less than ten, nor more than 25 days before the date fixed for the hearing.

(c) Notice shall also be posted by the town on the property subject to the request. Notice shall be posted at least one week before the scheduled hearing at which the request is to be heard.

(2) Public evidentiary hearing and action by Board of Aldermen. Upon receipt of a complete application at least 30 days before a meeting of the designated Board, the Board shall consider the applicant's request. All evidence presented at the public hearing shall be under oath, and evidence shall be competent, substantial and material. Following the public hearing, the board shall act on the applicant's request by either granting or denying the request.

(3) Voting. When voting on the applicant's request for a special use permit, a majority vote of the Board of Aldermen shall be required to grant the request. Vacant seats and disqualified members are not counted in computing the necessary majority vote. If the Board grants the special use permit, the approval

shall include approval of required plans as submitted.

(4) Conflicts. A member of the Board of Aldermen shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(5) Findings. In granting the permit, the Board of Aldermen shall make a written decision that:

(a) Identifies the key facts of the case and applies these facts to the following standards. The Board must find that all of these conditions exist, or the application will be denied;

(b) The use or development is located, designed and proposed to be operated so as to maintain or promote the public health, safety and general welfare;

(c) The use or development complies with all required regulations and standards of this ordinance and with all other applicable regulations; and

(d) The use or development conforms to the plans for the land use and development of town as embodied in this zoning ordinance and in the town CAMA land use plan.

(6) Additional conditions. In granting the special use permit, the Board may designate additional conditions that will, in its opinion, assure that the use in its proposed location will be harmonious with the area in which it is proposed to be located, is within the spirit of this ordinance and clearly in keeping with the public welfare.

All such additional conditions shall be entered into the minutes of the meeting, at which the special use permit is granted, on the special use permit itself and on the approved plans. The Board must obtain applicant's/landowner's written consent to conditions related to a special use permit to ensure enforceability. (S.L. 2019-111, Pt. I.) The special use permit and any other specific conditions shall run with the land and shall be binding on the original applicants, their heirs, successors and assigns. The Board must not impose conditions on special use permits that the local government does not otherwise have statutory authority to impose. (S.L. 2019-111, Pt. I.)

(7) Denial. If the specified board denies a request for a special use permit, it shall enter the reasons for its action in the minutes of the meeting at which the action was taken. A letter signed by the Zoning Administrator is mailed to the applicant identifying the reasons for denial.

(8) Approvals and copies. Upon approval of the request for a special use permit, a copy of the plan shall be dated and signed by the Zoning Administrator, denoting town approval. One copy shall be returned to the applicant.

(9) Appeal of decision. Appeal may be taken from the action of the Board of Aldermen in granting or denying a special use permit through Superior Court of the county. Any petition for review shall be filed with the Clerk of Superior Court within 30 days after a decision of the board is filed in the office of the Town Clerk, or after a written copy of the decision is delivered to every aggrieved party who has filed a written request for such copy with the Clerk at the time of the hearing of the case, whichever is later. The decision of the authorized board shall be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

(10) Failure to comply with plans or conditions. In the event of failure to comply with the plans approved by the Board of Aldermen or with any other conditions imposed upon the special use permit, the permit shall thereupon immediately become void and of no effect. No building permits for further construction or certificates of occupancy under this special use permit shall be issued, and all completed structures shall be regarded as nonconforming uses subject to the provisions of this ordinance; provided, however, that the Board of Aldermen shall not be prevented from thereafter rezoning said property for its most appropriate use.

(Ord. passed 11-2-2011)

§2.21 SUBDIVISION OF LAND.

Subdivisions shall be subject to the following procedures and requirements in additions to other applicable terms and conditions set forth in this ordinance. Both preliminary and final plats and other documents including fees required by this ordinance shall be submitted for approval to the Planning Board and the Board of Aldermen.

(A) Sketch design plan.

(1) Prior to the filing of an application for approval of the preliminary plat, the subdivider shall submit to the Planning Board a sketch design plan and a vicinity sketch showing the relationship of the proposed subdivision to surrounding properties and areas of environmental concern. The Planning Board shall review the sketch design plan for compliance with the requirements of this ordinance and inform the subdivider about the regulations that govern the proposed development and the procedure the subdivider is to follow in preparing and submitting the preliminary and final plats. The subdivider is to informally explain to the Planning Board the plans for developing the proposed subdivision, including the kind and extent of proposed improvements. The Planning Board is to discuss with the subdivider any suggested changes deemed advisable. Discussion of a sketch design plan with or without modifications shall not constitute or imply approval of any preliminary or final subdivision plat based on the sketch design plan.

(2) Applicants shall submit 12 copies of all required application materials. The sketch design plan and site planning sketches shall be drawn at an approximate scale of one inch to 100 feet and include:

(a) The name and address of the owner and the subdivider;

(b) Existing conditions of the site including streets, roads, rights-of-way, easements, watercourses, wetlands and structures;

(c) Zoning district;

(d) Approximate location of lot lines, approximate number of lots, and total tract acreage and square footage;

(e) Square footage of proposed built-upon area and percentage of total lot area; and

(f) Proposed rights-of-way, easements and any sites to be dedicated for places of worship or public use.

(B) Preliminary plats.

(1) Application requirements. A preliminary plat shall be drawn at a scale of not less than 100 feet to the inch, and show the following:

Name. The subdivision name, the names and addresses of the owners and the designer of the subdivision and his or her qualifications;

(a) Date and the like. Date, approximate north arrow and scale;

(b) Boundaries. The boundary line of the tract to be subdivided drawn accurately to scale and with accurate linear and angular dimensions;

(c) Location map. A map with a scale of not less than one inch equals 1,000 feet showing the location of the subdivision;

(d) Contours, contour interval and finished grades. Contours with a vertical interval of two feet referenced to sea level datum perimeter and in the interior shown in a manner that clearly distinguishes proposed elevations from existing elevations;

(e) Primary dunes. The location of the primary dunes as established by the N.C. Division of Coastal Management (NCDCM) or CAMA LPO;

(f) Existing property lines and the like. The location of existing and platted property lines, acreage and square footage, zoning district, streets, buildings, watercourses, railroads, bridges, water mains, sewers, culverts, drainpipes and public utility easements, both on the land to be subdivided and on the land immediately adjoining and any other pertinent characteristics of the land. The names of adjoining subdivisions or the names of record owners of adjoining parcels of unsubdivided land;

(g) Proposed improvements. The names proposed locations and approximate dimensions of all proposed improvements. All subdivision plats which will create lots not directly abutting a dedicated and accepted public street shall include proposed improvements for roadway access, either public or private, to each of these lots and such roadways shall conform to the design standards for town streets specified in § 6.02.05 of this unified development ordinance;

(h) Proposed changes. In all cases, shall be shown in a manner that will distinguish them clearly from the existing characteristics of the land;

(i) Drainage. The preliminary plat shall also indicate and show surface water drainage plans and methods. The preliminary plat shall include a drawing showing storm water drainage supported by design computations. The design shall conform to the standards as required by NCDOT, NCDWQ or other regulatory state agency;

(j) Utilities. The preliminary plat shall include all applicable utilities including street lighting. All utilities shall be underground. Utility distribution boxes; such as, water meter boxes and transformers, shall be located where side yard property lines intersect with street right-of-way lines (front yard property lines) and placed at the property corners in a manner that incompatible types of utility services will not conflict with each other (i.e., electric services combined at a common corner of two adjacent lots and water services combined at another common corner in order to serve two lots from each location when possible);

(k) Environmental concern standards. In order to be in compliance with area of environmental concern standards, the preliminary plat shall contain a statement that the subdivision is located either within or without a North Carolina Coastal Area Management Act Area of Environmental Concern and shall show all required AEC data;

(l) Road plans and profiles. Road plans and profiles of all streets showing natural and finished grades drawn to scale of not less than one inch equals 40 feet horizontal and one inch equals four feet vertical;

(m) Health Department approval. Where public water and/or sewage is not available for extension to each lot in the subdivision, a written report from the County Health Department shall be submitted as to the adequacy of the land area, and the suitability as to the soil and topography of the proposed subdivision to accommodate the proposed methods of water supply and sewage disposal;

(n) Required data. The preliminary plat shall be accompanied by a copy of all applications required by agencies other than the town. Applications must contain all pertinent data required to process applications;

(o) Street access to subdivided lots. Except as otherwise provided by this article, every subdivision of property within the jurisdiction of the town shall include access to each and every lot of the subdivision by way of dedicated and accepted public streets or by establishment of private street systems which are platted and approved pursuant to the requirements of this article. All public or private streets and bridges shall meet the design standards as required by NCDOT; and

(p) Other information. Other information as deemed necessary by the Planning Director.

(2) Approval procedure. The submission of a preliminary plat shall be accompanied by a letter of transmittal describing the proposed subdivision and a statement that the plat is in compliance with this ordinance. The Planning Board shall review the preliminary plat and shall approve the preliminary plat if it finds that the subdivision meets or exceeds the standards of this development ordinance. Approval of a preliminary plat shall be valid for a period of one year.

(3) Approval and conditional approval.

(C) When a preliminary plat is granted only a conditional approval, the reasons for conditional approval and the conditions to be met must be stated in writing. In lieu of granting conditional approval of the preliminary plat, the Planning Board may require the subdivider to resubmit the preliminary plat in a revised format that incorporates recommended changes.

(D) When a preliminary plat is disapproved by the Planning Board, reasons for such action shall be stated in writing. One copy of the plat with the reasons for disapproval shall be provided to the subdivider and one such copy shall be retained by the Planning Director. The subdivider may make the recommended changes and submit a revised plat to the Planning Board for approval.

(E) If the Planning Board approves the preliminary plat, one copy approved by the Planning Board shall be sent to the subdivider. If the preliminary plat is granted conditional approval, the conditions for approval by the Board must be noted and these conditions must be found by the Planning Director to be satisfied prior to the plat being deemed acceptable. If the preliminary plat is not acceptable to the Planning Board, the plat, along with the reasons for non-approval, shall be returned to the applicant.

(F) Final plat.

(1) Application requirements. The final plat shall be a reproducible map on linen, film or other permanent material and shall have an outside marginal size of 24 inches by 36 inches, including one and one-half inches for binding on the left margin and one-half-inch border on each of the other sides. Where the size of land areas is of a suitable scale, to assure legibility requirements maps may be placed on two or more sheets with appropriate match lines, it shall be drawn to the same scale as the preliminary plat, and shall contain the following:

(a) Boundary and the like. The exact boundary of the tract of land being subdivided, showing clearly the disposition of all portions of the tract into designated tracts, lots, streets, alleys, parks, open spaces, easements or other classifications, the exact location and width of all existing or recorded streets intersecting the boundary of the tract being subdivided, and the names of adjoining subdivisions or the name of record owners or adjoining parcels of unsubdivided land, including the boundaries of all special flood hazard areas. All existing characteristics of the land shall be clearly defined from those characteristics that are proposed.

(b) Streets and the like. The lines and names of all streets, alleys, boundary lines, lot lines, building lines, easements, areas devoted to public use, and lot and block numbers.

(c) Title. A note shall appear on the final plat stating the deed reference under which title to the property being subdivided is held.

(d) Lines. Sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement, boundary line and building line whether straight or curved. This shall include tangent distance, the central angle, the radius, arcs and chords of all curves. All linear dimensions shall be given in feet and hundredths thereof, and angular dimensions shall be of comparable accuracy within the limits of good surveying practice.

(e) Monuments and control corners. The accurate location, material and size of all monuments and the designation of specific control corners in conformance with the letter and intent of G.S. §§ 39-32.1, 39-32.2, 39-32.3 and 39-32.4 shall be known.

(f) Name of engineer and the like. The title, including the name of the subdivision, the town, the name of the registered engineer or registered surveyor under whose supervision the plat was prepared, the date of the plat, and a north arrow. Indication shall be made as to whether the north index is true, magnetic or grid.

(g) Certificate of ownership and dedication of streets and right-of-way.

For any plat submitted which incorporates public roadways, streets, easements and other rights-of-way, a certificate of ownership and dedication shall be shown properly completed and signed by the owners and all other interested parties, similar in wording to the following: the undersigned hereby acknowledge(s) this plat and allotment to be (his, her, their) free act and deed, and hereby dedicate(s) to public use as streets, playgrounds, parks, open spaces and easements forever all areas so shown or indicated on said plat.

Owner Date

(h) Owner's certification as to sewer service.

I certify (i) that I am the owner of the lands shown on this map and of all the sewer service infrastructure located on such lands, (ii) that all required sewer service improvements have been constructed within the streets and/or utility easements shown on this map in accordance with plans and specifications approved by the sewer service provider below, (iii) that such sewer service improvements are hereby dedicated and conveyed to the sewer service provider, free of liens and encumbrances, (iv) that the sewer service provider is hereby granted a perpetual easement over all streets and utility easements shown on this map, and (v) that the undersigned warrants to the sewer service provider for a period of 18 months from the date of this certification that such improvements are free from defects in materials and workmanship.

This ____ day of _____, 20__

[NAME OF OWNER]

By: _____

Title: _____

(i) Certificate as to sewer utilities and dedication.

I hereby certify that the plans and specifications for the sewer service improvements for _____ subdivision have been reviewed by the sewer service provider, that such sewer service improvements have been constructed, and that the sewer service provider hereby accepts the dedication of the sewer service improvements along with associated easements.

This _____ day of _____, 20_____

[NAME OF SEWER SERVICE PROVIDER]

By: _____

Print Name: _____

Title: _____

(j) Copy of the sewer service affidavit agreement regarding liens.

(k) Owner’s certification as to water service.

I certify (i) that I am the owner of the lands shown on this map and of all of the water and/or sewer infrastructure located on such lands, (ii) that all required water and/or sewer improvements have been constructed within the streets and/or utility easements shown on this map in accordance with plans and specifications approved by Onslow Water and Sewer Authority (“ONWASA”), (iii) that all such water and/or sewer improvements are hereby dedicated and conveyed to ONWASA, free of liens and encumbrances, (iv) that ONWASA is hereby granted a perpetual easement over all streets and utility easements shown on this map, and (v) that the undersigned warrants to ONWASA for a period of 18 months from the date of this certification that such improvements are free from defects in materials and workmanship.

This _____ day of _____, 20_____

[NAME OF OWNER]

By: _____

Title: _____

(l) Certificate as to water utilities and dedication.

I hereby certify that the plans and specifications for the water and/or sewer improvements for subdivision have been reviewed and approved by Onslow Water and Sewer Authority that such water and/or sewer improvements have been constructed, and that Onslow Water and Sewer Authority hereby accepts the dedication of the water and/or sewer improvements along with associated easements.

This _____ day of _____, 20_____

Onslow Water and Sewer Authority

By: _____

Print Name: _____

Title: _____

(m) Copy of the water service affidavit agreement regarding liens.

(n) Owners’ association documents for maintenance of private improvements. For any plat submitted incorporating private roadways, streets, easements and other rights-of-way, the following documents shall be submitted simultaneously with the final plat in order to provide for ongoing maintenance

of private improvements that will not be dedicated to the town:

(i) Documents creating the owners' association. The documents creating the association shall provide for control by the property owners other than the developer at such time as over 50% of the lots within the subdivision have been sold;

(ii) Proposed annual budget for the owners' association which includes the proposed monthly expenditures and income;

(iii) A proposed ten-year income and expense budget reflecting the establishment of a sinking fund for capital replacement;

(iv) A copy of the proposed bylaws of the association, and, when applicable, a declaration of unit ownership meeting the requirements of G.S. Ch. 47A or 47C; and

(v) A copy of the proposed restrictions, covenants and assessments shall also be provided.

(o) Form for endorsement. A form for the endorsement of the Town Board of Aldermen shall be similar to the following:

"Approved by the Board of Aldermen of the Town of North Topsail Beach, North Carolina, effective on the _____ day of _____, 20____.

Signed Mayor, Town of North Topsail Beach"

(p) Certification. The plat shall show proper certificates of the engineer or surveyor, notary public and the probate clerk as required by state law.

(q) AEC Standards. The AEC certification shall be similar to the following:

(i) "This subdivision conforms to the standards of the North Carolina Coastal Area Management Act of 1974, being G.S. §§ 113A-100 et seq. and is not located within an Area of Environmental Concern.

Signed Planning Director"

(ii) "This subdivision conforms to the standards of the North Carolina Coastal Area Management Act of 1974, being G.S. §§ 113A-100 et seq., and portions of the subdivision located within an Area of Environmental Concern is duly noted.

Signed Planning Director"

(2) Preparation of final plat. Upon approval of the preliminary plat by the Board of Aldermen, the subdivider may proceed with the preparation of the final plat, and the construction of required improvements in accordance with the approved preliminary plat and the requirements of this ordinance. Prior to approval of the final plat, the subdivider must complete the construction of all required improvements, or substantially complete all required improvements and guarantee completion by posting a letter-of-credit or cashier's check in accordance with subsection (C)(8) below.

(3) Planning Board review. The Planning Board shall review the final plat to ensure that the subdivision meets or exceeds the standards of this ordinance. Upon determination that these standards have been achieved, the Planning Board shall recommend to the Board of Aldermen that the final subdivision plat be approved.

(4) Submitting final plat. After the preliminary plat has been approved, the final subdivision plat shall

be prepared and submitted for final approval within one year after approval of the preliminary plat. Such owner or subdivider shall submit three 18-inch by 24-inch reproducible Mylar copies of the final plat, properly signed and executed as required for recording in the County Register of Deeds along with the necessary probate and recording fees to the Planning Director. Upon approval by the Board of Aldermen, the Planning Director, or designee, shall forward the final plat to the County Register of Deeds for recording.

(5) Conformity with preliminary plat. The final plat shall conform with the preliminary plat as approved, and, if desired by the owner or subdivider, it may constitute only that portion of the approved preliminary plat that he proposes to record and develop at the time provided that:

(a) The Planning Board shall find that the subdivision is reasonably located with respect to existing roads and utility lines; and

(b) Such portion shall conform to all requirements of this ordinance.

(6) State Board compliance. The final plat shall conform in all ways to the state statute G.S. § 47-30, as amended and to the State Board of Registration for Professional Engineers and Land Surveyors "Manual of Practice for Land Surveying".

(7) AEC standards. Area of Environmental Concern standards certification shall be provided on the final plat by the local permit officer that the subdivision is either within or without a North Carolina Coastal Management Act of 1974 Area of Environmental Concern.

§2.21.02 Security for uncompleted improvements.

(a) Performance guarantee.

(i) In lieu of prior construction of the improvements required by this ordinance, the Board of Alderman may, for the purpose of approving a final plat, accept a guarantee from the subdivider that such improvements will be carried out according to the final plat and the town's specifications at his expense. Such guarantee may be in the form of a surety bond made by a surety company licensed to do business in the state, a letter of credit or certified check drawn in favor of the town, or cash deposited with the town. To secure this agreement, the subdivider shall provide, subject to the approval of the Town Board of Alderman an engineer's cost estimate equal to 125% of the entire cost of the improvements and a schedule indicating time of initiation and completion of the work, as a whole or in stages to the Subdivision Administrator. The engineer's cost estimate shall show the quantities, unit costs and estimated total costs. All expenses associated with the town's review, recommendation, modification and approval relative to the amount of any performance guarantee and periodic drawdowns shall be born directly by the subdivider.

(ii) Performance guarantees shall run for a period of one year and may be renewed once for a period of one year upon written approval from the Board of Alderman.

(b) Default. Upon default, meaning failure on the part of the subdivider to complete the required improvements in a timely manner as spelled out in the performance bond or escrow agreement, then the surety, or the financial institution holding the escrow account shall if requested by the Board of Alderman, pay all or any portion of the bond or escrow fund to the town up to the amount needed to complete the improvements based on an engineering estimate. Upon payment, the Board of Alderman, in its discretion, may expend such portion of said funds, as it deems necessary to complete all or any portion of the required improvements. The town shall return to the subdivider any funds not spent in completing the improvements.

(c) Release of guarantee security.

(i) The Board of Alderman may release a portion of any security posted as the improvements are completed once said improvements are inspected and approved by the subdivision administrator.

(ii) In the event that the applicant wishes to occupy any building or any portion of any building prior to the completion of the required site improvements, the financial guarantee guaranteeing improvements shall be retained by the town until the remaining required improvements are completed.

(2) Areas for use. All property shown on the plat as dedicated for public use shall be deemed to be dedicated for any other public use authorized by the Town Charter or any general, local or special law pertaining to the town, when such other use is approved by the Board of Aldermen as in the public interest.

(3) Recordation of plat. No plat shall be recorded until the final subdivision plat is approved in accordance with this ordinance.

(Ord. passed 11-2-2011)

§2.22 SPECIAL PLAT APPROVAL.

The following types of development shall be subject to special plat approval by the Board of Aldermen, regardless of whether they involve a formal subdivision of land.

(A) Group housing and other special developments.

(1) Generally. This section shall apply to group housing and special developments to include apartments, condominiums, townhouses and planned unit developments.

(2) Application requirements. The application for preliminary approval and the preliminary plat shall contain the following information on one or more sheets, and shall comply with the following requirements.

(a) General information:

(i) Name of development;

(ii) Name of owner and developer;

(iii) Name of land planner, architect, engineer or surveyor;

(iv) Scale of map which shall be 50 feet to an inch; and

(v) Date of preliminary plan.

(b) A vicinity map showing all roads in the general area of the proposed group housing development, and also showing the relationship of the group housing project site to major roads in the area.

(c) The dimensions and bearings of all exterior property lines shall be shown on the preliminary plat.

(d) Land contours with vertical intervals of not more than two feet shall be provided for all projects and shall be shown either on the preliminary plat or on a topographic survey which accompanies the preliminary plat. In the event a topographic survey is submitted with the preliminary plat, it shall be drawn to the same scale as the preliminary plat and shall show land contours with vertical intervals of not more than two feet. Final grades around the perimeter and at significant locations inside the lot(s) shall be shown on the drawings.

(e) The preliminary plat shall show all roads within the group housing project area to include access roads and adjacent roads to the project area.

(f) The preliminary plat shall show and specifically locate all structures and buildings within the project site to include both present and proposed structures and buildings. The dimensions of the buildings and structures shall be shown in detail.

(g) All recreational and open spaces both existing and proposed shall be indicated in detail, and all structures, uses and buildings both existing and proposed within the recreation and open spaces shall be indicated in detail.

(h) The preliminary plat shall be accompanied by detailed plans of the developer concerning the method of surfacing roads and parking areas.

(i) The preliminary plat shall indicate in detail the location and intensity of area lights in the general plan of the electrical system for the proposed area. All utilities shall be underground.

(j) The preliminary plat shall indicate the source of water and the distribution system for the source of water. In the event the water system requires approval by the County Health Department, state and/or federal agencies, then plans and specifications approved by each agency having jurisdiction over the system must be approved. If the water distribution system requires approval from the County Health Department, then the approval of the County Health Department must accompany the preliminary plats.

(k) If a sewage collection disposal system is used, plans and specifications approved by Pluris, state and/or federal agencies must be submitted. If the public sewage system is not required and such system comes under the jurisdiction of the County Health Department, then their approval must accompany the preliminary plats.

(l) The preliminary plats shall indicate bodies of water, marshes, wooded areas, rivers, creeks and other natural conditions which may affect development within the project site.

(m) The preliminary plat shall indicate all adjoining property owners.

(n) The north arrow and graphic scale shall be shown.

(i) The preliminary plat shall indicate in detail the site data as follows:

(ii) Total acreage in the project, and natural area and method of calculation;

(iii) Type of group housing project units to be approved;

(iv) Number of one to four bedroom group housing project units;

(v) Maximum project area covered by all structures and improvements;

(vi) Minimum front, rear and side yards for each unit within the group housing project;

(vii) Minimum distance between principal buildings;

(viii) Height of each building;

(ix) Parking area and parking spaces for the project; and

(x) If the group housing project proposes townhouses, duplexes, row houses or other attached single-family dwellings, other than condominiums, the size of each lot shall be indicated. The minimum lot width and side, rear and front yards of each unit shall be indicated in detail.

(o) The preliminary plat shall also indicate the height above sea level for the project site, and shall

indicate whether or not any of the project area is within the area of environmental concern as defined under the Coastal Area Management Act, being G.S. §§ 113A-100 et seq.

(p) All utilities, including street construction, shall conform to the construction standards of the town and appropriate utility and state agency. The width and rights-of-way of streets shall meet the minimum standards for streets within the town as contained in Table 6-2, Right-of-Way Widths. The dedication of streets to the public use shall not be required, but the streets shall be designed and constructed meeting the minimum standards of the town in the event of future dedication of such streets to the town or NCDOT.

(q) The declaration of unit ownership, bylaws, restrictions or covenants shall contain information as to whom shall be responsible for payment of premiums for liability insurance, local taxes, maintenance of recreational facilities, parking lots, streets and drives, and other common areas, assessments, maintenance and repair expenses, and similar costs.

(r) All natural areas, as defined in § 3.03 Coastal Forest Overlay District (CFOD), shall be clearly delineated with dimensions shown, in order to verify the calculations of the reserved areas.

(3) Procedure for approval. Both preliminary and final plats and other documents required by this ordinance shall be submitted to the Planning Board and the Board of Aldermen in the same manner as preliminary and final subdivision plats. The application for preliminary and final approval of the group development shall contain the information and documents as required in § 2.06.03, in addition to the information required on preliminary and final subdivision plats, except as varied in this section. The same procedure for preliminary and final approval of subdivision plats as set forth in § 2.06.05(B), 2.06.05(C) and applicable provisions of this ordinance shall be applicable to preliminary and final approval of group housing plats, except as varied herein. Once final approval has been given by the Board of Aldermen, all final plats shall be recorded in the office of the County Register of Deeds.

(B) Commercial and business condominiums.

(1) Condominiums and townhouses designed, developed and constructed primarily for business and/or commercial use shall be subject to the procedure for preliminary and final approval by the Planning Board and the Board of Aldermen as detailed in subsection (A) above in addition to any other terms and conditions set forth in this ordinance.

(2) The preliminary application and preliminary plats shall meet the requirements of for group housing and other special developments above, as applicable, and in addition thereto the following additional information and documents shall be submitted to the Planning Board and Board of Aldermen prior to final approval for approval by the Planning Board and Board of Aldermen, and such information and documents shall be submitted simultaneously with the final plats:

(a) Documents creating the condominium owners' association. The documents creating the association shall provide for control by the property owners other than the developer at such time as over 50% of the condominium units within the project have been sold;

(b) A proposed ten-year income and expense budget reflecting the establishment of a sinking fund for capital replacement;

(c) A copy of the proposed declaration of unit ownership and proposed bylaws meeting the requirements of G.S. § 47A;

(d) If the project is to consist of townhouses or other structures other than condominiums, a copy

of the proposed restrictions, covenants and assessments shall also be provided; and

(e) Once final approval has been given by the Board of Aldermen, all final plats shall be recorded in the office of the County Register of Deeds.

(C) Manufactured home park permit. Pursuant to NCAC 15A 07H .0306(e), as amended, manufactured homes shall not be placed within the high hazard flood area unless they are within manufactured home parks existing as of June 1, 1979. As of the adoption of this ordinance, new manufactured home parks are not permitted in the town. Existing manufactured homes are a nonconforming use, subject to the provisions of § 9.03.

(D) Recreational vehicle park permit. The placement of recreational vehicles shall not be authorized in flood hazard areas subject to high velocity wave action and in floodways, pursuant to the State Building Code, § G601.1, as amended. As of the adoption of this ordinance, new recreational vehicle parks are not permitted in the town. Existing recreational vehicle parks are a nonconforming use, subject to the provisions of § 9.01.01.

(Ord. passed 11-2-2011)

§2.23 COMMERCIAL PLAN REVIEW.

(A) Commercial plan and design requirements.

(1) Development plans involving new construction of commercial space must be approved by the Board of Aldermen before issuance of a zoning permit. The Planning Board shall review and make recommendations prior to recommending action by the Board of Aldermen; furthermore, the Planning Board may return the development plan to the applicant/owner for revision and/or additional information before recommending action by the Board.

(2) Upon submittal of a development plan and all required materials specified by the Planning Board, the Planning Board shall have 20 working days to either return the development plan to the applicant with noncompliance findings noted, or notify the applicant of an approval/rejection/ recommendation for approval/return for revision and/or additional information. Notification may be verbal, but must be documented in writing within 30 days following the notification date. Each time a development plan is rejected, revised or returned for additional information, the timetable for official action shall begin anew. Should a period of 30 days elapse between the submittal of a development plan and the issuance of a written notification, then the development plan shall be deemed approved/ recommended for approval.

(3) Where Board of Aldermen approval is required as specified herein, the Board shall have 60 days following receipt of the Planning Board's recommendation to take action either to approve or reject the development plan. Failure of the Board of Aldermen to act on the development plan within the specified period shall deem approval of the development plan as submitted.

(4) Applicants wishing to re-submit rejected development plans must reapply. Substantial changes to approved development plans must be reviewed by the Planning Board and approved by the Board of Aldermen. Approved development plans must apply for all required permits, including zoning. All re-applications are subject to the current fee schedule as approved by the Board of Aldermen.

(5) Applicants requesting development plan review/approval shall be required to pay a review fee in accordance with the fee schedule at the time of each development plan submittal and/or request for substantial revision.

(B) Effect of development plan approval; validity.

(1) Approval of the development plan shall authorize the applicant to proceed with the installation of site improvements provided all other regulatory requirements and permits are satisfied. Approval shall not authorize the sale or transfer of lots/tracts/units, or the occupancy/use, or the revision of the approved development plan. Development plan approval shall be void unless installation of improvements is in accordance with the approved development plan and/or approved revisions thereto. Development plan approval is valid for a period of one year from the date of approval; however, approved revisions shall not constitute additional time unless specified in writing by the Planning Board upon approval of said revisions. Substantial revision to a development plan requires re-application as described in § 2.06.06(A), may constitute a new validation period.

(2) Projects requiring more than one year for construction and completion may request additional time in either the application or a subsequent letter or request; however, no approval shall be granted for a period greater than two years. Projects requiring phased construction or approval for periods exceeding two years shall submit development plans for each phase or for each extended period of construction, subject to the discretion of the Board of Aldermen.

(C) As-built plans; validity and effect.

(1) A set of as-built drawings and technical data shall be prepared by the applicant and submitted to the Building Inspector and Zoning Official for review of compliance prior to occupancy and/or use of developments. The Zoning Official shall notify the applicant within 15 days of receipt of the development plan as-built drawing and technical data, of any noncompliance or deficiency in information.

(2) As-built drawing(s) and technical data shall be kept on file at the Town Hall along with one copy of the approved development plan and any approved revisions thereto.

(3) Commercial development not in compliance with an approved development plan shall not be eligible for occupancy/use until all corrective measures are taken to satisfy the requirements herein.

(D) Sketch plan requirements and procedure.

(1) The sketch plan should be drawn to scale, preferably the scale required for development plan submittal. Required information shall include the following:

(a) Property boundaries and total acreage and square footage;

(b) Major topographical and physical features (i.e., water bodies, slopes, buildings, areas of environmental concern, streets and the like);

(c) Proposed streets, buildings and/or lot arrangement;

(d) Existing and proposed land use with brief project description including building sizes, unit sizes, lot sizes, open space, amenities and the like;

(e) Name, address and telephone number of applicant/owner and persons (FIRM) preparing the development plan;

(f) Adjacent street names, numbers and right-of-way widths; and

(g) Zoning district classification of site and surrounding properties, including those across streets.

(2) The sketch plan shall be submitted providing at least nine copies.

(E) Development plan requirements and procedure.

(1) The development plan shall be drawn to scale of one inch equals 30 feet unless otherwise approved by the Planning Board. Required information may be waived and/or recommended information required at the discretion of the Planning Board, where special circumstances avail. The development plan shall be submitted providing the minimum required information and should contain all applicable recommended information:

(a) Existing and proposed topographic contours, at vertical intervals no greater than two feet, of development areas;

(b) The location, use and outline of existing and proposed buildings and structures;

(c) Square footage and total percentage of built upon area;

(d) The location of proposed open spaces;

(e) The location, name, pavement width and right-of-way width of existing streets;

(f) The location, name, pavement width, curb type, right-of-way width, pavement type, sidewalk location and curb cuts of all proposed street and parking facilities and site improvement.

(g) The location of all existing and proposed utilities including electrical, water, sewage, telephone, fiber optic and gas facilities (including easements); all utilities must be underground;

(h) The location of all existing and proposed drainage facilities necessary to serve the site (including easements);

(i) Schedule of densities showing the number and type of units per acre;

(j) Schedule of building uses, by type, showing the number of bedrooms, the number of units and floor area;

(k) Buffer and screening devices proposed to separate uses within the development;

(l) Proposed perimeter buffers and screening devices;

(m) Proposed schedule of development for each phase of the project showing anticipated time for completion and estimated completion dates;

(n) Property line survey and acreage data;

(o) Vicinity map at a scale of one inch equals 400 feet and encompassing an area no less than one-fourth mile in radius of the site and including:

(i) Existing streets;

(ii) Existing watercourses and FEMA flood hazard areas; and

(iii) Existing land uses on the site and in the area surrounding the site.

(p) Written and graphic scale, north arrow and title;

(q) Proposed name of development;

(r) Technical report containing:

(i) A description of the project including general characteristics, development concept, architectural design and amenities;

(ii) A general assessment of impact showing the proposed impact upon all affected utilities, transportation facilities, the environment, the local economy and local government; and

(iii) Engineering report to demonstrate adequacy of existing and proposed public facilities;

(s) Name, address and telephone number of the applicant and persons (FIRM) preparing the development plan;

(t) Zoning district classification of site and surrounding properties, including those across street(s);

(u) Owner names of surrounding properties;

(v) Existing driveway cuts on all adjacent properties (including those across the street(s); and

(w) Certificate of review and approval of the technical standards:

“I hereby certify that I have reviewed the plan and the plan meets or exceeds the regulations and Ordinances of the Town of North Topsail Beach.

Public Works Director Date

Fire Marshal Date

Police Chief Date

Building Inspector Date

Planning Director Date

(2) Development plans requiring consideration by the Board of Aldermen shall be submitted in sets of nine copies for Planning Board and eight copies for the Board of Aldermen upon recommendation by the Planning Board. Applicants are encouraged to submit the eight copies for Aldermen review after receiving and incorporating comments resulting from the Planning Board’s recommendation. Facilities and/or improvement proposed for dedication to the state, the county and/or the town and/or their political subdivisions shall be submitted for design approval and plan. Before constructing, detailed plans and specification, prepared by a licensed professional engineer, shall be reviewed and approved by each relevant entity in accordance with their respective policies regarding said facilities and/or improvements. Approval of the development plan does not imply or satisfy approval requirements for such facilities and/or improvements.

(F) As-built development plan requirements.

(1) The as-built development plan shall be submitted in accordance with subsection (C) above, and the following requirements.

(a) The as-built development plan shall constitute only that portion of the approved development plan proposed for occupancy and/or use at that time.

(b) An as-built development plan may be required to show or be accompanied by the following information subject to the discretion of the Planning Director:

(i) Name of development;

(ii) Date including the month, day and year of the original drawings and of each revision;

(iii) Names and addresses of the owner of record, the applicant, the land planner, the surveyor and the engineer;

(iv) Boundary lines of the development with distances accurate to hundredths of a foot and bearings of one-half a minute;

(v) Building height,

(vi) Radii, central angles, tangents, length of acres and curvature of all new street lines;

(vii) Lines and widths of all easements with dimensions accurate to hundredths of a foot and notation of the purpose of the easement or any limitations on its use;

(viii) The location and elevation of the benchmark to which contour elevation refer;

(ix) Lot number and a statement of the total number of lots. Lot lines shall be defined by distances in hundredths of a foot and in degrees to the nearest one-half of a minute, either by magnetic bearings or by angles of deflection from other lot and street lines;

(x) Building setback lines with dimensions;

(xi) Statement of the intended use of all commercial areas, with reference to existing or proposed restrictions;

(xii) Accurate boundaries and specific designation of any area to be dedicated or reserved for public use of acquisition; and

(xiii) Accurate boundaries of flood hazards areas and areas of environmental concern.

(c) Certificate of ownership and dedication:

"I hereby certify that I am the owner of the property shown and described hereon, which is located in the Corporate Limits of the Town of North Topsail Beach, and that I hereby adopt this development plan with my free consent, establish minimum building setback lines, and dedicate all streets, walks, parks, and other sites and easement to public or private use as noted. Furthermore, I hereby dedicate all sanitary sewer and water lines to the appropriate agency.

Owner Date"

(d) Certificate of survey and accuracy:

"I, _____ certify that this map was (drawn under my supervision) (deed description recorded in Book ____, page ____, etc.)(other specify); that the error of closure as calculated by latitudes and departures is 1:__; that the boundaries not surveyed are shown as broken lines platted from information found in Book ____, page and seal this _____ day of _____, 20____, A.D.

Surveyor, Date

Registration No.,

Seal

Sworn to and subscribed before me this _____ day of _____.

Notary Public Seal

(e) Certification of the approval of streets and utilities:

We hereby certify: 1) that streets, utilities, and other improvements have been installed within the Development shown and described here on in an acceptable manner and in accordance with design standards of the applicable regulations and Zoning Ordinance, Town of North Topsail Beach, North Carolina and other specification so the town: or, 2) that a security bond in the amount of \$____, case in the amount of \$____, or an irrevocable letter of credit payable upon demand by the town has been posted with the town to assure completion of all required improvements in case of default.

Date

Surveyor,

Registration No.,

Seal

Sworn to and subscribed before me this _____ day of _____

Notary Public Seal

(f) Certificate of approval of water and sewage system:

I hereby certify that the water supply system and the sewage disposal system installed or planned to be installed to serve each lot or unit within the Development shown and described here on fully meets the requirements of the Onslow County Health Department.

Environmental Health Specialist Date

(g) Certificate of approval for recording:

I hereby certify that the development plan shown hereon has been found to comply with the Zoning Ordinance, Town of North Topsail Beach, North Carolina with the exception of such variances, if any, as are noted in the minutes of the Board of Adjustment at its meeting on _____ and may be recorded in the Office of Clerk of Onslow County.

Planning Director Date

(2) The as-built development plan shall be provided in a minimum of two copies, each bearing the original signatures and executions of the aforementioned applicable certifications.

(G) Design requirements. All development shall be in conformance with the following design and/or construction requirements.

(1) Private improvements. Any and all components for development not intended and/or proposed for public facilities dedication and/or public utility shall be in conformance with the following regulations.

(a) Driveway and parking facilities construction shall be in accordance with § 6.05.

(b) Water and sewer line (collection/distribution and service) construction shall be in accordance with policies and procedures established and design requirements and construction standards established by the water and sewer authorities.

(c) Buildings and their respective appurtenances shall be constructed in accordance with policies, procedures, design requirements and construction standards established herein and by the building code adopted by the town, as amended.

(d) Signs and their respective appurtenances shall be constructed in accordance with the policies,

procedures, design requirements and construction, standards established in Article 8 of this ordinance.
(Ord. passed 6-1-2006; Ord. passed 11-2-2011)

ARTICLE 3. ZONING REGULATIONS

§3.01 PURPOSES. § 160D-701.

Zoning regulations shall be made in accordance with a comprehensive plan and shall be designed to promote the public health, safety, and general welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; and to promote the health, safety, morals, or general welfare of the community. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the local government's planning and development regulation jurisdiction. The regulations may not include, as a basis for denying a zoning or rezoning request from a school, the level of service of a road facility or facilities abutting the school or proximately located to the school.

§3.02 ZONING DISTRICTS. § 160D-703.

(A) Types of Zoning Districts. - A local government may divide its territorial jurisdiction into zoning districts of any number, shape, and area deemed best suited to carry out the purposes of this Article. Within those districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. Zoning districts may include, but shall not be limited to, the following:

- (1) Conventional districts, in which a variety of uses are allowed as permitted uses or uses by right and that may also include uses permitted only with a special use permit.
- (2) Conditional districts, in which site plans or individualized development conditions are imposed.
- (3) Form-based districts, or development form controls, that address the physical form, mass, and density of structures, public spaces, and streetscapes.
- (4) Overlay districts, in which different requirements are imposed on certain properties within one or more underlying conventional, conditional, or form-based districts.
- (5) Districts allowed by charter.

(B) Conditional Districts. - Property may be placed in a conditional district only in response to a petition by all owners of the property to be included. Specific conditions may be proposed by the petitioner or the local government or its agencies, but only those conditions approved by the local government and consented to by the petitioner in writing may be incorporated into the zoning regulations. Unless consented to by the petitioner in writing, in the exercise of the authority granted by this section, the Town may not require, enforce, or incorporate into the zoning regulations any condition or requirement not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the

development and use of the site to local government ordinances, plans adopted pursuant to G.S. 160D-501, or the impacts reasonably expected to be generated by the development or use of the site. The zoning regulation may provide that defined minor modifications in conditional district standards that do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively. Any other modification of the conditions and standards in a conditional district shall follow the same process for approval as are applicable to zoning map amendments. If multiple parcels of land are subject to a conditional zoning, the owners of individual parcels may apply for modification of the conditions so long as the modification would not result in other properties failing to meet the terms of the conditions. Any modifications approved apply only to those properties whose owners petition for the modification.

(C) Uniformity Within Districts. - Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district but the regulations in one district may differ from those in other districts.

(D) Standards Applicable Regardless of District. - A zoning regulation or unified development ordinance may also include development standards that apply uniformly jurisdiction-wide rather than being applicable only in particular zoning districts.

§3.03 OFFICIAL ZONING MAP.

§3.03.01 § 3.01.01 ESTABLISHMENT OF THE OFFICIAL ZONING MAP.

The town is hereby divided into zones, or districts, as established in § 3.01.03, and as shown on the official zoning map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this ordinance.

(Ord. passed 11-2-2011)

§3.03.02 MAP CERTIFICATION AND CHANGES.

The official zoning map shall be identified by the mayor's signature, attested by the Clerk and bear the seal of the town, together with the effective date of the adoption of the map. The map shall be retained in Town Hall and all the notations, references and all amendments thereto, and other information shown thereon is hereby made a part of this ordinance the same as if such information set forth on the map were all fully described and set out herein. If changes are made in district boundaries or other matters portrayed on the official zoning map, such changes shall be entered on the official zoning map.

(Ord. passed 11-2-2011)

§3.03.03 DISTRICT BOUNDARIES.

(A) In the creation by this ordinance of the respective districts, careful consideration is given to the peculiar suitability of each and every district for the particular regulations applied thereto, and the necessary, proper and comprehensive groupings and arrangements of various uses and densities of population in accordance with a well-considered comprehensive plan for the physical development of the area. In order to implement the intent of this ordinance, there are hereby created zoning districts with the following designations and general purposes:

- Con-D Conservation District
- R-A Residential Agricultural
- R-20 Residential District
- R-15 Residential District
- R-10 Residential District

R-8 Multi-Family Residential
CD-R8 Conditional Use Multi-Family Residential
R-5 Multi-Family Residential
CD-R5 Conditional Use Multi-Family Residential
MHR Manufactured Housing Residential
B-1 Business District
B-2 Business District
(Ord. passed 11-2-2011)

(B) Conditional Use District Zoning is eliminated and existing conditional-use-district zoning converts to conditional district on January 1, 2021. (G.S. 160D-703; S.L. 2019-111, § 2.9(b).)

§3.04 DESCRIPTIONS AND PURPOSE OF ZONING.

The following general statements describe the various zoning districts established by the town unified development ordinance. Table 4-1, Use Table lists the specific land uses and activities of each.
(Ord. passed 11-2-2011)

§3.04.01 CON-D CONSERVATION DISTRICT.

This district is established to protect the floodplain, coastal waters and areas of environmental concern of the Coastal Area Management Act, being G.S. §§ 113A-100 et seq. It is further the intent that intensive use of the land not be permitted and that only water-dependent uses be permitted in this district.
(Ord. passed 11-2-2011)

§3.04.02 R-A RESIDENTIAL-AGRICULTURAL DISTRICT.

The purpose of this district is to set aside and protect those lands which are primarily suited for agriculture, forestry, wetlands and agricultural-related uses.
(Ord. passed 11-2-2011)

§3.04.03 R-20 RESIDENTIAL DISTRICT.

The purpose of this district is to allow single-family only (low-density) residential and recreational uses to be protected from undesirable future development and residential developments not having central water and sewer will occur in sufficiently low density to ensure a healthful environment.
(Ord. passed 11-2-2011)

§3.04.04 R-15 RESIDENTIAL DISTRICT.

The purpose of this district shall be to provide for single-family and duplex residential developments where central water or central sewer, but not both are available.
(Ord. passed 11-2-2011)

§3.04.05 R-10 RESIDENTIAL DISTRICT.

The purpose of this district shall be to provide for single-family and multi-family residential developments where both central water and central sewer are available.
(Ord. passed 11-2-2011)

§3.04.06 R-8 MULTI-FAMILY RESIDENTIAL DISTRICT.

The purpose of this district shall be to provide for single-family and multi-family residential developments where both central water and central sewer are available.

(Ord. passed 11-2-2011)

§3.04.07 R-5 MULTI-FAMILY RESIDENTIAL.

The purpose of this district shall be to provide for single-family and multi-family residential developments where both central water and central sewer are available.

(Ord. passed 11-2-2011)

§3.04.08 MHR MANUFACTURED HOUSING RESIDENTIAL.

The purpose of this district shall be to provide for single and multi-family dwellings and existing manufactured housing on individual lots (Wind Zone 3, Exposure D; see State Regulations for Manufactured Homes Code) where both central water and central sewer are available. Any existing manufactured housing parks (manufactured home parks) shall be permitted to continue as nonconforming uses. Manufactured homes shall not be placed within the high hazard flood area unless they are within manufactured home parks existing as of June 1, 1979, pursuant to NCAC 15A07H.0306, as amended.

(Ord. passed 11-2-2011)

§3.04.09 B-1 BUSINESS DISTRICT.

This district is established as a district in which the principal use of land is for the retailing of both perishable and durable goods, provision of commercial services to surrounding areas and neighborhoods and the provision of services to visitors. In promoting the general purpose of this ordinance, the specific intent of this district is:

- (A) To encourage the construction of and the continued use of the land for commercial and service uses, particularly those which serve the community or neighborhood;
- (B) To provide for the orderly expansion of such uses within this district, as designated on the zoning map;
- (C) To prohibit residential use of the land and to prohibit any other use which would substantially interfere with the development or continuation of the business uses in the district; and
- (D) To discourage the continuance of existing uses that would not be permitted as new uses under the provision of this district.

(Ord. passed 11-2-2011)

§3.04.10 B-2 BUSINESS DISTRICT.

The purpose of this district is to provide an area for fishing piers and fish houses.

(Ord. passed 11-2-2011)

§3.05 COASTAL FOREST OVERLAY DISTRICT (CFOD).

The purpose of this district is to preserve and protect the remaining maritime forests which are recognized as essential to Topsail Island's ecosystem. They provide wildlife habitat, stabilization of soil and sand, and are a vital link in natural storm water management through absorption. This natural management acts as a filter necessary to maintaining the health and quality of pristine waters.

- (A) General requirements.
 - (1) The CFOD shall apply to all properties in the town.

(2) The requirements of the CFOD shall be in addition to and apply to all zoning districts.

(3) The development of all uses permitted by right or by a special use permit in the underlying district shall be subject to the requirements of the CFOD and the underlying zoning district. In the event of a conflict of between the CFOD and the underlying district the CFOD regulations shall apply. If requirements for a particular requirement are not addressed in the CFOD, then the requirements of the underlying regulations shall apply.

(B) Design standards. Development shall be designed to protect the continuing growth of native trees. In doing so, the following conditions shall be met.

(1) No alteration of a lot or building site shall take place without a zoning permit.

(2) All CFOD requirements shall apply to new and existing lots.

(3) The area of disturbance is the proposed or existing structure footprint plus the six feet in each direction. Trees are allowed to be removed within the area of disturbance.

(4) All trees protected by this ordinance nine inches in circumference measured four feet from the ground may not be removed outside the area of disturbance.

(5) Dead and diseased trees may be removed.

(6) Pervious materials shall be used for the construction of any surfaces located outside the footprint of the principal structure and any accessory buildings allowed. (Commercial development and roads are exempt from this requirement). Pervious materials are, but not limited to, pervious concrete, pervious asphalt, slate gravel, river rock, slatted wood and other similar materials or products designed to allow water to pass through.

(7) Driveway design shall minimize land disturbance as much as possible in order to maximize natural areas.

(8) No clear cutting of lots is permitted.

(C) Site plan. Before development of a lot an applicant must submit a site plan to the zoning office for review and approval. Developing building sites in the CFOD requires maximal preservation of trees and vegetation. The site plan shall show the following:

(1) All requirements for a building permit application;

(2) All trees outside the area of disturbance greater or equal to nine inches in circumference measured four feet from the ground;

(3) Location of all structures, utilities, septic tanks, driveways and parking areas; and

(4) Location of all natural areas.

(D) Enforcement.

(1) Trees removed, other than those permitted under this ordinance, shall be replaced by a quantity of trees totaling the circumference of the tree removed (i.e., six three-inch in circumference trees may replace one 18-inch tree). Replacement trees are not to be less than three inches in circumference, measured four feet from the ground.

(2) Any lot cleared before submitting a site plan shall be assessed a penalty of one replacement tree, which must be at least three inches in circumference measured four feet from the ground, per foot of road frontage. A 50-foot lot would require 50 trees for replacement.

(E) Species of trees protected. Trees protected by this ordinance include all native oak, pine, cedar, maple, wax myrtle and all others indigenous to the area.

(Ord. passed 11-2-2011)

§3.06 INTERPRETATION OF MAP AND DISTRICT BOUNDARIES.

Where uncertainty exists with respect to the boundaries of any district shown on the zoning map, the following rules shall apply.

(A) Use of property lines. Where district boundaries are indicated as approximately following property lines, such lot lines shall be construed as boundary lines.

(B) Use of centerlines. Where streets, highways, railroads, watercourses and similar areas with width are indicated as the district boundary, the actual district boundary line shall be the center line of such area.

(C) Use of right-of-way. Where district boundaries are indicated as approximately following street, highway and railroad right-of-way lines, such right-of-way lines shall be construed as boundary lines.

(D) Use of the scale. In un-subdivided property or where a zone boundary divides a lot, the location of such boundary, unless the same is indicated by dimensions, shall be determined by use of the scale appearing on the map.

(E) Street vacation. Where any street or alley is hereafter officially vacated or abandoned, the zoning district regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley abandonment.

(F) Board of Adjustment. In case any further uncertainty exists, the Board of Adjustment shall interpret the intent of the map as to location of such boundaries.

(Ord. passed 11-2-2011)

§3.07 PROCEDURES FOR CHANGES AND AMENDMENTS.

(A) The amendment, supplement, change, modification or repeal of the regulations or district boundaries established by this ordinance may be initiated in these ways:

(1) The Board of Aldermen may recommend a change, in which case the proposed change is reviewed by the Planning Board as described below in § 3.07;

(2) The Planning Board may initiate a change, and review the proposed change as described below in § 3.07; or

(3) A petition (see appendix for petition) by an interested person shall be submitted to the Board of Aldermen and reviewed by the Planning Board as described in § 3.07 below.

(B) In all cases the Planning Board shall consider the merit of the proposed change and make a recommendation to the Board of Aldermen.

(C) In no case shall final action by the Board of Aldermen be taken on amending, changing, supplementing, modifying or repealing the regulations or district boundaries hereby established until a public hearing has been held by the Board of Aldermen at which parties in interest and citizens shall have an opportunity to be heard.

(Ord. passed 7-6-2006; Ord. passed 11-2-2011)

§3.08 ACTION BY THE APPLICANT.

§3.08.01 INITIATION OF AMENDMENTS.

(A) Proposed changes or amendments to the zoning map may be initiated by the Board of Aldermen, Planning Board, town administration, Board of Adjustment or by the owner(s) or any other interested party.

(B) Proposed amendments to the text of the ordinance may be initiated by any interested party.

(Ord. passed 11-2-2011)

§3.08.02 APPLICATION (PETITION).

An application (petition) for any change or amendment shall be provided by the Planning Department. Such application shall be filed not later than 30 days prior to the meeting of the Planning Board at which the application is to be considered.

(Ord. passed 11-2-2011)

§3.08.03 FEES.

Any non-governmental applicant shall pay a non-refundable fee, according to the schedule adopted by the Town Board of Aldermen, to the town for each application for an amendment, to cover costs of advertising and other administrative expenses involved.

(Ord. passed 12-2-2004; Ord. passed 11-2-2011)

§3.08.04 PUBLIC HEARING NOTICES.

When a change in the zoning classification of a piece of property is requested, the applicant shall provide to the Zoning Administrator a list of names and addresses, as obtained from the county tax listings and tax abstract, of all adjacent property owners and all owners of property within the area under consideration for rezoning along with one set of business (#10) envelopes stamped with a first class stamp and addressed to each person on the list. These addressed envelopes and the list shall be submitted at least eight workdays prior to the public hearing. The Zoning Administrator shall then mail notices of the public hearing to each person on the list and shall certify that fact to the Board of Aldermen. Such certification shall be deemed conclusive in the absence of fraud. A second set of identically prepared envelopes shall be submitted to the Zoning Administrator if the Planning Board recommends denial of the request and the applicant wishes to appeal to the Board of Aldermen. This second set shall be submitted at least eight workdays prior to the meeting at which the Board of Aldermen is to review the request and shall be handled in the same way by the Zoning Administrator.

(G.S. § 160D-601) (Ord. passed 11-2-2011)

§3.08.05 RE-APPLICATION FOR AMENDMENT.

With the exception of requests originating with the Board of Aldermen, Planning Board, Board of Adjustment or town administration, an application for any rezoning of the same property or any application for the same amendment to the UDO text shall be permitted only once within any six-month period. The Board of Aldermen, by four-fifths affirmative vote of its total membership, may waive this restriction if it finds any emergency exists.

(Ord. passed 12-2-2004; Ord. passed 11-2-2011)

§3.08.06 ACTION BY THE PLANNING BOARD.

(A) Every proposed amendment, supplement, change, modification or repeal of this ordinance shall be referred to the Planning Board for its recommendation and written report to the Board of Aldermen.

(B) The following policy guidelines shall be followed by the Planning Board concerning zoning amendments and no proposed zoning amendment will receive favorable recommendation unless:

(1) The proposal will place all property similarly situated in the area in the same category, or in appropriate complementary categories;

(2) There is convincing demonstration that all uses permitted under the proposed district classification would be in the general public interest and not merely in the interest of an individual or small group;

(3) There is convincing demonstration that all uses permitted under the proposed district classification would be appropriate in the area included in the proposed change (when a new district designation is assigned, any use permitted in the district is allowable, so long as it meets district requirements, and not merely uses which applicants state they intend to make of the property involved);

(4) There is convincing demonstration that the character of the neighborhood will not be materially and adversely affected by any use permitted in the proposed change; or

(5) The proposed change is in accord with any land use plan and sound planning principles.

(Ord. passed 11-2-2011)

§3.08.07 ACTION BY THE BOARD OF ALDERMEN.

(A) Before taking such lawful action as it may deem advisable, the Board of Aldermen shall conduct a public hearing and consider the Planning Board's recommendations on each proposed zoning amendment.

(B) Notice of any public hearing shall be published (the notice shall be published for the first time not less than ten days nor more than 25 days before the date fixed for the hearing) in a newspaper of general circulation in the town at least once each week for two successive weeks prior to the hearing according to G.S. § 160D-601 and by mailing notices to adjoining property owners in the envelopes provided by the applicant according to G.S. § 160D-601. Notice may also be made by posting the property concerned.

(C) The applicant, the Planning Board, and the Zoning Administrator shall be given written copies of the board's decision and the reasons therefor.

(Ord. passed 12-2-2004; Ord. passed 11-2-2011)

§3.09 WITHDRAWAL OF THE APPLICATION.

Any application submitted in accordance with the provisions of § 3.05 for the purpose of amending the regulations or district boundaries established by this ordinance may be withdrawn at any time, but fees are non-refundable.

(Ord. passed 11-2-2011)

ARTICLE 4. USE REGULATIONS

§4.01 DEFINITION OF PERMITTED USES AND SPECIAL USES.

(A) Permitted use. A use permitted in one or more zoning districts as a matter of right; provided, the land and structures and the use itself otherwise meet the remaining requirements of this ordinance. Uses permitted in the various districts are indicated by a "P" mark in the appropriate column(s) of Table 4.1. Permitted uses are required to comply with all applicable requirements of § 4.2, Use-Specific Standards, and all other applicable standards of this ordinance.

(B) Special use. A use within one or more zoning districts that is not a use by right, but that is required to meet the terms, conditions and requirements for special uses and for which a special use permit is required to have been issued by the Board of Aldermen. Special uses that may be allowed in the various districts are indicated by an "S" mark in the appropriate column(s) of Table 4.1. Permitted uses are required to comply with all applicable requirements of § 4.2, Use-Specific Standards, and Article 5, Density, Intensity and Dimensional Standards, unless any such requirement is modified or waived by the Board of Aldermen in the special use permit, as well as with all other applicable standards of this ordinance.

(C) Prohibited use. Any use that is not indicated by a "P" or an "S" for a specific zoning district in Table 4.1 is a prohibited use in that district, and is indicated by an empty cell in the table.

(D) Overlay districts. Permitted and special uses in each overlay zoning district are the same as those available in that portion of the base district(s) in which the overlay applies unless the terms of the overlay zoning district specifically prohibit the use. In addition, because of site-specific conditions or other factors, the terms and provisions of overlay districts may restrict or prohibit the availability or practicability of a use listed as a permitted or special use one or more base districts in Table 4.1. Applicants are urged to review all applicable overlay district provisions in conjunction with the provisions of this article.

(E) Accessory uses. Accessory uses are defined in Article 11. Such uses may only exist so long as the principal use of the property is in existence and not in violation of this ordinance. Accessory uses may not be established before a principal use is in operation, and may not continue after the principal use has ceased operation.

(Ord. passed 11-2-2011)

§4.02 PERMITTED AND SPECIAL USES.

Permitted and special uses for each of the zoning districts and cross-references to use-specific standards applicable to some uses are identified in Table 4-1. Uses which are prohibited within a district are indicated by a blank space or are not listed. Italicized terms are defined in Article 11.

Table 4-1 Use Table

Use	MHR	R5	R8	R10	R15	R20	RA	CON-D	B1	B2	Use Specific Standard
Residential Use											
Condominium	S	S	S	S							4.03.01
Duplex 10 bedrooms or less, or less than 5,000 heated sq. ft.	P	P	P	P	P						
Duplex greater than 10 bedrooms and 5,000 heated sq. ft.	S	S	S	S	S						4.03.20
Manufactured home	P										4.03.02
Planned unit development	S	S	S	S	S	S	S		S	S	2.06.03, 6.02
Single-family 8 bedrooms or less, or less than 5,000 heated sq. ft.	P	P	P	P	P	P	P				
Single-family greater than 8 bedrooms and 5,000 heated sq. ft.	S	S	S	S	S	S	S				4.03.21
Townhouse	S	S	S	S							4.03.03
Accessory use											
Bed and breakfast	P	P	P	P	P	P	P				4.03.04
Boat lift	P	P	P	P	P	P	P				
Boat ramp, private	P	P	P	P	P	P	P	P	P	P	
Bridge, private	S	S	S	S	S	S	S	S	S	S	4.03.05
Bulkhead	P	P	P	P	P	P	P		S	S	
Cross-over (accessory, principal)	P	P	P	P	P	P	P	P	P	P	
Deck	P	P	P	P	P	P	P		P	P	
Dock, pier (accessory, principal,)	P	P	P	P	P	P	P	P	P	P	
Elevator, dumbwaiter	P	P	P	P	P	P	P		P	P	
Enclosure or outside storage and service areas	P	P	P	P	P	P	P		P	P	4.03.05
Fence	P	P	P	P	P	P	P	P	P	P	4.03.06
Garage, attached or detached	P	P	P	P	P	P	P				
Garage apartment/guest house											
Gazebo	P	P	P	P	P	P	P		P	P	
Home occupation	P	P	P	P	P	P	P				4.03.08
Parking lot											
Retaining wall	P	P	P	P	P	P	P		P	P	
Sign	P	P	P	P	P	P	P	P	P	P	Art. 8
Storage shed	P	P	P	P	P	P	P		P	P	
Swimming pools, spas and hot tubs	P	P	P	P	P	P	P		P	P	4.03.09
Tennis court (accessory, principal)	P	P	P	P	P	P	P		P	P	
Walkway, boardwalk	P	P	P	P	P	P	P	P	P	P	
Windmills	S	S	S	S	S	S	S	S	S	S	
Commercial use											
Adult establishments									P	P	4.03.10

Airports and heliports							S		S	S	
Alcoholic beverages, packaged retail sales (accessory, principal)									S	S	
Apparel sales (department store)									P	P	
Assembly halls (gyms, stadiums and the like)									S	S	
Auction houses (general merchandise)									S	S	
Bakery									P	P	
Bank, savings and loan, financial activity									P	P	
Barber, beauty shop, day spa									P	P	
Bicycle rental, sales and repairs									P	P	
Billboard											
Boat launch/ramp									S	S	
Boats, canoes and kayaks sales, service and rental									S		
Campground (tents)									S	S	
Campground (travel trailer parks or recreation vehicle parks)											4.03.11
Clinic service (medical, dental, therapeutic massage)									P	P	
Club or lodge, swim and tennis club, country club, beach club, yacht club, all other private recreation clubs, retreat center	S	S	S	S	S	S	S		S	S	4.03.12
Community boating facility	S	S	S	S	S	S	S	S	S	S	
Convalescent/nursing homes									S	S	
Convenience store									P	P	
Day care center (adult or children)									S	S	
Dry cleaning and laundry service									S	S	
Fairground and carnival activities							S		S	S	4.03.13
Fishing pier										S	4.03.14
Florist shop									P	P	
Food sales, retail									P	P	
Golf course	S	S	S	S	S	S	S		S	S	4.03.15
Golf, miniature									P	P	
Hardware, paint and garden supply sales									P	P	
Home furnishings and appliance sales									P	P	
Hotels, motel, hotelminium									S	S	
Ice vending machine									P		4.03.22
Jewelry sales and repair									P	P	
Lock and gunsmith									P	P	
Marina											
Mobile offices (temporary)	P	P	P	P	P	P	P		P	P	4.03.16
Newsstands (principal, accessory)									P	P	

Nursery (plants)							P		P	P		
Office(s)									P	P		
Optician and optical supply sales									P	P		
Parking lots (principal)	S	S	S	S	S	S	S		S	S		
Pawnshop									P	P		
Pharmacy									P	P		
Photography, commercial									P	P		
Physical fitness center, gym									P	P		
Pool halls game rooms, video, arcade									P	P		
Printing and reproduction establishment									P	P		
Restaurant									P	P		
Shopping center									P	P		
Skating rink									P	P		
Specialty market									S	S		
Storage, warehouse, mini									P	P		
Swimming pools (commercial/public)									S	S	4.03.09	
Taxi service (includes office/stand)									P	P		
Telecommunications tower, wireless	S	S	S	S	S	S	S	S	S	S	4.03.17	
Theaters, indoor									P	P		
Theaters, outdoor									S	S		
Variety, gift and hobby supply sales									P	P		
Veterinary services, kennel									P	P		
Windmills	S	S	S	S	S	S	S	S	S	S		
Wireless tower antenna (co-location)	P	P	P	P	P	P	P		P	P	4.03.18	
Governmental/public												
Boat ramp (public)										S	S	
Church	P	P	P	P	P	P	P		P	P		
Educational services	S	S	S	S	S	S	S		S	S		
Park and recreational open space	P	P	P	P	P	P	P	P	P	P	4.03.19	
Postal service										P	P	
Public administration/government facilities (ambulance service; police and fire stations)	P	P	P	P	P	P	P	P	P	P	4.03.20	
Utilities	S	S	S	S	S	S	S	S	S	S		

(Ord. passed 11-2-2011; Ord. 2013-5, passed 8-1-2013; Ord. 2014-4, passed 6-5-2014; Ord. 2014-6, passed 6-5-2014; Ord. 2017-1, passed 1-5-2017)

§4.03 USE SPECIFIC STANDARDS.

The numbered paragraphs in this § 4.03 contain use-specific standards for certain designated permitted and special uses listed in Table 4-2. Each subsection relates to a notation in the right-hand column of Table 4-2 and applies to the use(s) on the same line as the notation. Each subsection contains application requirements, conditions, procedures and/or requirements for the permitted or special use to which this subsection applies

to that are in addition to other requirements and conditions contained in this ordinance, and apply regardless of whether the use is a permitted or a special use.

(Ord. passed 11-2-2011)

§4.03.01 CONDOMINIUM DEVELOPMENT.

(A) Generally. In a condominium development, individual owners hold title to the interior of their unit and all owners own the common areas of buildings and property together. The following information must be adhered to and submitted in order to have an application for a special use permit considered by the Board of Aldermen.

(B) Density. See Table 5-1, Dimensional Requirements for square footage requirements applicable to each zoning district where condominium developments are permitted.

(C) Development plan. A plan of the proposed development shall be submitted containing the following elements:

(1) Approval of NTBFD of the unit designation of each unit and a statement of its location, approximate area, number of rooms and immediate common area to which it has access and any other data necessary for its proper identification;

(2) Meet maximum impervious surface limit. Description of the general common areas and facilities as defined in the North Carolina Unit Ownership Act, being G.S. Ch. 47A and the proportionate interest of each unit owner therein;

(3) Require central sewer and central water. Location and amount of open space and recreation area which shall be a minimum of 10% of the area of the development minus any undevelopable land;

(4) Description of all boundary lines between portions of the structures designed for different ownership;

(5) Description of all garages, balconies, patios and the like, which form a part of each unit;

(6) Description of any special common areas and facilities stating what units shall share the same and in what proportion;

(7) Proposed provision for storm drainage and sanitary sewer, approved by a state certified registered engineer;

(8) Public or private easements or rights-of-way adjoining or intersecting the property;

(9) Proposed solid waste storage facilities and description of screening;

(10) Proposed water system and firefighting facilities such as hydrants or sprinkler connections;

(11) Types of surfacing, slope, grade and cross section of drives, sidewalks and the like (private streets shall be designed to assure proper access and turn around for service and emergency vehicles);

(12) The location and amount of parking spaces pursuant to Table 6-5, Parking Requirements;

(13) Landscaping and screening: a landscaping plan showing buffers between any residential districts as well as perimeter landscaping for the development. Also, location and heights of all fences and walls;

(14) Lighting plan: all lighting shall be directed away from residentially zoned areas. The location and height of all lighting shall be shown;

(15) All plans showing utility construction details must meet the current specifications of the town;

(16) Size and proposed location of any signs along the public street;

(17) All existing buildings and structures within 100 feet;

(18) Setbacks from public street rights-of-way shall be the same as required by the zoning district where the development is located; and

(19) No declaration and plan shall be recorded until all final boundary descriptions have been added to the plan and approved by the Zoning Administrator.

(D) Timing. Proposed schedule of development likely to be followed.

(E) Legal documentation. The applicant shall submit the following documents which shall be reviewed by the Zoning Administrator and approved by the Board of Aldermen before the final plat is recorded with the Register of Deeds.

(1) Declaration of covenants, conditions and restrictions. This declaration shall be a complete legal document establishing a unit ownership development as prescribed in the North Carolina Unit Ownership Act. It shall also contain proposed restrictions and covenants for the common area and residential sites. No unit shall be conveyed until the declaration and plan have been reviewed by the Planning Director and approved by the Board of Aldermen and recorded in the Office of the County Register of Deeds along with the final plat.

(2) Articles of incorporation of homeowners association.

(a) Before the final plat is recorded, the developer shall submit a copy of the articles of incorporation of the homeowners association, along with evidence that the articles have been filed and approved by the Secretary of State. The articles shall require membership in the association for each original purchaser and each successive purchaser of a residential site or unit. The articles shall also provide for control of the development by the homeowners association when over 50% of the dwelling units are sold.

(b) The homeowners association shall be responsible for payment of premiums for liability insurance, local taxes, maintenance for recreational and other facilities located on the common areas, payment of assessments for public and private capital improvements made to or for the benefit of the common areas, maintenance and repair to the exterior of all attached residences located within the development or other common area facilities. The homeowners association shall be empowered to assess owners of residential sites within the development for the payment of these expenditures, and any such assessment not paid by the owner shall constitute a lien on the residence of the owner.

(c) It shall be further provided that upon default by the homeowners association in the payment to the governmental authority of any ad valorem taxes levied against the common areas or assessments for a period of six months, then each owner of a residential site in the development shall become obligated to pay to the taxing or assessing governmental authority a portion of such taxes or assessments in an amount determined by dividing the total taxes and/or assessments due to the governmental authority by the total number of residential sites in the development. If the sum is not paid by the owner within 30 days following receipt of notice of the amount due, then the sum shall become a continuing lien on the residence of the then owner, his or her heirs, governmental authority may either bring an action at law against the owner obligated to pay the same or may elect to foreclose the lien against the residence of the owner.

(3) Bylaws of homeowners association. The bylaws of the homeowners association shall provide for annual meetings, election of officers, an annual budget showing monthly assessments set at a sufficient level to ensure success of the association, and an annual financial accounting distributed to all members.

(Ord. passed 11-2-2011)

§4.03.02 MANUFACTURED HOMES.

A manufactured home (formerly known as a mobile home) is built to the Manufactured Home Construction and Safety Standards (HUD Code) and displays a red certification label on the exterior of each transportable section.

(Ord. passed 11-2-2011; Ord. 2017-1, passed 1-5-2017)

§4.03.03 TOWNHOUSE DEVELOPMENT.

(A) In a townhouse development a group of adjoining self-contained units share common walls (either two one-hour fire walls or one two-hour fire wall) with the adjacent units, but stand on individual lots. Owners have title to the unit and lot that they occupy and a fractional interest in the building exteriors and common areas which generally contain drives, walks and open space.

(B) Density. See Table 5-1, Dimensional Requirements for square footage requirements applicable to each zoning district where condominium developments are permitted.

(C) Submission requirements. See § 4.03.01, Condominium Development (above). Submission requirements to obtain a special use permit for a townhouse development are the same as for condominium developments although the form of ownership and structural requirements are different.

(Ord. passed 11-2-2011)

§4.03.04 BED AND BREAKFASTS.

The following are the specific standards for bed and breakfasts.

(A) The use is the permanent, principal residence of the owner.

(B) A bed and breakfast can only be established in a site-built, single-family dwelling and there can be no substantial changes to the exterior that would alter the residential character of the property.

(C) Meals served on the premises shall be only for overnight guests of the facility.

(D) No cooking facilities shall be established in individual rooms.

(E) Provision for off-street parking pursuant to Table 6-5, Parking Requirements.

(F) Exterior signs shall not exceed six square feet for each a freestanding and attached sign.

(Ord. passed 11-2-2011)

§4.03.05 BRIDGES, PRIVATE.

(A) Information required.

(1) Each applicant requesting a permit under this article shall submit bridge plan and profile sheet signed and sealed by appropriate licensed professionals with a complete application. The planning department may require other information to be necessary to assess compliance with this article.

(2) In addition to the design standards established herein, all plans shall comply with the following laws, ordinances, rules and regulations.

(a) Federal requirements. All bridges must meet or exceed current standards and regulations of the USACE and any other agency of the federal government with the authority to regulate development.

(b) State requirements. The rules and regulations of the State Department of Transportation relating to safety of access and the preservation of the public interest and investment in the streets if the subdivision or any lot contained therein abuts a state trunk highway or connecting street. The State Division of Coastal Management shall review the application to determine the need for any state authorization.

(c) ONWASA policies. The applicable policies of the Onslow Water and Sewer Authority (ONWASA).

(d) Building codes.

(i) A building permit is required when constructing a private bridge. To ensure the structural integrity of bridges, the owner of a bridge shall ensure that it is maintained in compliance with standards contained in applicable federal, state and local building codes and regulations.

(ii) Where a bridge or elevated surface is part of a fire apparatus road, the bridge shall be constructed and maintained in accordance with AASHTO-HB-17. Bridges and elevated surfaces shall be designed for a live load sufficient to carry the imposed loads of fire apparatus. Vehicle load limits shall be posted in both entrances to bridges when required by the fire code official. Where elevated surfaces designed for emergency vehicle use are adjacent to surfaces which are not designed for such use, approved barriers, approved signs or both shall be installed and maintained when required by the fire code official.

(e) Other laws. Any other law presently applicable or subsequently to be enacted.

(3) The applicant shall provide an engineer's written certification of compliance.

(4) The applicant shall provide copies of its maintenance agreement.

(B) Review. Plans shall be reviewed by:

(1) State Division of Coastal Management to determine the need for any state authorization. Soil disturbances shall be avoided or minimized in the wetlands. At no time will wetlands be filled or excavated during construction;

(2) United States Army Corps of Engineers;

(3) Onslow Water and Sewer Authority (ONWASA) for approval of all taps from main water supply;

(4) Town Fire Marshal to determine compliance with the following fire safety requirements:

(a) Private bridges 500 feet or less shall be 20 feet in width and rated a minimum of 25 tons for fire apparatus and shall have a dry firefighting line of six-inch schedule 120 PVC with two risers each with a double two and one-half-inch IMFT fire hose connection (one riser at each end of bridge). Fire hydrant shall be installed within 100 feet of the riser from the mainland side of the bridge by the contractor and inspected by Onslow Water and Sewer Authority (ONWASA) and shall have dry firefighting line of no less than six inches schedule 120 PVC with two risers each with a dry fire hydrant (Muller Brand), shall be color coded different from main fire hydrants (one dry hydrant at each end of bridge.) Fire hydrant (Muller Brand) shall be installed off the present water main near the base of the bridge within 100 feet of the riser from the mainland side of the bridge by the contractor and shall be inspected by ONWASA.

(b) Placement of fire hydrants required;

(c) A planned development with an eight-inch water main supply to the properties that requires a bridge that meets the requirement set forth, would not require a dry firefighting line.

(C) Final inspection. Final inspection with project engineer and contractor shall be conducted on site by

Town Building Codes Administrator, Zoning Administrator and Fire Chief.

(D) Maintenance. Private bridges and dry fire line shall be maintained by property owners.

(E) Annual inspections. All private bridges shall be inspected on an annual basis and immediately after a hurricane or other acts of nature that impact the town. The inspection shall be conducted by a private certified engineer that has a background in the bridge construction. The property owner shall be responsible for providing a copy of the bridge inspection report to the town building inspections department.

(F) Disclosure statement. A disclosure statement shall be made to the property owners and /or homeowners association regarding bridge inspection. A disclosure statement shall be placed in all homeowners association covenants and bylaws and disclosure to all property owners that homeowners association and property owners are responsible for all bridge construction, maintenance, repair and annual inspections.

(G) Required yearly report. The owner of each such bridge shall submit a certification by a licensed professional engineer to the Town Building Inspections Department on the anniversary of the final inspection. Failure to provide annual certification will be assessed a \$500 per day fine after 30 days and may result in loss of fire protection insurance rating.

(H) Review fees. Any out-of-pocket costs incurred for review by a licensed engineer of any of the above required information shall be paid by the applicant. The town accepts no responsibility for inspection cost for private bridges or private roadways.

(I) Requests for acceptance to town or state system. Private bridges shall be constructed in accordance with AASHTO-HB-17 and be in accordance with the 2012 North Carolina Fire Code, § 503.2.6 (as amended). Bridges and elevated surfaces prior to a request for the bridge to be accepted and maintained by the town or state.

(Ord. passed 9-1-2008; Ord. passed 5-7-2009; Ord. passed 11-2-2011)

§4.03.06 ENCLOSURE OF OUTSIDE STORAGE AND SERVICE AREAS.

(A) In residential districts, all outside storage of governmental or commercial inventory or equipment or any other use which may represent a hazard to trespassers must be enclosed with a fence including entrance and exit gates at least six feet in height.

(B) In business districts, all business, servicing, processing or storage and public utility facilities, except off-street parking and loading, shall be within completely enclosed buildings, or enclosed by a fence (including entrance and exit gates) at least six feet in height.

(Ord. passed 11-2-2011)

§4.03.07 FENCES.

Ornamental fences not over four feet high may project into or may enclose any front or side yard, and fences enclosing rear yards may be six feet high. In nonresidential districts, an open fence through which clear vision is possible from one side to the other on a horizontal plane, and such openings occupy 50% or more of the area of the fence, may be erected in the rear yard to a maximum height of ten feet. Fences intended solely for enclosure of tennis courts, batting cages or other similar structures shall be exempt from the maximum height requirements of this section. In no event shall any electrified or barbed wire fence be erected or retained. Fences must be maintained in sound condition such that they are fully standing. No fence shall be erected in any location that interferes with the line-of-sight of motorists using public or private roadways. A zoning permit must be obtained from the Zoning Administrator for any fence erected in the town.

(Ord. passed 11-2-2011)

§4.03.08 OCCUPATIONS.

Home occupations are permitted only as an accessory use and shall be permitted subject to the following limitations.

(A) No display of products shall be visible from the street.

(B) No mechanical equipment shall be installed or used except such that is normally used for domestic, professional or hobby purposes and which does not cause noise or other interference in radio and television reception.

(C) There must be no outdoor storage or visible evidence of equipment or materials used in the home occupation, excepting equipment or materials of a type and quantity that could reasonably be associated with the principal residential use.

(D) No accessory buildings or outside storage shall be used in connection with the home occupation.

(E) Not over 25% of the total actual floor area shall be used for a home occupation.

(F) Only residents of the home can be engaged in the home occupation.

(G) Traffic generation shall not exceed the traffic volumes generated by nearby residents.

(H) Business identification signs no larger than four square feet are permitted.

(Ord. passed 11-2-2011)

§4.03.09 OUTDOOR SWIMMING POOLS, SPAS AND HOT TUBS.

(A) Setbacks. All swimming pools shall meet the following requirements, in addition to setbacks and other requirements specified elsewhere:

(1) Swimming pools may be permitted consistent with CAMA's general use standards for Ocean Hazard Area of Environmental Concern (AEC) pursuant to G.S. 15A NCAC 07H.0309.

(B) Prohibited.

(1) It shall be unlawful for any person to cause, permit, maintain or allow a swimming pool to be a nuisance as defined herein.

(2) Pools and spas are allowed adjacent to coastal buildings only if these amenities will not act as obstructions that lead to damage to nearby buildings. Pools and spas must be installed in-ground (either frangible or immovable) or completely elevated above the DFE. This constraint applies where the ground level is below, at or above the DFE. Above-ground pools within the DFE are prohibited.

(C) Fence required; gates. All swimming pools shall be completely surrounded by a fence not less than four feet in height. If a fence is erected, the width between any opening or pickets shall not exceed four inches. Openings in any such fence, gate, or wall may not exceed four inches. The wall(s) of a principal or accessory building may be used to meet this enclosure requirement. All gates or doors opening through such fence, wall, house or building shall have self-closing and self-latching devices for keeping the gate or door closed at all times when not in actual use. Fence gates shall open outward away from the swimming pool.

(D) Modifications and exceptions. The Administrator may make modifications in writing with respect to the height, nature or location of the fence, wall, gates or latches, in individual cases, upon a showing of good cause provided the protection as sought hereunder is not reduced thereby. The Administrator may permit in writing other protective devices or structures to be used so long as the degree of protection afforded by the

substitute devices or structures is not less than the protection afforded by the wall, fence, gate and latch described herein.

(E) Spas and hot tubs; covers. Spas or hot tubs with a safety cover must comply with ASTM F 1346 as required in Appendix G of the State Building Code and shall be exempt from § 7-132(b)4. Covers must be closed and locked when the spa or hot tub is not in use.

(Ord. passed 9-24-2008; Ord. passed 11-2-2011; Ord. 2017-2, passed 2-1-2017; Ord. 2017-4, passed 5-3-2017) Penalty, see § 10.06

§4.03.10 ADULT BUSINESSES.

Adult entertainment establishments shall be regulated pursuant to NCGS § 160D-902 and may be located within the B-1 zoning district identified on the table of permitted uses, subject to requirements of that district, and provided that:

(1) Each adult entertainment establishment shall be located a minimum of 1,500 feet from any existing adult entertainment establishments. Such measurement shall be the horizontal distance between the nearest property lines of the proposed and existing adult entertainment establishments;

(2) Each adult entertainment establishment shall be located a minimum of 1,500 feet from any residential or tourist zoned areas, church, school, public or private park or recreational facility. Such measurements shall be the horizontal distance between the nearest property line of the proposed adult entertainment establishment and the nearest residential or tourist zoning line or property line of any place of worship, school, public or private park or recreational facility; and

(3) All windows, doors, openings, entries and the like must be located, covered, screened or otherwise treated so that views into the interior of the establishment are not possible from any public or semi-public area, street or way.

(Ord. passed 11-2-2011)

§4.03.11 OPERATING STANDARDS FOR EXISTING TRAVEL TRAILER PARKS.

It is the intent of this section to set minimum standards for existing campgrounds which have been developed for occupancy on a temporary basis. A travel trailer or recreational vehicle is not a residential structure, but is a vehicle in which people live temporarily. Throughout this section, use of either of the phrases "travel trailer" or "recreational vehicle" shall be deemed to include both as defined in Article 11, Definitions.

(A) Sanitation facilities. All toilet, shower, lavatory and laundry facilities, provided:

(1) Shall be maintained in a clean and sanitary condition;

(2) Shall be kept in good repair;

(3) Shall be safely and adequately lighted;

(4) Shall be easily accessible and conveniently located to all spaces;

(5) Shall be constructed according to applicable building codes and maintained in compliance with all rules and regulations of the County Health Department; and

(6) Shall conform to any and all applicable laws of the town, the county and the state.

(B) Safe water supply required. A safe, adequate and conveniently located water supply must be provided within each park. All water supply systems shall be installed, altered and operated pursuant to the state and

County Health Department guidelines, rules and regulations.

(C) Sewage disposal. Each park shall provide and maintain at least one sewage disposal station (dump station) within the park, operated and constructed pursuant to all statutes, rules and regulations of the state and the County Health Department. All sewage disposal systems shall be installed, altered and operated pursuant to all applicable state statutes, and state and/or county rules and regulations.

(D) Garbage and solid waste. Each park shall provide solid waste storage, collection and disposal within the park in such a manner as to not create a health hazard, promote rodents or insect breeding, or cause accidents, a fire hazard or a nuisance from the odor. In addition, each park shall provide a minimum of one leak-proof container with a tight-fitting lid and a capacity of at least 20 gallons for every two spaces within the park. Such containers shall be no more than 150 feet from any space and stored in such a manner as to prevent spillage. Alternate methods of solid waste collection may be approved on an individual park basis by the director of public works. Approval of alternate systems will not be arbitrarily withheld provided that the collection systems would appear to the director to comply with the spirit of this provision.

(E) Electrical services. Where electrical service is provided, the installation and use of such facilities shall conform to all applicable codes and be subject to inspection by the town building inspector.

(F) Manufactured homes prohibited. It shall be unlawful for a person to park or store a manufactured home in a travel trailer park.

(G) Road worthiness required at all times. Each park shall maintain a permanent record book which shall be available during regular business hours of the park for inspection by the Town Building Inspector, containing the following information:

(1) Name and address of owners of each travel trailer or recreational vehicle located within the park at any point in time;

(2) Date when the vehicle was parked in its current location;

(3) License plate numbers for each vehicle. Every travel trailer or recreational vehicle located within the town shall maintain a current license plate issued by the state or the department of motor vehicles or similar agency within the state where the vehicle is registered;

(4) A notation as to the date of each inspection by park officials to verify that each vehicle is properly licensed and road worthy. ROAD WORTHY shall be defined as being fully intact so that the vehicle can be removed from the park within a reasonable time in the event that an emergency situation arises requiring evacuation of the island. A vehicle that has the tongue or other device needed to tow the vehicle removed, the axles removed, flat tires, missing tires or tires in extremely poor condition shall not be considered road worthy; except that vehicles designed with a quick-release system relating to the tongue or other towing device, may detach the device and store it within close proximity of the vehicle. Additionally, vehicles that, for whatever reason, are neither capable of self-propulsion nor towable by a light-duty truck as originally designed by the manufacturer shall not be considered road worthy. Any vehicle requiring a Department of Transportation permit or any other special permit for towing is specifically prohibited from placement within any travel trailer park. Additionally, any vehicle in excess of 320 square feet, as measured in the towing mode, is prohibited within any travel trailer park; and

(5) In connection with this subsection, each park in existence at the time of the adoption of this amendment shall submit a park design to the Building Inspector within 30 days, indicating the number of spaces within the park, their relative positions and all streets within the park. All spaces should be appropriately numbered on the design and following approval of the numbering system by the building inspector, such numbers must be displayed within the park.

(H) Structural attachments to travel trailers are prohibited. All structural improvements or additions to a travel trailer or used in connection with a travel trailer which might contribute to a delay or the inability to readily remove that or any other trailer from its parking space are prohibited. In addition, all attachments or improvements to travel trailers or used in connection with travel trailers not herein specifically permitted are prohibited.

(1) The following attachments or improvements are permitted:

(a) Any addition built into the travel trailer by the manufacturer and designed to fold out or extend from the trailer which does not interfere with the immediate removal of the trailer or any other travel trailer;

(b) Decks which are:

(i) Properly anchored;

(ii) Not in excess of ten feet by 20 feet, however, alternate configurations may be approved by the building inspector, on a case by case basis, provided that no deck may exceed 200 square feet. The approval of alternate configurations may not be arbitrarily withheld;

(iii) No more than ten feet perpendicular to the travel trailer;

(iv) No more than 20 feet parallel with the travel trailer;

(v) One level, not more than 16 feet from grade;

(vi) With or without rails;

(vii) Covered by a canvas awning attached to the travel trailer, but not to the deck itself or a cover certified by a state licensed professional engineer to meet or exceed the 130 mph wind load requirement of the State Building Code, and can be capable of being securely stored within one hour; and

(viii) Not placed in such a manner as to interfere with the removal of the travel trailer that it is used in connection with, or any other travel trailer.

(c) Storage boxes or bins not in excess of three feet by four feet by three feet or storage boxes or bins not in excess of three feet two inches (38 inches) by four feet three inches (51 inches) by six feet five inches (77 inches) or the equivalent Rubbermaid type storage bin which is properly anchored; and

(d) Landscaping or vegetation which does not interfere with the immediate removal of the travel trailer.

(I) Improvement permits required. Any improvements or repair activity within a travel trailer park or in connection with a travel trailer, whether within a park or not, may require permits. Any individual contemplating improvements or repair to or in connection with a travel trailer must consult the building inspector before commencing any action.

(1) Uncovered decks to be used in connection with travel trailers require building permits. The application for the building permit must include an engineered drawing of the proposed deck and its position relative to the travel trailer, the street and any other travel trailer nearby. Building permits will be issued jointly in the name of the travel trailer owner and the park and indicate the space number where the activity is approved. No deck shall impede the ingress or egress of any recreational vehicle either to, from or within the travel trailer park.

(2) All development activities shall comply with all state statutes and rules and regulations adopted pursuant to the Coastal Area Management Act.

(3) All development activity located within the town shall conform to FEMA requirements as set out in the flood damage prevention ordinance and as amended from time to time by either FEMA or the Board of Aldermen.

(J) Compliance. Campgrounds are required to comply with 44 C.F.R. § 60.3, the 2012 North Carolina Building Code, as amended and this ordinance. New recreational vehicle parks and the placement of recreational vehicles are not permitted in the town, pursuant to State Building Code § G601.1, as amended and the town's adoption of V Zone construction standards throughout Coastal AE Zones.

(K) Existing campgrounds. Existing campgrounds are classified as a nonconforming use, subject to the provisions of this section. Expansion of an existing campground is prohibited pursuant to the State Building Code § G601.1, as amended and § 9.01.01 of this ordinance. No deviations are allowed without a special use permit pursuant to § 2.06.04.

(L) Recreational vehicles. Recreational vehicles may be permitted in existing campgrounds provided that the unit is 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.

(M) Evacuation. In the interest of public safety due to an impending hazardous condition, the Board of Aldermen is authorized to call for the mandatory evacuation of all travel trailers and recreational vehicles. Failure to obey the mandatory evacuation order shall constitute a violation of this ordinance.

(Ord. passed 11-2-2011; Ord. 2013-3, passed 6-17-2013)

§4.03.12 CLUB, LODGE, SWIM AND TENNIS CLUB, COUNTRY CLUB, BEACH CLUB OR RETREAT CENTER.

(A) Minimum area. The minimum area must be three-quarters of an acre (32,670 square feet).

(B) Location. If located within a development, the site must be accessible from at least one main route into and out of the development.

(C) Use separation.

(1) Fifty-foot minimum distance between clubhouse, swimming pool, lighted tennis court or athletic field and any adjacent residential property.

(2) A pool must be located so as to comply with the minimum CAMA setback requirements and setback requirements for accessory structures for the district in which it is located.

(D) Security fencing for pool. Outdoor swimming pools must be protected by a chain link or other similar material fence, a minimum of four feet in height and equipped with a self-closing and positive self-latching gate provided with hardware for permanent locking. See also § 4.03.07, Fences.

(E) Permanent parking lots must meet the standards of § 6.05, Off-Street Parking and Loading Requirement.

(F) Service areas will be separated by an opaque screen from the view from any street and from abutting properties.

(G) Hours of operation will be no earlier than 6:00 a.m. and no later than 11:00 p.m.

(Ord. passed 11-2-2011)

§4.03.13 FAIRGROUNDS AND CARNIVAL ACTIVITIES.

(A) These activities are permitted only on the condition that their operation will be temporary in nature.

(B) Before a permit is issued, the applicant shall demonstrate to the Board of Aldermen that provisions adequate to protect the health and safety of the public will be provided for:

- (1) Off-street parking;
- (2) Bathrooms;
- (3) Adequate insurance; and
- (4) Disposal and collection of trash.

(Ord. passed 11-2-2011)

§4.03.14 FISHING PIERS.

(A) Permanent parking lots shall meet the standards of § 6.05, Off-Street Parking and Loading Requirement.

(B) Buffers may be required pursuant to conditions of § 6.04.

(C) Outdoor lighting must not shine directly into yards of a residential use or into the windows of a residential structure.

(Ord. passed 11-2-2011)

§4.03.15 GOLF COURSE (PAR 3 OR MORE).

(A) Approval required by Board of Aldermen.

(B) Permanent parking lots must meet the standards of § 6.05, Off-Street Parking and Loading Requirement.

(C) Service areas will be separated by an opaque screen from the view from any street and from abutting properties.

(D) Chain link and similar fencing materials, if used, must be planted on exterior side with evergreen shrubs, a minimum three feet in height and six feet on center at installation.

(E) Outdoor lighting must not shine directly into yards of a residential use or into the windows of a residential structure.

(F) Hours of operation will be no earlier than 6:00 a.m. and no later than 11:00 p.m.

(Ord. passed 11-2-2011)

§4.03.16 MOBILE OFFICES, TEMPORARY.

Mobile offices may be used on a temporary basis for such purposes as construction offices, bloodmobiles, bookmobiles and traveling museums; however, such uses must obtain a temporary occupancy permit from the Zoning Administrator if the use is to last more than 48 hours at one site. Mobile offices may also be used for other office or business purposes in cases where the permanent structure has been destroyed through no fault of the owner or tenant. A temporary occupancy permit must be obtained before the use of the mobile office is initiated. This occupancy permit shall be valid for a specified period of time while reconstruction takes place not to exceed six months and may be renewed at the Planning Director's discretion based up construction conditions.

(Ord. passed 11-2-2011)

§4.03.17 WIRELESS TELECOMMUNICATIONS TOWER.

(A) General.

(1) Intent. In compliance with the Federal Communications Act of 1996, being 47 USC 201 et seq. and all other relevant state and federal law, rules and regulations, it is the intent of the town to allow telecommunication providers the opportunity to locate wireless telecommunications antenna (WTA) and related facilities within its jurisdiction in order to provide an adequate level of service to its customers while protecting the health, safety and welfare of its citizens, and the aesthetics of the community.

(2) Applicant's responsibilities. It shall be the responsibility of all applicants and operators of the telecommunications equipment described herein to make all possible efforts to maintain consistency with the characteristics of this family beach community with its long and narrow island, its low building and vegetation profile, and the community whose primary income is based upon the attraction of tourists by the town's qualities and characteristics as a family beach.

(3) Conformance. No WTA or wireless telecommunication support structure (WTSS) shall be constructed or modified from and after the date of adoption of this ordinance, except in conformance to the provisions stated in this section.

(4) Enforcement. This section may be enforced by any and every remedy provided by the state statutes as specified in Article 10, Enforcement.

(B) General requirements.

(1) Certification of need. Any applicant(s) requesting a new WTA or WTSS or any modification to an existing WTA or WTSS shall be required to provide substantial evidence of need for such structures both in terms of coverage and capacity.

(2) Co-location. WTA placement on an existing structure - either alternative antenna support structure (AASS) or WTSS - is required unless the applicant(s) can clearly demonstrate with substantial, clear and convincing evidence that all co-location opportunities have been exhausted. The town will attempt to maintain by its own efforts or through its agents an up-to-date inventory of buildings and structures suitable for WTA installations. Maps are available showing these locations, as well as relative flood zones and flight approach vectors to neighboring airfields.

(3) New construction provision for co-location. All new WTSS shall be constructed to permit a minimum of two new WTA. The owner(s) of the new WTSS shall submit a notarized letter to the town declaring that these additional sites shall be available to new tenants and shall be negotiated in good faith at reasonable terms to other providers, and that if good faith negotiations fail, both parties may be subject to commercial arbitration. They shall further state that as a condition of sale or transfer of the proposed structure to any new owner(s), operator(s) or agent(s) that a statement of intent to provide for shared use of tower shall be required of any new owner(s), operator(s) or agent(s) and shall be delivered to the town prior to closing.

(4) Federal certification. Any new WTA or WTSS, or any modification to an existing structure that would affect an increase in height shall require certification in writing by the Federal Aviation Administration that such addition or modification constitutes "No Hazard" to air navigation both by its physical structure and by its potential for radio frequency interference with aviation communication signals. The proposed structure shall also satisfy all TOW AIR requirements. If operator(s) of the proposed structure can reasonably show that the Federal Aviation Administration cannot produce such certification, then certification of "No Hazard" to air navigation from a certified private agency shall suffice.

(5) Certification of compliance with FCC's Implementation of National Environmental Policy Act of 1969 (NEPA). The applicant(s) for any new WTA or WTSS or modification to any existing WTA or WTSS are required to file with the FCC if the structure location is within any definition provided in § 1.1307 of the NEPA. If the structure is located in any area defined by this Act, full compliance with the Act's requirements for environmental assessments (EA) shall be required.

(6) Radio frequency. Radio frequency exposure levels shall not exceed the lesser of FCC and ANSI exposure standards at any potential point of exposure to the general public. The owner(s) and operator(s) of all WTA shall make all reasonable attempts by design, fencing, signage and the like to limit the public's exposure. An engineer prepared and sealed document attesting to the fact that the calculated and proposed radio frequency levels shall remain at the lesser of the FCC and ANSI standards is required. This letter shall be required following completion of the structure's construction, and before a certificate of occupancy is issued.

(7) Structural integrity. An engineer's prepared and sealed complete site plan document that denotes compliance with all technical specifications provided in federal, state and town code, and a certification that the proposed structure and all proposed and potential occupant structures are stable and capable of withstanding a 50-year hurricane is required.

(8) Insurance requirements. A minimum of \$1,000,000 general liability insurance with a letter from the insurer attesting to this fact shall be required prior to receipt of a certificate of occupancy. This same letter shall acknowledge that the insurer shall notify the town 30 days prior to cancellation of this insurance.

(C) New construction or modification of wireless telecommunication support structures (WTSS).

(1) Statement of financial responsibility. The owner(s), and their representative(s) shall be required to provide proof of financial responsibility for all wireless telecommunication structures constructed or maintained within the town. This statement shall be completed upon initial application, and renewed each year. If full financial responsibility cannot clearly be demonstrated to the full satisfaction of the town, a surety bond for 110% of the total cost of all structure(s) removal and associated cleanup may be required by the town. The owner(s) and their representative(s) shall be fully responsible for all maintenance, and continued assurance that the structure(s) continually remain in compliance with town code.

(2) Special use permit required. Construction of any new, or modification of any existing WTSS shall require a special use permit. Exemptions to this requirement shall include, but shall not be limited to, co-location of new WTA on an existing WTSS, reductions in height or size of a WTSS, or any issues of routine maintenance to either the WTA or WTSS.

(3) Demonstration of need. Applicants shall provide substantial evidence as to the current need for the proposed WTSS both in terms of coverage area and capacity, and must demonstrate why all currently available WTSS and AASS co-location opportunities cannot provide adequate coverage and capacity.

(4) Demonstration of lack of suitable co-location opportunities. New WTSS shall be permitted only after clear demonstration that all potential opportunities for co-location have been exhausted, and that no suitable existing support structures exist within the coverage area that may be used, including all WTSS and AASS. The applicant(s) shall identify and assess all potential opportunities for co-location within a 5,000-foot radius around the proposed point of construction for the new WTSS. An engineer's prepared and sealed letter shall be required, attesting to the fact that it is technically impossible to co-locate on any existing WTSS and all other AASS within the search area, with a map showing all potential sites, and stating why each is technically unfeasible. A notarized letter from the applicant(s) shall be required listing all technically feasible sites, noting for each site that the applicant(s) attempted, in good faith, to negotiate terms of co-location with the owner(s) of the potential site, and negotiation has failed.

(5) Requirement of notification. Applicants shall be required to notify, by certified mail with return receipt requested, all property owners within 500 feet and all adjacent property owners of their application for construction of a new, or modification of an existing WTSS. Exceptions to this requirement shall include, but shall not be limited to, co-location of new WTA on an existing WTSS, reductions in height or size of the WTSS, or any issues of routine maintenance to either the WTA or WTSS.

(6) Minimum lot area. Parcels used for placement of new or modified WTSS shall be the greater of a minimum of 10,000 square feet, or shall be capable of meeting the minimum lot size necessary to accommodate the minimum setback requirements defined below.

(7) Minimum setback requirements. When the proposed structure is located adjacent to any church, school, public facility or residential zone, the center of the support structure shall be located a distance from the nearest property line a minimum of one and one-quarter times the greatest height of the structure including any WTA or devices that would add to the total height of the structure. The engineer's site plan for the tower shall indicate that the fall radius for the tower lies within the tower site, and that the fall radius zone does not include any of the aforementioned structures or zones. Otherwise, the center of structure shall be located as close as possible to then the geometric center of the property, with minimum setbacks from all sides of 50 feet.

(8) Support structure type. Only camouflaged or "stealth" WTSS or monopole support structures shall be used. Structures involving the use of guy wires for either internal or external bracing and support, or lattice type structures, or any other type of support structure shall be prohibited.

(9) Permitted height. The WTSS may not exceed the minimum height necessary to accomplish the technical objectives of the primary WTA and the required number of additional WTAs, and shall be the lesser of the demonstrated minimum required for the technology employed, plus the minimum required for all proposed additional occupants. No WTSS shall be constructed that has any component of its structure more than 75 feet above the average adjacent tree or building lines. No combination of WTA and WTSS may exceed 100 feet. An engineer's sealed letter describing the proposed WTSSs adherence to this provision shall be required.

(10) Illumination. No WTSS or WTA shall be illuminated unless specifically directed by the Federal Aviation Administration or other federal agency. If required, lighting must be to the minimum specified by a federal agency. Strobe lights shall be prohibited unless specifically required. When strobe lights are required by the specifying agency, they shall be dual strobes, with white strobes for daytime use, and red strobes for nighttime use. All lighting shall be directed toward the structure, and upward and outward from any public areas. A copy of the Federal Aviation Administration lighting requirements letter shall be submitted with the application.

(11) Color. Unless otherwise specified by a federal agency, all WTSS shall be painted a flat gray color.

(12) Limited to applicant. Every special use permit for freestanding WTSS shall be limited to the applicant(s). Any assignment or transfer of the special use permit or any of the rights under the permit may be made only upon the approval of the town.

(13) Complete application. A complete application, consisting of the following, shall be submitted for all proposed wireless telecommunication support structures (WTSS):

(a) WTSS application;

(b) Application fee;

(c) Copy of FCC license;

(d) Copy of all applications filed with federal and state agencies;

(e) FAA letter ascertaining “No Hazard” to air navigation;

(f) Statement of financial responsibility or surety bond;

(g) Engineer’s letter describing lack of technically feasible co-location opportunities within a 3,000-foot radius of the proposed site location;

(h) Owner(s) letter describing inability to negotiate in good faith co-location on all possible site which are technically feasible;

(i) Owner(s) letter describing and the availability and opportunity for co-location sites on the proposed structure;

(j) Engineer’s site plan for the proposed WTSS depicting the location parcel, its size, zoning, adjacent zoning and fall radius;

(k) FAA or other federal agency letter describing minimal lighting and color requirements for the proposed WTSS;

(l) Engineer’s letter denoting structural integrity of the proposed WTSS and all potential tenants, and certification of its integrity in a 50-year storm;

(m) Engineer’s letter attesting to the fact that exposures to the public of any radio frequency levels will at or below the lesser of the FCC and ANSI standards;

(n) Letter from insurer that the owner(s) will have a minimum \$1,000,000 general liability policy, and that the insurer will notify the town 30 days prior to cancellation of this insurance;

(o) Engineer’s scaled site plan including elevations, visual analysis, rendering or photo simulation of the proposed WTSS from varying distances as viewed by the public; and

(p) Engineer’s site plan including elevations, and showing total heights of the proposed WTA and its support structure, and the WTA proposed color(s) and illumination scheme.

(D) Co-location on existing structures.

(1) Permitted use. Co-location of WTA on an existing WTSS or AASS shall be a permitted use.

(2) Zoning. Co-located WTA shall be allowed as a permitted use only in the Business Zoning Districts (B-1, B-2) and within the right-of-way for Highway 210 as defined by the state, and on water towers.

(3) Height limitations. WTA located on an existing WTSS or AASS shall not exceed the lesser of 15 feet or 10% of the existing support structure height as measured from the structure’s apex to the average ground level immediately adjacent to the structure.

(4) Color. The color of all WTAs shall match the color of the supporting WTSS or AASS.

(5) Illumination. Illumination requirements for new WTA co-located on existing structures shall be subject to the same requirements for freestanding WTSS.

(6) Lease agreement. A copy of the lease agreement between the owner(s) of the WTA and the

owner(s) of the support structure shall be submitted with the application. The financial terms of the agreement need not be disclosed.

(7) Complete application. The requirements for a complete application for a WTA are:

(a) WTA application;

(b) Application fee;

(c) Copy of FCC license;

(d) Copy of all applications filed with federal and state agencies;

(e) FAA letter ascertaining "No Hazard" to air navigation;

(f) FAA or other federal agency letter describing minimal lighting and color requirements for the proposed WTA;

(g) Engineer's letter denoting structural integrity of the proposed WTA and all potential tenants, and certification of its integrity in a 50-year storm;

(h) Engineer's letter attesting to the fact that exposures to the public of any radio frequency levels will at or below the lesser of the FCC and ANSI standards;

(i) A copy of the lease agreement between the owner(s) of the WTA and the owner(s) of the structure on placement is proposed;

(j) Engineer's depiction of the minimal size and other requirement for equipment housing structures; and

(k) Engineer's site plan including elevations, and showing total heights of the proposed WTA and its support structure, and the WTA proposed color(s) and illumination scheme.

(8) Equipment housing structures.

(a) Visibility. The base of the support structure to a minimum height of six feet shall not be visible from any public right-of-way or area of public congregation, and must be hidden from view either by natural vegetation or by vegetative screening. All equipment necessary for the functional operation of the technology employed shall be located in either a lawfully pre-existing structure, or in an equipment housing structure. The colors and external characteristics of the equipment housing structures shall be harmonious with, and blend with, the natural features, buildings and structures surrounding it.

(b) Access drives. Roads and drives used to gain access from public right-of-way to the equipment housing structures shall be designed to minimize, as much as possible, viewing of the equipment housing structures by the public.

(c) Size. Equipment housing structures shall be the minimum size necessary to accommodate the closed storage of all ground-based equipment, and necessary materials for the primary occupant's technical needs, and for the technical needs of all potential tenants. Depiction of the minimum size necessary to accomplish these technical objectives shall be included in the engineer's site plan details.

(d) Fencing and screening. The accessory building and its fencing shall be fully surrounded (excepting a single point of access) by a planted vegetative screening, as described below, or by a minimum of

15 feet existing natural vegetation. Whether natural or planted, the vegetative buffer shall have the effect of fully obscuring the structure and its fencing from public view. All planted buffers shall be at least five feet tall at planting, and shall be designed to reach at least eight feet within two years, and shall be an evergreen, salt-resistant planting material. Continued maintenance and replacement of the vegetative buffer, as needed, shall be required for the permitted life of the structure. A security fence shall be installed along the full perimeter of the support structure and shall be no less than five feet and no more than eight feet high. The fencing shall incorporate designs for structure security and for making all possible efforts to minimize public exposure to radio frequency radiation. Any and all accessories and all materials relating to the use of the WTA or WTSS shall be installed within the building, unless technically impractical. All road or drive, gate, fence and vegetative screening details shall be noted within the engineer's site plan.

(e) Signage. No advertising signs are permitted on the support structure, the fence, building or at any location on the site, with the exception of one sign that is attached to the gate, and one sign that is attached to the gate-face of the building for the purposes of safety and information. These two signs shall clearly identify the dangers, and shall provide the names of emergency contact persons and their phone numbers. Any signs shall comply with the town code.

(f) Two-way and microwave antennas. Two-way and microwave antennae shall be located within accessory buildings whenever technically feasible.

(g) Outdoor storage prohibited. Storage of any equipment or materials on the accessory building site or support structure site is prohibited.

(h) Noise producing equipment. Noise producing equipment shall be sited and/or insulated to minimize to the maximum practicable extent any increase in noise above ambient levels as measured at the property line.

(i) Electrical connections and land lines. Electrical connections and land phone lines to and from the accessory building shall be installed underground.

(E) Applicant's remedy. Minor variances from the stated design and purpose of all structures may be addressed to the Board of Adjustment.

(F) Informal dispute resolution process. All parties shall attempt to adhere to the agreement adopting an informal dispute resolution process as described in the 1998 meeting between the LSGAC, the CTIA, the PCIA and the AMTA. This process is designed to arrive at a mutual agreement while avoiding lengthy and costly court proceedings. All parties retain their full legal rights should this remediation process fail.

(G) Appeal for remediation. Upon disapproval, or dissatisfaction with the conditions of approval by the Board of Aldermen, the applicant(s) shall have a 30-day period in which to request an appeal for remediation. The appeal for remediation shall involve the applicant(s), selected members of the Planning Board, and the Board of Aldermen, and shall be moderated by a third-party arbitration team. At the end of the process, the arbitration team will make a recommendation of its findings to all parties, and will provide a written record of the proceedings.

(H) Annual renewal.

(1) Annual renewal required. All WTA and WTSS shall be reviewed by the town on an annual basis. An application for annual renewal must be submitted to the town no later than 90 days prior to the date of last renewal or the date of the original certificate of occupancy. Structures will be re-permitted for the next 365 days following review by the inspections office, the Planning Board, and the Board of Aldermen.

(2) Application for renewal. The complete list of requirements for annual renewal for a WTSS and a WTA is:

(a) Renewal application fee;

(b) Complete renewal application form;

(c) Letter of continued insurance coverage for minimal general liability;

(d) Letter from the inspections department that the WTSS or WTA has remained in compliance with town code since the later of the last renewal or the certificate of occupancy;

(e) Engineer's letter stating that the WTSS or WTA had remained in compliance with all federal, state and town code requirements for structural integrity, and for radio frequency exposure requirements; and

(f) Letter from the owner(s) that the WTSS or WTA has remained in compliance with all FCC, FAA and NEPA requirements since the later of either the last renewal or the certificate of occupancy. Letter from the owner(s) that they intend to maintain full financial responsibility for the WTSS or WTA for the entire renewal period.

(3) Abandonment. Any WTA or WTSS that is not operated for a continuous period of 180 consecutive days, or that is not maintained according to town code for 180 cumulative during the calendar year, or any structure for whom the owner(s) or representative(s) fail to make annual renewal shall be considered abandoned. Removal of the abandoned structure to the satisfaction of the inspections department shall be required within 90 days. The owner(s) shall be responsible for all costs of removal. Petition for a onetime extension of 90 days may be made to the Board of Adjustment. Density, intensity and dimensional standards. (Ord. passed 11-2-2011)

§4.03.18 PARKS AND RECREATIONAL OPEN SPACE.

(A) Permanent parking lots associated with parks and greenways must meet the standards of § 6.05, Off-Street Parking and Loading Requirement.

(B) Dust-free, pervious surface areas are encouraged for overflow or event parking. Such areas, if maintained in a natural condition, need not conform with this paving requirements for off-street parking.

(C) Service areas must be separated by an opaque screen from view from any street and from abutting residential properties.

(D) Outdoor lighting associated with active outdoor recreation must not shine directly into yards associated with a residential use nor into the windows of a residential structure.

(E) Hours of operation of outdoor recreation must be no earlier than 6:00 a.m. and no later than 11:00 p.m. for uses located in or abutting a residential district.

(Ord. passed 11-2-2011)

§4.03.19 PUBLIC ADMINISTRATION (GOVERNMENT FACILITIES).

(A) Access. Must have primary access to a minor thoroughfare or higher capacity street.

(B) Use separation. Fifty-foot minimum distance between the ambulance or police station or similar use and any adjacent residential property.

(C) Screening. Service areas must be separated from the view from abutting residential properties using the standards for enclosed outdoor storage and service areas pursuant to § 4.03.06.

(Ord. passed 11-2-2011)

§4.03.20 DUPLEX.

Duplex greater than ten bedrooms total and 5,000 heated square feet:

(A) General requirements:

- (1) Side setbacks are ten feet required for zoning district;
- (2) Height is limited to 48 feet;
- (3) Maximum impervious surface is limited to 30% outside the ORW;
- (4) Parking plan:
 - (a) To include one space per bedroom up to ten, and two spaces per bedroom over ten.
- (5) Engineered stormwater plan for all impervious surfaces; and
- (6) The proposed development is harmonious and compatible with surrounding area.

(Ord. 2014-4, passed 6-5-2014)

§4.03.21 SINGLE-FAMILY.

Single-family greater eight bedrooms and 5,000 heated square feet:

(A) General requirements:

- (1) Side setbacks are ten feet required for zoning district;
- (2) Height is limited to 48 feet;
- (3) Maximum impervious surface is limited to 30% outside the ORW;
- (4) Parking plan:
 - (a) To include one space per bedroom up to ten, and two spaces per bedroom over ten.
- (5) Engineered stormwater plan for all impervious surfaces; and
- (6) The proposed development is harmonious and compatible with surrounding area.

(Ord. 2014-4, passed 6-5-2014)

§4.03.22 ICE VENDING MACHINE.

(A) General requirements.

- (1) Unit must meet construction standards for high hazard flood area.
- (2) Unit must be elevated two feet above base flood elevation (BFE), as indicated by required elevation certificate.
- (3) Engineered designed access must be ADA compliant.
- (4) Provided engineer certification that structure as installed is rated to withstand wind loads up to 130 mph with three-second wind gusts.

(5) Submit plans and specifications for the facility and/or unit, including the plumbing, electrical, mechanical, HVAC (if applicable), as well as a schedule of finished materials, maintenance and cleaning schedules, post-anomaly procedures (flood, loss of water pressure, loss of power).

(6) Advertising shall not take up more than 50% on two sides.

(7) Application shall include illustration or photos for the Board's consideration of aesthetics.

(8) Survey required indicating proposed unit meets setbacks, maximum impervious and other CAMA and zoning requirements. A detailed site plan is required to indicate:

(a) A parking plan, consistent with Table 6-5, Parking Requirements:

(b) Cannot take up existing parking spaces;

(c) Ingress/egress so designed as to minimize the traffic congestion and not to impede emergency vehicle access to surrounding properties; and

(d) Engineered design French drains for the water melt without any negative effect to the environment.

(Ord. 2015-04, passed 5-7-2015)

§4.03.23 AGRICULTURAL USES.

Property that is located in North Topsail Beach's planning and development regulation jurisdiction and that is used for bona fide purposes, including agritourism, is exempt from this UDO to the same extent bona fide farming activities are exempt from county zoning pursuant to NCGS 160D-903. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that ceases to be used for bona fide farm purposes shall become subject to exercise of the Town's extraterritorial planning and development regulation jurisdiction under NCGS Chapter 160D. For purposes of complying with State or federal law, property that is exempt from the exercise of municipal extraterritorial planning and development regulation jurisdiction pursuant to this subsection shall be subject to the Town's floodplain regulation or all floodplain regulation provisions of the County's ordinances.

ARTICLE 5. DIMENSIONAL REQUIREMENTS

<i>Table 5-1 Dimensional Requirements</i>								
ZONING	MINIMUM LOT SIZE	FRONT YARD	LOT WIDTH	SIDE YARD SETBACK	SIDE YARD CORNER	REAR YARD SETBACK	BUILDING HEIGHT	MAXIMUM LOT COVERAGE
Con-D								30%
R-A	3 acres	30'	75'	10'	20'	10'	48'	30%
R-20	20,000 sq. ft.	30'	75'	10'	20'	10'	48'	30%
R-15 Single- family or duplex	15,000 sq. ft.	20'	60'	8'	15'	10'	48'	30%
R-10 Single- family	10,000 sq. ft.	20'	60'	8'	15'	10'	48'	30%
Multi-family	plus 10,000 sq. ft. for each unit over 2	20'	60'	8'	15'	10'	48'	30%
R-8 Single- family	8,000 sq. ft.	20'	50'	8'	15'	10'	48'	30%
Multi-family	plus 8,000 sq. ft. for each unit over 2	20'	50'	8'	15'	10'	48'	30%
R-5 Single- family	5,000 sq. ft.	20'	50'	8'	15'	10'	48'	30%
Multi-family	plus 5,000 sq. ft. for each unit over 2	20'	50'	8'	15'	10'	48'	30%
MHR Single- family	5,000 sq. ft.	20'	50'	8'	15'	10'	48'	30%
Multi-family	plus 5,000 sq. ft. for each unit over 1						48'	
B-1	8,000 sq. ft. per building	20'	50'	8'	10'	10'	48'	30%
B-2								

(Ord. passed 11-2-2011; Ord. 2012-1, passed 4-5-2012)

§5.01 OUTSTANDING RESOURCE WATERS (ORW).

Lots adjacent to outstanding resource waters (ORW), as defined by the State Division of Environmental Management, shall not exceed 25% lot coverage as per state requirements.

(Ord. passed 11-2-2011)

§5.02 MEASUREMENT OF BUILDING HEIGHT.

(A) The height of any building shall be the vertical distance of the highest point of the roof or any rooftop deck, fence, railing, widow’s walk or other rooftop structure as measured from the top of the lowest slab and if no slab is measured from the lowest adjacent grade as specified on the elevation certificate.

(B) No building shall be erected, altered or raised in any manner as to exceed the height of 48 feet. Certification of compliance with this section shall be indicated on the final elevation certificate and on the as-built plat of survey prior to the issuance of a certificate of occupancy.

(Ord. passed 11-2-2011)

§5.03 SETBACKS FOR ACCESSORY BUILDINGS.

Any accessory building must meet the same setback requirements as the principal building and not exceed the frontline of the main structure.

(Ord. passed 11-2-2011)

§5.04 LOT SIZE WITHOUT CENTRAL WATER AND CENTRAL SEWER.

(A) All lots not served by central sewer and central water shall be at least 10,000 square feet in area, not less than 50 feet wide at the building line nor less than 75 feet deep.

(B) All lots served by one but not both central water or central sewer shall be at least 5,000 square feet in area, not less than 40 feet wide at the building line, nor less than 75 feet deep.

(Ord. passed 11-2-2011)

§5.05 ZERO LOT LINES.

Any planned unit development in the residential districts may make use of the zero lot line concept, that is, no minimum lot size or yard requirements, provided that the total area of the development meets the minimum lot size in its district, that density requirements for the zoning district are complied with, that the development remains under single control through a property owners’ association or similar means, and that minimum yards and buffers as required in its district are preserved around each building, and around the entire perimeter of the development.

(Ord. passed 11-2-2011)

§5.06 OTHER YARD MODIFICATIONS.

(A) The required front yard for through lots shall be provided on both streets.

(B) Architectural features, such as open or enclosed fire escapes, steps, outside stairways, balconies and similar features, and uncovered porches, may not project more than four feet into any required yard. Sills, cornices, eaves, gutters, buttresses, ornamental features and similar items may not project into any required yard more than 30 inches.

(C) Townhouse developments shall adhere to the dimensional requirements in Table 5-1, Dimensional Requirements, prior to construction. Resulting post-construction lots will be irregular lot sizes and not further developable.

(Ord. passed 11-2-2011)

§5.07 RETAINING WALLS.

The setback and yard requirements of this ordinance shall not apply to a retaining wall not more than three feet high, as measured from the lowest ground elevation to the top of the wall. The Board of Adjustment may

permit a retaining wall greater than three feet in height where it finds that due to the topography of the lot such a wall is necessary.

(Ord. passed 11-2-2011)

ARTICLE 6. DEVELOPMENT STANDARDS

§ 6.01 SUBDIVISION.

§6.01.01 PURPOSE.

The purpose of this section is to establish procedures and standards for the development and subdivision of land within the territorial jurisdiction of the town. It is further designed:

(A) To provide for the orderly growth and development of the town;

(B) For the coordination of streets and highways within proposed subdivisions with existing or planned streets and highways and with other public facilities;

(C) For the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of rights-of-way or easements for street and utility purposes;

(D) For the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions essential to public health, safety and the general welfare;

(E) To further facilitate adequate provision of water, sewerage, parks, schools and playgrounds; and

(F) To facilitate the further resubdivision of larger tracts into smaller parcels of land.

(Ord. passed 11-2-2011)

§6.01.02 APPLICABILITY.

(A) Conformity with regulations required. After the effective date of this ordinance, no real property within the town shall be subdivided and any portion of the property offered for sale, sold or transferred except in conformance with all applicable provisions of this ordinance. Compliance with this Article 6 includes, but is not limited to, compliance with all regulations in this ordinance applicable in the district in which the land is located.

(B) Suitability of land. Land subject to flooding, poor drainage, erosion or that is for topographical or other reasons unsuitable for residential or commercial use as determined by the Board of Aldermen, shall not be platted for any use that will continue or increase the danger to health, safety or property unless the conditions can be corrected.

(C) Building permits. Building permits shall not be issued for structures located in a subdivision unless the final plat is recorded in the office of the County Register of Deeds.

(Ord. passed 11-2-2011)

§6.01.03 DEFINITION OF SUBDIVISION.

For the purpose of this article, "subdivision" shall mean all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets.

(A) Exemptions. The following exemptions shall not be included within this definition nor be subject to any regulations enacted pursuant to this article, however, all lots created under these exemptions must be in compliance with the CAMA Land Use Plan and meet the impervious limits, minimum area, lot width and

setback standards of the Unified Development Ordinance. Any document or plat to be recorded pursuant to such exclusions shall have the proper notation of “no approval required” and the signature of the Planning Director, before filing with the County Register of Deeds:

(1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in this article;

(2) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;

(3) The public acquisition by purchase of strips of land for the widening or opening of streets; and

(4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality as shown in this article.

(5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under G.S. Chapter 29.

(a) Family division. The division of land by any method of transfer from a grantor to a grantee (or grantees) who is a member of the grantor's immediate family, solely for the residential use of the grantee (or grantees). For the purposes of this section, the term "immediate family" shall include only direct lineal descendants (children and grandchildren) and direct lineal ascendants (father, mother, grandfather and grandmother). The following is a list of requirements/statements that must be submitted with an exempt plat for a subdivision of property for family purposes:

(i) A plat listing the names of the family members and identifying which lots are to be conveyed to each with a statement that “the lot(s) shown are created for the purpose of family ownership”;

(ii) Where lots are not adjacent in a public street, a note on the plat stating that the lot is benefited by a permanent easement for access and utilities;

(iii) The following note shall appear on the plat: “No additional lots, including the resubdivision of the lots served by the access easement and utility, shall be permitted unless the access and utility easement is upgraded to meet or exceed the standards of the Unified Development Ordinance”;

(iv) A note stating that the property owners are responsible for the upkeep and maintenance of the access and utility easement shall be placed on the plat; and

(v) A septic permit or letter of sewer availability shall be required for each lot to be created or a statement shall be placed on the plat that the property is being conveyed as forestland or farmland.

(b) Divisions (A)(6)(a)2. through (A)(6)(a)4. only apply only when the lot(s) created do not have direct access to a public street.

(B) The town may provide for expedited review of specified classes of subdivisions.

(C) The town may require only a plat for recordation for the division of a tract or parcel of land in single ownership if all the following criteria are met:

(1) The tract or parcel to be divided is not exempted under this section;

(2) No part of the tract or parcel to be divided has been divided under this article in the ten years prior to division;

(3) The entire area of the tract or parcel to be divided is greater than five acres;

(4) After division, no more than three lots result from the division; and

(5) After division, all resultant lots comply with all of the following:

(a) Any lot dimension size requirements of the zoning, subdivision, and other development regulations of the Unified Development Ordinance and the CAMA Land Use Plan;

(b) The use of the lots is in conformity with the applicable zoning requirements of the Unified Development Ordinance and the CAMA Land Use Plan; and

(c) A permanent means of ingress and egress is recorded for each lot.

(Ord. passed 11-2-2011; Ord. 18-03, passed 5-3-2018)

§6.01.04 STANDARDS.

Relationship of buildings to lot. Every building hereafter erected, moved or structurally altered shall be located on a lot and in no case shall there be more than one principal building and its customary accessory buildings on the lot except in the case of a designed complex of professional, residential or commercial buildings in an appropriate zoning district. Detached garages and carports must meet the same setback requirements as the principal building, just as if they were attached.

(Ord. passed 11-2-2011)

§6.01.05 STREET ACCESS.

No building shall be erected on a lot which does not abut a street, provided that in a business district or in a planned project in a residential district, a building may be erected adjoining a parking area or dedicated open space which has access to a street used in common with other lots.

(Ord. passed 11-2-2011)

§6.01.06 REDUCTION OF LOT SIZE PROHIBITED.

(A) Ordinance shall be reduced in size, lot width or area below the minimum requirements set forth in Table 5-1, Dimensional Requirements.

(B) Yards or lots created after the effective date of this ordinance shall meet at least these minimum requirements.

(Ord. passed 11-2-2011)

§6.01.07 DESIGN STANDARDS.

(A) Relations of proposed streets to adjoining street systems. The proposed street system shall extend existing and projected streets at not less than the required minimum width. Where in the opinion of the Board of Aldermen it is desirable to provide for street access to adjoining property, proposed streets shall be extended by dedication to the boundary of such property. The Board of Aldermen may require that a subdivision locate proposed streets, public or private, to intersect with other streets or roadways in a place and manner that will minimize traffic congestion and risk to the public safety. The Board of Aldermen may limit the number of accesses and control the traffic from all outlets of subdivisions onto other streets for the purpose of protecting the public safety while providing for reasonably convenient subdivision access to the street system.

(B) Street names.

(1) Proposed streets that are obviously in alignment with others already existing shall bear the names of the existing streets.

(2) The road names on file with the State Department of Transportation and the County GIS Department are hereby declared the official names of these roads, unless changed by action of the Board of Aldermen in accordance with policies so adopted by the Board of Aldermen. The Planning Board is hereby authorized to determine the need for road name changes and to recommend such changes to the Board of Aldermen.

(3) All roads in the town shall be identified by a sign showing the official name and state road number, if any. These road signs shall be placed at all intersections and may identify both intersecting streets.

(4) Road name signs shall be uniform throughout the town in accordance with approved local standards and policies.

(C) Street construction. All dedicated public streets and approved private streets shall be constructed to the specifications of the town as specified in § 6.02.05.

(D) Intersections. Street intersections shall be as nearly at right angles as possible, and no intersection shall be at an angle less than 75 degrees. No more than two streets shall intersect at any one point.

(E) Fire hydrants. Fire hydrants shall be within 500 feet of each proposed lot as measured along a paved street. All hydrants shall be three-outlet-base-valve type located on a six-inch or larger water main. The fire hydrant plan shall be reviewed by the Fire Chief and public water authority.

(F) Access. Within all proposed subdivisions, group housing and special developments, and all other developments subject to the terms of special plat approvals, a minimum public access width of ten feet shall be provided from each street right-of-way to the high-water mark of both the Atlantic Ocean and the soundside; provided, the Board of Aldermen may eliminate, vary or change the location or width of any of the public accesses within a block following recommendation by the Planning Board based upon topography, good land use planning, or similar considerations.

(G) Minimum lot width. All lots within the proposed subdivision shall meet the required minimum lot width, as indicated in Table 5-1, Dimensional Requirements.

(H) Installation of improvements. No local improvements or utilities, including water, sewer, storm drains, paving, curb and gutter, shall be constructed until the preliminary plat and completed detailed plans for such improvements have been examined, analyzed and approved by the Board of Aldermen. Detailed plans of proposed improvements shall be submitted with the preliminary plat and shall include plan views, profiles, typical sections, cross-sections, standard specifications and construction details. Design of streets and utilities shall be combined into one plan set when possible.

(Ord. passed 11-2-2011)

§6.01.08 BUSINESS DISTRICTS.

(A) Buffers. A buffer shall be required in accordance with § 6.04, if commercial development abuts a residential or multi-family residential lot.

(B) Paved roads. For all projects containing more than two units, all parking lots, drives, streets and roads within the project shall be paved and constructed in accordance with the construction standards for paved subdivision streets within the town.

(C) Lighting. Outdoor lighting shall be in accordance with § 6.02.06(C). Any lighting provided within the project shall be so located or shielded so that no offensive glare will be visible from an adjoining street or

property.

(D) Swimming pools. Swimming pools shall conform to the building setback lines. All swimming pools shall be reasonably accessible to emergency equipment and vehicles. Any lighting in the pool area shall be shielded in such a manner that no offensive glare will be visible from an adjoining street or property.

(E) Garbage areas. Adequate space shall be provided within the project area for the collection of garbage and other refuse, and all dumpsters and equipment used for garbage collection shall be screened from public view.

(F) Provision for fire. All hydrants shall be located adjacent to a paved street, road or parking lot suitable for the transportation of firefighting vehicles and equipment.

(Ord. passed 11-2-2011)

§6.02 PLANNED UNIT DEVELOPMENTS.

§6.02.01 DESIGN AND CONSTRUCTION REQUIREMENTS.

The design, construction and development of planned developments shall comply with the design and construction requirements of § 2.06.03, and other applicable ordinances of the town, except as may be modified in this section.

(Ord. passed 11-2-2011)

§6.02.02 MINIMUM AREA.

Subject to the provisions in this ordinance, all planned unit developments shall contain a minimum of two contiguous acres. Any addition must be at least two acres, contiguous and adjacent to the existing planned unit development, and subject to design standards.

(Ord. passed 11-2-2011)

§6.02.03 PROJECT DENSITY.

The overall density of each planned development (both residential and commercial units) shall be in conformance to the requirements of Table 5-1, Dimensional Requirements.

(Ord. passed 11-2-2011)

§6.02.04 OPEN SPACE.

(A) Each planned development shall contain open space in the following percentages of the overall area of the Planned Unit Development that shall be computed based upon the number of dwellings per gross acre of planned development shown in Table 6-1.

Table 6-2 Required Open Space in Planned Unit Developments

<i>Table 6-2 Required Open Space in Planned Unit Developments</i>	
<i>Number of Dwelling Units per Gross Acre</i>	<i>Minimum Percentage of Open Space</i>
3 units or less	10
4 to 6 units	20
7 to 8 units	30

(B) Open space is defined as that land designated on the plat as being for the use, benefit and enjoyment of the residents of the planned unit development. The open space shall be set aside for the use, benefit and enjoyment of all residents of the planned unit development, and shall either be dedicated to the private use of residents of the planned unit development or conveyed to the owner's association or similar resident's association for ownership, use and management. Land that is restricted in any way so as to be for the use, benefit or enjoyment of a select group within the planned unit development shall not qualify as open space.

(C) To qualify as open space, land shall have a minimum width of 24 feet excluding street rights-of-way, drives, parking areas or structures other than recreational structures. Street rights-of-way, drives, parking areas and central water and sewer systems may qualify as open space and be counted towards the percentage of open space required for each development; provided, that street rights-of-way, drives, parking areas, and water and central sewage systems shall not comprise more than 33-1/3% of the required open spaces for each development unless the percentage is varied or waived by the Board of Aldermen upon recommendation by the Planning Board.

(D) Required natural area: nothing in this section shall change, modify or repeal the requirements of §§ 2.06.09 or 7.05(G) related to dunes and vegetation protection with regard to the percentage of each tract or lot that must be retained in its natural state.

(E) Dimension requirements:

(1) A 15-foot setback shall be required along all peripheral boundaries of a planned unit development. A building, whether it is a principal or accessory building, shall not encroach upon this required setback distance.

(2) Side or rear setbacks for single-family detached dwellings. A zero side or rear yard setback within the PUD, where the side or rear building line is on the side or rear lot line, may be permitted on one side or rear of each lot subject to the following provisions:

(a) Any wall constructed on the side or rear lot lines shall be a solid, windowless, doorless wall. If there is an offset of the wall from the lot line, such offset shall be a solid, windowless, doorless wall or be located the applicable setback distance from the side or rear lot line as applicable as required by this ordinance for the zoning district in which the property is located.

(b) The minimum building separation for the side or rear yard opposite the zero rear lot line shall be either a minimum building separation of 15 feet from the side of the adjacent dwelling if then constructed, or a minimum 15-foot building setback line from the adjoining side or rear lot line, whichever is greater. This 15-foot area shall be subject to all the requirements and conditions of the unified development ordinance normally applied to side or rear yards for buildings within the zoning district in which the property is located.

(c) A five-foot maintenance easement with a maximum eave encroachment easement of two feet within the maintenance easement shall be established in the deed restrictions and covenants of the adjoining lot and shall assure ready access to the lot line wall at reasonable periods of the day for normal maintenance.

(d) Preliminary and final site development plans shall indicate the proposed location and configuration of dwellings, driveways and parking arrangements for each lot. In addition, a draft of proposed encroachment and maintenance easement shall be submitted for review and approval.

(e) All remaining yards shall have a minimum 15-foot building setback.

(F) Water supply and sewage service: central water supply and public sewer service connection shall be required for all units, and the same shall be approved, constructed, completed and maintained in accordance with the requirements of the appropriate water or sewer agency.

(G) Primary vehicular access: primary vehicular access to the planned unit development shall be from a public street.

(H) Building height: no building shall exceed the maximum height allowed.

(Ord. passed 11-2-2011)

§6.02.05 STREETS.

(A) Type of streets required. All subdivision lots shall abut on a public or private street. All public streets shall be dedicated to the town or the state as determined by the Board of Aldermen or appropriate state authority. All public streets shall be built to the standards of this ordinance and all other applicable standards of the town and the State Department of Transportation. Public streets not dedicated to the town which are eligible for acceptance into the state highway system shall be constructed to the standards necessary to be put on the state highway system or the standards in this ordinance, whichever is stricter. A written maintenance agreement with provisions for maintenance of the street until it is put on the state or town system shall be included with the final plat.

(B) Subdivision street disclosure statement. All streets shown on the final plat shall be designated in accordance with G.S. § 136-102.6 and designation as public shall be conclusively presumed an offer of dedication to the public. Where streets are dedicated to the public but not accepted into a municipal or state system, before lots are sold, a statement explaining the status of the street shall be included with the final plat.

(C) Nonresidential streets. The subdivider of a nonresidential subdivision shall provide streets in accordance with the standards contained in the most current edition of the state roads, Minimum Construction Standards booklet, and the standards in this ordinance, whichever are stricter in regard to each particular item.

(D) Design standards. The design of public streets and roads within the jurisdiction of this ordinance shall be in accordance with the accepted policies of the State Department of Transportation, Division of Highways, as taken or modified from the American Association of State Highway Officials (AASHO) manuals. The most current edition of the State Department of Transportation, Division of Highways' Subdivision Roads Minimum Construction Standards shall apply for any items not included in this ordinance, or where stricter than this ordinance.

(E) Right-of-way widths. Right-of-way widths shall not be less than the following and shall apply except in those cases where right-of-way requirements have been specifically set out in the thoroughfare plan.

<i>Table 6-3 Right-of-Way Widths</i>	
	<i>Minimum Right-of-Way</i>
Rural	
Principal arterial	
Freeways	350 feet
Other	200 feet
Minor arterial	100 feet
Major collector	100 feet*
Minor collector	60 feet*
Local road	60 feet*
Urban	
Cul-de-sac	Varies**

Local street	60 feet
Major thoroughfare	70 feet
Major thoroughfare other than freeway and expressway	90 feet
* If curb and gutter is provided, 50 feet of right-of-way is permitted on local residential streets.	

** The subdivider will only be required to dedicate a maximum of 100 feet of right-of-way. In cases where over 100 feet of right-of-way is desired, the subdivider will be required only to reserve the amount in excess of 100 feet. In all cases in which right-of-way is sought for an access controlled facility, the subdivider will only be required to make a reservation.

(F) Street paving widths. Paving widths for street and road classifications other than local shall be as required by the mutually adopted thoroughfare plan where applicable. Paving widths of local roads and streets shall be as follows:

(1) Local residential.

(a) Curb and gutter section: 26 feet, to face of curb.

(b) Shoulder section: 20 feet to edge of pavement, four-foot shoulders.

(2) Residential collector.

(a) Curb and gutter section: 34 feet, face to face of curb.

(b) Shoulder section: 20 feet to edge of pavement, six-foot shoulders.

(3) One-way streets. One-way streets may be developed in situations where the applicant can show that public safety would not be jeopardized. In developing a one-way street, the travel way shall not be less than 18 feet where the Fire Marshal approved the design as satisfactory for fire access or other emergency access purposes.

(4) Other street design standards. Transverse slopes in pavement and shoulders, sight distance, grade, horizontal and vertical curves and superelevation shall be in accordance with the minimum construction standards as established by the State Department of Transportation.

(G) Intersections.

(1) Streets shall be laid out so as to intersect as nearly as possible at right angles, and no street shall intersect any other street at an angle less than 75 degrees.

(2) Property lines at intersections should be set so that the distance from the edge of pavement, of the street turnout, to the property line will be at least as great as the distance from the edge of pavement to the property line along the intersecting streets. This property line can be established as a radius or as a sight triangle. Greater offsets from the edge of pavement to the property line will be required, if necessary, to provide sight distance for the vehicle on the side street.

(3) Offset intersections are to be avoided unless exception is granted by the division of highways. Intersections which cannot be aligned should be separated by a minimum length of 200 feet between survey center lines.

(Ord. passed 11-2-2011)

§6.02.06 UTILITIES.

(A) Public water and public sanitary sewer system. All lots in subdivisions not connected to the public water system and/or the public sanitary sewer system must have a suitable source of water supply and sanitary sewage disposal, which complies with the regulations of the appropriate permitting agency. Lots connected to private utility systems shall submit evidence authorizing the connection from the permitting agency.

(B) Stormwater drainage system. The developer shall provide surface water drainage plans. These plans shall indicate storm water drainage supported by design computations. The design shall conform to the standards as required by NCDOT, NCDWQ or other regulatory state agency.

(C) Outdoor lighting.

(1) The intent of these standards is to focus on the physical effects of outdoor lighting, as well as the effect lighting may have on the surrounding neighborhood, natural beach environment, extremely sensitive turtle population and night sky conditions. Exterior lighting shall be evaluated in the development review process to ensure that the functional and security needs of the project are met in a way that will not adversely affect the adjacent properties, the surrounding neighborhood, natural beach environment, and dark night sky conditions.

(2) Any outdoor lighting shall be constructed as to not shine directly on any other property, neighborhood or beach and to reduce night sky glow. This may be accomplished by indirect lighting, or by low voltage wattage, and use of full cutoff fixtures, location and height of luminaries.

(3) Ocean front dwellings may install outdoor lighting on the ocean side of the dwelling, but it must be low voltage, indirect or full cut-off fixtures. The lighting shall not illuminate any part of the dune area or public beach area. Low indirect lighting can be placed on crosswalks from the dwelling to the dune area; lighting will not extend past the toe of the dune on the landward side.

(4) Plan approval: if the designated official determines that the proposed lighting does not comply with this Code, the permit shall not be issued or the plan approved.

(D) Underground wiring. All subdivisions in which the smallest lot is less than 40,000 square feet shall have underground wiring. This requirement may be waived by the Board of Aldermen if underlying rock is less than four feet from surface, in areas where soils have a high water table, or if there is extensive preexisting overhead wiring on the street in the immediate neighborhood of the subdivision. Such underground wiring shall be installed in accordance with the standards of Jones-Onslow EMC. The subdivider shall be required to pay the charges for installation of the underground service, which charges will be made in accordance with then effective underground electric service plan as filed with the State Utilities Commission.

(Ord. passed 11-2-2011)

§6.03 SUITABILITY OF LAND.

Criteria for evaluating suitability of proposed recreation, parks and open space areas shall include, but not be limited to, the following as determined by the Board of Aldermen.

(A) Usability. The dedicated land shall be usable for active recreation. (Play areas, ball fields, tennis courts or similar recreation uses). Wetlands may not be included in computing amount of land to be dedicated unless acceptable to the Board of Aldermen. If the Board of Aldermen determines that active recreation needs are being met by other dedicated parcels or existing recreation facilities, then land that is suitable for open space may be dedicated.

(B) Adjustments to requirements. The Board of Aldermen may, in cases of unusual or exceptional nature allow adjustments in the dedication requirements established in or required by this ordinance. Such adjustments shall be reviewed by the Planning Board before action by the Board of Aldermen.

(C) Conservation and historic preservation easements. Conservation and historic preservation easements shall comply with G.S. § 121-34 through 121-42. All facilities and improvements and open spaces which the owner makes an offer of dedication to public use shall be maintained by the owner until such offer of dedication is accepted by the appropriate public authority.

(Ord. passed 11-2-2011)

§6.04 BUFFERS.

§6.04.01 PURPOSE OF BUFFERS.

(A) Buffers are required to protect one class of use from adverse impacts caused by a use in another class. This regulation benefits both the developer and the adjoining landowner(s) because it allows the developer several options from which to choose in developing the property, while ensuring each neighbor adequate protection regardless of the developer's choice, thereby protecting the property values of all properties involved.

(B) The buffer is a strip of land together with the planting required thereon. Both the amount of land and the type and amount of planting specified for each buffer requirement of this ordinance are designed to minimize nuisances between adjacent land uses or between a land use and a public street. The planting units required in buffers have been calculated to ensure that they do, in fact, function as "buffers".

(C) Buffers required for permits:

(1) Buffers are required to separate different land uses from each other in order to eliminate or minimize potential nuisances such as dirt, litter, traffic, noise, glare of lights, signs and unsightly buildings or parking areas, or to provide spacing to reduce adverse impacts of noise, or danger from fires or explosions. The fact that a particular land use may be permitted by right in its zoning district does not exempt it from the buffering requirements;

(2) Each application for a zoning permit or a certificate of occupancy shall include information on the location and types of buffers to be constructed or already existing. This information shall be in sufficient detail to enable the Zoning Administrator to determine whether the requirements of this section are being met; and

(3) The installation of all required buffers shall be completed prior to the issuance of a certificate of occupancy.

(Ord. passed 11-2-2011)

§6.04.02 LOCATION, INSTALLATION AND MAINTENANCE OF BUFFERS.

(A) Buffers shall be located on the outer perimeter of a lot or parcel, extending to the lot or parcel boundary line and shall not be located on any portion of an existing or dedicated public or private street or right-of-way. In new construction the buffer is in addition to required yards.

(B) The installation of buffers is the responsibility of the developer. The property owner shall be responsible for the maintenance of all buffers. Litter and debris shall be kept cleared and dead plants shall be replaced with plants meeting the specifications in § 6.04.06. All structures shall be kept in good repair. If proper maintenance is not provided, the Zoning Administrator shall notify the property owner of such fact and, if the proper action is not taken within 30 days of such notice, the town shall be authorized to enter the

property and perform the work. The cost of this work shall be charged to the property owners and a lien on the property in that amount shall exist until the town is reimbursed.

(Ord. passed 11-2-2011)

§6.04.03 USE OF BUFFERS.

A buffer may be used for passive recreation and may contain picnic tables and bicycle, pedestrian or equestrian trails, provided that no required plant material is eliminated, the total width of the buffer is maintained, and all other regulations are met. A buffer shall not be used for drives, accessory buildings or any other use.

(Ord. passed 11-2-2011)

§6.04.04 BUFFERS AND SUBSEQUENT DEVELOPMENT.

When a lot has been developed and the required buffer is installed, that landowner will not later be required to add to the buffer, regardless of subsequent adjacent development, as long as the use does not change. If subsequent development does not require as great a buffer as has been installed, the landowner of the first lot may reduce the existing buffer, but no more than which will leave a buffer meeting all requirements.

(Ord. passed 11-2-2011)

§6.04.05 BUFFER DESCRIPTION AND OPTIONS.

The following descriptions list the specifications of each buffer. The requirements are minimum and the developer may increase the buffer at his or her option. Buffer requirements are stated in terms of width of the buffer and the number of plant units required per 100 linear feet of buffer. The requirements of a buffer may be satisfied by any of the options under each letter designation. The number of plant materials required per 100 feet is represented by a whole or decimal number. Both the type and number of plants is, therefore, specified. All mathematical rounding shall be upwards and shall be applied to the total amount of plant material required in the buffer, not to each 100-foot length. Smaller plant sizes are permitted adjacent to vacant or agricultural land.

(A) Buffer "A". The requirements for buffer "A" shall be met by any one of the following:

- (1) Ten feet wide strip with one canopy tree, two understory trees and three shrubs per 100 linear feet;
- (2) Fifteen feet wide strip with 0.8 canopy tree, 1.6 understory tree, and 2.4 shrubs per 100 linear feet;
- (3) Twenty feet wide strip with 0.6 canopy tree, 1.2 understory tree, and one and 1.8 shrubs per 100 linear feet; or
- (4) Twenty-five feet wide strip with 0.4 canopy tree, 0.8 understory tree, and 1.2 shrubs per 100 linear feet.

(B) Buffer "B". The requirements for buffer "B" shall be met by any one of the following:

- (1) Fifteen feet wide strip with two canopy trees, four understory trees, and six shrubs per 100 linear feet;
- (2) Twenty feet wide strip with 1.6 canopy trees, 3.2 understory trees, and 4.8 shrubs per 100 linear feet;
- (3) Twenty-five feet wide strip with 1.2 canopy trees, 2.4 understory trees, and 3.6 shrubs per 100 linear feet; or

(4) Thirty feet wide strip with 0.8 canopy tree, 1.6 understory trees, and 2.4 shrubs per 100 linear feet.

(Ord. passed 11-2-2011)

§6.04.06 MINIMUM PLANT SIZE.

<i>Table 6-4 Minimum Plant Size</i>			
<i>Plant material type</i>		<i>Minimum Size</i>	
		<i>Planting in buffers abutting vacant land*</i>	<i>All other plantings</i>
Canopy tree			
	Single stem	1-inch caliper**	1-1/2-inch caliper**
	Multi-stem clump	5 feet (height)	6 feet (height)
	Understory tree	4 feet (height)	4 feet (height)
	Evergreen tree	2 feet (height)	3 feet (height)
Shrub			
	Deciduous	12 inches (height)	15 inches (height)
	Evergreen	9 inches (height)	12 inches (height)
*Smaller plant sizes are allowed adjacent to vacant land because it is assumed that the plants will have time to grow before the vacant land is developed. For this purpose, agricultural land is considered vacant			
**Caliper is a measurement of the size of a tree equal to the diameter of its trunk measured four and one-half feet above natural grade			

(Ord. passed 11-2-2011)

§6.04.07 BUFFERING REQUIREMENTS BY DISTRICT AND TYPE OF DEVELOPMENT.

(A) The following are the buffering requirements of listed permitted uses in each district and certain special types of development. Special uses may be required to have greater required buffers, but shall in all cases be required to have at a minimum the same buffer as permitted uses.

Multi-family residential developments shall be required to have the following buffers:

- (1) Adjacent business districts: none.
- (2) Adjacent residential districts:
 - (a) Along streets outside the development: none.
 - (b) Along all other boundaries: "A".

(B) All uses in the residential districts are not required to have buffers, except as required for multi-family developments and except as may be required for conditional uses.

(C) All uses in the B-1 and B-2 Business District shall be required to have the following buffers:

(1) Adjacent residential districts:

(a) Along streets: "A"; and

(b) Along all other boundaries: "B".

§6.04.08 BUFFERS NOT REQUIRED FOR EXISTING USES.

Uses already existing at the time of the passage of this ordinance, or subsequent amendments thereto, shall not have buffering requirements modified. Such preexisting uses, which are conforming, shall not be required to install a buffer along any public street. A change of use after the adoption of this ordinance requires conformance with the buffering requirements.

(Ord. passed 11-2-2011)

§6.05 OFF-STREET PARKING AND LOADING REQUIREMENT.

(A) Permanent off-street parking spaces shall be indicated on plans submitted for review and provided on the lot in accordance with the following requirements prior to the completion of construction of any building or structure, or at the time any principal building or structure is enlarged or increased in capacity by adding dwelling units, bedrooms or before conversion from one zoning use or occupancy to another.

(B) Storm water run-off standards are required for all off-street parking and driveways for the purpose of protecting surface water and ground water quality, to protect and promote public health, safety and general welfare with guided plans that limit storm water run-off, pollutants, road ponding and environmental concerns and to avoid any further problems. The developer shall provide surface water drainage plans. These plans shall indicate storm water drainage supported by design computations. The design shall conform to the standards as required by NCDOT, NCDWQ or other regulatory state agency.

(1) Permanent off-street parking spaces and driveways shall be graded and paved with gravel, porous concrete, porous paving or an open-face paving block over sand and filter-cloth base. If non-porous material is used to construct the parking area or driveway on the property an engineered storm water plan must be submitted as a supplement to the plat plan.

(2) Applicants must prove to the Planning Department that adequate measures have been taken to contain the first inch and a half of rainfall in a 24-hour period.

(3) The engineered storm water plan for driveways is not allowed on any property located in any Outstanding Resource Water (ORW) Area of Environmental Concern (AEC). The state requirement of 25% built-upon will remain in effect.

Table 6-5 Parking Requirements

Land Uses

Required Parking

Assembly, places of, including churches	1 parking space for each 5 seats in the largest assembly room
Beauty and barber shops	1 parking space for each service chair, plus 1 additional parking space for each employee
Residential	2 parking spaces per dwelling unit with fewer than 3 rooms, plus one per room for each

Bed and breakfast	additional room (excluding kitchen, bath, dining or living room) One off-street parking space provided for each guest room in addition to requirements of Residential listed above.
Convalescent care	1 space per 2 beds
Fishing pier	1 parking space for every 10 feet of pier, plus additional parking for other uses in conjunction with the pier as required by this ordinance
Home occupations	1 parking space per home occupation in addition to residence requirements
Libraries	1 parking space for each 4 seats provided for patron use
Lodging facilities, including hotels, motels, rooming houses, tourist homes and boardinghouses, bed and breakfast as may be required for any commercial or business uses	1 parking space for each room to be rented, plus 1 additional parking space for each 2 employees, plus additional parking spaces
Offices	1 parking space for each 300 square feet of gross floor space
Public buildings	1 parking space for each employee, plus 1 parking space for each 5 seats in the largest assembly room
Recreational facilities not otherwise listed (without facilities for spectators)	1 parking space for each employee, plus 1 parking space for every 2 participants at full capacity
Recreational facilities not otherwise listed (with facilities for spectators)	Same as for recreational facilities without spectators, plus 1 parking space for every 4 spectator seats
Restaurants, cafeterias, private clubs and lounges	1 parking space for each 4 seats at tables, and 1 parking space for each 2 seats at counters or bars, plus 1 parking space for each 2 employees
Retail uses, financial institutions, civic and fraternal clubs and community centers	1 parking space for each 200 square feet of gross floor area
Schools, elementary and junior high or middle schools, preschools and day care facilities	1 parking space for each classroom and administrative office, plus 1 parking space for each employee and 1 large space for each bus
Services not otherwise listed	1 parking space for each employee, plus 1 parking space for each client at full capacity
Shopping centers	5 parking spaces for each 1,000 square feet of gross leasable floor space in the center
Theaters, indoor	1 parking space for each 4 seats up to 400 seats, plus 1 space for each 6 seats above 400

Video arcades	1 parking space for every 4 game machines plus 1 space for each employee
Warehouses and other storage services	1 parking space for each employee, plus 1 space for each vehicle used in the operation

(Ord. passed 12-2-2004; Ord. passed 3-3-2005; Ord. passed 11-2-2011)

§6.05.02 OFF-STREET LOADING PURPOSE AND GENERAL REQUIREMENTS.

(A) Off-street loading requirements are established in order to ensure the proper and uniform development of loading areas throughout the town, to relieve traffic congestion in the streets, and to minimize any detrimental effects of off-street loading areas on adjacent properties.

(B) Each application for a zoning permit or certificate of occupancy shall include plans and other information of sufficient detail to enable the Zoning Administrator to determine whether or not the requirements of this section have been met. Plans for off-street loading areas shall include information as to:

- (1) The location and dimensions of driveway entrances, access aisles and loading spaces;
- (2) The provision for vehicular and pedestrian circulation; and
- (3) The location of sidewalks and curbs.

(C) The zoning permit or certificate of occupancy for the construction or use of any building, structure or land where off-street loading space is required shall be withheld by the Zoning Administrator until the provisions of this section have been met. If at any time such compliance ceases, any certificate of occupancy which shall have been issued for the use of the property shall immediately become void and of no effect.

(Ord. passed 11-2-2011)

§6.05.03 MINIMUM LOADING REQUIREMENTS.

Off-street loading shall be provided and maintained as specified in the following schedule.

(A) For uses containing a gross floor area of less than 20,000 square feet, each off-street loading space shall have minimum dimensions of 15 feet in width and 30 feet in length.

(B) For uses containing a gross floor area of 20,000 square feet or more, each off-street loading space shall be 15 feet in width and 45 feet in length as a minimum.

(C) Uses which normally handle large quantities of goods, including, but not limited to, industrial plants, wholesale establishments, storage warehouses, freight terminals, hospitals or sanitariums, and retail sales establishments shall provide off-street loading facilities in the following amounts:

Gross Floor Area (Square Feet)	Minimum Number of Spaces Required
5,000 - 20,000	1
20,001 - 50,000	2
50,001 - 80,000	3
80,001 - 125,000	4
For each additional 45,000	1 additional

(D) Uses which do not handle large quantities of goods, including, but not limited to, office buildings, restaurants, funeral homes, hotels, motels, apartment buildings and places of public assembly, shall provide off-street loading facilities in the following amounts:

Gross Floor Area (Square Feet)	Minimum Number of Spaces Required
5,000 - 80,000	1
80,001 - 200,000	2
200,001 - 320,000	3
320,001 - 500,000	4
For each additional 180,000	1 additional

(Ord. passed 11-2-2011)

ARTICLE 7. FLOOD DAMAGE PREVENTION

Floodplains generally, see G.S. §§ 143-215.51 et seq.

§ 7.01 STATUTORY AUTHORIZATION, FINDINGS OF FACTS, PURPOSE AND OBJECTIVES.

(A) Statutory authorization. The legislature of the state has in G.S. Ch. 143, Art. 21, Part 6; G.S. Ch. 153A, Art. 6; G.S. Ch. 160A, Art. 8; and G.S. Ch. 160D, Art. 7, 9 and 11 (Effective January 1, 2021), delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety and general welfare. Therefore, the Board of Aldermen of the town, does ordain as follows.

(B) Findings of fact.

(1) The flood prone areas within the jurisdiction of the town are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(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.

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

(1) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;

(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 that will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(D) Objectives. The objectives of this article are to:

(1) Protect human life, safety and health;

(2) Minimize expenditure of public money for costly flood control projects;

(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) Minimize prolonged business losses and interruptions;

(5) Minimize damage to public facilities and utilities (i.e., water and gas mains, electric, telephone, cable and sewer lines, streets and bridges) that are located in flood prone areas;

- (6) Minimize damage to private and public property due to flood;
 - (7) Make flood insurance available to eligible properties in the community through the National Flood Insurance Program;
 - (8) Maintain the natural and beneficial functions of the floodplains;
 - (9) Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
 - (10) Ensure that potential buyers are aware that property is in a special flood hazard area.
- (Ord. passed 4-2-2009; Ord. passed 11-2-2011; Ord. passed 11-3-2016; Ord. 2020-01, passed 6-4-2020)

§ 7.02 DEFINITIONS.

Unless specifically defined in Article 11, Definitions, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

(Ord. passed 11-2-2011; Ord. passed 11-3-2016; Ord. 2020-01, passed 6-4-2020)

§ 7.03 GENERAL PROVISIONS.

(A) Lands to which this article applies. This article shall apply to all special flood hazard areas within the jurisdiction of the town.

(B) Basis for establishing the special flood hazard areas. The special flood hazard areas are those identified under the Cooperating Technical State (CTS) agreement between the state and FEMA in FIS dated June 19, 2020, the county and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared to be a part of this article, and all revisions thereto.

(C) Establishment of floodplain development permit. A floodplain development permit shall be required in conformance with the provisions of this article prior to the commencement of any development activities within special flood hazard areas determined in accordance with the provisions of § 7.03(B).

(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 article and other applicable regulations.

(E) Abrogation and greater restrictions. This article is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions; however, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(F) Interpretation. In the interpretation and application of this article, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(G) Warning and disclaimer of liability. The degree of flood protection required by this article 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 human-made or natural causes. This article 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 article shall not create liability on the part of the town or by any officer or

employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made hereunder.

(H) Penalties for violation. Violation of the provisions of this article 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 Class 1 misdemeanor pursuant to G.S. § 143-215.58. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. passed 11-2-2011; Ord. passed 11-3-2016; Ord. 2020-01, passed 6-4-2020)

§ 7.04 ADMINISTRATION.

(A) Designation of Floodplain Administrator. The Planning Director, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this article. The Floodplain Administrator may delegate performance of certain duties to other employees. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this article, the Floodplain Administrator shall be responsible for the coordination and community's overall compliance with the National Flood Insurance Program and the provisions of this article.

(B) Floodplain development application, permit and certification requirements.

(1) Application requirements. Application for a floodplain development permit shall be made to the Floodplain Administrator prior to any development activities located within special flood hazard areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

(a) A plot plan drawn to scale which shall include, but shall not be limited to, zoning district, setbacks, percentage impervious surface, building height, area of environmental concern, CAMA setbacks, wetland delineation and the following specific details of the proposed floodplain development:

The nature, location, dimensions and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities and other development;

(i) The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in § 7.03(B), or a statement that the entire lot is within the special flood hazard area;

(ii) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in § 7.03(B);

(iii) The boundary of the floodway(s) or non-encroachment area(s) as determined in § 7.03(B);

(iv) The base flood elevation (BFE) where provided as set forth in §§ 7.03(B) and 7.04(C);

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(vii) The old and new location of any watercourse that will be altered or relocated as a result of proposed development;

(viii) The boundary and designation date of the coastal barrier resource system (CBRS) area or

otherwise protected areas (OPA), if applicable; and

(ix) The certification of the plot plan by a registered land surveyor or professional engineer.

(b) Proposed elevation, and method thereof, of all development within a special flood hazard area including, but not limited to:

(i) Elevation in relation to NAVD 1988 of the proposed reference level of all structures;

(ii) Elevation in relation to NAVD 1988 to which any non-residential structure in Zones A, AE, AH, AO or A99 will be floodproofed; and

(iii) Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed.

(c) Floodproofing is prohibited in lieu of elevation. However, if non-residential floodproofing is used, a floodproofing certificate (FEMA Form 086-0-34) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise and maintenance of floodproofing measures;

(d) A foundation plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this article are met. These details include, but are not limited to:

(i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/sheer walls);

(ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with § 7.05(B)(4)(d) when solid foundation perimeter walls are used in Zones V, A, AE, AH, AO and A99; and

(iii) The following, in coastal high hazard areas, in accordance with the provisions of §§ 7.05(B)(4)(e) and 7.05(G) (§ 7.05(H), if applicable):

a. V-Zone certification with accompanying plans and specifications verifying the engineered structure and any breakaway wall designs. In addition, prior to the certificate of compliance/occupancy issuance, a registered professional engineer or architect shall certify the finished construction is compliant with the design, specifications and plans for VE Zone construction;

b. Plans for open wood latticework or insect screening, if applicable; and

c. Plans for non-structural fill, if applicable. If non-structural fill is proposed, it must be demonstrated through coastal engineering analysis that the proposed fill would not result in any increase in the BFE or otherwise cause adverse impacts by wave ramping and deflection on to the subject structure or adjacent properties.

(e) Usage details of any enclosed areas below the lowest floor;

(f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical and water systems to be located and constructed to minimize flood damage;

(g) Certification that all other local, state and federal permits required prior to floodplain development permit issuance have been received;

(h) Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure that the provisions of §§ 7.05(B)(6) and (7) are met; and

(i) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(2) Permit requirements. The floodplain development permit shall include, but not be limited to:

(a) A complete description of all the development to be permitted under the floodplain development permit (i.e., house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.);

(b) The special flood hazard area determination for the proposed development in accordance with the available data specified in § 7.03(B);

(c) The regulatory flood protection elevation required for the reference level and all attendant utilities;

(d) The regulatory flood protection elevation required for the protection of all public utilities;

(e) All certification submittal requirements with timelines;

(f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse unless the requirements of § 7.05(F) have been met;

(g) The flood openings requirements, if in zones A, AE, AH, AO or A99;

(h) Limitations of below BFE enclosure uses (i.e., parking, building access and limited storage only);

(i) A statement that there shall be no alteration of sand dunes which would increase potential flood damage;

(j) A statement that there shall be no fill used for structural support; and

(k) A statement, that all materials below BFE/RFPE must be flood-resistant materials.

(3) Certification requirements.

(a) Plot plans and elevation certificates.

(i) A plot plan and an elevation certificate (FEMA Form 086-0-33) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

(ii) A foundation plan and an elevation certificate (FEMA Form 086-0-33) is required after the reference level is established. Within seven calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification

or failure to make required corrections shall be cause to issue a stop-work order for the project.

(iii) A final as-built survey and a final finished construction elevation certificate (FEMA Form 086-0-33) is required after construction is completed and prior to certificate of compliance/occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a certificate of compliance/occupancy. The finished construction elevation certificate certifier shall provide at least two photographs showing the front and rear of the building taken within 90 days from the date of certification. The photographs must be taken with views confirming the building description and diagram number. To the extent possible, these photographs should show the entire building including foundation. If the building has split-level or multi-level areas, provide at least two additional photographs showing side views of the building. In addition, when applicable, provide a photograph of the foundation showing a representative example of the flood openings or vents. All photographs must be in color and measure at least three inches by three inches. Digital photographs are acceptable.

(b) Floodproofing certificate. Floodproofing is prohibited in lieu of elevation. However, if non-residential floodproofing is used to meet the regulatory flood protection elevation requirements:

(i) A floodproofing certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a certificate of compliance/occupancy.

(ii) A final finished construction floodproofing certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a certificate of compliance/occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to certificate of occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to deny a certificate of compliance/occupancy.

(c) Manufactured home. If a manufactured home is placed within Zones A, AE, AH, AO, and A99 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of § 7.05(B)(3)(b).

(d) Watercourse. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation, a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream, and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

(e) Certification exemptions. The following structures, if located within Zones A, AE, AH, AO, and A99, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:

(i) Recreational vehicles meeting requirements of § 7.05(B)(6)(a);

(ii) Temporary structures meeting requirements of § 7.05(B)(7); and

(iii) Accessory structures that are 150 square feet or less or that is a minimal investment of \$5,000 or less and meeting requirements of § 7.05(B)(8).

(f) V-Zone certification. A V-Zone certification with accompanying design plans and specifications is required prior to issuance of a floodplain development permit within coastal high hazard areas. It shall be the duty of the permit applicant to submit to the Floodplain Administrator said certification to ensure the design standards of this article are met. A registered professional engineer or architect shall develop or review the structural design, plans, and specifications for construction and certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this article. This certification is not a substitute for an elevation certificate. In addition, prior to the certificate of compliance/occupancy issuance, a registered professional engineer or architect shall certify the finished construction is compliant with the design, specifications and plans for VE Zone construction.

(4) Determinations for existing buildings and structures. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

(a) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;

(b) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

(c) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and

(d) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood-resistant construction requirements of the North Carolina Building Code and this article is required.

(C) Duties and responsibilities 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 areas to assure that the requirements of this article have been satisfied;

(2) Review all proposed development within special flood hazard areas to assure that all necessary local, state and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;

(3) Notify adjacent communities and the State Department of 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 Cape Town is maintained;

(5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of § 7.05(F) are met;

(6) Obtain actual elevation (in relation to mean sea level) of the reference level and all attendant utilities of all new and substantially improved structures, in accordance with § 7.04(B)(3);

(7) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of § 7.04(B)(3);

(8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of § 7.04(B)(3);

(9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of §§ 7.04(B)(3) and 7.05(B)(2);

(10) Where interpretation is needed as to the exact location of boundaries of the special flood hazard areas, floodways or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article;

(11) When BFE data has not been provided in accordance with § 7.03(B), obtain, review and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a federal, state or other source, including data developed pursuant to § 7.05(D)(2)(c), in order to administer the provisions of this article;

(12) When BFE data is provided but no floodway or non-encroachment area data has been provided in accordance with § 7.03(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 article;

(13) When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a special flood hazard area is above the BFE, advise the property owner of the option to apply for a letter of map amendment (LOMA) from FEMA. However, if the property is to be removed from the V Zone it must not be located seaward of the landward toe of the primary frontal dune. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file;

(14) Permanently maintain all records that pertain to the administration of this article and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended;

(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 article and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action;

(16) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered or repaired in violation of this article, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor;

(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 and 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 the special flood hazard areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action;

(19) Follow through with corrective procedures of § 7.04(D);

(20) Review, provide input and make recommendations for variance requests;

(21) Maintain a current map repository to include, but not limited to, historical and effective FIS report, historical and effective FIRM and other official flood maps and studies adopted in accordance with § 7.03(B), including any revisions thereto including letters of map change, issued by FEMA. Notify state and FEMA of mapping needs; and

(22) Coordinate revisions to FIS reports and FIRMs, including letters of map revision based on fill (LOMR-Fs) and letters of map revision (LOMRs).

(D) Corrective procedures.

(1) Violations to be corrected. When the Floodplain Administrator finds violations of applicable state and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

(2) Actions in event of failure to take corrective action. If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

(a) That the building or property is in violation of the floodplain management regulations;

(b) That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(c) That following the hearing, the Floodplain Administrator may issue an order to alter, vacate or demolish the building, or to remove fill as applicable.

(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 article, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than 180 calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser period as may be feasible.

(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 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 to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a Class 1 misdemeanor pursuant to G.S. § 143-215.58 and shall be punished at the discretion of the court.

(E) Variance procedures.

(1) The Board of Adjustment as established by the town, hereinafter referred to as the "Appeal Board", shall hear and decide requests for variances from the requirements of this article.

(2) Any person aggrieved by the decision of the Appeal Board may appeal such decision to the Court, as provided in G.S. Ch. 7A.

(3) Variances may be issued for:

(a) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;

(b) Functionally dependent facilities if determined to meet the definition as stated in Article 11, Definitions, provided provisions of § 7.04(E)(9)(b),(c) and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; and

(c) Any other type of development provided it meets the requirements of this section.

(4) In passing upon variances, the Appeal Board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this article, 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 11 as a functionally dependent facility, where applicable;

(f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(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 floodwaters and 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 article, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this article.

(7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the BFE and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE may result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

(8) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the FEMA and the state upon request.

(9) 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 not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge;

(c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

(d) Variances shall only be issued prior to development permit approval; and

(e) 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, cause fraud on or victimization of the public, or conflict with existing local laws or this article.

(10) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards and chemical storage facilities that are in special flood hazard areas if all of the following conditions are met.

(a) The use serves a critical need in the community;

(b) No feasible location exists 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; and

(e) The town has notified the Secretary of the State Department of Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

(Ord. passed 4-2-2009; Ord. passed 11-2-2011; Ord. passed 11-3-2016; Ord. 2020-01, passed 6-4-2020)

§ 7.05 PROVISIONS FOR FLOOD HAZARD REDUCTION.

(A) General standards. In all special flood hazard areas, the following provisions are required.

(1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse and lateral movement of the structure.

(2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the FEMA Technical Bulletin 2, flood damage-resistant materials requirements.

(3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.

(4) All new electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall be located at or above the RFPE or designed and installed to prevent water from entering or accumulating within the components during the occurrence of the base flood. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters and electric outlets/switches.

(a) Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.

(b) Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

(7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(8) Nothing in this article shall prevent the repair, reconstruction or replacement of a building or structure existing on the effective date of this article and located totally or partially within the floodway, non-encroachment area or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction or replacement meets all of the other requirements of this article.

(9) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards and chemical storage facilities shall not be permitted, except by variance as specified in § 7.04(E)(10). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a special flood hazard area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified in accordance with the provisions of § 7.04(B)(3).

(10) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.

(11) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

(12) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(13) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including § 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334.

(14) When a structure is partially located in a special flood hazard area, the entire structure shall meet the requirements for new construction and substantial improvements.

(15) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest BFE shall apply.

(16) Fill shall not be used for structural support. This includes not approving conditional letters or letters of map revision - based on fill (CLOMR-F or LOMR-F).

(B) Specific standards. In all special flood hazard areas where BFE data has been provided, as set forth in §§ 7.03(B) or 7.05(D), the following provisions, in addition to the provisions of § 7.05(A), are required:

(1) Residential construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Article 11.

(2) Non-residential construction. New construction and substantial improvement of any commercial, industrial or other non-residential structure shall have the reference level elevated no lower than the regulatory flood protection elevation, as defined in Article 11. Structures located in Zones V, VE, A, AE, AH, AO and A99 may not be floodproofed to the regulatory flood protection elevation in lieu of elevation.

(3) Manufactured homes.

(a) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in Article 11.

(b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the state regulations for manufactured homes adopted by the Commissioner of Insurance pursuant to G.S. § 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.

(c) All enclosures or skirting below the lowest floor shall meet the requirements of § 7.05(B)(4).

(d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

(4) Elevated buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor or below the lowest horizontal structural member in VE zones:

(a) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

(b) May be temperature-controlled or conditioned;

(c) Shall be constructed entirely of flood-resistant materials at least to the regulatory flood protection elevation;

(d) Shall include, in Zones A, AE, AH, AO and A99, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:

(i) 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 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 foot above the higher of the interior or exterior 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; and

(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.

(e) Shall, in coastal high hazard areas (Zones VE and AE), meet the requirements of § 7.05(G).

(5) Additions/improvements.

(a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

(i) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more nonconforming than the existing structure; or

(ii) A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing structure and the addition must comply with the standards for new construction.

(b) Additions to pre-FIRM and post-FIRM structures that are a substantial improvement with no modifications/rehabilitations/improvements to the existing structure other than a standard door in the common wall, shall require only the addition to comply with the standards for new construction.

(c) 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 consistent with the code and requirements for the original structure; and

(ii) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(d) Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a one-year period, the cumulative cost of which equals or exceeds 50% of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the one-year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this article. 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 each such flood event, on the average, equals or exceeds 25% of the market value of the structure before the damage occurred. (The repetitive loss portion is optional, but will be required for flood insurance policy holders to be eligible for increased cost of compliance (ICC) benefits for repetitive losses.) If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

(i) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions; or

(ii) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

(6) Recreational vehicles. Recreational vehicles shall either:

(a) Temporary placement.

(i) Be on site for fewer than 180 consecutive days; or

(ii) 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.)

(b) Permanent placement. Recreational vehicles that do not meet the limitations of temporary placement shall meet all the requirements for new construction.

(7) Temporary non-residential structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

(a) A specified time period for which the temporary use will be permitted. Time specified should not exceed three months, renewable up to one year;

(b) The name, address and phone number of the individual responsible for the removal of the temporary structure;

(c) The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

(d) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and

(e) Designation, accompanied by documentation, of a location outside the special flood hazard area, to which the temporary structure will be moved.

(8) Accessory structures.

(a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);

(b) Accessory structures shall not be temperature-controlled;

(c) Accessory structures shall be designed to have low flood damage potential;

(d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

(e) Accessory structures shall be firmly anchored in accordance with the provisions of § 7.05(A)(1);

(f) All service facilities such as electrical shall be installed in accordance with the provisions of § 7.05(A)(4); and

(g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with the provisions of § 7.05(B)(4)(d).

(h) An accessory structure with a footprint less than 150 square feet or that is a minimal investment of \$5,000 or less and satisfies the criteria outlined above is not required to meet the elevation or floodproofing standards of § 7.05(B)(2). Elevation or floodproofing certifications are required for all other accessory structures in accordance with § 7.04(B)(3).

(9) Tanks. When gas and liquid storage tanks are to be placed within a special flood hazard area, the

following criteria shall be met:

(a) Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;

(b) Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the regulatory flood protection elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;

(c) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements shall be not be permitted in V, VE, A, AE Zones. Tanks may be permitted in other flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.

(d) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:

(i) At or above the regulatory flood protection elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

(ii) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

(10) Other development.

(a) Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of § 7.05(F).

(b) Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of § 7.05(F).

(c) Roads and watercourse crossings in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of § 7.05(F).

(d) Commercial storage facilities are not considered “limited storage” as noted in this article, and shall be protected to the Regulatory Flood Protection Elevation as required for commercial structures.

(C) Reserved.

(D) Standards for floodplains without established base flood elevations. Within the special flood hazard areas designated as Approximate Zone A and established in § 7.03(B), where no BFE data has been provided by FEMA, the following provisions, in addition to the provisions of § 7.05 (A), shall apply:

(1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of 20 feet each side from top of bank or five times the width of the

stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(2) The BFE used in determining the regulatory flood protection elevation shall be determined based on the following criteria.

(a) When BFE data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this article and shall be elevated or floodproofed in accordance with standards in § 7.05(A) and (B).

(b) When floodway or non-encroachment data is available from a federal, state or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of § 7.05(B) and (F).

(c) All subdivision, manufactured home park and other development proposals shall provide BFE data if development is greater than five acres or has more than 50 lots/manufactured home sites. Such BFE data shall be adopted by reference in accordance with § 7.03(B) and utilized in implementing this article.

(d) When BFE data is not available from a federal, state or other source as outlined above, the reference level shall be elevated or floodproofed (non-residential) to or above the regulatory flood protection elevation, as defined in Article 11. All other applicable provisions of § 7.05(B) shall also apply.

(E) Standards for riverine floodplains with base flood elevations but without established floodways or non-encroachment areas. Along rivers and streams where BFE data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a special flood hazard area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

(1) Standards of § 7.05(A) and (B); and

(2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(F) Floodways and non-encroachment areas. Areas designated as floodways or non-encroachment areas are located within the special flood hazard areas established in § 7.03(B). The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in § 7.05(A) and (B), shall apply to all development within such areas:

(1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:

(a) It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood discharge, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit; or

(b) A conditional letter of map revision (CLOMR) has been approved by FEMA. A letter of map revision (LOMR) must also be obtained within six months of completion of the proposed encroachment.

(2) If § 7.05(F)(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this article.

(3) Manufactured homes may be permitted provided the following provisions are met:

(a) The anchoring and the elevation standards of § 7.05(B)(3); and

(b) The encroachment standards of § 7.05(F)(1).

(G) Coastal high hazard area (Zones VE and AE). Coastal high hazard areas are special flood hazard areas established in § 7.03(B), and designated as Zones VE and AE. These areas have special flood hazards associated with high velocity waters from storm surges or seismic activity and, therefore, all new construction and substantial improvements shall meet the following provisions, in addition to the provisions of § 7.05 (A) and (B):

(1) All new construction and substantial improvements shall:

(a) Be located landward of the reach of mean high tide;

(b) Comply with all applicable CAMA setback requirements.

(2) All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is no lower than the regulatory flood protection elevation. Floodproofing shall not be utilized on any structures in coastal high hazard areas to satisfy the regulatory flood protection elevation requirements.

(3) All new construction and substantial improvements shall have the space below the bottom of the lowest horizontal structural member of the lowest floor free of obstruction or constructed with breakaway walls, open wood latticework or insect screening, provided they are not part of the structural support of the building and are designed so as to break away, under abnormally high tides or wave action without causing damage to the elevated portion of the building or supporting foundation system or otherwise jeopardizing the structural integrity of the building. The following design specifications shall be met:

(a) Material shall consist of open wood or plastic lattice having at least 40% of its area open;

(b) Insect screening; or

(c) Breakaway walls shall meet the following design specifications:

(i) Breakaway walls shall have flood openings that allow for the automatic entry and exit of floodwaters to minimize damage caused by hydrostatic loads, per § 7.05 (B)(4)(d) (i)-(vi); and

(ii) Design safe loading resistance shall be not less than ten nor more than 20 pounds per square foot; or

(iii) Breakaway walls that exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by state or local codes) shall be certified by a registered professional engineer or architect that the breakaway wall will collapse from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). The water loading

values used shall be those associated with the base flood. The wind loading values used shall be those required by the North Carolina State Building Code.

(iv) All new construction and substantial improvements shall be securely anchored to pile or column foundations. All pilings and columns and the structure attached thereto shall be anchored to resist flotation, collapse and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.

(d) Water loading values used shall be those associated with the base flood.

(e) Wind loading values used shall be those required by the current edition of the State Building Code.

(4) For concrete pads, including patios, decks, parking pads, walkways, driveways, pool decks etc., the following is required:

(a) Pad thickness shall not exceed four inches;

(b) Shall be structurally independent of the primary structural foundation system of the structure and shall not adversely affect structures through redirection of floodwaters or debris; and

(c) Shall be constructed to break away cleanly during design flood conditions, shall be frangible and shall not produce debris capable of causing damage to any structure. (The installation of concrete in small segments (approximately four feet by four feet) that will easily break up during the base flood event, or score concrete in four feet by four feet maximum segments is acceptable to meet this standard); and

(d) Reinforced, including welded wire fabric, shall not be used in order to minimize the potential for concreted pads being a source of debris; or

(e) Provide a design professional's certification stating the design and method of construction to be used meet the applicable criteria of this section.

(5) For swimming pools and spas, the following is required:

(a) Be designed to withstand all flood-related loads and load combinations.

(b) Be elevated so that the lowest horizontal structural member is elevated above the RFPE;

(c) Be designed and constructed to break away during design flood conditions without producing debris capable of causing damage to any structure;

(d) Be sited to remain in the ground during design flood conditions without obstructing flow that results in damage to any structure;

(e) Registered design professionals must certify to local officials that a pool or spa beneath or near a VE Zone building will not be subject to flotation or displacement that will damage building foundations or elevated portions of the building or any nearby buildings during a coastal flood; or

(f) Pool equipment shall be located above the RFPE whenever practicable. Pool equipment shall not be located beneath an elevated structure.

(6) All elevators, vertical platform lifts, chair lifts and the like, the following is required:

(a) Elevator enclosures must be designed to resist hydrodynamic and hydrostatic forces as well as erosion, scour and waves.

(b) Utility equipment in coastal high hazard areas (VE and AE Zones) must not be mounted on, pass through or be located along breakaway walls.

(c) The cab, machine/equipment room, hydraulic pump, hydraulic reservoir, counterweight and roller guides, hoist cable, limit switches, electric hoist motor, electrical junction box, circuit panel, and electrical control panel are all required to be above RFPE. When this equipment cannot be located above the RFPE, it must be constructed using flood damage-resistant components.

(d) Drainage must be provided for the elevator pit.

(e) Flood damage-resistant materials can also be used inside and outside the elevator cab to reduce flood damage. Use only stainless steel doors and door frames below the BFE. Grouting in of door frames and sills is recommended.

(f) If an elevator is designed to provide access to areas below the BFE, it shall be equipped with a float switch system that will activate during a flood and send the elevator cab to a floor above the RFPE.

(7) Accessory structures, regardless of size or cost, shall not be permitted below elevated structures.

(8) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions of §§ 7.04(B) and 7.05(G)(3) and (4), on the current version of the North Carolina V-Zone Certification form or equivalent local version. In addition, prior to the certificate of compliance/occupancy issuance, a registered professional engineer or architect shall certify the finished construction is compliant with the design, specifications and plans for VE Zone construction.

(9) Fill/grading:

(a) Minor grading and the placement of minor quantities of non-structural fill may be permitted for landscaping and for drainage purposes under and around buildings and for support of parking slabs, pool decks, patios and walkways.

(b) The fill material must be similar and consistent with the natural soils in the area.

(c) The placement of site-compatible, non-structural fill under or around an elevated building is limited to two feet. Fill greater than two feet must include an analysis prepared by a qualified registered design professional demonstrating no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent elevated buildings and structures.

(d) Non-structural fill with finished slopes that are steeper than five units horizontal to one unit vertical shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent elevated buildings and structures.

(e) Fill for structural support is prohibited in the SFHA which should be consistent with § 7.05(A)(17).

(10) There shall be no alteration of sand dunes or mangrove stands which would increase potential flood damage.

(11) No manufactured homes shall be permitted except in an existing manufactured home park or

subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring and elevation standards of this section have been satisfied.

(12) Recreational vehicles may be permitted in coastal high hazard areas provided that they meet the recreational vehicle criteria of § 7.05(B)(6)(a).

(13) A deck that is structurally attached to a building or structure shall have the bottom of the lowest horizontal structural member at or above the regulatory flood protection elevation and any supporting members that extend below the regulatory flood protection elevation shall comply with the foundation requirements that apply to the building or structure, which shall be designed to accommodate any increased loads resulting from the attached deck. The increased loads must be considered in the design of the primary structure and included in the V-Zone Certification required under § 7.04(B)(3)(f).

(14) A deck or patio that is located below the regulatory flood protection elevation shall be structurally independent from buildings or structures and their foundation systems, and shall be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.

(15) In coastal high hazard areas, development activities other than buildings and structures shall be permitted only if also authorized by the appropriate state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

(a) Bulkheads, seawalls, retaining walls, revetments and similar erosion control structures; and

(b) Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters.

(c) Docks, piers, and similar structures.

(H) Standards for Coastal A Zones (Zone CAZ) LIMWA. Structures in CAZs shall be designed and constructed to meet V Zone requirements, including requirements for breakaway walls. However, the NFIP regulations also require flood openings in walls surrounding enclosures below elevated buildings in CAZs (see Technical Bulletin 1, openings in foundation walls and walls of enclosures). Breakaway walls used in CAZs must have flood openings that allow for the automatic entry and exit of floodwaters to minimize damage caused by hydrostatic loads. Openings also function during smaller storms or if anticipated wave loading does not occur with the base flood.

(1) All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is no lower than the regulatory flood protection elevation. Floodproofing shall not be utilized on any structures in Coastal A Zones to satisfy the regulatory flood protection elevation requirements.

(2) All new construction and substantial improvements shall have the space below the lowest horizontal structural member free of obstruction or constructed with breakaway walls, open wood latticework or insect screening, provided they are not part of the structural support of the building and are designed so as to break away, under abnormally high tides or wave action without causing damage to the elevated portion of the building or supporting foundation system or otherwise jeopardizing the structural integrity of the building.

The following design specifications shall be met:

- (a) Material shall consist of open wood or plastic lattice having at least 40% of its area open;
- (b) Insect screening; or
- (c) Breakaway walls shall meet the following design specifications:

- (i) Breakaway walls shall have flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the design criteria in § 7.05(B)(4)(d);

- (ii) Design safe loading resistance shall be not less than 10 nor more than 20 pounds per square foot; or

- (iii) Breakaway walls that exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by state or local codes) shall be certified by a registered professional engineer or architect that the breakaway wall will collapse from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). The water loading values used shall be those associated with the base flood. The wind loading values used shall be those required by the North Carolina State Building Code.

(3) Concrete pads, including patios, decks, parking pads, walkways, driveways and the like must meet the provisions of § 7.05(G)(5).

(4) All new construction and substantial improvements shall meet the provisions of § 7.05(G)(3).

(5) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions of §§ 7.04(B) and 7.05(G)(3) and (4), on the current version of the North Carolina V-Zone certification form or a locally developed V-Zone certification form.

(6) Recreational vehicles may be permitted in Coastal A Zones provided that they meet the recreational vehicle criteria of § 7.05(B)(6)(a).

(7) Fill/grading must meet the provisions of § 7.05(G)(11).

(8) Fill for structural support is prohibited in the SFHA which should be consistent with § 7.05(A)(17).

(9) Decks and patios must meet the provisions of § 7.05(G)(15) and (16).

(10) In coastal high hazard areas, development activities other than buildings and structures must meet the provisions of § 7.05(G)(17).

(Ord. passed 11-2-2011; Ord. passed 11-3-2016; Ord. 2020-01, passed 6-4-2020)

§ 7.06 LEGAL STATUS PROVISIONS.

(A) Effect on rights and liabilities under the existing flood damage prevention ordinance.

(1) This article in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted May 2, 1990, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this article shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance

of the town enacted on May 2, 1990, as amended, which are not reenacted herein are repealed.

(2) The date of the initial flood damage prevention ordinance for the county is July 2, 1987.

(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 development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this article; provided, however, that when construction is not begun under such outstanding permit within a period of six months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this article.

(C) Severability. If any section, clause, sentence, or phrase of the article is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this article.

(D) Effective date. This article shall become effective June 19, 2020.

(Ord. passed 11-2-2011; Ord. passed 11-3-2016; Ord. 2020-01, passed 6-4-2020)

ARTICLE 8. SIGNS

§8.01 STATEMENT OF PURPOSE.

Sign regulations are established to ensure public safety, protect and stabilize property values; eliminate confusing, distracting and unsafe signs; assure efficient transfer of information; and maintain the aesthetic quality of the town, while still allowing for the identification of residential, office, commercial, industrial and other activities. Sign regulations govern the nature, location and size of signs in addition to providing standards for the erection and maintenance of signs. Sign regulations encourage the effective use of signs as a means of communication within the town, and minimize possible adverse effects of signs on nearby public and private property. Compliance with sign regulations result in a pleasing community image and generally enhance the economic stability of the town.

(Ord. passed 11-2-2011; Ord. 2014-7, passed 7-9-2014)

§8.02 SCOPE.

The provisions of this article shall apply to the erection and maintenance of all signs within the town. It is unlawful to erect or maintain a sign that is inconsistent with the provisions of this ordinance. It shall also be unlawful to alter or move any sign in existence prior to the enactment of this ordinance, except to bring the existing sign into compliance.

(Ord. passed 11-2-2011) Penalty, see § 10.06

§8.03 GENERAL REQUIREMENTS.

§8.03.01 PERMITS, DRAWINGS AND SPECIFICATIONS.

(A) It shall be unlawful to erect or maintain any sign or sign structure without first obtaining the required permits unless the proposed sign falls within the list of exemptions. Application for the permit shall be made in writing on forms furnished by the Zoning Administrator. Building and electrical permits are required pursuant to the 2012 State Building Code Appendix H, as amended. Those forms are to be signed by the applicant. Failure to apply for a permit prior to the erection of a sign represents a violation of this article.

(B) Submittal requirements:

(1) Site plan of property showing sign location from all property lines. The town may require a survey to verify property lines and setbacks.

(2) An elevation shall be provided to show sign dimensions.

(3) Construction documents shall be required with sign applications, 2012 State Building Code Appendix H, as amended. These documents shall show the dimensions, material and required details of construction, including loads, stresses and anchors, if not otherwise exempt.

(4) The applicant may request a pre-application meeting to consult with the Zoning Administrator and Building Inspector.

(Ord. passed 11-2-2011)

§8.04 EXEMPTIONS.

§8.04.01 SIGNS EXEMPT FROM REGULATION.

(A) Signs that are not designed to be visible beyond the boundaries of the lot which they are located on from any public thoroughfare or public right-of-way, except such signs that may be regulated hereinafter.

(B) Official government notices or any sign erected by government officials.

(C) Flags, pennants or insignias of any nation, organization of nations, state, county or town, any religious, civic or fraternal organization, or any educational or cultural facility.

(D) Temporary decorations that are clearly incidental to and customarily associated with any national, local or religious event/holiday.

(E) Any sign erected by public utility or construction companies that warn of dangerous or hazardous conditions, or denote the presence of underground cables, pipes, electrical wires and similar devices.

(F) Signs that display information paramount to the safety or legal responsibility of the public relating to a particular piece of property. Commercial advertisements are not to be included on these signs.

(G) Signs designated to be historically significant and/or signs that denote landmarks.

(H) Temporary signs providing directions to a recognized local community festival or event.

(I) Signs affixed to windows of vehicles indicating that said vehicle is for sale.

(Ord. passed 11-2-2011)

(J) Fence wraps. Fence wraps displaying signage when affixed to perimeter fencing at a construction site are exempt from zoning regulation pertaining to signage under this Article until the certificate of occupancy is issued for the final portion of any construction at that site or 24 months from the time the fence wrap was installed, whichever is shorter. If construction is not completed at the end of 24 months from the time the fence wrap was installed, the Town may regulate the signage but shall continue to allow fence wrapping materials to be affixed to the perimeter fencing. No fence wrap affixed pursuant to this section may display any advertising other than advertising sponsored by a person directly involved in the construction project and for which monetary compensation for the advertisement is not paid or required. (NCGS §160D-908).

§8.04.02 SIGNS THAT DO NOT REQUIRE A PERMIT.

(A) Real estate signs indicating the sale, long-term rental or lease of the property on which the signs are located. Said signs are not to exceed six square feet per face on properties zoned residential. Two signs are allowed per property. In cases of commercially zoned property (B-1, B-2) or three or more contiguous residential lots, a single sign, not to exceed 18 square feet and the dimensions of three feet by six feet, is permitted. The signs are not to be illuminated and must be removed 60 days after the closing or lease of the property.

(B) Political signs representing candidates for election or issues present on a ballot shall be allowed in all zoning districts. Such signs are not to exceed six square feet per face. Signs shall not contain more than two faces. Signs on private property may be posted only after the official campaign period has begun. Signs must be removed within five days following the appropriate election. Property owners and political candidates are equally responsible for the removal of signs. Signs in a right-of-way shall comply with G.S. § 136-32, as

amended.

(Ord. passed 11-2-2011; Ord. 2015-1, passed 1-7-2015; Ord. 2016-1, passed 4-7-2016; Ord. 2018-02, passed 5-3-2018)

§8.04.03 NONCOMMERCIAL MESSAGES.

Any sign, display or device allowed under this article may contain any otherwise lawful noncommercial message that does not promote a business operated for profit or a commodity or service for sale and that complies with the size, lighting and spacing requirements of this ordinance.

(Ord. passed 11-2-2011)

§8.05 PROHIBITED SIGNS.

(A) Signs on roadside appurtenances, including, but not limited to, roadside benches, planters, utility poles, trees and refuse containers are prohibited, with the exception of governmental signs.

(B) Temporary or permanent signs located within the right-of-way of any street or highway with the exception of directional signs which should be single faced and no more than two square feet, provided, however, political signs are not prohibited pursuant to G.S. § 136-32.

(C) Signs with the optical illusion of movement by means of a design which presents a pattern capable of reversible perspective, giving the illusion of movement are prohibited.

(D) Signs that by shape or characteristic resemble traffic signals or the flashing lights or emergency vehicles and/or traffic lights are prohibited, along with any signs that conveys any a signal that could be misconstrued as a public safety warning.

(E) Animated or flashing signs are prohibited.

(F) Abandoned signs or structures are prohibited.

(G) Signs that obstruct the ingress to or egress from a driveway or required door, window, fire escape or any required exit.

(H) Roof signs are prohibited.

(I) Any sign that copies or imitates an official sign, or reasonably appears to purport to have an official status.

(J) All "No Parking" signs not installed by a governmental entity shall be placed no closer than fifteen feet from the edge of any public right-of-way.

(K) There shall be no more than two non-commercial signs placed upon any single parcel.

(L) No non-commercial signs shall exceed six square feet.

(Ord. passed 11-2-2011; Ord. 2014-7, passed 7-9-2014)

§8.06 DISPLAY OF STREET ADDRESS NUMBERS.

(A) Road address numbers must be clearly displayed so that the location can be identified easily from the road.

(1) The official address number must be displayed on the front of a building or at the entrance to a

building which is most clearly visible from the street or road during both day and night.

(2) If a building is more than 75 feet from any road measured from the center of the road, the address number shall be displayed at the end of the driveway or easement nearest the road which provides access to the building.

(3) Numerals indicating the address number of a single-family dwelling shall be at least three inches in height and shall be posted and maintained so as to be legible from the road.

(4) Numerals for multiple dwelling units and nonresidential buildings shall be at least three inches in height and shall be placed on the front of the building facing the road or on the end of the building nearest the road.

(5) Numerals must be of contrasting color to the background.

(B) The Planning Director may authorize and approve alternate methods of displaying building numbers which meet the intent of this ordinance when strict adherence to these standards cannot reasonably be met.

(Ord. passed 11-2-2011)

§8.07 SIGNS PERMITTED IN THE BUSINESS 1 AND 2 DISTRICT.

Within the Business 1 and 2 Districts as shown on the zoning map, only the following types of signs shall be permitted:

(A) Permanent wall signs shall be permitted for each separate business establishment provided the total allowable sign area for all such signs shall not exceed one-half square foot for each lineal foot of building wall facing a public street. The location and number of wall signs is at the option of the owner or tenant; however, where more than four signs are located on any lot, the fifth such sign and each succeeding sign, respectively, shall reduce the total allowable sign area by 20%. Wall signs shall not project higher than the building eave or 30 feet, whichever is lower. Street number numerals shall not count in this requirement;

(B) One identification sign per business establishment may be suspended from or attached to the underside of a canopy or marquee, provided such sign does not exceed six square feet in area and maintains a clear distance of at least seven and one-half feet between the sidewalk and the bottom of the sign;

(C) Restaurants shall be permitted one freestanding sign if the business is located on a corner lot or has at least 100 feet of street frontage. Such freestanding sign shall not exceed 20 feet in height or 20 square feet in sign area per side and shall be located on private property such that no part of the sign shall project over any public right-of-way or another lot; and

(D) Where there is a front yard of at least 50 feet in depth, a freestanding identification sign shall be permitted in the front yard. Such sign must be set back a minimum of ten feet from any property line or public right-of-way, shall not exceed 14 feet in height above ground level, and shall not exceed 160 square feet in area. Illumination shall be limited to indirect white lighting.

(Ord. passed 11-2-2011)

§8.08 SIGNS PERMITTED IN RESIDENTIAL DISTRICTS.

(A) Permanent identification signs for subdivisions and residential developments not exceeding 20 square feet in area. One sign may be erected at each major entrance to the subdivision, but shall be located on private property. No sign shall exceed six feet in height above ground level, and illumination shall be restricted

to indirect white lighting.

(B) Permanent identification signs for campgrounds not exceeding six square feet in area. One sign may be erected at each major entrance to the campground but shall be located on private property. No sign shall exceed six feet in height above ground level. Illumination shall be limited to indirect white lighting.

(C) One permanent identification sign for multi-family residential developments may be erected at each major entrance to the property. Such signs shall not exceed 20 square feet in area and may be flat mounted against the wall of an apartment building or freestanding. If freestanding, shall not exceed six feet in height above ground level. Illumination shall be limited to indirect white lighting.

(D) One identification sign for each home occupation is permitted, but shall not project higher than two feet above ground level, and shall not exceed six square feet in area.

(E) Temporary signs as permitted by § 8.09.

(F) All signs under § 8.04, "Exemptions" (including "Signs Exempt From Regulation"; "Signs that Do Not Require a Permit" and "Noncommercial Messages") permitted in residential districts. No other signs are permitted.

(G) No other signs other than those indicated herein (in § 8.08) are permitted in any residential district. (Ord. passed 11-2-2011; Ord. 2014-7, passed 7-9-2014; Ord. 18-04, passed - -) Penalty, see § 10.06

§8.09 TEMPORARY SIGNS.

(A) Temporary signs, except real estate signs and political signs, require a temporary sign permit. No temporary sign may exceed three feet by six feet (18 square feet). The display of a temporary sign shall not exceed 30 days. No more than two temporary sign permits, per business, can be issued in any one calendar year. Temporary signs include banners for special temporary events and uses, such as grand openings and special events.

(B) Seasonal rental signs shall be attached to the structure or placed in ground and not within the right-of-way and not to exceed two feet in height. All seasonal rental signs shall not exceed two square feet. One seasonal rental sign is allowed for each rental property.

(C) Temporary construction signs shall be allowed if such signs are limited to one sign per road frontage and no more than two signs are present per property. Such signs are not to exceed six square feet in areas zoned residential and are not to exceed three feet by six feet (18 square feet) in areas zoned commercial. Construction signs must be removed within 60 days of the final inspection or issuance of certificate of occupancy.

(D) Temporary signs related to service providers require a temporary sign permit. Any such signs are limited to display for a maximum of 30 days from the date of the issuance of the permit and shall be a minimum of three square feet and shall not exceed a maximum of six square feet.

(Ord. passed 11-2-2011; Ord. 2018-02, passed 5-3-2018)

§8.10 INSTITUTIONAL SIGNS.

Signs erected by schools, churches and hospitals and other institutions are permitted in all districts, but the size of any such signs shall not be in excess of 100 square feet. If such sign is freestanding, it shall not be closer than ten feet from any property line and shall not project higher than 20 feet above ground level. If the sign is

a wall sign, it shall not project higher than 20 feet above ground level or the maximum height permitted in the district, whichever is greater.

(Ord. passed 11-2-2011)

§8.11 ILLUMINATION.

Where illuminated signs are permitted, they shall conform to the following requirements.

(A) All signs illuminated under the provisions of this section shall be constructed to meet the requirements of the 2012 State Building Code § H106, as amended.

(B) Signs which contain, include, or are lighted by any flashing, intermittent or moving lights are prohibited, except those giving public information such as time, temperature and date.

(C) Illuminated signs shall be limited to those lighted internally with glass or plastic faces bearing the advertisements; provided, however, that exposed neon tubing and exposed incandescent or other bulbs not exceeding 15 watts each shall be permitted.

(D) Flood and display lighting shall be shielded so as to prevent direct rays of light from being cast into a residential area or district and/or vehicles approaching on a public right-of-way from any direction. Such lighting shall also be shielded so as to prevent view of the light source from a residence or residential district and/or vehicles approaching on a public right-of-way from any direction.

(E) Flame as a source of light is prohibited.

(Ord. passed 11-2-2011)

§8.12 MAINTENANCE.

(A) The following maintenance requirements must be observed for all signs visible from any public street or highway within the jurisdiction of this article.

(1) No sign shall have more than 20% of its surface area covered with disfigured, cracked, ripped or peeling paint or poster paper for a period of more than 30 successive days.

(2) No sign shall be allowed to stand with bent or broken sign facing, broken supports, loose appendages or struts or be allowed to stand more than 15 degrees away from the perpendicular for a period of more than 30 successive days.

(3) No sign shall be allowed to have weeds, vines, landscaping or other vegetation growing upon it and obscuring its view from the street or highway from which it is to be viewed for a period of more than 30 successive days.

(4) No neon or internally illuminated sign may be allowed to stand with only partial illumination for a period of more than 30 successive days.

(5) If a sign or sign structure is damaged due to factors other than vandalism or other criminal or tortious acts such that more than 50% of the value is lost, with such determination made by the Planning Director, any repair or replacement must be done in conformance with this article. If a sign or sign structure is damaged due to vandalism or other criminal or tortious acts, it may be repaired or replaced, regardless of cost, but must be repaired or replaced as previously permitted or if no permit exists, it must be repaired or replaced to the same specifications to which and with the same materials of which the sign was constructed immediately prior to the act which caused the damage.

(B) The Planning Director may inspect all signs for compliance with these maintenance requirements.

(Ord. passed 11-2-2011)

Table 8-1 Allowed Sign Types by Zoning District

The following chart indicates the type and maximum size (in square feet) of signs permitted in each zoning district. If the sign chart gives no numerical maximum size, then the indicated type of sign is not permitted in the indicated zoning district:

Zoning District	All Residential	All Commercial
Business and professional		100 sq. ft.
Campground		6 sq. ft.
Church/school/parks	50 sq. ft.	50 sq. ft.
Directional	4 sq. ft.	10 sq. ft.
Home occupation	6 sq. ft.; height 2 ft.	
Real estate for sale/rent	6 sq. ft. or 3 ft. x 6 ft. (18 sq. ft.) for 3 or more contiguous lots	
Residential developments	20 sq. ft.	

These regulations shall be interpreted to permit one freestanding sign, either single-faced or double-faced, for each permitted use on the lot or premises.

Signs intended to advertise the sale or rental of any single item, residence or property on the same premises shall be permitted provided that the business sign requirements for the district in which the article is located are met. Such signs shall be removed upon the sale or rental of the item, residence or property.

Portable signs meeting area and height limits of this section and advertising businesses on the same property on which they are located may be permitted as a temporary use provided they are removed within 30 days.

(Ord. passed 11-2-2011; Ord. 2018-02, passed 5-3-2018)

ARTICLE 9. NONCONFORMITIES

§9.01 NONCONFORMING USES.

§9.01.01 EXISTING NONCONFORMING USES.

The lawful use of land and/or buildings existing at the time of adoption of the various regulations from which this ordinance derives, although such use does not conform to the provisions of this ordinance, shall not be affected by this ordinance; provided, however, that no such nonconforming use shall be enlarged or increased, nor shall any nonconforming use be extended to occupy a greater area of land than that occupied by such use at the time of the passage of the various regulations from which this ordinance derives. If such nonconforming use is discontinued for a continuous period of more than 365 days, any future use of the land and/or building shall be in conformity with the provisions of this ordinance.

(Ord. passed 11-2-2011)

§9.01.02 CHANGING NONCONFORMING USES.

A nonconforming use shall not be changed to any use other than either a permitted use or special use for the district in which the nonconforming use is located; provided, before the nonconforming use can be changed to a special use, it must have met the conditions and requirements of the special use as contained in this ordinance, and the nonconforming use must have been issued a special use permit by the Board of Aldermen.

(Ord. passed 11-2-2011)

§9.01.03 RESTORING NONCONFORMING USES.

In cases not covered by § 9.01.01, no provision in this ordinance shall prevent the restoration of a nonconforming use in which the building has been damaged or destroyed by fire, explosion, other casualty or act of God, if the restoration of such building is commenced within one year of the date such damage and completed within the period of validity of the building permit issued therefore.

(Ord. passed 11-2-2011)

§9.02 NONCONFORMING LOTS.

Any lot of record or structure existing at the time of the adoption of this article (May 2, 1990), which has dimensions which do not meet the requirements of this article, shall be subject to the following exceptions and modifications.

(A) Adjoining lots. When two or more adjoining lots with continuous frontage are in one ownership at any time after the adoption of this article, and such lots individually are less than the minimum square footage and/or have less than the minimum width required in the district in which they are located, then such group of lots shall be considered as a single lot or several lots of minimum permitted area and width for the district in which located.

(B) Lot not meeting minimum lot size requirements. Except as set forth in the above, in any district in which single-family dwellings are permitted, any lot of record existing at the time of the adoption of these regulations which has dimensions which are less than required by these regulations may be used as a building

site for a single-family dwelling providing the lot area and width are not less than 80% of the requirements in the district. If the lot is smaller or narrower, a variance may be requested of the Board of Adjustment.

(C) Yard requirements modified. Except as set forth in subsection (A) above, where a lot has width or depth less than that required in the district in which it is located, the Zoning Administrator shall be authorized to reduce the yard requirements for such lot by not more than 20%. Additional or other forms of yard modification may be permitted with a variance granted by the Board of Adjustment.

(D) Enlargement of nonconforming structures. Any building which is nonconforming solely because of its encroachment in a required yard area may be extended in any lawful manner that does not further encroach in that yard.

(E) Repair or rebuilding. Nothing in the zoning ordinance shall prohibit the repair or rebuilding of any fire escapes, steps, outside stairways, balconies, sills, cornices, eaves, gutters, buttresses, ornamental features or similar items in existence at the time of the adoption of this amendment even though the rebuilding or repair requires continued encroachment into the required yard setbacks; however, any rebuilding or repair may not extend the encroachment beyond that encroachment of the original feature.

(Ord. passed 9-1-2008; Ord. passed 11-2-2011)

§9.03 NONCONFORMING STRUCTURES.

Nonconforming structures may be improved or expanded, provided that any addition to, improvement to or expansion of the nonconforming building must comply with the minimum front, side and rear yard setbacks as well as other dimensional requirements for the district in which it is located, and the addition to, improvement or expansion may not increase the nonconformity of the structure. Repair, restoration, expansion and reconstruction of existing duplex and multi-family structures within the inlet hazard area are allowed applicable.

(Ord. passed 11-2-2011; Ord. 2013-4, passed 8-1-2013)

ARTICLE 10. ENFORCEMENT

§10.01 RESPONSIBLE PERSONS.

§10.01.01 OWNER.

The owner of each property located within the town is responsible for ensuring that development, redevelopment, use of the land and improvements to land on that property occur and are maintained in compliance with this ordinance.

(Ord. passed 11-2-2011)

§10.01.02 TENANT.

Each tenant of property located within the town is responsible for ensuring that the use of the land and improvements to land on that property occur and are maintained in compliance with this ordinance.

(Ord. passed 11-2-2011)

§10.01.03 LICENSEE.

Every person desiring to obtain a license for the privilege of engaging in a business within the town is responsible for investigating and adhering to all federal, state and local laws, rules and regulations including, but not limited to permits, licenses, insurance, taxes and safety compliance.

(Ord. passed 11-2-2011)

§10.02 VIOLATIONS.

Any of the following shall be a violation of this unified development ordinance and shall be subject to the enforcement remedies and penalties provided by this article and state law:

(Ord. passed 11-2-2011)

§10.02.01 DEVELOPMENT WITHOUT A PERMIT.

To engage in any development, use, construction, remodeling or other activity of any nature upon land or improvements thereto subject to the jurisdiction of this ordinance without all the required permits, certificate or other forms of authorization as set forth in this ordinance.

(Ord. passed 11-2-2011)

§10.02.02 DEVELOPMENT INCONSISTENT WITH A PERMIT.

To engage in any development, use, construction, remodeling or other activity of any nature upon land or improvements thereto inconsistent with any approved plan, permit, certificate or other forms of authorization as set forth in this ordinance.

(Ord. passed 11-2-2011)

§10.02.03 VIOLATION OF CONDITIONS IMPOSED.

To violate by act or omission any term, variance, modification, condition or qualification placed by the Planning Director, in accordance with this ordinance, upon any required permit, certificate or other form of authorization for the use, development or other activity upon land or improvements thereto.

(Ord. passed 11-2-2011)

§10.02.04 USE IN VIOLATION.

To use any building, structure or land in violation or contravention of this ordinance or any other regulation made under the authority of this ordinance.

(Ord. passed 11-2-2011)

§10.02.05 SUBDIVIDE IN VIOLATION.

To subdivide land in violation or to transfer land, sell land by reference to, exhibition of, or any other use of a plat or map showing a subdivision of land before the plat or map has been properly approved under this ordinance and recorded in the County Register of Deeds. The description by metes and bounds in the instrument of transfer of other documents used in the process of selling or transferring land does not exempt the transaction from violation of this ordinance.

(Ord. passed 11-2-2011)

§10.02.06 VIOLATION OF REQUIREMENTS FOR OUTDOOR SWIMMING POOLS, SPAS AND HOT TUBS.

(A) Whenever a violation of § 4.03.10 exists, the violation shall be considered a public nuisance, and the Administrator shall give written notice to the owner, occupant, tenant, manager or property management company of the property upon which such nuisance exists and/or upon the owner, occupant, tenant, manager or property management company causing, maintaining or allowing the nuisance to exist. If, upon reasonable diligence, the owner, occupant, tenant, manager or property management company responsible for the nuisance cannot be determined or located, then the Administrator shall post the notice on the property.

(B) The notice to abate shall contain:

(1) An order to abate the nuisance within a stated time, not to exceed ten days from the date of mailing or the date of posting;

(2) An order allowing the violator to request a hearing within a stated time, not to exceed ten days from the date of receipt of the mailing or, if the owner, occupant, tenant, manager or property management company responsible for the nuisance cannot be determined or located, then no later than ten days from the date of posting;

(3) The location of the nuisance, if the same is stationary;

(4) A description of what constitutes the nuisance;

(5) A statement of acts necessary to abate the nuisance; and

(6) A statement that if the nuisance is not abated as directed and no request for hearing is made within the prescribed time, the town will abate such nuisance, assess the cost thereof against such person, and pursue appropriate criminal and/or civil penalties.

(7) Service of notice. The notice to abate a nuisance shall be served by certified mail or personally delivered to the violator. If, upon reasonable diligence, the owner, occupant, tenant, manager or property management company responsible for the nuisance cannot be determined or located, then the Administrator shall post the notice on the property in a location visible from the nearest street.

(8) Persons liable. The owner, tenant, occupant, manager or land management company of any building or land or part thereof who participates or acts in concert, assists, directs, creates or maintains a nuisance (the "violator") may be held responsible for the violation and subject to the fines, penalties or remedies herein provided.

(9) Hearing and appeal. At any time before the expiration of the abatement period specified, the

respondent may request a hearing before the Planning Director or his or her designee to appeal the finding that a public nuisance exists. The request for a hearing must be in writing and must be filed in the office of the Planning Director. The Planning Director shall fix a time for the hearing which shall be no greater than seven days beyond the expiration of the abatement period, and the initial abatement order shall be temporarily suspended pending such hearing. Failure to request a hearing shall waive the right to do so after the abatement period has elapsed. At the hearing, the individual affected by the order shall be given the opportunity to present evidence to refute the findings which supported the abatement order. No later than five days following completion of the hearing, the Planning Director or his or her designee shall render a decision either revoking the initial order, issuing a final order which differs from the initial order, or affirming the initial order.

(10) Abatement by the town. Upon the failure of the violator to abate the nuisance following a hearing, or upon the failure of the violator to request a hearing, the Planning Director may enter the property, take action to abate the nuisance, and prepare a statement of costs incurred in the abatement thereof.

(11) Payment of costs. Upon completion of the abatement of any nuisance under the provisions of this article, the Planning Director shall deliver to the Finance Officer a statement including the costs of labor, hauling and other necessary items of expense for such abatement. The Finance Officer shall thereupon mail a bill to the violator for the costs. When the violator is the property owner, the amount of the bill may be collected in a civil action or may become a lien upon said property and if not paid within 30 days shall be collected in the same manner as provided for the collection of delinquent taxes. If the violator is not the property owner, the amount shall be recovered by the town in a civil action in the nature of debt.

(12) Civil remedies.

(a) A violator who fails to abate a nuisance in the time specified shall be subject to a fine of \$200. No fine shall be assessed until the person alleged to be in violation has been notified of the violation by certified mail, return receipt requested, or by personal service. For each day the violation is not corrected, the violator shall be liable for a new and separate offense and subject to additional civil fines. If the violator fails to pay a fine within ten days after being cited for violation, the fine may be recovered by the town in a civil action.

(b) In addition to or in lieu of any fine, the town may seek a mandatory injunction or order of abatement to enforce the provisions of this article.

(13) Criminal remedies. Any person violating the provisions of this article shall be guilty of a misdemeanor and shall be subject to a fine of \$200 or imprisonment of not more than 30 days as specified by G.S. § 14.4. Each day of violation of this article shall be a separate and cumulative violation.

(Ord. passed 11-2-2011)

§10.02.07 VIOLATION OF OPERATING STANDARDS FOR EXISTING TRAVEL TRAILER PARKS.

Violation of any provisions of this ordinance regarding the creation, construction, operation or maintenance of a campground (including violations of conditions and safeguards established in connection with grants of variances) shall constitute a misdemeanor. Any person who violates the campground regulations in this ordinance or fails to comply with any of their requirements shall, upon conviction thereof, be punished in accordance with § 10.06.

(Ord. passed 11-2-2011)

§10.02.08 VIOLATIONS OF SIGN REGULATIONS.

(A) Any person violating any of the sign regulations in Article 8 shall be subject to enforcement, penalties and remedies pursuant to §§ 10.04 and 10.05.

(B) Pursuant to G.S. § 160A-193, the town shall have the authority to summarily remove, abate or remedy a sign or sign structure which the town determines to be dangerous or prejudicial to the public health or safety. The expense of the action shall be paid by the sign owner, or if the sign owner cannot be ascertained, by the property owner, and if not paid, there shall be a lien placed upon the land or premises where the nuisance arose, and it shall be collected as unpaid taxes.

(C) Pursuant to G.S. §§ 160A-193 and 160A-296, any signs or sign structures prohibited under § 8.05 are hereby declared to be a public health nuisance in that they are dangerous or prejudicial to the public health or public safety and the Planning Director shall have the authority to remove summarily the sign and/or sign structure.

(D) The Planning Director shall have the authority to issue a remove order for any sign not repaired or brought into compliance within the time prescribed by a notice of violation. Remove orders shall be issued to and served upon the sign/sign structure owner, or if the sign/sign structure owner cannot be ascertained, the sign or sign structure shall be removed 30 days after the service of the remove order at the expense of the offender. The remove order shall describe with particularity the location of the sign or sign structure to be removed and the reason(s) for issuance of the remove order, including specific reference to the provisions of this article that have been violated.

(E) In the event of failure to comply with the requirements of a remove order, the Planning Director may cause such sign or sign structure to be removed. The sign owner and property owner may be jointly and separately liable for the expense of removal. Notice of the cost of removal shall be sent via registered mail by the ordinance administrator.

(F) If said sum is not paid within 30 days thereafter, said sum may be collected by the town in a civil action in the nature of debt, which shall not subject the offender to the penalty provisions of G.S. § 14-4.

(Ord. passed 11-2-2011)

§10.03 CONTINUED VIOLATIONS.

To continue any of the above violations is a separate and distinctive offense. Each day is considered a separate offense.

(Ord. passed 11-2-2011)

§10.04 RECURRING VIOLATIONS.

A violation that has been corrected but recurs within 365 days is a continued violation subject to any one or combination of the penalties for violation pursuant to §§ 10.03, 10.04 or 10.05 or otherwise available at law.

(Ord. passed 11-2-2011)

§10.05 ENFORCEMENT GENERALLY.

§10.05.01 COMPLAINTS REGARDING VIOLATIONS.

(A) Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Any written complaint stating fully the cause and basis of the complaint shall be filed with the Planning Director, or designee, who shall properly record such complaint, investigate in a timely manner,

and take appropriate action as provided by this ordinance.

(B) A notice of violation indicating the nature of the violation, the section of this ordinance that has been violated, the order giving the necessary action needed to correct the violation, and the time frame for which the violation is to be corrected shall be sent to the person or property owner responsible for the violation. The Planning Director may, but is not obligated to, issue an initial notice of violation allowing the person or property owner a period of time to correct the violation and providing that a final notice of violation will not be issued if the violation is corrected within that time.

(C) The final notice of violation (and the initial notice of violation may be the final notice of violation) shall state what the course of action is intended if the violation is not corrected within the specified time frame as ordered. The notice of violation shall also advise the violator of their rights to appeal the notice of violation to the board of adjustment within 30 days of the date the notice of violation was issued. A civil penalty cannot be appealed.

(D) If the owner, occupant or person responsible for the violation fails to comply with the notice of violation from which no appeal has been taken, or from a final decision by the Board of Adjustment following an appeal, the owner, occupant or person responsible for the violation shall be subject to any one or combination of the remedies and penalties authorized in §§ 10.04 and 10.05.

(Ord. passed 11-2-2011)

§10.05.02 ENFORCEMENT OF FLOOD DAMAGE PREVENTION REGULATIONS.

In the case of any violation or alleged violation of flood damage prevention regulations or floodplain regulations in this ordinance, or any applicable law, the Floodplain Administrator shall notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law pertaining to their property. If the owner fails within 30 days from the date of notice to commence corrective action, and thereafter to proceed with due diligence to make all necessary corrections, and fails to appeal the matter to the Board of Adjustment, the town may take necessary corrective action pursuant to § 10.05.01 and any other applicable provision of §§ 10.04 or 10.05 permitted by law.

(Ord. passed 11-2-2011)

§10.05.03 ENFORCEMENT OF SIGN REGULATIONS.

(A) No building permit shall be issued until an official building number has been assigned for a lot.

(B) No final inspection shall be released until a building number is displayed in accordance with this article.

(C) After the effective date of this article, any person, firm or agent thereof who intentionally violates this article shall be guilty of a misdemeanor, for the conviction of which, the maximum penalty by law may be imposed. Each day's continuing violation is a separate and distinct offense.

(D) Any person violating the sign regulations shall be notified of the nature of the violation, via certified mail, posted to the mailing address of record at the town's tax office, and shall be subject to those penalties and remedies described in § 10.06 and any other applicable provisions of §§ 10.04 or 10.05 permitted by law.

(Ord. passed 11-2-2011)

§10.06 GENERAL REMEDIES AND PENALTIES.

Failure to comply with any provision of this ordinance is declared unlawful. The remedies and enforcement powers in this § 10.06 may be used to administer and enforce this ordinance, provided, that when the provisions of § 10.07 apply they shall supersede any inconsistent provisions in § 10.06.

(Ord. passed 11-2-2011)

§10.06.01 EQUITABLE REMEDIES THROUGH THE COURTS.

The town may apply to a court of law for any appropriate equitable remedy to enforce the provisions of this ordinance. It is not a defense to the town's application for equitable relief that there are other remedies provided under general law or this ordinance.

(A) Injunction. Enforcement of the provisions of this ordinance may also be achieved by injunction. When a violation occurs, the town may, either before or after the initiation of other authorized action, apply to the appropriate division of the court for a mandatory or prohibitory injunction commanding the defendant to correct the unlawful condition or cease the unlawful use of the property.

(B) Order of abatement. In addition to an injunction, the town may apply for and the court may enter into an order of abatement as part of the judgment in the case. An order of abatement may direct any of the following actions:

(1) Buildings or other structures on the property be closed, demolished or removed;

(2) Fixtures, furniture or other moveable property be moved or removed entirely;

(3) Improvements alterations, modifications or repairs be made; or

(4) Any other action be taken that is necessary to bring the property into compliance with this ordinance.

(C) Execution of court decisions. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, the defendant may be cited for contempt. If so authorized to do so by the court, the town may execute the order of abatement and will have a lien on the property in the nature of a mechanic's and material man's lien for the cost of executing the order. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and by posting a bond for compliance with the order. The bond must be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter was heard and shall be conditioned for the defendant's full compliance with the terms of the order of abatement within the time fixed by the judge. Cancellation of an order of abatement does not suspend or cancel an injunction issued in conjunction with the order.

(Ord. passed 11-2-2011)

§10.06.02 EQUITABLE REMEDIES THROUGH THE TOWN.

The town may enforce this ordinance through the use of any of the equitable remedies in this section (§ 10.06); provided, that if the provisions of § 10.07 apply, they shall supersede any inconsistent provisions in this § 10.06.

(A) Stop work order issuance and revocation of all permits.

(1) Whenever a building or structure is being constructed, demolished, renovated, altered or repaired in substantial violation of any applicable provision of this ordinance, the Building Official may order the revocation of the zoning permit for such work and request a stop work order be issued by the town. The stop work order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for cessation and the action(s) necessary to lawfully resume work.

(2) The town may revoke any zoning permit by written notification to the permit holder when violations of this ordinance have occurred. Permits may be revoked when false statements or misrepresentations were made in securing the permit, work is being or has been done in substantial departure

from the approved application or plan, there has been a failure to comply with the requirements of this ordinance, or a permit has been mistakenly issued in violation of this development ordinance.

(Ord. passed 11-2-2011)

§10.06.03 CRIMINAL PENALTIES.

Pursuant to G.S. § 14-4, any person, firm or corporation convicted of violating the provisions of this ordinance shall, upon conviction, be guilty of a misdemeanor and shall be fined an amount not to exceed \$500.

(Ord. passed 11-2-2011)

§10.06.04 CIVIL PENALTIES.

In addition to the other remedies cited in this ordinance for the enforcement of its provisions, and pursuant to G.S. § 160A-175, the regulations and standards in this ordinance may be enforced through the issuance of civil penalties by the Town Manager. Subsequent citations for the same violation may be issued by the town if the offender does not pay the citation after it has been issued unless the offender has sought an appeal to the actions of the code enforcement officer through the Board of Adjustment. The penalties listed below are hereby established. If the offender fails to pay the civil penalties within seven days after having been cited, the town may recover the penalties in a civil action in the nature of debt.

Table 10-1 Civil Penalties

Notice of Violation

Correct Violation Within 15 Days

First citation \$50

Second citation for same offense \$100

Third and subsequent citations for same offense \$200

(Ord. passed 11-2-2011)

§10.06.05 CUMULATIVE PENALTIES.

More than one of the listed remedies and enforcement powers may be used in connection with a specific violation, and use of one listed remedy or enforcement power shall not preclude the town from concurrently or later using a different remedy or enforcement power.

(Ord. passed 11-2-2011)

§10.07 SPECIAL REMEDIES AND PENALTIES.

§10.07.01 FLOOD DAMAGE PREVENTION REGULATIONS.

(A) Actions in event of failure to take corrective action. If the owner of a building or property fails to take prompt corrective action in response to a notification from the Floodplain Administrator, 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:

(1) That the building or property is in violation of the flood damage prevention regulations;

(2) That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in

person or by counsel and to present arguments and evidence pertaining to the matter; and

(3) That following the hearing, the Floodplain Administrator may issue such order to alter, vacate or demolish the building; or to remove fill as appears appropriate.

(B) 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 regulations, he or she shall make an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 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.

(C) Appeal. Any owner who has received an order to take corrective action may appeal the order to the Board of Adjustment by giving notice of appeal in writing to the Floodplain Administrator within ten days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

(D) Failure to comply with order. If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or 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 in the discretion of the court.

(Ord. passed 11-2-2011)

§10.07.02 REBUILDING OF DAMAGED DUNES.

Any dune in the required natural area that is damaged during construction, or damage occurring as a result of such construction, or excavated in violation of this ordinance shall be restored to its original state using similar materials and stabilizing vegetation. It shall be the responsibility of the property owner to guarantee the protection of all identified dune systems and not allow the natural topography of the lot altered beyond that which has been authorized in the permit. The rebuilding of a dune shall be the ultimate responsibility of the property owner. Any dune in the required natural area that has been damaged or excavated in violation of this ordinance shall be restored within 60 days of notice.

(Ord. passed 11-2-2011)

§10.07.03 REPLACEMENT OF DAMAGED TREES.

Any trees in the required natural area that have been killed, damaged, destroyed or removed in violation of this ordinance shall be restored or replaced within 60 days of notice. All replacement trees shall be at least ten feet in height and have a caliper of not less than three inches.

(A) Conformance with authorized permit. Prior to the issuance of a certificate of occupancy for the development site, the site shall be inspected for the purpose of certifying compliance with the requirements of the authorized permit. Posting surety in lieu of actual compliance with an authorized permit may be permitted, providing that compliance with the authorized permit shall be obtained within 60 days.

(B) Daily violation charge. Each day after the 60-day period that the violator fails to perform such restoration or replacement shall constitute a new and separate civil violation.

(C) Individual tree violations. For purposes of the dunes and vegetation regulations, the removal of each tree and the failure to replace each tree on a given parcel of land shall be viewed as individual violations of these regulations.

(D) Civil penalty for violation. Each violation of § 3.03 shall incur a civil penalty in the amount of \$1,000.

(Ord. passed 11-2-2011)

§10.07.04 VIOLATION OF SIGN REGULATIONS.

If, within ten days of the date of the mailing of the notice described in § 10.05.01 the party fails to bring the sign into compliance with this ordinance, fails to remove the sign or fails to provide to the town any evidence of the party's good faith effort to do either, then the party shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of \$100 per day, per violation, retroactive to the date of mailing of the violation notice and any or all of the following.

(A) Abatement. In case any sign is erected, constructed, reconstructed, altered, repaired, converted or continued in violation of this ordinance, the town, or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction or mandamus, or other appropriate action or proceeding to prevent or abate such violations.

(B) Impoundment of signs.

(1) The town shall have the authority to remove and impound any sign, without further notice, where such sign is not in compliance with this ordinance, and:

(a) After ten days of the mailing of notification of a violation, the owner has failed to remove the sign or bring it into compliance with this ordinance, or has failed to provide the town with the evidence of a good faith effort to make such removal or compliance: or

(b) The sign is placed within any street, state road or highway right-of-way or other right-of-way, or attached to trees, fence posts, telephone and/or utility poles, and other than natural features.

(2) The town shall impound such signs for a period of ten days. The owner of a sign impounded may recover it upon payment of \$50 for each sign, prior to the expiration of the ten-day impoundment period. In the event a sign is not claimed within ten days of its impoundment, the town shall have the authority to dispose of such sign.

(3) In the event a violating sign requires special resources for its removal and impoundment, the town, or independent contractor secured by the town, shall remove the sign and the resulting charges shall be assessed to the owner and/or lessee.

(C) Revocation of privilege license. Pursuant to the town code Chapter 4, the Board of Aldermen may revoke any privilege license upon the finding by the Board that the licensee has willfully or persistently violated any section of this ordinance or other ordinance of the town or laws of the state. Any such licensee shall be entitled to a hearing upon reasonable notice before his or her license shall be revoked, and the findings of the Board of Aldermen as a result of such hearing shall be final and conclusive.

(Ord. passed 11-2-2011)

§10.08 BUILDING CODE ENFORCEMENT § 160D Article 11

§10.08.01 DEFINITIONS. § 160D-1101.

As used in this Article, the following terms shall have their ordinary meaning and shall also be read to include the following:

(A) Building or buildings. - Includes other structures.

(B) Governing board or board of commissioners. - Includes the Tribal Council of a federally recognized

Indian tribe.

(C) Local government. - Includes a federally recognized Indian tribe, and, as to such tribe, includes lands held in trust for the tribe.

(D) Public officer. - Includes the officer or officers who are authorized by regulations adopted hereunder to exercise the powers prescribed by the regulations and by this Article.

§10.08.02 BUILDING CODE ADMINISTRATION. § 160D-1102.

(A) A local government may create an inspection department and may appoint inspectors who may be given appropriate titles, such as building inspector, electrical inspector, plumbing inspector, housing inspector, zoning inspector, heating and air-conditioning inspector, fire prevention inspector, or deputy or assistant inspector, or such other titles as may be generally descriptive of the duties assigned. Every local government shall perform the duties and responsibilities set forth in G.S. 160D-1105 either by (i) creating its own inspection department, (ii) creating a joint inspection department in cooperation with one or more other units of local government, pursuant to G.S. 160D-1105 or Part 1 of Article 20 of Chapter 160A of the General Statutes, (iii) contracting with another unit of local government for the provision of inspection services pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, or (iv) arranging for the county in which a city is located to perform inspection services within the city's jurisdiction as authorized by G.S. 160D-1105 and G.S. 160D-202.

(B) In the event that any local government fails to provide inspection services or ceases to provide such services, the Commissioner of Insurance shall arrange for the provision of such services, either through personnel employed by the department or through an arrangement with other units of government. In either event, the Commissioner shall have and may exercise within the local government's planning and development regulation jurisdiction all powers made available to the Board of Aldermen with respect to building inspection under this Article and Part 1 of Article 20 of Chapter 160A of the General Statutes. Whenever the Commissioner has intervened in this manner, the local government may assume provision of inspection services only after giving the Commissioner two years' written notice of its intention to do so; provided, however, that the Commissioner may waive this requirement or permit assumption at an earlier date upon finding that such earlier assumption will not unduly interfere with arrangements made for the provision of those services.

§10.08.03 QUALIFICATIONS OF INSPECTORS. § 160D-1103.

No local government shall employ an inspector to enforce the State Building Code who does not have one of the following types of certificates issued by the North Carolina Code Officials Qualification Board attesting to the inspector's qualifications to hold such position: (i) a probationary certificate, (ii) a standard certificate, or (iii) a limited certificate which shall be valid only as an authorization to continue in the position held on the date specified in G.S. 143-151.13(c) and which shall become invalid if the inspector does not successfully complete in-service training specified by the Qualification Board within the period specified in G.S. 143-151.13(c). An inspector holding one of the above certificates can be promoted to a position requiring a higher level certificate only upon issuance by the Board of a standard certificate or probationary certificate appropriate for such new position.

§10.08.04 DUTIES AND RESPONSIBILITIES. § 160D-1104.

(A) The duties and responsibilities of an inspection department and of the inspectors in it are to enforce within their planning and development regulation jurisdiction State and local laws relating to the following:

- (1) The construction of buildings and other structures.

(2) The installation of such facilities as plumbing systems, electrical systems, heating systems, refrigeration systems, and air-conditioning systems.

(3) The maintenance of buildings and other structures in a safe, sanitary, and healthful condition.

(4) Other matters that may be specified by the Board of Aldermen.

(B) The duties and responsibilities set forth in subsection (a) of this section include the receipt of applications for permits and the issuance or denial of permits, the making of any necessary inspections in a timely manner, the issuance or denial of certificates of compliance, the issuance of orders to correct violations, the bringing of judicial actions against actual or threatened violations, the keeping of adequate records, and any other actions that may be required in order adequately to enforce those laws. The Board of Aldermen shall have the authority to enact reasonable and appropriate provisions governing the enforcement of those laws.

(C) In performing the specific inspections required by the North Carolina Building Code, the inspector shall conduct all inspections requested by the permit holder for each scheduled inspection visit. For each requested inspection, the inspector shall inform the permit holder of instances in which the work inspected fails to meet the requirements of the North Carolina Residential Code for One- and Two-Family Dwellings or the North Carolina Building Code.

(D) Except as provided in G.S. 160D-1117 and G.S. 160D-1207, the Town may not adopt or enforce a local ordinance or resolution or any other policy that requires regular, routine inspections of buildings or structures constructed in compliance with the North Carolina Residential Code for One- and Two-Family Dwellings in addition to the specific inspections required by the North Carolina Building Code without first obtaining approval from the North Carolina Building Code Council. The North Carolina Building Code Council shall review all applications for additional inspections requested by the Town and shall, in a reasonable manner, approve or disapprove the additional inspections. This subsection does not limit the authority of the local government to require inspections upon unforeseen or unique circumstances that require immediate action. In performing the specific inspections required by the North Carolina Residential Building Code, the inspector shall conduct all inspections requested by the permit holder for each scheduled inspection visit. For each requested inspection, the inspector shall inform the permit holder of instances in which the work inspected is incomplete or otherwise fails to meet the requirements of the North Carolina Residential Code for One- and Two-Family Dwellings or the North Carolina Building Code.

(E) Each inspection department shall implement a process for an informal internal review of inspection decisions made by the department's inspectors. This process shall include, at a minimum, the following:

(1) Initial review by the supervisor of the inspector.

(2) The provision in or with each permit issued by the department of (i) the name, phone number, and e-mail address of the supervisor of each inspector and (ii) a notice of availability of the informal internal review process.

(3) (3) Procedures the department must follow when a permit holder or applicant requests an internal review of an inspector's decision.

(4) Nothing in this subsection limits or abrogates any rights available under Chapter 150B of the General Statutes to a permit holder or applicant.

(F) If a specific building framing inspection as required by the North Carolina Residential Code for One- and Two-Family Dwellings results in 15 or more separate violations of that Code, the inspector shall forward a copy of the inspection report to the Department of Insurance.

§10.08.05 OTHER ARRANGEMENTS FOR INSPECTIONS. § 160D-1105.

A local government may contract with an individual who is not the Town employee but who holds one of the applicable certificates as provided in G.S. 160D-1103 or with the employer of an individual who holds one of the applicable certificates as provided in G.S. 160D-1103.

§10.08.06 ALTERNATE INSPECTION METHOD FOR COMPONENT OR ELEMENT. § 160D-1106.

(A) Notwithstanding the requirements of this Article, the Town shall accept and approve, without further responsibility to inspect, a design or other proposal for a component or element in the construction of buildings from an architect licensed under Chapter 83A of the General Statutes or professional engineer licensed under Chapter 89C of the General Statutes provided all of the following apply:

(1) The submission design or other proposal is completed under valid seal of the licensed architect or licensed professional engineer.

(2) Field inspection of the installation or completion of a component or element of the building is performed by a licensed architect or licensed professional engineer or a person under the direct supervisory control of the licensed architect or licensed professional engineer.

(3) The licensed architect or licensed professional engineer under subdivision (2) of this subsection provides the local government with a signed written document certifying that the component or element of the building inspected under subdivision (2) of this subsection is in compliance with the North Carolina State Building Code or the North Carolina Residential Code for One- and Two-Family Dwellings. The certification required under this subdivision shall be provided by electronic or physical delivery, and its receipt shall be promptly acknowledged by the local government through reciprocal means. The certification shall be made on a form created by the North Carolina Building Code Council which shall include at least the following:

(a) Permit number.

(b) Date of inspection.

(c) Type of inspection.

(d) Contractor's name and license number.

(e) Street address of the job location.

(f) Name, address, and telephone number of the person responsible for the inspection.

(4) In accepting certifications of inspections under subsection (A) of this section, the Town shall not require information other than that specified in this section.

(B) Upon the acceptance and approval receipt of a signed written document by the local government as required under subsection (a) of this section, notwithstanding the issuance of a certificate of occupancy, the local government, its inspection department, and the inspectors are discharged and released from any liabilities, duties, and responsibilities imposed by this Article with respect to or in common law from any claim arising out of or attributed to the component or element in the construction of the building for which the signed written document was submitted.

(C) With the exception of the requirements contained in subsection (a) of this section, no further certification by a licensed architect or licensed professional engineer is required for any component or element designed and sealed by a licensed architect or licensed professional engineer for the manufacturer of the component or element under the North Carolina State Building Code or the North Carolina Residential

Code for One- and Two-Family Dwellings.

(D) As used in this section, the following definitions apply:

(1) Component. - Any assembly, subassembly, or combination of elements designed to be combined with other components to form part of a building or structure. Examples of a component include an excavated footing trench containing no concrete, a foundation, and a prepared underslab with slab-related materials without concrete. The term does not include a system.

(2) Element. - A combination of products designed to be combined with other elements to form all or part of a building component. The term does not include a system.

§10.08.07 MUTUAL AID CONTRACTS. § 160D-1107.

(A) Any two or more cities or counties may enter into contracts with each other to provide mutual aid and assistance in the administration and enforcement of State and local laws pertaining to the North Carolina State Building Code. Mutual aid contracts may include provisions addressing the scope of aid provided, for reimbursement or indemnification of the aiding party for loss or damage incurred by giving aid, for delegating authority to a designated official or employee to request aid or to send aid upon request, and any other provisions not inconsistent with law.

(B) Unless the mutual aid contract says otherwise, while working with the requesting city or county under the authority of this section, a Code-enforcement official shall have the same jurisdiction, powers, rights, privileges, and immunities, including those relating to the defense of civil actions and payment of judgments, as the Code-enforcement officials of the requesting agency.

(C) Nothing in this section shall be construed to deprive any party to a mutual aid contract under this section of its discretion to send or decline to provide aid to another party to the contract under any circumstances, whether or not obligated by the contract to do so. In no case shall a party to a mutual aid contract or any of its officials or employees be held to answer in any civil or criminal action for declining to send aid whether or not obligated by contract to do so.

§10.08.08 CONFLICTS OF INTEREST. § 160D-1108.

(A) Staff members, agents, or contractors responsible for building inspections shall comply with G.S. 160D(c). No member of an inspection department shall be financially interested or employed by a business that is financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of any building within the local government's planning and development regulation jurisdiction or any part or system thereof, or in the making of plans or specifications therefor, unless he is the owner of the building. No member of an inspection department or other individual or an employee of a company contracting with the Town to conduct building inspections shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government. The local government must find a conflict of interest if any of the following is the case:

(1) If the individual, company, or employee of a company contracting to perform building inspections for the local government has worked for the owner, developer, contractor, or project manager of the project to be inspected within the last two years.

(2) If the individual, company, or employee of a company contracting to perform building inspections for the local government is closely related to the owner, developer, contractor, or project manager of the project to be inspected.

(3) If the individual, company, or employee of a company contracting to perform building inspections

for the local government has a financial or business interest in the project to be inspected.

(B) The provisions of this section do not apply to a firefighter whose primary duties are fire suppression and rescue but who engages in some fire inspection activities as a secondary responsibility of the firefighter's employment as a firefighter, except no firefighter may inspect any work actually done, or materials or appliances supplied, by the firefighter or the firefighter's business within the preceding six years.

§10.08.09 FAILURE TO PERFORM DUTIES. § 160D-1109.

(A) If any member of an inspection department shall willfully fail to perform the duties required by law, or willfully shall improperly issue a building permit, or shall give a certificate of compliance without first making the inspections required by law, or willfully shall improperly give a certificate of compliance, the member shall be guilty of a Class 1 misdemeanor.

(B) A member of the inspection department shall not be in violation of this section when the local government, its inspection department, or one of the inspectors accepted a signed written document of compliance with the North Carolina State Building Code or the North Carolina Residential Code for One- and Two-Family Dwellings from a licensed architect or licensed engineer in accordance with G.S. 160D-1104(d).

§10.08.10 BUILDING PERMITS. § 160D-1110.

(A) Except as provided in subsection (c) of this section, no person shall commence or proceed with any of the following without first securing all permits required by the State Building Code and any other State or local laws applicable to any of the following activities:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or structure.

(2) The installation, extension, or general repair of any plumbing system except that in any one- or two-family dwelling unit a permit is not required for the connection of a water heater that is being replaced if (i) the work is performed by a person licensed under G.S. 87-21 who personally examines the work at completion and ensures that a leak test has been performed on the gas piping, and (ii) the energy use rate or thermal input is not greater than that of the water heater that is being replaced, there is no change in fuel, energy source, location, capacity, or routing or sizing of venting and piping, and the replacement is installed in accordance with the current edition of the State Building Code.

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system.

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment, except that in any one- or two-family dwelling unit a permit is not required for repair or replacement of electrical lighting fixtures or devices, such as receptacles and lighting switches, or for the connection of an existing branch circuit to an electric water heater that is being replaced if all of the following requirements are met:

(a) With respect to electric water heaters, the replacement water heater is placed in the same location and is of the same or less capacity and electrical rating as the original.

(b) With respect to electrical lighting fixtures and devices, the replacement is with a fixture or device having the same voltage and the same or less amperage.

(c) The work is performed by a person licensed under G.S. 87-43.

(d) The repair or replacement installation meets the current edition of the State Building Code, including the State Electrical Code.

(B) However, a building permit is not required for the installation, maintenance, or replacement of any load control device or equipment by an electric power supplier, as defined in G.S. 62-133.8, or an electrical contractor contracted by the electric power supplier, so long as the work is subject to supervision by an electrical contractor licensed under Article 4 of Chapter 87 of the General Statutes. The electric power supplier shall provide such installation, maintenance, or replacement in accordance with (i) an activity or program ordered, authorized, or approved by the North Carolina Utilities Commission pursuant to G.S. 62-133.8 or G.S. 62-133.9 or (ii) a similar program undertaken by a municipal electric service provider, whether the installation, modification, or replacement is made before or after the point of delivery of electric service to the customer. The exemption under this subsection applies to all existing installations.

(C) A building permit shall be in writing and shall contain a provision that the work done shall comply with the North Carolina State Building Code and all other applicable State and local laws. Nothing in this section requires the Town to review and approve residential building plans submitted to the local government pursuant to the North Carolina Residential Code, provided that the local government may review and approve the residential building plans as it deems necessary. If a local government chooses to review residential building plans for any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings, all initial reviews for the building permit must be performed within 15 business days of submission of the plans. A local government shall not require residential building plans for one- and two-family dwellings to be sealed by a licensed engineer or licensed architect unless required by the North Carolina State Building Code. No building permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and, if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a licensed architect or licensed engineer, no building permit shall be issued unless the plans and specifications bear the North Carolina seal of a licensed architect or of a licensed engineer. When any provision of the General Statutes of North Carolina or of any ordinance or development or zoning regulation requires that work be done by a licensed specialty contractor of any kind, no building permit for the work shall be issued unless the work is to be performed by such a duly licensed contractor.

(D) No permit issued under Article 9 or 9C of Chapter 143 of the General Statutes is required for any construction, installation, repair, replacement, or alteration performed in accordance with the current edition of the North Carolina State Building Code costing fifteen thousand dollars (\$15,000) or less in any single-family residence or farm building unless the work involves any of the following:

(1) The addition, repair, or replacement of load-bearing structures. However, no permit is required for replacement of windows, doors, exterior siding, or the pickets, railings, stair treads, and decking of porches and exterior decks.

(2) The addition or change in the design of plumbing. However, no permit is required for replacements otherwise meeting the requirements of this subsection that do not change size or capacity.

(3) The addition, replacement, or change in the design of heating, air-conditioning, or electrical wiring, devices, appliances, or equipment, other than like-kind replacement of electrical devices and lighting fixtures.

(4) The use of materials not permitted by the North Carolina Residential Code for One- and Two-Family Dwellings.

(5) The addition (excluding replacement) of roofing.

(E) A local government shall not require more than one building permit for the complete installation or

replacement of any natural gas, propane gas, or electrical appliance on an existing structure when the installation or replacement is performed by a person licensed under G.S. 87-21 or G.S. 87-43. The cost of the building permit for such work shall not exceed the cost of any one individual trade permit issued by that local government, nor shall the local government increase the costs of any fees to offset the loss of revenue caused by this provision.

(F) No building permit shall be issued pursuant to subsection (a) of this section for any land- disturbing activity, as defined in G.S. 113A-52(6), or for any activity covered by G.S. 113A-57, unless an erosion and sedimentation control plan for the site of the activity or a tract of land including the site of the activity has been approved under the Sedimentation Pollution Control Act.

(G) No building permit shall be issued pursuant to subsection (a) of this section for any land- disturbing activity that is subject to, but does not comply with, the requirements of G.S. 113A-71.

(H) No building permit shall be issued pursuant to subdivision (1) of subsection (a) of this section where the cost of the work is thirty thousand dollars (\$30,000) or more, other than for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the owner occupies as a residence, or for the addition of an accessory building or accessory structure as defined in the North Carolina Uniform Residential Building Code, the use of which is incidental to that residential dwelling unit, unless the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set forth in the permit or in an attachment thereto. The building permit may contain the lien agent's electronic mail address. The lien agent information for each permit issued pursuant to this subsection shall be maintained by the inspection department in the same manner and in the same location in which it maintains its record of building permits issued. Where the improvements to a real property leasehold are limited to the purchase, transportation, and setup of a manufactured home, as defined in G.S. 143-143.9(6), the purchase price of the manufactured home shall be excluded in determining whether the cost of the work is thirty thousand dollars (\$30,000) or more.

(I) No local government may withhold a building permit or certificate of occupancy that otherwise would be eligible to be issued under this section to compel, with respect to another property or parcel, completion of work for a separate permit or compliance with land-use regulations under this Chapter unless otherwise authorized by law or unless the local government reasonably determines the existence of a public safety issue directly related to the issuance of a building permit or certificate of occupancy.

(J) Violation of this section constitutes a Class 1 misdemeanor.

§10.08.11 EXPIRATION OF BUILDING PERMITS. § 160D-1111.

A building permit issued pursuant to this Article shall expire by limitation six months, or any lesser time fixed by ordinance of the Board of Aldermen, after the date of issuance if the work authorized by the permit has not been commenced. If, after commencement, the work is discontinued for a period of 12 months, the permit therefor shall immediately expire. No work authorized by any building permit that has expired shall thereafter be performed until a new permit has been secured.

§10.08.12 CHANGES IN WORK. § 160D-1112.

After a building permit has been issued, no changes or deviations from the terms of the application, plans and specifications, or the permit, except where changes or deviations are clearly permissible under the State Building Code, shall be made until specific written approval of proposed changes or deviations has been obtained from the inspection department.

§10.08.13 INSPECTIONS OF WORK IN PROGRESS. § 160D-1113.

Subject to the limitation imposed by G.S. 160D-1104(d), as the work pursuant to a building permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable State and local laws and of the terms of the permit. In exercising this power, members of the inspection department have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. If a building permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes.

§10.08.14 APPEALS OF STOP ORDERS. § 160D-1114.

(A) The owner or builder may appeal from a stop order involving alleged violation of the State Building Code or any approved local modification thereof to the North Carolina Commissioner of Insurance or his designee within a period of five days after the order is issued. Notice of appeal shall be given in writing to the Commissioner of Insurance or his designee, with a copy to the local inspector. The Commissioner of Insurance or his or her designee shall promptly conduct an investigation, and the appellant and the inspector shall be permitted to submit relevant evidence. The Commissioner of Insurance or his or her designee shall as expeditiously as possible provide a written statement of the decision setting forth the facts found, the decision reached, and the reasons for the decision. Pending the ruling by the Commissioner of Insurance or his or her designee on an appeal, no further work shall take place in violation of a stop order. In the event of dissatisfaction with the decision, the person affected shall have the following options:

(1) Appealing to the Building Code Council.

(2) Appealing to the superior court as provided in G.S. 143-141.

(B) The owner or builder may appeal from a stop order involving alleged violation of a local development regulation as provided in G.S. 160D-405.

§10.08.15 REVOCATION OF BUILDING PERMITS. § 160D-1115.

The appropriate inspector may revoke and require the return of any building permit by notifying the permit holder in writing stating the reason for the revocation. Building 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 any applicable State or local laws; or for false statements or misrepresentations made in securing the permit. Any building permit mistakenly issued in violation of an applicable State or local law may also be revoked.

§10.08.16 CERTIFICATES OF COMPLIANCE; TEMPORARY CERTIFICATES OF COMPLIANCE. § 160D-1116.

(A) At the conclusion of all work done under a building permit, the appropriate inspector shall make a final inspection, and, if the inspector finds that the completed work complies with all applicable State and local laws and with the terms of the permit, the inspector shall issue a certificate of compliance. Except as provided by subsection (b) of this section, no new building or part thereof may be occupied, no addition or enlargement of an existing building may be occupied, and no existing building that has been altered or moved may be occupied, until the inspection department has issued a certificate of compliance.

(B) A temporary certificate of occupancy may be issued permitting occupancy for a stated period of time of either the entire building or property or of specified portions of the building if the inspector finds that the building may safely be occupied prior to its final completion. A permit holder may request and be issued a

temporary certificate of occupancy if the conditions and requirements of the North Carolina State Building Code are met.

(C) Any person who owns, leases, or controls a building and occupies or allows the occupancy of the building or a part of the building before a certificate of compliance or temporary certificate of occupancy has been issued pursuant to subsection (a) or (b) of this section is guilty of a Class 1 misdemeanor.

§10.08.17 PERIODIC INSPECTIONS. § 160D-1117.

The inspection department may make periodic inspections, subject to the Board of Aldermen's directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures within its planning and development regulation jurisdiction. In exercising this power, members of the department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. Inspections of dwellings shall follow the provisions of G.S. 160D- 1207. Nothing in this section shall be construed to prohibit periodic inspections in accordance with State fire prevention code or as otherwise required by State law.

§10.08.18 DEFECTS IN BUILDINGS TO BE CORRECTED. § 160D-1118.

When a local inspector finds any defects in a building, or finds that the building has not been constructed in accordance with the applicable State and local laws, or that a building because of its condition is dangerous or contains fire hazardous conditions, it shall be the inspector's duty to notify the owner or occupant of the building of its defects, hazardous conditions, or failure to comply with law. The owner or occupant shall each immediately remedy the defects, hazardous conditions, or violations of law in the property.

§10.08.19 UNSAFE BUILDINGS CONDEMNED. § 160D-1119.

(A) Designation of Unsafe Buildings. - Every building that shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating systems, inadequate means of egress, or other causes shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of the building.

(B) Nonresidential Building or Structure. - In addition to the authority granted in subsection (A) of this section, an inspector may declare a nonresidential building or structure within a community development target area to be unsafe if it meets all of the following conditions:

(1) It appears to the inspector, having followed standardized process pursuant to G.S. 160D-1203(6) to be vacant or abandoned.

(2) It appears to the inspector to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, or fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities that would constitute a public nuisance.

(C) Notice Posted on Structure. - If an inspector declares a nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of an urban progress zone under G.S. 143B-437.09, a "nonresidential redevelopment area" under G.S. 160A-503(10), or an area with similar characteristics designated by the Board of Aldermen as being in special need of revitalization for the benefit and welfare of its citizens.

(D) Applicability to Residential Structures. - A local government may expand subsections (b) and (c) of this section to apply to residential buildings by adopting an ordinance. Before adopting such an ordinance, the

Town shall hold a legislative hearing with published notice as provided by G.S. 160D-601.

§10.08.20 REMOVING NOTICE FROM CONDEMNED BUILDING. § 160D-1120.

If any person shall remove any notice that has been affixed to any building or structure by a local inspector of any local government and that states the dangerous character of the building or structure, that person shall be guilty of a Class 1 misdemeanor.

§10.08.21 ACTION IN EVENT OF FAILURE TO TAKE CORRECTIVE ACTION. § 160D-1121.

If the owner of a building or structure that has been condemned as unsafe pursuant to G.S.160D-1119 fails to take prompt corrective action, the local inspector shall give written notice, by certified mail to the owner's last known address or by personal service, of all of the following:

(A) That the building or structure is in a condition that appears to meet one or more of the following conditions:

(1) Constitutes a fire or safety hazard.

(2) Is dangerous to life, health, or other property.

(3) Is likely to cause or contribute to blight, disease, vagrancy, or danger to children.

(4) Has a tendency to attract persons intent on criminal activities or other activities that would constitute a public nuisance.

(B) That an administrative hearing will be held before the inspector at a designated place and time, not later than 10 days after the date of the notice, at which time the owner will be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter.

(C) That following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

(D) If the name or whereabouts of the owner cannot, after due diligence, be discovered, the notice shall be considered properly and adequately served if a copy is posted on the outside of the building or structure in question at least 10 days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the local government's area of jurisdiction at least once not later than one week prior to the hearing.

§10.08.22 ORDER TO TAKE CORRECTIVE ACTION. § 160D-1122.

If, upon a hearing held pursuant to the notice prescribed in G.S. 160D-1119, the inspector shall find that the building or structure is in a condition that constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, the inspector shall make an order in writing, directed to the owner of such building or structure, requiring the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or structure or taking other necessary steps, within such period, not less than 60 days, as the inspector may prescribe, provided that where the inspector finds that there is imminent danger to life or other property, the inspector may order that corrective action be taken in such lesser period as may be feasible.

§10.08.23 APPEAL; FINALITY OF ORDER IF NOT APPEALED. § 160D-1123.

Any owner who has received an order under G.S. 160D-1122 may appeal from the order to the Board of Aldermen by giving notice of appeal in writing to the inspector and to the local government clerk within 10 days following issuance of the order. In the absence of an appeal, the order of the inspector is final. The Board

of Aldermen shall hear an appeal in accordance with G.S. 160D-406 and render a decision within a reasonable time. The Board of Aldermen may affirm, modify and affirm, or revoke the order.

§10.08.24 FAILURE TO COMPLY WITH ORDER. § 160D-1124.

If the owner of a building or structure fails to comply with an order issued pursuant to G.S. 160D-1122 from which no appeal has been taken or fails to comply with an order of the Board of Aldermen following an appeal, the owner is guilty of a Class 1 misdemeanor.

§10.08.25 ENFORCEMENT. § 160D-1125.

(A) Action Authorized. - Whenever any violation is denominated a misdemeanor under the provisions of this Article, the local government, either in addition to or in lieu of other remedies, may initiate any appropriate action or proceedings to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building or structure involved.

(B) Removal of Building. - In the case of a building or structure declared unsafe under G.S. 160D- 1119 or an ordinance adopted pursuant to G.S. 160D-1119, the Town may, in lieu of taking action under subsection (a) of this section, cause the building or structure to be removed or demolished. The amounts incurred by the local government in connection with the removal or demolition are a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in Article 10 of Chapter 160A of the General Statutes. If the building or structure is removed or demolished by the local government, the local government shall sell the usable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building. The local government shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the clerk of superior court of the county where the property is located and shall be disbursed by the court to the person found to be entitled thereto by final order or decree of the court.

(C) Additional Lien. - The amounts incurred by the Town in connection with the removal or demolition are also a lien against any other real property owned by the owner of the building or structure and located within the local government's planning and development regulation jurisdiction, and for cities without extraterritorial planning and development jurisdiction, within one mile of the city limits, except for the owner's primary residence. The provisions of subsection (b) of this section apply to this additional lien, except that this additional lien is inferior to all prior liens and shall be collected as a money judgment.

(D) Nonexclusive Remedy. - Nothing in this section shall be construed to impair or limit the power of the local government to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

§10.08.26 RECORDS AND REPORTS. § 160D-1126.

The inspection department shall keep complete and accurate records in convenient form of all applications received, permits issued, inspections and reinspections made, defects found, certificates of compliance or occupancy granted, and all other work and activities of the department. These records shall be kept in the manner and for the periods prescribed by the Department of Natural and Cultural Resources. Periodic reports shall be submitted to the Board of Aldermen and to the Commissioner of Insurance as they shall by ordinance, rule, or regulation require.

§10.08.27 APPEALS. § 160D-1127.

Unless otherwise provided by law, appeals from any order, decision, or determination by a member of a local inspection department pertaining to the State Building Code or other State building laws shall be taken to the

Commissioner of Insurance or the Commissioner's designee or other official specified in G.S. 143-139 by filing a written notice with the Commissioner and with the inspection department within a period of 10 days after the order, decision, or determination. Further appeals may be taken to the State Building Code Council or to the courts as provided by law.

§10.08.28 FIRE LIMITS. § 160D-1128.

(A) County Fire Limits. - A county may by ordinance establish and define fire limits in any area within the county and not within a city. The limits may include only business and industrial areas. Within any fire limits, no frame or wooden building or addition thereto may be erected, altered, repaired, or moved, either into the fire limits or from one place to another within the limits, except upon the permit of the inspection department and approval of the Commissioner of Insurance. The Board of Aldermen may make additional regulations necessary for the prevention, extinguishment, or mitigation of fires within the fire limits.

(B) Municipal Fire Limits. - The Board of Aldermen of every incorporated city shall pass one or more ordinances establishing and defining fire limits, which shall include the principal business portions of the city and which shall be known as primary fire limits. In addition, the Board of Aldermen may, in its discretion, establish and define one or more separate areas within the city as secondary fire limits.

(C) Restrictions Within Municipal Primary Fire Limits. - Within the primary fire limits of any city, as established and defined by ordinance, no frame or wooden building or structure or addition thereto shall hereafter be erected, altered, repaired, or moved, either into the limits or from one place to another within the limits, except upon the permit of the local inspection department approved by the Board of Aldermen and by the Commissioner of Insurance or the Commissioner's designee. The Board of Aldermen may make additional regulations for the prevention, extinguishment, or mitigation of fires within the primary fire limits.

(D) Restrictions Within Municipal Secondary Fire Limits. - Within any secondary fire limits of any city or town, as established and defined by ordinance, no frame or wooden building or structure or addition thereto shall be erected, altered, repaired, or moved, except in accordance with any rules and regulations established by ordinance of the areas.

(E) Failure to Establish Municipal Primary Fire Limits. - If the Board of Aldermen of any city shall fail or refuse to establish and define the primary fire limits of the city as required by law, after having such failure or refusal called to their attention in writing by the State Commissioner of Insurance, the Commissioner shall have the power to establish the limits upon making a determination that they are necessary and in the public interest.

§10.08.29 REGULATION AUTHORIZED AS TO REPAIR, CLOSING, AND DEMOLITION OF NONRESIDENTIAL BUILDINGS OR STRUCTURES; ORDER OF PUBLIC OFFICER. § 160D-1129.

(A) Authority. - The Board of Aldermen of the local government may adopt and enforce regulations relating to nonresidential buildings or structures that fail to meet minimum standards of maintenance, sanitation, and safety established by the Board of Aldermen. The minimum standards shall address only conditions that are dangerous and injurious to public health, safety, and welfare and identify circumstances under which a public necessity exists for the repair, closing, or demolition of such buildings or structures. The regulations shall provide for designation or appointment of a public officer to exercise the powers prescribed by the regulation, in accordance with the procedures specified in this section. Regulations adopted under this section shall be applicable within the local government's entire planning and development regulation jurisdiction or limited to one or more designated zoning districts, municipal service districts, or defined geographic areas designated for improvement and investment in an adopted comprehensive plan.

(B) Investigation. - Whenever it appears to the public officer that any nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by the Board of Aldermen, the public officer shall undertake a preliminary investigation. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant in accordance with G.S. 15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

(C) Complaint and Hearing. - If the preliminary investigation discloses evidence of a violation of the minimum standards, the public officer shall issue and cause to be served upon the owner of and parties in interest in the nonresidential building or structure a complaint. The complaint shall state the charges and contain a notice that an administrative hearing will be held before the public officer, or his or her designated agent, at a place within the county scheduled not less than 10 days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to answer the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity are not controlling in hearings before the public officer.

(D) Order. - If, after notice and hearing, the public officer determines that the nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public is jeopardized for failure of the property to meet the minimum standards established by the Board of Aldermen, the public officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order. The order may require the owner to take remedial action, within a reasonable time specified, subject to the procedures and limitations herein.

(E) Limitations on Orders. -

(1) An order may require the owner to repair, alter, or improve the nonresidential building or structure in order to bring it into compliance with the minimum standards established by the Board of Aldermen or to vacate and close the nonresidential building or structure for any use.

(2) An order may require the owner to remove or demolish the nonresidential building or structure if the cost of repair, alteration, or improvement of the building or structure would exceed fifty percent (50%) of its then current value. Notwithstanding any other provision of law, if the nonresidential building or structure is designated as a local historic landmark, listed in the National Register of Historic Places, or located in a locally designated historic district or in a historic district listed in the National Register of Historic Places and the Board of Aldermen determines, after an administrative hearing as provided by ordinance, that the nonresidential building or structure is of individual significance or contributes to maintaining the character of the district, and the nonresidential building or structure has not been condemned as unsafe, the order may require that the nonresidential building or structure be vacated and closed until it is brought into compliance with the minimum standards established by the Board of Aldermen.

(3) An order may not require repairs, alterations, or improvements to be made to vacant manufacturing facilities or vacant industrial warehouse facilities to preserve the original use. The order may require such building or structure to be vacated and closed, but repairs may be required only when necessary to maintain structural integrity or to abate a health or safety hazard that cannot be remedied by ordering the building or structure closed for any use.

(F) Action by Board of Aldermen Upon Failure to Comply With Order. -

(1) If the owner fails to comply with an order to repair, alter, or improve or to vacate and close the nonresidential building or structure, the Board of Aldermen may adopt an ordinance ordering the public

officer to proceed to effectuate the purpose of this section with respect to the particular property or properties that the public officer found to be jeopardizing the health or safety of its occupants or members of the general public. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following adoption of an ordinance, the public officer may cause the building or structure to be repaired, altered, or improved or to be vacated and closed. The public officer may cause to be posted on the main entrance of any nonresidential building or structure so closed a placard with the following words: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a building or structure so posted is guilty of a Class 3 misdemeanor.

(2) If the owner fails to comply with an order to remove or demolish the nonresidential building or structure, the Board of Aldermen may adopt an ordinance ordering the public officer to proceed to effectuate the purpose of this section with respect to the particular property or properties that the public officer found to be jeopardizing the health or safety of its occupants or members of the general public. No ordinance shall be adopted to require demolition of a nonresidential building or structure until the owner has first been given a reasonable opportunity to bring it into conformity with the minimum standards established by the Board of Aldermen. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following adoption of an ordinance, the public officer may cause the building or structure to be removed or demolished.

(G) Action by Board of Aldermen Upon Abandonment of Intent to Repair. - If the Board of Aldermen has adopted an ordinance or the public officer has issued an order requiring the building or structure to be repaired or vacated and closed and the building or structure has been vacated and closed for a period of two years pursuant to the ordinance or order, the Board of Aldermen may make findings that the owner has abandoned the intent and purpose to repair, alter, or improve the building or structure and that the continuation of the building or structure in its vacated and closed status would be inimical to the health, safety, and welfare of the local government in that it would continue to deteriorate, would create a fire or safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, or would cause or contribute to blight and the deterioration of property values in the area. Upon such findings, the Board of Aldermen may, after the expiration of the two-year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

(1) If the cost to repair the nonresidential building or structure to bring it into compliance with the minimum standards is less than or equal to fifty percent (50%) of its then current value, the ordinance shall require that the owner either repair or demolish and remove the building or structure within 90 days.

(2) If the cost to repair the nonresidential building or structure to bring it into compliance with the minimum standards exceeds fifty percent (50%) of its then current value, the ordinance shall require the owner to demolish and remove the building or structure within 90 days.

(H) In the case of vacant manufacturing facilities or vacant industrial warehouse facilities, the building or structure must have been vacated and closed pursuant to an order or ordinance for a period of five years before the Board of Aldermen may take action under this subsection. The ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with the ordinance, the public officer shall effectuate the purpose of the ordinance.

(I) Service of Complaints and Orders. - Complaints or orders issued by a public officer pursuant to an

ordinance adopted under this section shall be served upon persons either personally or by certified mail so long as the means used are reasonably designed to achieve actual notice. When service is made by certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the certified mail is refused but the regular mail is not returned by the post office within 10 days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected. If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence and the public officer makes an affidavit to that effect, the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the local government at least once no later than the time that personal service would be required under this section. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(J) Liens. -

(1) The amount of the cost of repairs, alterations, or improvements, or vacating and closing, or removal or demolition by the public officer is a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of Chapter 160A of the General Statutes.

(2) If the real property upon which the cost was incurred is located in an incorporated city, the amount of the costs is also a lien on any other real property of the owner located within the city limits except for the owner's primary residence. The additional lien provided in this subdivision is inferior to all prior liens and shall be collected as a money judgment.

(3) If the nonresidential building or structure is removed or demolished by the public officer, he or she shall offer for sale the recoverable materials of the building or structure and any personal property, fixtures, or appurtenances found in or attached to the building or structure and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition, and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the Board of Aldermen to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

(K) Ejectment. - If any occupant fails to comply with an order to vacate a nonresidential building or structure, the public officer may file a civil action in the name of the local government to remove the occupant. The action to vacate is in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying the nonresidential building or structure. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date, and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served and if at the hearing the public officer produces a certified copy of an ordinance adopted by the Board of Aldermen pursuant to subsection (f) of this section to vacate the occupied nonresidential building or structure, the magistrate shall enter judgment ordering that the premises be vacated and all persons be removed. The judgment ordering that the nonresidential building or structure be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered under this subsection by the magistrate may be taken as provided in G.S. 7A-228, and the execution of the judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a nonresidential building or structure who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this subsection unless the occupant was served with notice, at least 30 days before the filing of the

summary ejectment proceeding, that the Board of Aldermen has ordered the public officer to proceed to exercise his or her duties under subsection (f) of this section to vacate and close or remove and demolish the nonresidential building or structure.

(L) Civil Penalty. - The Board of Aldermen may impose civil penalties against any person or entity that fails to comply with an order entered pursuant to this section. However, the imposition of civil penalties does not limit the use of any other lawful remedies available to the Board of Aldermen for the enforcement of any ordinances adopted pursuant to this section.

(M) Supplemental Powers. - The powers conferred by this section are supplemental to the powers conferred by any other law. An ordinance adopted by the Board of Aldermen may authorize the public officer to exercise any powers necessary or convenient to carry out and effectuate the purpose and provisions of this section, including the following powers in addition to others herein granted:

(1) To investigate nonresidential buildings and structures in the local government's planning and development regulation jurisdiction to determine whether they have been properly maintained in compliance with the minimum standards so that the safety or health of the occupants or members of the general public are not jeopardized.

(2) To administer oaths, affirmations, examine witnesses, and receive evidence.

(3) To enter upon premises pursuant to subsection (b) of this section for the purpose of making examinations in a manner that will do the least possible inconvenience to the persons in possession.

(4) To appoint and fix the duties of officers, agents, and employees necessary to carry out the purposes of the ordinances adopted by the Board of Aldermen.

(5) To delegate any of his or her functions and powers under the ordinance to other officers and agents.

(N) Appeals. - The Board of Aldermen may provide that appeals may be taken from any decision or order of the public officer to the local government's housing appeals board or board of adjustment. Any person aggrieved by a decision or order of the public officer has the remedies provided in G.S. 160D- 1208.

(O) Funding. - The Board of Aldermen is authorized to make appropriations from its revenues necessary to carry out the purposes of this section and may accept and apply grants or donations to assist in carrying out the provisions of the ordinances adopted by the Board of Aldermen.

(P) No Effect on Just Compensation for Taking by Eminent Domain. - Nothing in this section shall be construed as preventing the owner or owners of any property from receiving just compensation for the taking of property by the power of eminent domain under the laws of this State nor as permitting any property to be condemned or destroyed except in accordance with the police power of the State.

(Q) Definitions. - As used in this section, the following definitions apply:

(1) Parties in interest. - All individuals, associations, and corporations who have interests of record in a nonresidential building or structure and any who are in possession thereof.

(2) Vacant industrial warehouse. - Any building or structure designed for the storage of goods or equipment in connection with manufacturing processes, which has not been used for that purpose for at least one year and has not been converted to another use.

(3) Vacant manufacturing facility. - Any building or structure previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one year and has not been converted to another use.

§10.08.30 VACANT BUILDING RECEIVERSHIP. § 160D-1130.

(A) Petition to Appoint a Receiver. – The Board of Aldermen of a city or its delegated commission may petition the superior court for the appointment of a receiver to rehabilitate, demolish, or sell a vacant building, structure, or dwelling upon the occurrence of any of the following, each of which is deemed a nuisance per se:

(1) The owner fails to comply with an order issued pursuant to G.S. 160D-1122, related to building or structural conditions that constitute a fire or safety hazard or render the building or structure dangerous to life, health, or other property, from which no appeal has been taken.

(2) The owner fails to comply with an order of the city following an appeal of an inspector's order issued pursuant to G.S. 160D-1122.

(3) The Board of Aldermen of the city adopts any ordinance pursuant to subdivision (f)(1) of G.S. 160D-1129, related to nonresidential buildings or structures that fail to meet minimum standards of maintenance, sanitation, and safety, and orders a public officer to continue enforcement actions prescribed by the ordinance with respect to the named nonresidential building or structure. The public officer may submit a petition on behalf of the Board of Aldermen to the superior court for the appointment of a receiver, and if granted by the superior court, the petition shall be considered an appropriate means of complying with the ordinance. In the event the superior court does not grant the petition, the public officer and the Board of Aldermen may take action pursuant to the ordinance in any manner authorized in G.S. 160D-1129.

(4) The owner fails to comply with an order to repair, alter, or improve, remove, or demolish a dwelling issued under G.S. 160D-1203, related to dwellings that are unfit for human habitation.

(5) Any owner or partial owner of a vacant building, structure, or dwelling, with or without the consent of other owners of the property, submits a request to the Board of Aldermen in the form of a sworn affidavit requesting the Board of Aldermen to petition the superior court for appointment of a receiver for the property pursuant to this section.

(B) Petition for Appointment of Receiver. – The petition for the appointment of a receiver shall include all of the following: (i) a copy of the original violation notice or order issued by the city or, in the case of an owner request to the Board of Aldermen for a petition for appointment of a receiver, a verified pleading that avers that at least one owner consents to the petition; (ii) a verified pleading that avers that the required rehabilitation or demolition has not been completed; and (iii) the names of the respondents, which shall include the owner of the property, as recorded with the register of deeds, any mortgagee with a recorded interest in the property, and all other parties in interest, as defined in G.S. 160D-1202(2). If the petition fails to name a respondent as required by this subsection, the proceeding may continue, but the receiver's lien for expenses incurred in rehabilitating, demolishing, or selling the vacant building, structure, or dwelling, as authorized by subsection (f) of this section, does not have priority over the lien of that respondent.

(C) Notice of Proceeding. – Within 10 days after filing the petition, the city shall give notice of the pendency and nature of the proceeding by regular and certified mail to the last known address of all owners of the property, as recorded with the register of deeds, any mortgagee with a recorded interest in the property, and all other parties in interest, as defined in G.S. 160D-1202(2). Within 30 days of the date on which the notice was mailed, an owner of the property, as recorded with the register of deeds, any mortgagee with a recorded interest in the property, and all other parties in interest, as defined in G.S. 160D-1202(2), may apply to intervene in the proceeding and to be appointed as receiver. If the city fails to give notice to any owner of the property, as recorded with the register of deeds, any mortgagee with a recorded interest in the property, and all other parties in interest, as defined in G.S. 160D-1202(2), as

required by this subsection, the proceeding may continue, but the receiver's lien for expenses incurred in rehabilitating, demolishing, or selling the vacant building, structure, or dwelling, as authorized by subsection (f) of this section, does not have priority over the lien of that owner, as recorded with the register of deeds, any mortgagee with a recorded interest in the property, and all other parties in interest, as defined in G.S. 160D-1202(2).

(D) Appointment of Receiver. – The court shall appoint a qualified receiver if the provisions of subsections (b) and (c) of this section have been satisfied. If the court does not appoint a person to rehabilitate or demolish the property pursuant to subsection (e) of this section, or if the court dismisses such an appointee, the court shall appoint a qualified receiver for the purpose of rehabilitating and managing the property, demolishing the property, or selling the property to a buyer. To be considered qualified, a receiver must demonstrate to the court (i) the financial ability to complete the purchase or rehabilitation of the property, (ii) the knowledge of, or experience in, the rehabilitation of vacant real property, (iii) the ability to obtain any necessary insurance, and (iv) the absence of any building code violations issued by the city on other real property owned by the person or any member, principal, officer, major stockholder, parent, subsidiary, predecessor, or others affiliated with the person or the person's business. No member of the petitioning city's Board of Aldermen or a public officer of the petitioning city is qualified to be appointed as a receiver in that action. If, at any time, the court determines that the receiver is no longer qualified, the court may appoint another qualified receiver.

(E) Rehabilitation Not by Receiver. – The court may, instead of appointing a qualified receiver to rehabilitate or sell a vacant building, structure, or dwelling, appoint an owner or other party in interest in the property, as defined in G.S. 160D-1202, to rehabilitate or demolish the property if that person (i) demonstrates the ability to complete the rehabilitation or demolition within a reasonable time, (ii) agrees to comply with a specified schedule for rehabilitation or demolition, and (iii) posts a bond in an amount determined by the court as security for the performance of the required work in compliance with the specified schedule. After the appointment, the court shall require the person to report to the court on the progress of the rehabilitation or demolition, according to a schedule determined by the court. If, at any time, it appears to the city or its delegated commission that the owner, mortgagee, or other person appointed under this subsection is not proceeding with due diligence or in compliance with the court-ordered schedule, the city or its delegated commission may apply to the court for immediate revocation of that person's appointment and for the appointment of a qualified receiver. If the court revokes the appointment and appoints a qualified receiver, the bond posted by the owner, mortgagee, or other person shall be applied to the receiver's expenses in rehabilitating, demolishing, or selling the vacant building, structure, or dwelling.

(F) Receiver Authority Exclusive. – Upon the appointment of a receiver under subsection (d) of this section and after the receiver records a notice of receivership in the county in which the property is located that identifies the property, all other parties are divested of any authority to collect rents or other income from or to rehabilitate, demolish, or sell the building, structure, or dwelling subject to the receivership. Any party other than the appointed receiver who actively attempts to collect rents or other income from or to rehabilitate, demolish, or sell the property may be held in contempt of court and is subject to the penalties authorized by law for that offense. Any costs or fees incurred by a receiver appointed under this section and set by the court constitute a lien against the property, and the receiver's lien has priority over all other liens and encumbrances, except taxes or other government assessments.

(G) Receiver's Authority to Rehabilitate or Demolish. – In addition to all necessary and customary powers, a receiver appointed to rehabilitate or demolish a vacant building, structure, or dwelling has the right of possession with authority to do all of the following:

- (1) Contract for necessary labor and supplies for rehabilitation or demolition.

(2) Borrow money for rehabilitation or demolition from an approved lending institution or through a governmental agency or program, using the receiver's lien against the property as security.

(3) Manage the property prior to rehabilitation or demolition and pay operational expenses of the property, including taxes, insurance, utilities, general maintenance, and debt secured by an interest in the property.

(4) Collect all rents and income from the property, which shall be used to pay for current operating expenses and repayment of outstanding rehabilitation or demolition expenses.

(5) Manage the property after rehabilitation, with all the powers of a landlord, for a period of up to two years and apply the rent received to current operating expenses and repayment of outstanding rehabilitation or demolition expenses.

(6) Foreclose on the receiver's lien or accept a deed in lieu of foreclosure.

(H) Receiver's Authority to Sell. – In addition to all necessary and customary powers, a receiver appointed to sell a vacant building, structure, or dwelling may do all of the following: (i) sell the property to the highest bidder at public sale, following the same presale notice provisions that apply to a mortgage foreclosure under Article 2A of Chapter 45 of the General Statutes, and (ii) sell the property privately for fair market value if no party to the receivership objects to the amount and procedure. In the notice of public sale authorized under this subsection, it is sufficient to describe the property by a street address and reference to the book and page or other location where the property deed is registered. Prior to any sale under this subsection, the applicants to bid in the public sale or the proposed buyer in the private sale shall demonstrate the ability and experience needed to rehabilitate the property within a reasonable time. After deducting the expenses of the sale, the amount of outstanding taxes and other government assessments, and the amount of the receiver's lien, the receiver shall apply any remaining proceeds of the sale first to the city's costs and expenses, including reasonable attorneys' fees, and then to the liens against the property in order of priority. Any remaining proceeds shall be remitted to the property owner.

(I) Receiver Forecloses on Lien. – A receiver may foreclose on the lien authorized by subsection (f) of this section by selling the property subject to the lien at a public sale, following public notice and notice to interested parties in the manner as a mortgage foreclosure under Article 2A of Chapter 45 of the General Statutes. After deducting the expenses of the sale and the amount of any outstanding taxes and other government assessments, the receiver shall apply the proceeds of the sale to the liens against the property, in order of priority. In lieu of foreclosure, and only if the receiver has rehabilitated the property, an owner may pay the receiver's costs, fees, including reasonable attorneys' fees, and expenses or may transfer ownership in the property to either the receiver or an agreed upon third party for an amount agreed to by all parties to the receivership as being the property's fair market value.

(J) Deed After Sale. – Following the court's ratification of the sale of the property under this section, the receiver shall sign a deed conveying title to the property to the buyer, free and clear of all encumbrances, other than restrictions that run with the land. Upon the sale of the property, the receiver shall at the same time file with the court a final accounting and a motion to dismiss the action.

(K) Receiver's Tenure. – The tenure of a receiver appointed to rehabilitate, demolish, or sell a vacant building, structure, or dwelling shall extend no longer than two years after the rehabilitation, demolition, or sale of the property. Any time after the rehabilitation, demolition, or sale of the property, any party to the receivership may file a motion to dismiss the receiver upon the payment of the receiver's outstanding costs, fees, and expenses. Upon the expiration of the receiver's tenure, the receiver shall file a final accounting with the court that appointed the receiver.

(L) Administrative Fee Charged. – The city may charge the owner of the building, structure, or dwelling subject to the receivership an administrative fee that is equal to five percent (5%) of the profits from the sale of the building, structure, or dwelling or one hundred dollars (\$100.00), whichever is less.

ARTICLE 11. DEFINITIONS

§11.01 GENERAL RULES FOR INTERPRETATION.

§11.01.01 MEANINGS AND INTENT.

All provisions, terms, phrases and expressions contained in this development ordinance shall be construed according to the stated purpose and intent of the development ordinance or its various sections.

(Ord. passed 11-2-2011)

§11.01.02 HEADINGS, ILLUSTRATIONS AND TEXT.

Headings, illustrations in this development ordinance are intended to supplement and explain the meaning of the text, but shall not be used to expand, limit or alter the meanings of the words in the text. In case of an inconsistency between a heading or illustration and the substantive text of any section, the text of the section shall govern.

(Ord. passed 11-2-2011)

§11.01.03 LISTS AND EXAMPLES.

Unless otherwise specifically indicated, lists of items or examples that use terms such as “for example”, “including” and “such as”, or similar language are intended to provide examples; not to be exhaustive lists of all possibilities.

(Ord. passed 11-2-2011)

§11.01.04 COMPUTATION OF TIME.

Periods of time defined by a number of days shall mean a number of consecutive calendar days, including all weekend days, holidays and other non-business/working days; however, if the last day is a Saturday, Sunday or legal holiday, that day shall be excluded.

(Ord. passed 11-2-2011)

§11.01.05 REFERENCES TO OTHER REGULATIONS/PUBLICATIONS.

Where this development ordinance refers to other regulations or publications, the reference shall be to the most recent version of such regulation or publication, including any amendments that may have been made after the effective date of this development ordinance. If the regulation or publication referred to is no longer published or effective, the reference shall be deemed to be any successor or replacement regulation or publication, if there is one, as determined by the Planning Director or the Town Manager, in his or her absence.

(Ord. passed 11-2-2011)

§11.01.06 DELEGATION OF AUTHORITY.

Whenever a provision appears requiring the head of a department or division, or another officer or employee of the town to perform an act or duty, that provision shall be construed as authorizing the department/division head or officer to delegate the responsibility to subordinates, unless the terms of the provision specify otherwise.

(Ord. passed 11-2-2011)

§11.01.07 TECHNICAL AND NONTECHNICAL TERMS.

Words and phrases not otherwise defined in this development ordinance shall be construed according to the common and approved usage of the language, but technical words and phrases not otherwise defined in this development ordinance that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

(Ord. passed 11-2-2011)

§11.01.08 PUBLIC OFFICIALS AND AGENCIES.

All public officials, bodies and agencies to which references are made are those of the town, unless otherwise indicated.

(Ord. passed 11-2-2011)

§11.01.09 MANDATORY AND DISCRETIONARY TERMS.

The word “shall” is always mandatory, and the words “may” or “should” are always permissive.

(Ord. passed 11-2-2011)

§11.01.10 CONJUNCTIONS.

Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows. “And” indicates that all connected items, conditions, provisions or events shall apply. “Or” indicates that one or more of the connected items, conditions, provisions or events shall apply.

(Ord. passed 11-2-2011)

§11.01.11 TENSES, PLURALS AND GENDER.

Words used in one tense (past, present or future) include all other tenses, unless the context clearly indicates the contrary. The singular shall include the plural, and the plural shall include the singular. The masculine shall include the feminine, and vice versa.

(Ord. passed 11-2-2011)

§11.01.12 DEFINITIONS.

Unless specifically defined below, words or phrases used in this development 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.

ABANDONMENT. A property, use or structure that has been physically and objectively discontinued, ceased, relinquished, vacated or not maintained for a consecutive period of 180 days or more days and regardless of any condition or circumstance beyond the control of such parties that prevent a continuation of the use or occupancy of the structure or property.

ABUTTING. See ADJACENT, ADJOINING LOT OR LAND.

ACCESS. A way of approaching or entering a property, access also includes ingress, the right to enter, and egress, and the right to leave.

ACCESSORY DWELLING UNIT. A residential dwelling unit, located on the same lot as a single-family dwelling unit, either within the same building as the single-family dwelling unit or in a detached building. Secondary dwelling units shall be developed in accordance with the standards set forth in this ordinance and only in those zoning districts where the use is listed as a special use.

ACCESSORY STRUCTURE (APPURTENANT STRUCTURE). A structure that 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. Poles, barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

ACCESSORY USE. A use on the same lot or in the same building with the principal use of the lot or building, the nature and extent of which is clearly incidental or subordinate to that of the principal use.

ACCRETED LAND. Accretion is defined as the natural addition of land by the slow action of wind or water. Heavy rain, river or ocean action would have this effect by either washing up sand or soil or by a permanent retreat of the high water mark. In general, ACCRETED LAND will be considered to maintain the same zoning designation as the adjacent land. In any case, the landowner would have the right to attempt to have the accreted land rezoned, following the usual rezoning process.

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

ADJACENT, ADJOINING LOT OR LAND. A lot or parcel of land that shares all or part of a common lot line or boundary with another lot or parcel of land or that is directly across a public street or right-of-way.

ADMINISTRATION DECISION. Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in this ordinance. These are sometime referred to as ministerial decisions or administrative determinations.

ADMINISTRATIVE HEARING. A proceeding to gather facts needed to make an administrative decision. **ADULT BUSINESS AND RELATED DEFINITIONS.** See definitions in North Topsail Beach Town Code Chapter 4, Art. III, Adult and Sexually Oriented Businesses.

ADULT DAY CARE CENTER. See DAY CARE CENTER.

ALLEY. A public or private right-of-way primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on a street and is not intended for general traffic.

ALTERATION. Any change or expansion in the size, configuration or location of a structure; or any change or expansion in the use of a structure or lot, from a previously approved or legally existing size, configuration, location or use.

ALTERATION OF A WATERCOURSE. A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

ALTERNATIVE ANTENNA SUPPORT STRUCTURES (AASS). Structures which are functionally and legally capable of supporting wireless communication antennae, including, but not limited to, buildings, water towers and utility poles as an ancillary use of the primary structure.

AMENDMENT. Any change by the Board of Aldermen to the unified development ordinance such as text amendments or changes to the official zoning map.

AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION (AMTA). A Washington, D.C. based industry trade group which serves to support its specialized mobile radio (SMR) operator members through lobbying and networking efforts.

ANTENNA. Any apparatus or group of apparatus, designed for the transmitting and/or receiving of electromagnetic waves that includes, but is not limited to telephonic, radio or television communications. ANTENNAS include omni-directional (whip) antennas, sectorized (panel) antennas, microwave dish antennas, multi or single bay (FM and amp; TV), or parabolic (dish) antennas, but do not include satellite earth stations.

ANTENNA, DISH. A parabolic, spherical or elliptical antenna intended to receive wireless communications.

ANTENNA, FLUSH MOUNTED. An antenna that is attached flush to an antenna-supporting structure, without the use of sidearms or other extension devices.

ANTENNA, PANEL. A directional antenna designed to transmit and/or receive signals in a directional pattern that is less than 360 degrees and is not flush-mounted or dish antenna.

ANTENNA, SURFACE MOUNTED. An antenna that is attached flush to the surface or facade of a building or structure other than an antenna-supporting structure.

ANTENNA, WHIP. A cylindrical, omni-directional antenna designed to transmit and/or receive signals in a 360-degree pattern.

APPEAL. A request for a review of the Zoning or Floodplain Administrator's interpretation of any provision of this ordinance.

APPROVAL AUTHORITY. The Board of Aldermen, Board of Adjustment, Planning Board, Planning Director or official designated by this development ordinance or by the town as being authorized to grant the specific zoning or land use permit or approval that constitutes a site-specific development plan.

ARCHITECTURAL FEATURE. A prominent or significant part or element of a building, structure or site.

AREA OF ENVIRONMENTAL CONCERN (AEC). The foundation of the CRC's permitting program for coastal development. An AEC is an area of natural importance: The CRC classifies areas as AECs to protect them from uncontrolled development, which may cause irreversible damage to property, public health or the environment. The CRC has established four categories of AECs:

- (1) The estuarine and ocean system;
- (2) The ocean hazard system;
- (3) Public water supplies; and
- (4) Natural and cultural resource areas.

AREA OF SHALLOW FLOODING. A designated Zone AO or AH on a community's flood insurance rate map (FIRM) with base flood depths determined to be from one to three feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

AREA OF SPECIAL FLOOD HAZARD. See SPECIAL FLOOD HAZARD AREA (SFHA).

AS-BUILT PLANS. Plans showing location of all existing and constructed features, certifying that a project was built in accordance with the permit.

ATTIC. The unfinished space between the ceiling joists of the top story and the roof rafters.

BALCONY, EXTERIOR. An exterior floor projecting from and supported by a structure without additional independent supports.

BANNER. A sign intended to be hung either with or without a frame, possessing characters, letters, illustrations or ornamentations applied to plastic or fabric of any kind excluding flags.

BASE FLOOD. The flood having a 1% chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION (BFE). A determination of the water surface elevations of the base flood as published in the flood insurance study. When the BFE has not been provided in a “special flood hazard area”, it may be obtained from engineering studies available from a federal, state or other source using FEMA-approved engineering methodologies. This elevation, when combined with the two-foot “freeboard”, establishes the “regulatory flood protection elevation”.

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

BED AND BREAKFAST. A building other than a hotel or motel where, a resident family, for compensation, provides temporary lodging and meals.

BEDROOM. *Sleeping room.* A room designated as sleeping or bedroom on the plans and permit application.

BILLBOARD. A sign that identifies, advertises and/or directs the public to a business, merchandise, service, entertainment or product that is located at a place other than the property on which such sign is located. See also SIGN, OFF-PREMISES.

BLOCK. A tract of land or a lot or group of lots bounded by streets, public parks, golf courses, railroad rights-of-way, watercourses, lakes, unsubdivided land or a boundary line or lines of the town or any combination of the above.

BLOCK FRONTAGE. The portion of a block which abuts a single street.

BOARD OF ADJUSTMENT. A local body, created by ordinance, whose responsibility is to hear appeals from decisions of the Zoning Administrator and to consider requests for variances from the terms of the unified development ordinance.

BOARD OF ALDERMEN. The governing body of the Town of North Topsail Beach.

BOAT LAUNCH/RAMP. Facility to launch and retrieve recreational boats from a trailer.

BOAT SLIP. A berthing place for one or two watercraft where the watercraft can be securely moored to cleats, piling, or other devices while the boats are in the water. Boat slips are commonly configured as “side-ties” or as single or double loaded “U” shaped berths.

BONA FIDE FARM PURPOSES. Agricultural activities as set forth in G. S. 160D-903.

BREAKAWAY WALL. A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

BUFFER. A fence, wall, hedge or other planted area or device used to enclose, screen or separate one use or lot from another.

BUILDING. any one- and two-family dwelling or portion thereof, including townhouses, that is used, or designed or intended to be used for human habitation, for living, sleeping, cooking or eating purposes, or any combination thereof, and shall include accessory structures thereto.

BUILDING, EXISTING. A building erected prior to the adoption of this code, or one for which a legal building permit has been issued.

BUILDING, HEIGHT OF. The vertical distance of the highest point of the roof or any rooftop deck, fence, railing, widow’s walk or other rooftop structure as measured from the top of the lowest slab and if no slab measured from lowest adjacent grade as specified on the elevation certificate.

BUILDING LINE/SETBACK. The line established by this ordinance, beyond which a building shall not extend, except as specifically provided.

BUILDING PERMIT. A permit obtained from the town for the construction, repair, alteration or addition to a structure, which sets the inspection schedule and construction techniques for a particular project and specified use in accordance with this ordinance and adopted building ordinances and other prevailing standards for construction, and includes the town's necessary zoning approval.

BUILDING, PRINCIPAL (MAIN). A building in which is conducted the principal use of the plot on which it is situated.

BULKHEAD. A vertical wall structure designed to retain shoreline material and prevent erosion due to wave activity.

CALIPER. The size of tree's trunk diameter as measured 36 inches above the ground.

CAMOUFLAGED TOWER. A tower which is designed to blend into the surrounding environment, such as a tower designed to resemble a tree or, if erected on an existing structure, an integral part of the building.

CAMPER. A structure manufactured of metal, wood, canvas, plastic or other materials, or any combination thereof, mounted on wheels and designed for travel, recreation or vacation use. A CAMPER is not designed or intended to be used as a permanent dwelling. CAMPERS include the following:

(1) **TRAVEL TRAILER.** A vehicular, portable structure built on chassis, designed to be towed by a self-propelled vehicle for use for travel, recreation or vacation purposes. A travel trailer is not designed or meant to be used as a permanent dwelling.

(2) **RECREATIONAL VEHICLE.** A self-propelled vehicle or portable structure mounted on such a vehicle designed as temporary dwelling for travel, recreation and vacation.

(3) **TENT.** A portable shelter of canvas, plastic or skins stretched over a supporting framework of poles with skins stretched over a supporting framework of poles with ropes and pegs.

CAMPER SPACE. A plot of land within a campground designed for the accommodation of one camper.

CAMPGROUND. Any lot upon which multiple campers or tent spaces are provided for temporary occupancy according to requirements as set forth in this ordinance. A CAMPGROUND shall also be known as a RECREATIONAL VEHICLE PARK or TRAVEL TRAILER PARK.

CARPOR. A covered parking area opened on at least two sides.

CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION (CTIA). A family of representative companies that support the cellular, PCS and enhanced SMR carriers industry through lobbying, research and policy efforts.

CERTIFICATE OF OCCUPANCY. A document issued by the Building Inspector allowing the occupancy or use of a building and certifying that the structure or use has been constructed or will be used in compliance with this ordinance and all other applicable regulations.

CERTIFICATE OF ZONING COMPLIANCE. Official certification that a premises conforms to provisions of the unified development ordinance (and building code) and may be used or occupied, subject to issuance of a certificate of occupancy by the Building Inspector. Such a certificate is granted for new construction or for alterations or additions to existing structures or a change in use. Unless such a certificate is issued, a structure cannot be occupied.

CHANGE OF USE. See USE, CHANGE OF.

CHARTER. As defined in G.S. 160A-1(2).

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

CHILD CARE HOME. A home occupation providing for day care of no more than seven children See also HOME OCCUPATION and DAY CARE FACILITY.

CITATION. A notice by a governmental authority indicating a violation or possible violation of this ordinance or other applicable government regulations applicable to the property.

CLEARING. The removal of trees and brush from the land, but shall not include the ordinary mowing of grass. CITY. As defined in G.S. 160A-1(2).

CLUB OR LODGE (PRIVATE NONPROFIT, CIVIC OR FRATERNAL). Buildings and facilities owned or operated by a corporation, association, person or persons, for a social, educational or recreational purpose, to which membership is required for participation.

COASTAL AREA MANAGEMENT ACT (CAMA). North Carolina's Coastal Area Management Act, along with the Dredge and Fill Law and the Federal Coastal Zone Management Act, is managed through North Carolina Department of Environment and Natural Resources' (NCDENR's) North Carolina Department of Environmental Quality (NCDEQ) Division of Coastal Management (DCM).

COASTAL A ZONE (CAZ). An area within a special flood hazard area, landward of a V zone or landward of an open coast without mapped V zones; in a Coastal A Zone, the principal source of flooding must be astronomical tides, storm surges, seiches or tsunamis, not riverine flooding. During the base flood conditions, the potential for wave heights shall be greater than or equal to one and one-half feet. COASTAL A ZONES are not normally designated on FIRMs (see LIMIT OF MODERATE WAVE ACTION (LiMWA)).

COASTAL BARRIER RESOURCES SYSTEM (CBRS). Consists of undeveloped portions of coastal and adjoining areas established by the Coastal Barrier Resources Act (CoBRA) of 1982, the Coastal Barrier Improvement Act (CBIA) of 1990, and subsequent revisions, and includes areas owned by federal or state governments or private conservation organizations identified as otherwise protected areas (OPA).

COASTAL HIGH HAZARD AREA. A special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM or other adopted flood map as determined in § 7.03(B), as zones VE and AE.

CO-LOCATION. The siting of two or more wireless telecommunication antennae on the same wireless telecommunication support structure.

COMMERCIAL USE. Any use permitted by this ordinance in one or more of the B-1 or B-2 zoning district, or as otherwise permitted by this ordinance. Unless otherwise indicated, the meaning and use of the term "commercial" or "business" are similar and the terms are interchangeable.

COMMUNITY BOATING FACILITY. A private, nonprofit boating facility including a dock, pier and/or launching ramp on property having water frontage, the use of which is intended to serve more than one residential lot. The right to use such facility must be conferred by an easement appurtenant to the residential lot it is intended to serve. No commercial activities of any kind shall be allowed within the confines of the facility. The facility shall be limited to one slip per one residential dwelling unit, not to exceed ten slips.

COMPREHENSIVE PLAN. The comprehensive plan, land-use plan, small area plans, neighborhood plans, transportation plan, capital improvement plan, and any other plans regarding land use and development that have been officially adopted by the the Board of Aldermen pursuant to G.S. 160D-501.

CONDITIONAL ZONING. A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.

CONDOMINIUM. Ownership of single units in a multi-unit structure with common areas and facilities in accordance with G.S. Ch. 47A.

CONDOMINIUM HOTEL or CONDOTEL. See HOTELMINIUM.

CONTIGUOUS. Abutting directly or immediately adjacent to a boundary or separated only by a street or public utility right-of-way.

CONVALESCENT HOME (NURSING HOME). An institution, which is advertised, announced or maintained for the express or implied purpose of providing nursing or convalescent care for persons unrelated to the licensee. A CONVALESCENT HOME is a home for chronic or nursing patients who, on admission, are not as a rule acutely ill or who do not usually require special facilities, such as an operating room, X-ray facilities, laboratory facilities and obstetrical facilities.

CONVENIENCE STORE. A small store or shop used as a convenient supplement to main shopping that stocks a range of everyday items such as groceries, toiletries, alcoholic and soft drinks.

COUNTY. Any one of the counties listed in G. S. 153A-10.

CROSSOVER (DUNE). Wooden walkway and steps providing access to the beach, which protect dunes by eliminating foot traffic.

CUL-DE-SAC. See STREET, CUL-DE-SAC.

DAY CARE CENTER. A day care facility as defined in G.S. § 110-86(3) as well as a center providing day care on a regular basis for more than two hours per day for more than five adults or children.

DECISION MAKING BOARD. The Board of Aldermen, planning board, board of adjustment or other board assigned to make quasi-judicial decisions under this ordinance.

DECK. An accessory structure, with or without a roof, directly adjacent to a principal building, which may be constructed of any materials and may either be freestanding or attached to a building and supported by pillars or posts.

DEDICATION. A gift, by the owner, or a right to use of land for a specified purpose or purposes. Because a transfer of property rights is entailed, dedication must be made by written instrument, and is completed with an acceptance.

DENSITY. A ratio expressed as the number of dwelling units per acre (DUA). The ratio is derived by dividing the total number of dwelling units by the total land area (in acres).

DESIGN FLOOD. See REGULATORY FLOOD PROTECTION ELEVATION.

DETERMINATION. A written, final, and binding order, requirement, or determination regarding an administrative decision.

DEVELOPER. A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.

DEVELOPMENT. Any of the following:

- a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
- b. The excavation, grading, filling, clearing, or alteration of land.
- c. The subdivision of land as defined in G.S. 160D-802.
- d. The initiation or substantial change in the use of land or the intensity of use of land.

This definition does not alter the scope of regulatory authority granted by this ordinance.

DEVELOPMENT ACTIVITY. Any activity defined as DEVELOPMENT which will necessitate a floodplain development permit. This includes buildings, structures and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps and erosion control/stabilization measures.

DEVELOPMENT APPROVAL. An administrative or quasi-judicial approval made pursuant to this Chapter that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other

regulatory approvals required by regulations adopted pursuant to this Chapter, including plat approvals, permits issued, development agreements entered into, and building permits issued.

DEVELOPMENT REGULATION. A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, State Building Code enforcement, or any other regulation adopted pursuant to this Chapter, or a local act or charter that regulates land use or development.

DIAMETER AT BREAST HEIGHT (DBH). The diameter of a tree measured four and one-half feet above the ground.

DIGITAL FLOOD INSURANCE RATE MAP (DFIRM). The digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated.

DIRECT LIGHT. Light emitted directly from the lamp, off of the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire.

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

DISTRICT. An area delineated on the official zoning district map for which this ordinance sets forth standards and guidelines for development.

DISTURBED AREA. The portion of the lot that is allocated for land disturbing activities and construction of structures and associated improvements.

DOCK. A pier, wharf or platform for the unloading of materials or living beings.

DOUBLE FRONTAGE LOT or THROUGH LOT. See LOT, DOUBLE FRONTAGE.

DRAINAGE SYSTEM. The system through which water flows from the land. It includes all watercourses, water bodies and wetlands.

DRIVEWAY, PRIVATE. A roadway serving two or fewer lots, building sites or other division of land and not intended to be public ingress or egress. That portion of the property area that consists of a travel lane bounded on either side by an area that is not part of the vehicle accommodation area. A driveway includes the driveway ramp or entrance at the road, throat, travel lane and parking stall connected to either a private, public or state road.

DUNE. A naturally placed mound of earth or sand, vegetated or un-vegetated, that can be independent or part of an incorporated system. The word DUNE shall include:

(1) Estuarine frontal dunes: the first mounds of sand located landward of the estuarine waters of the intercoastal and having a minimum elevation equal to mean flood level plus six feet;

(2) Frontal dunes: the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value;

(3) Interior dunes: all dunes located in the town that are not considered frontal dunes; and

(4) Primary dunes: the first mounds of sand located landward of the ocean beaches having an elevation equal to mean flood level for the area plus six feet. Primary dunes extend landward to the lowest elevation in the depression behind the same mound of sand.

DUPLEX. A building containing two dwelling units: where the building is designed to be occupied by two families living independently from each other. The DUPLEX must have a continuous common wall and/or floor assemblies having less than a one-hour fire-resistance rating. A breezeway or porch connection will not be considered a common or party wall.

DWELLING. Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. For the purposes of this ordinance, the term does not include any recreational vehicle.

DWELLING UNIT. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

EASEMENT. A grant by the property owner of a strip of land for a specified purpose and use by the public, a corporation or persons.

EDUCATIONAL SERVICES. Comprises uses that provide instruction and training in a wide variety of subjects. This instruction and training is provided by specialized establishments, such as schools, colleges, universities and training centers. These establishments may be privately owned and operated for profit or not for profit, or they may be publicly owned and operated. They may also offer food and accommodation services to their students. EDUCATIONAL SERVICES are usually delivered by teachers or instructors that explain, tell, demonstrate, supervise and direct learning. Instruction is imparted in diverse settings, such as educational institutions, the workplace, or the home through correspondence, television or other means. It can be adapted to the particular needs of the students, for example sign language can replace verbal language for teaching students with hearing impairments. All industries in the sector share this commonality of process, namely, labor inputs of instructors with the requisite subject matter expertise and teaching ability.

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

ENCROACHMENT. The advance or infringement of uses, fill, excavation, buildings, structures or development into a special flood area, which may impede or alter the flow capacity of a floodplain.

ENVIRONMENTAL ASSESSMENT (EA). An assessment of a project's environmental impact as defined in the National Environmental Policy Act of 1969.

EROSION. The wearing away of the land surface by wind, water, ice or other geologic agents. Erosion occurs naturally from weather or runoff, but is often intensified by human land use practices.

EVIDENTIARY HEARING. A hearing to gather competent, material and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation adopted under this ordinance.

EXISTING BUILDING and EXISTING STRUCTURE. Any building and/or structure for which the START OF CONSTRUCTION commenced before the community entered the NFIP, dated June 2, 1987.

EXISTING MANUFACTURED HOME PARK or MANUFACTURED HOME SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the community entered the NFIP, dated June 2, 1987.

FALL RADIUS. A physical radius prescribed by the total effective height of any tower which includes an area which theoretically could be penetrated by the collapse of that tower.

FAMILY. One or more persons living together as a single housekeeping unit.

FAMILY CARE HOME. A dwelling that provides room and board for not more than six persons who because of age, illness, handicap or specialized program, require personalized services or a supervised living arrangement in order to assure their safety and comfort that is regulated by the state. (For purposes of FAMILY CARE HOMES, a "handicapped person" as defined in G.S. § 168-21(2) means a person with a temporary or permanent physical, emotional or mental disability including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in G.S. § 122C-3(11)b. If the

home is not licensed under G.S. Ch. 31D, Article 1 or is exempt from state licensing, the home shall be considered a group home and shall be subject to all applicable requirements of this ordinance.

FARMERS MARKET. A specialty market with or without a structure principally for the sale of produce, plants and flowers. Value-added agricultural products such as honey or jam, along with handmade craft items, may be sold, provided their sale is ancillary to the sale of produce, plants and flowers.

FEDERAL AVIATION ADMINISTRATION (FAA). The Federal Agency responsible for regulating aviation in the United States.

FEDERAL COMMUNICATIONS COMMISSION (FCC). The Federal Agency responsible for regulating telecommunications in the United States.

FLEA MARKET. A specialty market, where the use involves the setting up of two or more booths, tables, platforms, racks or similar display areas for the purpose of selling, buying or trading merchandise, goods, materials, products or other items offered for sale outside an enclosed building. FLEA MARKETS shall not include any of the following activities which occur at the same location four or fewer days in any calendar year: garage sales, produce stands or fundraising activities done by a nonprofit organization.

FLOOD BOUNDARY and FLOODWAY MAP (FBFM). An official map of a community, issued by the FEMA, on which the special flood hazard areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the flood insurance rate map (FIRM).

FLOOD HAZARD BOUNDARY MAP (FHBM). An official map of a community, issued by the FEMA, where the boundaries of the special flood hazard areas have been defined as Zone A.

FLOOD INSURANCE. The insurance coverage provided under the national flood insurance program.

FLOOD INSURANCE RATE MAP (FIRM). An official map of a community, issued by the FEMA, on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated (see also DFIRM).

FLOOD INSURANCE STUDY (FIS). An examination, evaluation and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones and other flood data in a community issued by the FEMA. The flood insurance study report includes flood insurance rate maps (FIRMs) and flood boundary and floodway maps (FBFMs), if published.

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

- (a) The overflow of inland or tidal waters; and/or
- (b) The unusual and rapid accumulation of runoff of surface waters from any source.

FLOOD OR SPOT LIGHT. Any light fixture or lamp that incorporates a reflector or a refractor to concentrate the light output into a directed beam in a particular direction.

FLOOD PRONE AREA. See FLOODPLAIN.

FLOOD ZONE. A geographical area shown on a flood hazard boundary map or flood insurance rate map that reflects the severity or type of flooding in the area.

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

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

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

FLOODPLAIN MANAGEMENT. The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain,

including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations and open space plans.

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

FLOODPROOFING. Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

FLOOD-RESISTANT MATERIAL. Any building product (material, component or system) capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

FLOODWAY. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

FLOODWAY ENCROACHMENT ANALYSIS. An engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified state licensed engineer using standard engineering methods and hydraulic models meeting the minimum requirement of the National Flood Insurance Program.

FLOOR AREA. For determining off-street parking and loading requirements: the sum of the gross horizontal areas of each floor of the principal building, and any accessory buildings or structures, measured from the exterior walls or from the center line of party walls. The term does not include any area used exclusively for the surface parking of motor vehicles or for building or equipment access, such as stairs, elevator shafts and maintenance crawl space.

FLOOR AREA, GROSS. The total square footage on all floors within a building.

FREEBOARD. The height added to the BFE to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The BFE plus the FREEBOARD establishes the "regulatory flood protection elevation".

FRONTAGE. The lot boundary that coincides with a public thoroughfare or space; the facade of a structure facing the street.

FULL CUT-OFF TYPE FIXTURE. A luminaire or light fixture that by design of the fixture housing does not allow any light dispersion or direct glare to shine above a 90-degree horizontal plane from the base of the fixture.

FUNCTIONALLY DEPENDENT FACILITY. A facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to 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.

FUTURE CONNECTION. The extension of a street to an external property line to facilitate future roadway connection and reduce traffic impacts on the road network.

GARAGE APARTMENT. A structure above a private garage in which provision is made for one dwelling unit. See also **ACCESSORY DWELLING UNIT**.

GARAGE (PRIVATE). A building used as an accessory to or a part of the main building permitted in any residential district, and providing for the storage of motor vehicles and in which no business, or service for profit is in any way conducted.

GAZEBO. A freestanding roofed, open-sided structure providing a shady resting place.

GEOGRAPHIC SEARCH AREA. An area designated by a wireless provider or operator for a new base station facility, produced in accordance with generally accepted principles of wireless engineering.

GOLF COURSE. A tract of land designed and laid out for the game of golf having at least nine holes, each with a tee, fairway, green and one or more hazards. A clubhouse, pool and other facilities associated with a country club built around a golf course are considered part of the **GOLF COURSE**. This definition does not include miniature golf.

GOVERNING BOARD. The city council or board of county commissioners. The term is interchangeable with the terms "board of aldermen" and "boards of commissioners" and means any Board of Aldermen without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage. The Board of Aldermen for North Topsail Beach is the Board of Aldermen.

GRADE. The finished ground level adjoining the building at all exterior walls.

GROUP HOME. A dwelling operated under state regulations that provides room and board for more than six, but less than 13 individuals who as a result of age, illness, handicap or some specialized program, require personalized services or a supervised living arrangement in order to assure their safety and comfort. Additional requirements may be imposed by the International Building Code with North Carolina Amendments.

GUESTHOUSE. A separate residence for guests.

HALF-STREET. A street whose center line coincides with a subdivision plat boundary, with one-half the street right-of-way width being contained within the subdivision plat. Also, any existing street to which the parcel of land to be subdivided abuts on only one side.

HANDICAPPED PERSON. A person with a temporary or permanent physical, emotional or mental disability including, but not limited to, mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in G.S. § 122C-3(11)b.

HAZARDOUS WASTE MANAGEMENT FACILITY. As defined in G.S. Ch. 130A, Art. 9, a facility for the collection, storage, processing, treatment, recycling, recovery or disposal of hazardous waste.

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

HISTORIC STRUCTURE. Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;
- (3) Individually listed on a local inventory of historic landmarks in communities with a "certified local government (CLG) program"; or

(4) (a) Certified as contributing to the historical significance of a historic district designated by a community with a “certified local government (CLG) program”.

(b) Certified local government (CLG) programs are approved by the U.S. Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966, as amended in 1980.

HOME OCCUPATION. A commercial activity conducted within a residential structure.

HOTEL or MOTEL. A building or other structure kept, used, maintained, advertised as or held out to the public to be a place where sleeping accommodations are supplied for pay to transient or permanent guests or tenants, where rooms are furnished for the accommodation of such guests; and may have one or more dining rooms, restaurants or cafes where meals are served.

HOTELMINIUM. A structure containing individually owned hotel or efficiency units, and operated in the manner of a hotel or motel.

ICE VENDING MACHINE. A freestanding building or modular unit (not to exceed 200 square feet and heights limited to 15 feet) that produces, stores, bags and/or vends ice to the consumer in an automated fashion.

IMPERVIOUS SURFACE. Any surface which in whole or in part, restricts or prevents the natural absorption of water into the ground. Such surfaces may include, but not be limited to compacted earth (such as marl and coquina), concrete, asphalt or other paving material, and all area covered by the footprint of buildings or structures. Porous pavement, gravel, uncovered wooden slatted decks and the water area of a swimming pool are considered pervious.

INCOMPATIBLE USE. A use or service which is unsuitable for direct association and/or contiguity with certain other uses because it is contradictory, incongruous or discordant.

INOPERATIVE VEHICLE. Any vehicle, designed to be self-propelled, which by virtue of broken or missing component parts, is no longer capable of self-propulsion. For the purpose of this ordinance, any vehicle which is registered with the North Carolina Department of Motor Vehicles and has a current North Carolina motor vehicle registration license affixed to it shall not be considered INOPERATIVE.

INTERESTED PARTY. Any person that has an interest in any proceeding or action being proposed or taken.

JUNK. Old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste or junked, dismantled or wrecked automobiles, or parts thereof, iron, steel and other old or scrap ferrous or nonferrous material.

(G.S. § 136-143)

JUNKYARD. An establishment or place of business which is maintained, operated or used for storing, keeping, buying or selling junk, or for maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills. An establishment or place of business which stores or keeps for a period of 15 days or more materials within the meaning of JUNK as defined above which had been derived or created as a result of industrial activity shall be deemed to be a JUNKYARD. (G.S. § 136-143)

KENNEL. A commercial non-incidentual or nonprofit establishment used as housing, leasing, sealing, training, rehabilitating, breeding, grooming or fostering of any species, excluding domesticated livestock.

LAND AREA. The total square footage within a development project property boundary.

LANDOWNER OR OWNER. The holder of the title in fee simple. Absent evidence to the contrary, the Town may rely on the county tax records to determine who is a landowner. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his or her agent or representative for the purpose of making applications for development approvals.

LANDSCAPE LIGHTING. Luminaries mounted in or at grade (but not more than three feet above grade) and used solely for landscape rather than any area lighting.

LANDSCAPING. The installation and maintenance, usually of a combination of trees, shrubs, plant materials or other ground cover, including grass, mulch, decorative stone and similar materials, but excluding bare soil, uncultivated vegetation, impervious pavement materials and gravel. Any live plant material such as trees, shrubs, ground cover and grass areas left in their natural state.

LATTICE-TYPE STRUCTURE. A self-supporting, three- or four-sided open steel frame structure used to support telecommunications equipment.

LEGISLATIVE DECISION. The adoption, amendment, or repeal of a regulation under this Chapter or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of G. S. 160D Article 10.

LEGISLATIVE HEARING. A hearing to solicit public comment on a proposed legislative decision.

LETTER OF MAP CHANGE (LOMC). An official determination issued by FEMA that amends or revises an effective flood insurance rate map or flood insurance study. **LETTERS OF MAP CHANGE** include:

(1) **LETTER OF MAP AMENDMENT (LOMA).** An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective flood insurance rate map and establishes that a specific property, portion of a property or structure is not located in a special flood hazard area.

(2) **LETTER OF MAP REVISION (LOMR).** A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

(3) **LETTER OF MAP REVISION BASED ON FILL (LOMR-F).** A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

(4) **CONDITIONAL LETTER OF MAP REVISION (CLOMR).** A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective flood insurance rate map or flood insurance study; upon submission and approval of certified as-built documentation, a letter of map revision may be issued by FEMA to revise the effective FIRM.

LIGHT DUTY TRUCK. Any motor vehicle rated at 8,500 pounds gross vehicular weight rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

- (1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle;
- (2) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (3) Available with special features enabling off-street or off-highway operation and use.

LIGHTING, OUTDOOR. The night-time illumination of an outside area or object by any manmade device located outdoors that produces light by any means.

LIMIT OF MODERATE WAVE ACTION (LimWA). The boundary line given by FEMA on coastal map studies marking the extents of Coastal A Zones (CAZ).

LOADING SPACE, OFF-STREET. Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles. Required **OFF-STREET LOADING SPACE** is not to be included as off-street parking space in computation of required **OFF-STREET PARKING SPACE**.

LOCAL ACT. - As defined in G.S. 160A-1(5).

LOCAL AND STATE GOVERNMENT ADVISORY COMMITTEE (LSGAC). An FCC-established group which works with both carriers and communities on antenna siting solutions.

LOCAL GOVERNMENT. - A city or county.

LOT. A parcel of land in single ownership occupied or intended for occupancy by a principal building, together with its accessory buildings; including the open space required under this ordinance. For the purpose of this ordinance, the word LOT shall be taken to mean any number of contiguous lots of record for location of one principal building and its accessory buildings.

LOT, CORNER. A lot abutting the intersection of two or more streets or a lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot at the apex meet at any angle of less than 135 degrees. In such a case the apex of the curve forming the CORNER LOT shall be considered as the intersection of street lines for the purpose of this ordinance, such as in corner visibility requirements.

LOT COVERAGE. The built-upon area that is covered by impervious or partially impervious cover including buildings, pavement, recreation facilities, but not including decking.

LOT DEPTH. The depth of a lot is the average distance between the front and back lot lines measured at right angles to its frontage and from corner to corner.

LOT, FLAG. A large lot not meeting minimum lot frontage requirements and where access to a public or private street is provided by means of a long, narrow driveway between abutting lots.

LOT, INTERIOR. A lot other than a corner lot.

LOT LINE. The line bounding a lot.

LOT OF RECORD. A lot that is shown on a subdivision recorded in the office of Register of Deeds, or a lot described by metes and bounds, the description of which has been recorded in the office of the Register of Deeds prior to the incorporation of the town.

LOT, REVERSE FRONTAGE. A key lot or the first lot to the rear of a corner lot, the front lot line of which is a continuation of the side lot line of the corner lot, and fronting on the street that intersects the street upon which the corner lot fronts and/or that faces the street upon which the side of a corner lot abuts.

LOT, THROUGH (ALSO LOT, DOUBLE FRONTAGE). An interior lot having frontage on two streets.

LOT WIDTH. The straight line distance between the points where the building setback line intersects the two side lot lines.

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

LOWEST FLOOR. The lowest floor of the lowest enclosed area. 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.

LUMINAIRE, FULLY SHIELDED (FULL CUTOFF). A luminaire emitting no light above the horizontal plane.

LUMINAIRE (LIGHT FIXTURE). A complete lighting unit consisting of one or more electric lamps, the lamp holder, any reflector or lens, ballast (if any), and any other components and accessories.

MANUFACTURED HOME OR MOBILE HOME. A structure as defined in G.S. 143-145(7). A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term MANUFACTURED HOME does not include a "recreational vehicle".

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

MAP REPOSITORY. The location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products carries the same authority as hard copy products. Therefore, the NCEM's Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data, the NC FRIS website (<http://FRIS.NC.GOV/FRIS>) is the map repository, and for historical flood hazard data the FloodNC website (<http://FLOODNC.GOV/NCFLOOD>) is the map repository.

MARINA. Any publicly or privately owned dock, basin or wet boat storage facility constructed to accommodate more than ten boats and providing any of the following services: permanent or transient docking spaces, dry storage, fueling facilities, haul out facilities and repair service. Excluded from this definition are boat ramp facilities allowing access only, temporary docking and none of the preceding services. Boat ramp facilities providing access only are excluded.

(NCAC 10B.1401(9))

MARKET VALUE. The building value, not including the land value and that of any accessory structures or other improvements on the lot. MARKET VALUE can be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (actual cash value); or adjusted tax assessed values.

MOBILE OFFICE. A structure identical to a manufactured home except that it has been converted, or originally designed and constructed, for commercial or office use.

MODULAR HOME. A dwelling unit constructed in accordance with the standards set forth in the North Carolina State Building Code and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. Among other possibilities, a MODULAR HOME may consist of two or more sections transported to the site in a manner similar to a manufactured home (except that the modular home meets the North Carolina State Building Code), or a series of panels or room sections transported on a truck and erected or joined together on the site.

MONOPOLE TOWERS. A slender, open-telescoping, self-supporting tower used to support telecommunications equipment.

NATURAL AREA. The portion of the lot that is required to remain undisturbed in its natural state and retain its natural vegetation. Disturbance of the NATURAL AREA and the removal of natural vegetation shall be permitted only as specifically authorized in this ordinance.

NEW CONSTRUCTION. Structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

NONCONFORMING BUILDING OR STRUCTURE. A structure that does not conform or comply with the dimensional regulations of this ordinance for the district in which it is located, either at the effective date of this ordinance or the regulation from which it derives, or as a result of one or more subsequent amendments to them.

NONCONFORMING LOT. A lot existing at the effective date of this ordinance (May 2, 1990) or any amendment to it (and not created for the purpose of evading the restrictions of this ordinance) that cannot meet the minimum dimensional requirements of the district in which the lot is located.

NONCONFORMING SIGN. Any sign lawfully existing on the effective date of this ordinance or of the regulations from which it arises, or amendment to them, that renders such sign nonconforming because it does not conform to all the standards and regulations of the adopted or amended ordinance or regulation.

NONCONFORMING USE. The use of a building, manufactured home or land which does not conform to the use regulations of this ordinance for the district in which it is located, either at the effective date of this

ordinance (May 2, 1990) or as a result of subsequent amendments which may be incorporated into this ordinance.

NON-ENCROACHMENT AREA (NEA). 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 foot as designated in the flood insurance study report.

NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88). The official vertical datum in the National Spatial Reference System (NSRS) for the Conterminous United States and Alaska. A vertical datum is a surface of zero ground elevation to which heights of various points are referenced. Mean sea level was not a good reference due to differences at various locations.

NUISANCE. Anything that interferes with the use or enjoyment of property.

NURSING HOME. See **CONVALESCENT HOME**.

OBTRUSIVE LIGHT. Spill light that causes glare, annoyance, discomfort or loss of visual ability. Light pollution.

OFFICIAL MAPS OR PLANS. Any maps or plans officially adopted by the North Topsail Beach Board of Aldermen.

OPEN SPACE.

(1) Any land or area, the preservation of which in its present use would:

(a) Conserve and enhance natural or scenic resources;

(b) Protect streams or water supply;

(c) Promote conservation of soils, wetlands, beaches or tidal marshes;

(d) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries; or

(e) Enhance recreation opportunities.

(2) **OPEN SPACE.** Shall not include lands below mean high water.

ORDINANCE. This unified development ordinance, text and map including any amendments. Whenever the effective date of the **ORDINANCE** is referred to, the reference includes the effective date of any amendment to it.

OTHERWISE PROTECTED AREA (OPA). See **COASTAL BARRIER RESOURCES SYSTEM (CBRS)**.

OVERLAY ZONING. Zoning which crosses other zoning lines which may add additional requirements to each line crossed or "overlaid". Note: does not include areas established by the state or federal government such as the inlet hazard area or the coastal resource barrier system.

OWNER. Any person, agent, firm or corporation having a legal or equitable interest in the property.

PARK. Land consisting of open space, in grasses, trees and possibly with shrubbery, sometimes providing paths for walking and bicycling, maintained as a public or semi-public use. **PARKS** are usually either a formal landscape, or maintained in basically a natural state.

PARKING LOT. Any public or private area, providing ten or more parking spaces designed and used for parking or storing motor vehicles.

PARKING SPACE. A storage space of not less than 160 square feet for one automobile.

PERSON. An individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.

PERVIOUS SURFACE. Any material that permits full or partial absorption of stormwater into previously unimproved land.

PIER. A water-related structure extending into the water from the shore, whether floating or fixed to the bottom, for use as a boat landing place or promenade, constructed of pylons and decking for mooring and access to a boat or watercraft. May also include structures designed and constructed to serve as a means of recreational access (fishing and the like) to the ocean and sound waters.

PLANNED UNIT DEVELOPMENT (PUD).

(1) A zoning overlay;

(2) A special use designed to provide for developments incorporating a single type or a variety of residential and related uses which are planned and developed as a unit. Such development may consist of individual lots and common building sites. Common open space must be an element of the plan related to affecting the long-term value of the entire development; or

(3) A subdivision designed to permit flexibility and allow creative approaches to residential development not usually associated with conventional subdivisions. Flexible setbacks and lot sizes are considered.

PLANNING AND DEVELOPMENT REGULATION JURISDICTION. The geographic area defined in § 1.05 of this ordinance within which the town may undertake planning and apply the development regulations authorized by G. S. 160D.

PLANNING BOARD. Any board or commission established pursuant to G.S. 160D-301

PLAT. A document, prepared by a registered surveyor or engineer, that delineates property lines and shows monuments and other landmarks for the purpose of identifying property.

POST-FIRM. Construction or other development for which the “start of construction” occurred on or after July 2, 1987, the effective date of the initial flood insurance rate map.

POSTAL SERVICE. Comprises establishments primarily engaged in operating the national postal service. Establishments primarily engaged in performing one or more POSTAL SERVICES, such as sorting, routing and/or delivery, on a contract basis (except the bulk transportation of mail) are included in this industry.

PRE-FIRM. Construction or other development for which the “start of construction” occurred before July 2, 1987, the effective date of the initial flood insurance rate map.

PREMISES. A single piece of property as conveyed in a deed or a lot or a number of adjacent lots on which is situated a land use, a building, or group of buildings designed as a unit or on which a building or group of buildings are to be constructed.

PRIMARY FRONTAL DUNE (PFD). A continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

PRINCIPAL BUILDING. See BUILDING, PRINCIPAL.

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

PRIVATE CLUBS. See CLUB OR LODGE.

PROPERTY. All real property subject to land-use regulation by the Town. The term includes any improvements or structures customarily regarded as a part of real property.

PUBLIC ADMINISTRATION. Consists of establishments of federal, state and local government agencies that administer, oversee and manage public programs and have executive, legislative or judicial authority over other institutions within a given area.

PUBLIC ROAD OR STREET. A road or street that has been dedicated for use and maintenance by the town or the state and serves as the principal means of access to abutting properties.

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

PUBLIC SEWAGE DISPOSAL SYSTEM. An approved sewage disposal system serving two or more connections including private, municipal and sanitary district sewage systems located and constructed according to specifications of the County Health Department in consultation with the division of health services and/or the division of environmental management of the department of environment, health and natural resources. This definition is not to be inferred as limited to publicly owned or operated systems, as such systems may be owned and operated by either public or private enterprise.

PUBLIC WATER SUPPLY SYSTEM. An approved water supply system serving 15 or more connections including county, municipal and sanitary district water systems designated to serve particular subdivisions at full development and constructed to specifications of the county health office in consultation with the division of health services and/or the division of environmental management of the department of environment, health and natural resources. This definition is not to be inferred as limited to publicly owned or operated systems, as such systems may be owned and operated by either public or private enterprise.

QUASI-JUDICIAL DECISION. A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board.

RECREATIONAL VEHICLE (RV).

(1) A vehicle which is:

- (a) Built on a single chassis;
- (b) Four hundred 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;
- (d) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use; and
- (e) Is fully licensed and ready for highway use.

(2) For the purpose of this ordinance, "tiny homes/houses" and park models that do not meet these items listed above are not considered RECREATIONAL VEHICLES and should meet the standards of and be permitted as residential structures.

REFERENCE LEVEL. The bottom of the lowest horizontal structural member of the lowest floor for structures within all special flood hazard areas.

REGULATORY FLOOD PROTECTION ELEVATION. The base flood elevation plus the freeboard. In special flood hazard areas where base flood elevations (BFEs) have been determined, this elevation shall be the BFE plus two feet of freeboard. In special flood hazard areas where no BFE has been established, this elevation shall be at least two feet above the highest adjacent grade.

REMEDY A VIOLATION. To bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the flood damage prevention

ordinance or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

RENTAL, SHORT-TERM. See SEASONAL RENTAL.

REPETITIVE LOSS. 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 each such flood event, on the average, equals or exceeds 25% of the market value of the structure before the damage occurred.

RESERVATION. A reservation of land does not involve any transfer of property rights, it simply constitutes an obligation to keep property free from development for a stated period of time.

RESERVE STRIP. A narrow strip of land overlying a dedicated street reserved to the town or NCDOT for control of access until such time as additional right-of-way is accepted by the town or NCDOT for the continuation or widening of the street.

RESTAURANT. A commercial establishment where food and drink are prepared, served and consumed primarily within the principal building.

RETAINING WALL. A human-made barrier constructed for the purpose of stabilizing soil, retarding erosion or terracing a parcel or site.

RETREAT CENTER. A new or existing facility operated by a corporation or association of persons or churches for social and recreational purposes. A RETREAT CENTER may be owned by a profit or not-for-profit organization.

RIVERINE. Relating to, formed by or resembling a river (including tributaries), stream, brook and the like.

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

SAND DUNES. Naturally occurring accumulations of sand in ridges or mounds landward of the beach.

SATELLITE DISH ANTENNA(S) (SATELLITE EARTH STATIONS). A single or group of satellite parabolic (or dish) antennas. These dishes are mounted to a supporting device that may be a pole or truss assembly attached to a foundation in the ground, or in some other configuration. A SATELLITE EARTH STATION may include the associated separate equipment enclosures necessary for the transmission or reception of wireless communications signals with satellites.

SCREENING. A fence, wall, hedge, landscaping, earth berm, buffer area or any combination of these provided to create a visual and/or physical separation between certain land uses. SCREENING may be located on the property line or elsewhere on the site.

SEASONAL RENTAL. The rental of residential property for vacation, leisure or recreation purposes for fewer than 90 days by a person who has a place of permanent residence to which he or she intends to return, as defined by the NC Vacation Act 42A-4, as amended.

SETBACK. The required distance between every structure and the lot lines of the lot on which it is located.

SEWAGE SYSTEM, PUBLIC OR COMMUNITY. See PUBLIC SEWAGE DISPOSAL SYSTEM.

SHALL. The term, when used in this ordinance, is construed as mandatory.

SHEAR WALL. Walls used for structural support but not structurally joined or enclosed at the end (except by breakaway walls). SHEAR WALLS are parallel or nearly parallel to the flow of the water.

SHOPPING CENTER. A group of commercial establishments planned and constructed as a single unit with off-street parking and loading facilities provided on the property and related in location size and type of shops to the trade area which the unit serves.

SIGN. A communication device, structure or fixture used to attract attention or convey a message, when the same is placed in view of the general public and includes every billboard, freestanding ground sign, wall sign, roof sign, illuminated sign, projecting sign and temporary sign.

SIGN, ABANDONED. A sign pertaining to or associated with an event, business or purpose which is no longer ongoing and which has been inactive or out of business for a period of 90 consecutive days or longer; or a sign which contains structural components but no display for a period of 90 consecutive days or longer.

SIGN, ADVERTISING. A sign that has as its purpose to promote, advertise or sell a product or service obtainable on the premises upon which the sign is located, and not to identify the premises.

SIGN AREA. Shall be measured by the smallest square, rectangle, triangle, circle or combination thereof, which will encompass the entire advertising copy area including architectural trim and structural members. In computing AREA, only one side of a double-faced sign shall be considered.

SIGN, COMBINATION. A sign incorporating any combination of the features of the pole, projecting and roof signs.

SIGN, DIRECTIONAL. Any on-premises sign that includes information assisting in the flow of pedestrian or vehicular traffic such as enter, exit and one-way.

SIGN, DISPLAY. The area made available by the sign structure for the purpose of displaying the advertising message.

SIGN, ELECTRIC. A sign containing electrical wiring, but not including signs illuminated by an exterior light source.

SIGN, FREESTANDING. Any sign supported wholly or in part by some structure other than the building or buildings housing the business to which the sign pertains, or any sign which projects more than five feet from the side of the building to which it is attached.

SIGN, GROUND. A billboard or similar type of sign which is supported by one or more uprights, poles or braces in or upon the ground other than a combination sign or pole sign, as defined by the ordinance.

SIGN, IDENTIFICATION. A sign used to display only the name, address, crest or trademark of the business, individual, family, organization or enterprise occupying the premises, the profession of the occupant or the name of the building on which the sign is displayed; or a permanent sign announcing the name of a subdivision, shopping center, tourist home, group housing project, church, school, park or public or quasi-public structure, facility or development and the name of the owners or developers.

SIGN, OFF-PREMISES. A sign which directs attention to a business, commodity, service or entertainment not exclusively related to the premises where such sign is located or to which it is affixed.

SIGN, POLE. A sign wholly supported by a sign structure in the ground.

SIGN, PORTABLE DISPLAY SURFACE. A display surface temporarily fixed to a standardized advertising structure which is regularly moved from structure to structure at periodic intervals.

SIGN, PRINCIPAL USE OR ON-PREMISES. Any sign advertising an establishment, a service commodity, or activity conducted upon the premises where the sign is located.

SIGN, PROJECTING. A sign other than a wall sign, which projects from and is supported by a wall of a building or structure.

SIGN, REAL ESTATE (OFF-SITE). A readily removable sign announcing the proposed sale or rental of property other than the property upon which the sign is located and providing directions to the subject property.

SIGN, REAL ESTATE (ON-SITE). A sign announcing the sale or rental of the property upon which the sign is located.

SIGN, ROOF. A sign erected upon or above a roof or parapet of a building or structure.

SIGN, SNIPE. A sign which is attached to trees, poles or to other objects, with a message appearing on it that does not apply to the present use of the premises or structure upon which the sign is located. Any sign in the state or town right-of-way is a SNIPE SIGN, unless a minor easement and permit has been issued by the town.

SIGN STRUCTURE. Any structure which supports or is capable of supporting a sign as defined in the ordinance.

SIGN, WALL. Any sign attached to or erected against the wall of a building or structure, with the exposed face of the sign in a plane parallel to the plane of said wall.

SINGLE-FAMILY DWELLING. A building containing one dwelling unit only, where the building is designed to be occupied by one family.

SITE PLAN. A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review. A site plan approval based solely upon application of objective standards is an administrative decision and a site plan approval based in whole or in part upon the application of standards involving judgment and discretion is a quasi-judicial decision. A site plan may also be approved as part of a conditional zoning decision.

SITE-SPECIFIC DEVELOPMENT PLAN.

(1) A plan of land development submitted to the town for purposes of obtaining one of the following zoning or land use permits:

(a) Subdivision plans as referenced in the subdivision ordinance in effect at the time a vested right is requested; or

(b) Conditional zoning and/or permit and planned unit development (PUD) as referenced in the zoning ordinance in effect at the time a vested right is requested.

(2) All SITE-SPECIFIC DEVELOPMENT PLANS shall conform to the referenced ordinances as well as the following:

(a) The approximate boundaries of the site;

(b) Significant topographical and other natural features affecting development of the site;

(c) The approximate location on the site of the proposed buildings, structures and other improvements;

(d) The approximate dimensions, including height, of the proposed buildings and other structures; and

(e) The approximate locations of all existing and proposed infrastructure on the site, including water, sewer, roads and pedestrian walkways.

(3) Notwithstanding the foregoing, neither a variance, a sketch plan nor any other document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a SITE-SPECIFIC DEVELOPMENT PLAN.

SOLID WASTE DISPOSAL FACILITY. Any facility involved in the disposal of solid waste, as defined in G.S. § 130A-290(a)(35).

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

SPECIAL FLOOD HAZARD AREA (SFHA). The land in the floodplain subject to a 1% or greater chance of being flooded in any given year, as determined in § 7.03(B).

SPECIALTY MARKET. Rented spaces at a location other than a permanent retail store, to others for the purpose of selling goods at retail or offering goods for sale at retail (i.e., flea market, farmers market).

SPILL LIGHT. Light from a lighting installation that falls outside of the boundaries of the property on which it is located. Usually results in obtrusive light.

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

STEALTH WIRELESS TRANSMISSION FACILITY. A wireless transmission facility that is screened, disguised, concealed or otherwise camouflaged as a natural structure, structure or part of a structure such that the wireless transmission facility is indistinguishable from other natural structures, structures or the structure that it is attached to or within.

STREET. A thoroughfare which affords the principal means of access to abutting property.

STREET, CUL-DE-SAC. A street designed with a closed end, terminated by a vehicular turnaround and does not intersect with another street.

STREET, PRIVATE. Any road or street which:

(1) Is not publicly owned and maintained and is used for access by the occupants of the development, their guests, and the general public; and

(2) Requires a subdivision streets disclosure statement pursuant to G.S. § 136-102.6, as amended.

STRUCTURAL ALTERATIONS. Any change in the supporting members of a building, such as bearing walls, columns, beams or girders except for repair or replacement.

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

SUBDIVIDER. Any person, firm or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

SUBDIVISION. The division of land for the purpose of sale or development as specified in G.S. 160D-802

SUBDIVISION REGULATION. The subdivision regulation contained in Article 5 of this ordinance and authorized by G. S. 160D Article 8.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% 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 each such flood event, on the average, equals or exceeds 25% of the market value of the structure before the damage occurred. (Note: The last sentence is required for eligibility for increased cost of compliance (ICC) benefits for repetitive losses.)

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

(1) Any correction of existing violations of state or community health, sanitary or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or

(2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to § 7.04(E).

SWIMMING POOL. Any permanent outdoor structure intended for swimming or recreational bathing that contains water over 24 inches deep including in-ground, above-ground and on-ground swimming pools, hot tubs and spas, but not including temporary or inflatable pools having a depth of 24 inches or less. A structure is considered "outdoor" if it is not totally contained within a roofed structure and surrounded on all four sides by the walls of the enclosing structure.

TAXI SERVICE. Comprises establishments primarily engaged in providing passenger transportation by automobile or van, not operated over regular routes and on regular schedules. Establishments of taxicab owner/operators, taxicab fleet operators or taxicab organizations are included in this industry.

TECHNICAL BULLETIN and TECHNICAL FACT SHEET.

(1) A FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in 44 CFR 60.3. The bulletins and fact sheets are intended for use primarily by state and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations, rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

(2) It should be noted that technical bulletins and technical fact sheets provide guidance on the minimum requirements of the NFIP regulations. State or community requirements that exceed those of the NFIP take precedence. Design professionals should contact the community officials to determine whether more restrictive state or local regulations apply to the building or site in question. All applicable standards of the state or local building code must also be met for any building in a flood hazard area.

TEMPERATURE CONTROLLED. Having the temperature regulated by a heating and/or cooling system, built-in or appliance.

TOWAIR. Landing facility slope calculations designed to avoid obstruction by towers to aircraft.

TOWNHOUSE. A single-family dwelling unit constructed in a group of three or more attached units in which each unit extends from the foundation to roof and with open space on at least two sides.

USE, CHANGE OF. The replacement of an existing use by a new use, or a change in the nature of an existing use, but not including a change of ownership, tenancy or management where the previous nature of the use, line of business or other function is substantially unchanged.

USE, PERMITTED. A use which is permitted in a district for which a zoning permit may be issued by the Zoning Administrator.

USE, SPECIAL. A use which is permitted under certain conditions in a district only after review by the Planning Board and final approval by the Board of Aldermen after review by the Planning Board.

UTILITIES. Comprises uses engaged in the provision of the following utility services: electric power, natural gas, steam supply, water supply and sewage removal. Within this sector, the specific activities associated with the utility services provided vary by utility: electric power includes generation, transmission and distribution; natural gas includes distribution; steam supply includes provision and/or distribution; water supply includes treatment and distribution; and sewage removal includes collection, treatment and disposal of waste through sewer systems and sewage treatment facilities. Excluded from this sector are establishments primarily engaged in waste management services classified in Subsector 562, Waste Management and Remediation

Services. These establishments also collect, treat and dispose of waste materials; however, they do not use sewer systems or sewage treatment facilities.

VARIANCE. A grant of relief from the requirements of this ordinance.

VIOLATION. The failure of a structure or other development to be fully compliant with this ordinance. Also, a structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §§ 7.04 and 7.05 is presumed to be in violation until such time as that documentation is provided.

WALKWAY or BOARDWALK. A wooden walkway for pedestrians providing a common path through wetlands or to crossovers of coastal dunes and other sensitive environments.

WATER SURFACE ELEVATION (WSE). The height, in relation to NAVD 1988, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

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

WIRELESS TELECOMMUNICATIONS ATTACHMENTS (WTA). Devices mounted onto a support structure, principally intended to radiate or receive a source of non-ionizing electromagnetic radiation (NIER), and accessory equipment related to broadcast services, including, but not limited to, private radio services, cellular or digital telephone services, pagers, beepers, wireless data repeaters and common carriers (as regulated by the FCC), including AM, FM, two-way radio, fixed point microwave dishes, commercial satellite, HDTV, cellular and PCS communication systems. The term WTA does not include electrical or telephone transmission lines or supporting distribution structures, antennas of amateur radio (ham) operators, and amateur club services licensed by the FCC.

WIRELESS TELECOMMUNICATIONS SUPPORT STRUCTURE (WTSS). All freestanding monopole, self-supported, guyed or similar structures whose primary design is to provide for support and placement of wireless telecommunications antennas.

YARD. An open space on the same lot with a building (including the area of steps, eaves and uncovered porches, but not including the areas of covered porches) unoccupied and unobstructed from the ground upward, except by trees or shrubbery or as otherwise provided herein.

YARD, FRONT. A yard across the full width of the lot, extending from the front line of the building to the front line of the lot.

YARD, REAR. A yard extending across the full width of the lot and measured between the rear line of the lot and the rear line of the main building.

YARD, SIDE. An open unoccupied space on the same lot with a building between the building and the side line of the lot extending through from the front building line to the rear yard or, where no rear yard is required, to the rear line of the lot.

ZERO LOT LINE. A concept commonly used in planned developments where individual commercial buildings or dwellings, such as townhouses (row houses), duplex town homes and patio homes, are sold along with a small yard or patio area. Such commercial or residential units are grouped in buildings with two or more units per building, usually including common walls or married walls. With ZERO LOT LINE development styles, the minimum interior side yard requirements are relaxed. Construction takes place right up to the lot line.

ZONING. A police-power measure, enacted primarily by general-purpose units of local government, in which the community is divided into districts or zones within which permitted and conditional uses are established as are regulations governing lot size, building bulk, placement and other development standards. Requirements vary from district to district, but they must be uniform within districts. The unified development ordinance consists of two parts: a text and a map.

ZONING MAP AMENDMENT or REZONING. An amendment to a zoning regulation for the purpose of changing the zoning district that is applied to a specified property or properties. The term also includes (i) the initial application of zoning when land is added to the territorial jurisdiction of the Town that has previously adopted zoning regulations and (ii) the application of an overlay zoning district or a conditional zoning district. The term does not include (i) the initial adoption of a zoning map by the Town, (ii) the repeal of a zoning map and readoption of a new zoning map for the entire planning and development regulation jurisdiction, or (iii) updating the zoning map to incorporate amendments to the names of zoning districts made by zoning text amendments where there are no changes in the boundaries of the zoning district or land uses permitted in the district.

ZONING REGULATION. The zoning regulation contained in Article 4 of this ordinance and authorized by G. S. 160D Article 7.

ZONING VESTED RIGHT. A right pursuant to G.S. § 153A-344.1 to undertake and complete the development and use of land under the terms and conditions of an approved site development plan even if the zoning or zoning district requirements are changed prior to development.

(Ord. passed 12-2-2004; Ord. passed 3-3-2005; Ord. passed 6-1-2006; Ord. passed 5-6-2010; Ord. passed 11-2-2011; Ord. 2015-4, passed 5-7-2015; Ord. passed 11-3-2016; Ord. passed - -)

TABLE 11-1 ABBREVIATIONS

Below is a list of abbreviations and their meanings found throughout the ordinance.

AASS	Alternative antenna support structures
AEC	Area of environmental concern
AMTA	American Mobile Telecommunications Association
BFE	Base flood elevation
BOA	Board of Aldermen
CAMA	Coastal Area Management Act
CBRS	Coastal barrier resources system
CLOMR	Conditional letter of map revision
dbh	Diameter at breast height
DENR	North Carolina Department of Environment and Natural Resources
DWQ	Division of Water Quality
FAR	Floor area ratio
Fc	Foot-candles
FEMA	Federal Emergency Management Agency
FIRM	Flood insurance rate map
FIS	Flood insurance study
GIS	Geographic information system
G.S.	North Carolina General Statutes
HAG	Highest adjacent grade
HQW	High quality water
LAG	Lowest adjacent grade

LOMR	Letter of map revision
LSGAC	Local and State Government Advisory Committee
NCDOT	North Carolina Department of Transportation
NFIP	National flood insurance program
NGVD	National geodetic vertical datum
OPA	Otherwise protected area
P	Permitted use
PB	Planning Board
ROW	Right-of-way
RV	Recreational vehicle
SFHA	Special flood hazard area
S	Special use
TDM	Transportation demand management
TIA	Traffic impact analysis
TRC	Technical Review Committee
UDO	Unified development ordinance
USDA	United States Department of Agriculture
USGS	United States Geologic Survey
WSE	Water surface elevation
WTSS	Wireless telecommunication support structures
ZBA	Board of Adjustment

(Ord. passed 11-2-2011)