

# CAROLINA BEACH

Town Council Regular Meeting

Tuesday, July 09, 2024 – 6:00 PM

Council Chambers, 1121 N. Lake Park Boulevard, Carolina Beach, NC



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## AGENDA

### CALL TO ORDER

### INVOCATION AND PLEDGE OF ALLEGIANCE

### ADOPT THE AGENDA

### CONSENT AGENDA

- [1.](#) Budget Amendments/Transfers FY24
- [2.](#) First Reading of Resolution 24-2307 supporting New Hanover County's Ordinance on Abandoned Vessels
- [3.](#) Resolution for the final CAMA grant application pertaining to a new ADA ramp and paved parking lot at 1810 Canal Drive
- [4.](#) Approval of the Emergency Debris Removal Contract
- [5.](#) Approval of Council Meeting Minutes

### SPECIAL PRESENTATIONS

- [6.](#) Grant Award Presentation by the Terry Benjey Bicycle Foundation
- [7.](#) Manager's Update

### PUBLIC COMMENT

*Public Comment allows the public the opportunity to address Town Council. Please direct your comments to Council only. Speakers should restrict comments to no more than three minutes. Items or questions presented during this time will not be discussed by Council. However, the topic may be deferred to Town staff or a Town committee for follow-up. Please be sure to state your name and address, and speak directly into the microphone for those watching online.*

### PUBLIC HEARINGS

- [8.](#) Conditional Zoning to consider a 2-unit PUD at 2 North Carolina Avenue to reduce the 15' separation requirement Applicant: Michael Rose Properties, LLC

- [9.](#) Consider approving the final draft of the Unified Development Ordinance (UDO) repealing Ch. 30, 32, 36, and 40 and the existing relevant language will be incorporated into the UDO.

Applicant: Town of Carolina Beach

- [10.](#) Text Amendment to Chapter 40 Art. III. Zoning District Regulations, Art. V. Off-street Parking and Loading Requirements; Parking, and Art. IX. Development Standards for Particular Uses to amend standards for Wine and Beer Shops. Applicant: Town of Carolina Beach

## **ITEMS OF BUSINESS**

- [11.](#) Committee Appointment Parks and Rec

- [12.](#) Request to Consider a Proposed Traffic Signal Modification at Harper Avenue and North Lake Park Boulevard

## **COUNCIL COMMENTS**

## **ADJOURNMENT**



# AGENDA ITEM COVERSHEET

**PREPARED BY:** Debbie Hall, Finance Director

**DEPARTMENT:** Finance

**MEETING:** Town Council – 7/9/24

**SUBJECT:** Budget Amendments/Transfers FY24

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**BACKGROUND:**

I have received several budget amendments and/or transfer requests. Transfers require only your notification whereas amendments require your approval. Listed below you will find a description of the amendments and/or transfers. I have also attached a copy of the supporting documentation for the appropriations.

**Appropriations:**

Appropriate \$5,959.13 from Sale of Fixed Asset to account 10-409-030 Vehicle Leases to cover lease payments on replacement Police vehicles.

**Transfers:**

Transfer \$10,525 from account 10-420-051 Executive Liability Insurance to account 10-409-030 Vehicle Leases to cover lease payments on replacement for totaled Police vehicle.

Transfer \$1,000 from account 10-510-040 Police Crime Prevention to account 10-409-030 Vehicle Leases to cover lease on detective vehicle.

Transfer \$8,257 from account 10-580-074 Environmental Capital over \$10,000 to account 10-409-030 Vehicle Leases to cover cost of Dump Truck lease. The Town decided to lease instead of purchasing a vehicle.

**Annual Transfer:**

A journal entry has been prepared for the annual budgeted transfer from the Utility Fund to the General Fund in the amount of \$750,000.

**BUDGET IMPACT:**

The Budget will not be impacted by the amendments or transfers.

**ACTION REQUESTED:**

Approve the budget amendments and/or transfers as presented by the Finance Director.



## CAROLINA BEACH POLICE DEPARTMENT

1121 N. Lake Park Blvd.  
Carolina Beach, NC 28428  
Tel: (910) 458-2540  
Fax: (910) 458-2988



Item 1.

TO: DEBBIE HALL, FINANCE DIRECTOR  
BRUCE OAKLEY, TOWN MANAGER

FROM: VIC WARD, CHIEF OF POLICE

RE: BUDGET TRANSFER REQUEST

DATE: JUNE 28, 2024

The Carolina Beach Police Department is requesting the appropriation of \$5,959.13 from 10-383-000 (Sale of Fixed Assets) to account 10-409-030 (Vehicle Leases) to cover lease payments on replacement CBPD vehicles. We are also requesting a transfer of \$10,525.00 from account 10-420-051 (Executive Liability Insurance) to account 10-409-030 (Vehicle Leases) to cover lease payments on the replacement of the totaled CBPD vehicle.

Thank you.

*C. V. Ward*



# CAROLINA BEACH POLICE DEPARTMENT

1121 N. Lake Park Blvd.  
Carolina Beach, NC 28428  
Tel: (910) 458-2540  
Fax: (910) 458-2988



Item 1.

TO: Debbie Hall, Finance Director  
Bruce Oakley, Town Manager

FROM: Chief C. V. Ward *C. V. Ward*

DATE: June 11, 2024

RE: Budget Transfer Request

The Carolina Beach Police Department would like to request the following budget transfer for FY23/24.

**\$1,000.00 – Lease for new SIU vehicle**

From 10-510-040 Crime Prevention/DARE (ABC Grant funds)  
To 10-409-030 Vehicle Lease Payments

Thank you for your consideration.

Budget TransferDebbie,

Brian Stanberry <brian.stanberry@carolinabeach.org>

Fri 2024-06-28 12:59 PM

To:Debbie Hall <debbie.hall@carolinabeach.org>

Cc:Alisa Perry <alisa.perry@carolinabeach.org>

Debbie,

I would like to please request the following budget transfer:

\$8500 from 10-580-074 Capital over \$10K to 10-409-080 Vehicle Debt Service to account for the payment on the new environmental dump truck. If you have any questions let me know. Thank you for your help.

*Brian Stanberry*

Director of Public Works

Town of Carolina Beach

910-458-8291 office

910-443-1837 mobile

brian.stanberry@carolinabeach.org



DISCLAIMER:

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties



Fund Or Attrib	Type	Dept Desc	Disp Acct	Budget	YTD	Variance
Fund Or Attrib: 10 General Fund						
Type: Revenues						
10 General Fund	Revenues		10-397-003 Reimbursement from W&S Fund	\$750,000.00	\$0.00	(\$750,000.00)
				\$750,000.00	\$0.00	\$0.00
				\$750,000.00	\$0.00	\$0.00
Fund Or Attrib: 30 Utilities Fund						
Type: Expenses						
30 Utilities Fund	Expenses	W&S Administrative	30-800-090 Capital Reserve	\$0.00	\$0.00	\$0.00
				\$0.00	\$0.00	\$0.00
				\$0.00	\$0.00	\$0.00





## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Kim Ward, Town Clerk

**DEPARTMENT:** Clerk

**MEETING:** Town Council Meeting 7/9/2024

**SUBJECT:** First Reading of Resolution 24-2307 supporting New Hanover County's Ordinance on Abandoned Vessels

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### **BACKGROUND:**

On June 17, 2024 New Hanover County Commissioners approved an Ordinance authorizing the Sherriff's Office to identify, and when needed, remove abandoned vessels from waterways in the unincorporated areas of the county.

New Hanover County asked that the Carolina Beach Town Council consider supporting this ordinance by approving a resolution authorizing the Sheriff's Office to remedy abandoned vessels within town limits.

### **ACTION:**

Motion to approve a 2<sup>nd</sup> reading of Resolution 24-2307 on July 23, 2024, authorizing the New Hanover County Sheriff's Office to remedy abandoned vessels within town limits.

**NEW HANOVER COUNTY BOARD OF COMMISSIONERS**  
**REQUEST FOR BOARD ACTION**  
**MEETING DATE: 6/17/2024**

Item 2.

Consent

**DEPARTMENT:** County Attorney      **PRESENTER(S):** Chief Jonathan Hart, Chief Deputy Sheriff

**CONTACT(S):** Chief Jonathan Hart, Chief Deputy Sheriff; Lisa Wurtzbacher, Assistant County Manager; Karen Richards, Deputy County Attorney

**SUBJECT:**

**Second Reading: Approval of New Hanover County Abandoned Vessel Ordinance**

**BRIEF SUMMARY:**

Currently, the authority for removing abandoned vessels from bodies of water in the unincorporated area of the County has been with the NC Wildlife Resources Commission. Pursuant to North Carolina General Statute (NCGS) 153A-132, Removal and Disposal of Abandoned and Junked Motor Vehicles; Abandoned Vessels, a county may by ordinance prohibit the abandonment of vessels in navigable waters within the county’s ordinance-making jurisdiction.

Staff have drafted the attached ordinance which allows the New Hanover County Sheriff’s Office (Sheriff’s Office) to take appropriate actions to address abandoned vessels in the unincorporated areas of the county, in accordance with NCGS 153A-132. The ordinance defines what constitutes an abandoned vessel, outlines procedures for notifying the owner and, if necessary, removing the vessel. It allows owners to notify the County within 10 days of the notice of the plan to address the issue(s) specified in the notice, and 30 days to rectify the conditions or remove the vessel.

Additionally, the ordinance provides authority to the Sheriff’s Office to remove or relocate the vessel, with all associated costs of towing, relocation, removal and storage or disposal and area restoration falling to the owner. Penalties for violating the ordinance are included such as a class 3 misdemeanor with a \$100 per day fine for each offense, and civil penalties of \$500 per offense.

The ordinance permits the Sheriff’s Office to take these actions only within the unincorporated areas of the County. It will not prevent the NC Wildlife Resources Commission from continuing to take necessary actions. Other jurisdictions within the County would need to adopt a similar ordinance and also delegate their authority to the Sheriff’s Office in order for the department to address any abandoned vessels in their jurisdiction. Additionally, letters were sent on behalf of New Hanover County to the other local municipalities sharing that the abandoned vessel ordinance was pending Board of Commissioner approval in June and requesting once adopted, the other municipalities adopt their own resolutions. This coordinated approach ensures that the adopted ordinance in New Hanover County is clearly defined and widely shared.

NCGS 153A-123(b) requires any ordinances imposing a criminal penalty only be enacted after a second reading and adoption of said ordinance. The first reading of this ordinance was held at the May 20, 2024 Board of Commissioners meeting. Each municipality within New Hanover County has the option to adopt its own ordinance and request the County’s assistance, adopt this ordinance by resolution per NCGS 153A-122(b), or develop their own removal process.

**STRATEGIC PLAN ALIGNMENT:**

- Community Safety & Well-being
  - The community supports a life that mitigates health and safety risks
    - Effectively and efficiently respond to public health and safety demands.
- Good Governance
  - Effective County Management
    - Increase transparency and awareness about county actions

**RECOMMENDED MOTION AND REQUESTED ACTIONS:**

Adopt the ordinance.

**ATTACHMENTS:**

New Hanover County Abandoned Vessel Ordinance  
City of Wilmington  
Town of Wrightsville Beach  
Town of Carolina Beach  
Town of Kure Beach

**COUNTY MANAGER'S COMMENTS AND RECOMMENDATIONS: (only Manager)**

Recommend adoption.

**COMMISSIONERS' ACTIONS:**

Adopted 5-0.

**NEW HANOVER COUNTY BOARD OF COMMISSIONERS**

**ORDINANCE**

**AMENDING NEW HANOVER COUNTY CODE CHAPTER 23 ENVIRONMENT**

The Board of County Commissioners of New Hanover County, North Carolina does hereby ordain and enact that the New Hanover County Code of Ordinances, Chapter 23, Environment, be amended as follows:

- I. Add Article X, Abandoned Maritime Vessel(s) to include the following new sections:

**Section 23-514. Definitions.**

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Abandoned vessel:**

- (a) is a maritime vessel that is in danger of sinking, has sunk, is resting on the bottom, or is located such that it is a hazard to navigation or is an immediate danger to other vessels.
- (b) is a maritime vessel has been left unattended and is in significant disrepair, neglected, dismantlement, or noncompliance with current registration requirements, such that the condition may affect the seaworthiness of the vessel or affect the safety of the public or the environment.

**Section 23-515. Abandoned vessels prohibited.**

- (a) It shall be unlawful to anchor, moor or ground on the public land or waters of the county or on private property without permission of the property owner, any abandoned vessel.
- (b) Upon identifying an abandoned vessel, the sheriff shall post a notice on board the vessel, if above water, and shall attempt to notify the owner by certified mail or personal delivery of notice. If personal service is not obtained after an attempt to do so, the posting of the vessel shall be deemed full and sufficient personal and in rem service hereunder. The notice shall:
  - (1) Describe the vessel and location of the vessel, however the notice posted aboard the vessel need not include description and location.
  - (2) Identify the condition(s) identified that must be corrected if repairable.
  - (3) Inform the owner that a written plan for correcting identified conditions, or removal of the vessel and restoration of the affected surrounding environmental area must be submitted within ten (10) days of the notice is served.
  - (4) Inform the owner that the identified conditions must be corrected, or the vessel must be removed from the waters or public lands and the affected surrounding environmental area restored, within thirty (30) days of the date the notice posted aboard the vessel.
  - (5) Inform the owner that failure to meet either the ten-day or thirty-day deadlines will result in the vessel being deemed abandoned, subject the owner to civil/criminal penalties, and that all costs associated with removal and disposition of the vessel and restoration of the affected surrounding environmental areas will be the responsibility of the owner.
- (c) Failure of the owner to correct the dangerous condition or remove the vessel from the waters or public lands of the county within thirty (30) days, after notice, shall cause the vessel to be defined as an abandoned vessel.
- (d) Any abandoned vessel located on or below any navigable waters, or beaches, or grounded adjacent thereto may be removed or relocated and impounded by the sheriff.
- (e) The owner shall be responsible for all costs of towing, relocation, removal and storage of the vessel or disposal and restoration of the area surrounding the vessel, including costs owed to a third party, and costs incurred by the county or the sheriff. Any vessel towed, removed, relocated, or impounded shall be subject to a lien pursuant to North Carolina General Statute 44A.

**Section 23-516. Exceptions.**

- (a) Shipwrecks, vessels, cargoes, tackle, and other underwater archeological remains that have been in place and unclaimed for more than ten (10) years shall not be considered abandoned vessels unless approved by the North Carolina Department of Cultural Resources, which is the legal custodian of these properties pursuant to North Carolina General Statutes 121-22 and 121-23.
- (b) Any vessel within an enclosed building boathouse, or upon the premises of a business enterprise being operated in a lawful place and manner if the vessel is necessary to the operation of the enterprise.

**Section 23-517. Enforcement responsibility and authority.**

- (a) The sheriff of the county, or any law enforcement officer with territorial jurisdiction, is authorized and empowered to enforce this article.
- (b) The sheriff is authorized to board any vessel as required to enforce the provisions of this article, or any federal or state law, and such boarding in the performance of official duties shall not constitute a trespass.
- (c) The sheriff is authorized to seize, tow, remove or relocate from the public waters, and to store or dock the vessel in a safe place that, as a result of arresting the operator, or taking any enforcement action that would render the vessel unattended, or without an operator of suitable age, discretion and competence.
- (d) The county or the sheriff may use staff, equipment, and material under its control or provided by any cooperating federal, state, or local government or agency; may authorize or contract with any private agent or contractor it deems appropriate; or may authorize or contract with any federal, state, or local government or agency for the removal, storage, or disposal of an abandoned vessel and restoration of the affected area.
- (e) The owner shall be responsible for all costs of towing, relocation, removal and storage or disposal of the vessel, including costs owed to a third party, and costs incurred by the county or the sheriff.

**Section 23-518. Penalties for violation.**

- (a) *Criminal penalties.*
  - (1) A violation under this article shall be deemed a class 3 misdemeanor punishable to the extent provided in North Carolina General Statute 14-4 and shall carry a fine of One Hundred Dollars (\$100.00) per offense. A violation that either reoccurs or continues without cessation twenty-four (24) hours after a person has been criminally charged, either by arrest or citation, shall constitute a separate offense.
  - (2) A conviction under this section does not bar the assessment and collection of the civil remedies provided in this article.
- (b) *Civil remedies.* In addition to, or in lieu of any criminal penalties set forth herein, any person, firm or corporation violating any provisions of this article shall be subject to civil penalties as follows:
  - (1) A violation hereunder shall be subject to a civil remedy in the amount of Five Hundred Dollars (\$500.00) per offense. A violation that either reoccurs or continues without cessation after a twenty-four (24) hour period shall constitute a separate offense.
  - (2) Civil remedies shall be used in the recovery of the costs expended in enforcing this article.
- (c) *Other remedies.* Any other remedies available pursuant to North Carolina General Statute 153A-123, Enforcement of Ordinances.

**Section 23-519. Appeal.**

- (a) An abandoned vessel designation, abatement removal, property disposition and civil penalty, as applicable, may be appealed to the county manager or his designee within fifteen (15) calendar days of the occurrence of the challenged determination or action.
- (b) Any decision of the county manager, or his designee, may be appealed to the District Court of New Hanover County within thirty (30) days, provided the matter in controversy has first been timely appealed to the county manager.

**Section 23-520. Disposition/disposal of abandoned vessels.**

- (a) An abandoned vessel, including all cargo, tackle, and equipment, seized pursuant to this article, which remains unclaimed after notice, shall be deemed forfeited, as set forth in North Carolina General Statute 14-399(g).
- (b) A vessel having a value less than Five Hundred Dollars (\$500.00) may be disposed of at any suitable solid waste facility.
- (c) A vessel having a value of Five Hundred Dollars (\$500.00) or greater shall be disposed as provided in North Carolina General Statute 44A with the proceeds paying for the towing, removal, and storage charges, accrued fines, and environmental restoration costs. The remaining proceeds, if any, shall be deposited into the general fund of the county and designated for use to abate, or remove abandoned vessels and restore environmental damage resulting from abandoned vessels.
- (d) Any vessel, cargo, tackle, or equipment remaining unsold after being offered at public sale, may be disposed at any suitable solid waste facility.
- (e) Within ten (10) days following the disposal or public sale of any vessel previously registered in any state or meeting the requirements for registration prior to operation in North Carolina, the sheriff shall provide notice to the North Carolina Wildlife Resources Commission, and the agency responsible for registration in the state of any previously registered vessel. The contents of the notice, shall include, if available:
  - (1) Vessel registration number;
  - (2) Manufacturer, model, year;
  - (3) NC title number (if applicable);
  - (4) Hull identification number;
  - (5) A description of the reason for being disposed or sold as an abandoned vessel;
  - (6) Type of disposition and location (e.g. public sale – New Hanover County Sheriff’s Office, or Discarded – New Hanover County Landfill);
  - (7) Full name and address of the purchaser (if applicable);
  - (8) Date of sale and sale price (if applicable)

II. Except as specifically above amended Chapter 23, Environment, shall remain unaltered and in full force and effect.

ADOPTED this the \_\_\_\_ day of \_\_\_\_ 2024.

NEW HANOVER COUNTY

\_\_\_\_\_  
William E. Rivenbark, Chair

ATTEST:

\_\_\_\_\_  
Kymberleigh G. Crowell, Clerk to the Board



# NEW HANOVER COUNTY

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## COUNTY MANAGER'S OFFICE

Item 2.

230 Government Center Drive, Suite 195, Wilmington, NC 28403

P: (910) 798-7184 | F: (910) 798-7277 | NHCgov.com

**Chris Coudriet**, County Manager

**Tufanna Bradley**, Assistant County Manager | **Lisa Wurtzbacher**, Assistant County Manager

**Jessica Loeper**, Assistant County Manager

May 28, 2024

Hon. Bill Saffo, Mayor  
City of Wilmington  
P.O. Box 1810  
Wilmington, NC 28402

Dear Mayor Saffo,

The New Hanover County Board of Commissioners is in the process of approving an ordinance authorizing the Sheriff's Office to identify and, when needed, remove abandoned vessels from waterways in the unincorporated areas of the county.

The Board has taken an initial vote on the ordinance and is holding a required second reading and taking a vote on June 17 to fully authorize the ordinance.

The Board asked me to reach out to you to request that the Wilmington City Council authorize the Sheriff's Office to remedy abandoned vessels within city limits. We hope that centralizing this service within the Sheriff's Office will provide for seamless response and reduced customer confusion while reporting abandoned vessels.

For your convenience, a draft of a resolution will be sent to you upon final passage of the ordinance. Because this resolution would have the same effect of a municipality adopting an ordinance that contains criminal penalties, per General Statute 160A-175(b), it would need two readings.

I appreciate your consideration of this request. If you have any questions, please do not hesitate to contact my office.

Chris Coudriet  
County Manager

cc: Tony Caudle, City Manager



# NEW HANOVER COUNTY

Item 2.

## COUNTY MANAGER'S OFFICE

230 Government Center Drive, Suite 195, Wilmington, NC 28403

P: (910) 798-7184 | F: (910) 798-7277 | NHCgov.com

**Chris Coudriet**, County Manager

**Tufanna Bradley**, Assistant County Manager | **Lisa Wurtzbacher**, Assistant County Manager

**Jessica Loeper**, Assistant County Manager

May 28, 2024

Darryl Mills, Mayor  
Town of Wrightsville Beach  
321 Causeway Drive  
P.O. Box 626  
Wrightsville Beach, NC 28480

Dear Mayor Mills,

The New Hanover County Board of Commissioners is in the process of approving an ordinance authorizing the Sheriff's Office to identify and, when needed, remove abandoned vessels from waterways in the unincorporated areas of the county.

The Board has taken an initial vote on the ordinance and is holding a required second reading and taking a vote on June 17 to fully authorize the ordinance.

The Board asked me to reach out to you to request that the town of Wrightsville Beach Board of Aldermen authorize the Sheriff's Office to remedy abandoned vessels within the town limits. We hope that centralizing this service within the Sheriff's Office will provide for seamless response and reduced customer confusion while reporting abandoned vessels.

For your convenience, a draft of a resolution will be sent to you upon final passage of the ordinance. Because this resolution would have the same effect of a municipality adopting an ordinance that contains criminal penalties, per General Statute 160A-175(b), it would need two readings.

I appreciate your consideration of this request. If you have any questions, please do not hesitate to contact my office.

Chris Coudriet  
County Manager

cc: Tony Wilson, Interim Town Manager





# NEW HANOVER COUNTY

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## COUNTY MANAGER'S OFFICE

Item 2.

230 Government Center Drive, Suite 195, Wilmington, NC 28403

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**Chris Coudriet**, County Manager

**Tufanna Bradley**, Assistant County Manager | **Lisa Wurtzbacher**, Assistant County Manager

**Jessica Loeper**, Assistant County Manager

May 28, 2024

Lynn Barbee, Mayor  
Town of Carolina Beach  
1121 N. Lake Park Blvd.  
Carolina Beach, NC 28428

Dear Mayor Barbee,

The New Hanover County Board of Commissioners is in the process of approving an ordinance authorizing the Sheriff's Office to identify and, when needed, remove abandoned vessels from waterways in the unincorporated areas of the county.

The Board has taken an initial vote on the ordinance and is holding a required second reading and taking a vote on June 17 to fully authorize the ordinance.

The Board asked me to reach out to you to request that the Carolina Beach Town Council authorize the Sheriff's Office to remedy abandoned vessels within the town limits. We hope that centralizing this service within the Sheriff's Office will provide for seamless response and reduced customer confusion while reporting abandoned vessels.

For your convenience, a draft of a resolution will be sent to you upon final passage of the ordinance. Because this resolution would have the same effect of a municipality adopting an ordinance that contains criminal penalties, per General Statute 160A-175(b), it would need two readings.

I appreciate your consideration of this request. If you have any questions, please do not hesitate to contact my office.

Chris Coudriet  
County Manager

cc: Bruce Oakley, Town Manager



# NEW HANOVER COUNTY

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## COUNTY MANAGER'S OFFICE

Item 2.

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**Chris Coudriet**, County Manager  
**Tufanna Bradley**, Assistant County Manager | **Lisa Wurtzbacher**, Assistant County Manager  
**Jessica Loeper**, Assistant County Manager

May 28, 2024

Allen Oliver, Mayor  
Town of Kure Beach  
117 Settlers Lane  
Kuree Beach, NC 28449

Dear Mayor Oliver,

The New Hanover County Board of Commissioners is in the process of approving an ordinance authorizing the Sheriff's Office to identify and, when needed, remove abandoned vessels from waterways in the unincorporated areas of the county.

The Board has taken an initial vote on the ordinance and is holding a required second reading and taking a vote on June 17 to fully authorize the ordinance.

The Board asked me to reach out to you to request that the Kure Beach Town Council authorize the Sheriff's Office to remedy abandoned vessels within the town limits. We hope that centralizing this service within the Sheriff's Office will provide for seamless response and reduced customer confusion while reporting abandoned vessels.

For your convenience, a draft of a resolution will be sent to you upon final passage of the ordinance. Because this resolution would have the same effect of a municipality adopting an ordinance that contains criminal penalties, per General Statute 160A-175(b), it would need two readings.

I appreciate your consideration of this request. If you have any questions, please do not hesitate to contact my office.

Chris Coudriet  
County Manager

cc: Mandy Sanders, Town Clerk

# Resolution



Town of Carolina Beach  
Town Council

**RESOLUTION NO. 24-2307**

**RESOLUTION TO ENJOIN WITH NEW HANOVER COUNTY TO ENFORCE AND REMOVE ABANDONED VESSELS IN WATERWAYS**

**WHEREAS**, on June 17, 2024, the New Hanover County Board of Commissioners approved an amendment to Chapter 23 of the New Hanover County Code of Ordinances by the addition of Article X Abandoned Maritime Vessel(s), to regulate, enforce and dispose of abandoned vessels as authorized by North Carolina General Statute 153A-132; and

**WHEREAS**, the ordinance authorizes the New Hanover County Sheriff’s Office to investigate, seek remediation, enforce and, if necessary, dispose of abandoned vessels in waterways in unincorporated New Hanover County; and

**WHEREAS**, the Town of Carolina Beach has also identified issues with abandoned vessels on waterways within Carolina Beach Town limits; and

**WHEREAS**, authorizing the New Hanover County Sheriff’s Office to investigate, remediate, enforce and dispose of abandoned vessels in Carolina Beach would be beneficial to maintaining safety in Carolina Beach’s waterways; and

**WHEREAS**, under North Carolina General Statute 153A-122 Carolina Beach may adopt a resolution permitting county ordinances to be applicable within Carolina Beach corporate limits;

**NOW, THEREFORE, BE IT RESOLVED**, the Town of Carolina Beach as authorized by North Carolina General Statute 153A-122, permits Chapter 23, Article X Abandoned Maritime Vessel(s), of the New Hanover County Code of Ordinances and any future amendments to that article, to be applicable within Carolina Beach corporate limits to be enforced by the New Hanover County Sheriff’s Office.

**ADOPTED**, this 23<sup>rd</sup> day of July 2024.

TOWN OF CAROLINA BEACH

\_\_\_\_\_  
Albert L. Barbee, Mayor

ATTEST:

\_\_\_\_\_  
Kimberlee Ward, Town Clerk



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Kim Ward, Town Clerk

**DEPARTMENT:** Clerk

**MEETING:** Town Council Meeting 7/9/2024

**SUBJECT:** Resolution for the final CAMA grant application pertaining to a new ADA ramp and paved parking lot at 1810 Canal Drive

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**BACKGROUND:**

Resolution 24-2309 gives staff the authority to submit the final application for a 75/25 CAMA grant.

**ACTION:**

Approve Resolution 24-2309 authorizing staff to complete the final CAMA grant application.

# Resolution



Town of Carolina Beach  
Town Council

**RESOLUTION NO. 24-2309**

RESOLUTION TO COMPLETE THE FINAL CAMA GRANT APPLICATION SUBMITTAL: Site Improvements to include a new ADA ramp and paved parking lot at 1810 Canal Drive.

WHEREAS, the projected budget is \$176,430 with the proposed cost share of 75% CAMA Grant of \$132,322, and 25% Town Match of \$44,108; and

WHEREAS, the project entails site improvements of parcel 1810 Canal Drive to complete the accessible public access by constructing approximately 150ft of ADA ramp from the parking area to the beach and paving the parking lot to add two ADA designated parking spaces; and

WHEREAS, the completed project will be an authorized ADA public waterway access point; and

WHEREAS, the date for submittal of the final application is July 2024.

**ADOPTED**, this 9<sup>th</sup> day of July, 2024.

TOWN OF CAROLINA BEACH

\_\_\_\_\_  
Albert L. Barbee, Mayor

ATTEST:

\_\_\_\_\_  
Kimberlee Ward, Town Clerk



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Brian Stanberry

**DEPARTMENT:** Public Works

**MEETING:** Town Council Meeting 7/9/2024

**SUBJECT:** Approval of the Debris Removal Contract

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### **BACKGROUND:**

The Town recently hired Rostan Solutions LLC to procure, through formal RFP process, proposals for Emergency Debris Hauling. This is a prepositioned contract that would be activated in a time of emergency need, such as hurricane cleanup. Procurement of this contract meets all Town, State and Federal requirements and allows for FEMA reimbursement for emergency services post-event. Based on the attached recommendation document submitted by Rostan Solutions LLC, it is Staff's request to extend contracts for Disaster Debris Management to Custom Tree Care, Crowder Gulf and DRC. Having three contracts in place for this service put the Town in a stronger position to provide cleanup services post-event. The contract is for a period of three years with the option of (2) one year mutually agreeable extensions.

### **ACTION:**

Motion to award the emergency debris hauling contracts to Custom Tree Care, Crowder Gulf, and DRC.



July 1, 2024

Brian Stanberry, Director of Public Works  
 Town of Carolina Beach  
 Operations Department  
 1121 North Park Blvd  
 Carolina Beach, NC 28428

**RE: RFP 2024-001 – Disaster Debris Management – Review and Recommendations of Proposals**

Mr. Stanberry,

As you have requested, Rostan has reviewed the proposals submitted in response to the Town’s Request for Proposals (“RFP”) for Disaster Debris Management. Six (6) proposals were received in response to the solicitation:

- CERES Environmental Services, Inc
- CrowderGulf.
- CTC Disaster Response, Inc.
- DRC Emergency Services, Inc.
- Looks Great Services of MS, Inc.
- TFR Enterprises

All proposals were thoroughly reviewed by three evaluators, with each firm demonstrating high levels of qualifications and a deep understanding of the requirements of debris management within FEMA’s regulations and requirements. The scoring was extremely close, underscoring the competitiveness and high quality of the proposals. Our team used its best judgement in assigning scores for each of the four subjective evaluation categories; price was objectively scored based on the cost proposals. The results are reflected below:

Firm	Firm Qualifications and References	Past Project Experience	Key Personnel	Project Understanding and Approach	Cost Proposal (carry from cost sheet)	Total (All Reviewers)
CERES	18.33	20	18.33	25.33	6.89	88.89
CrowderGulf	18.33	19.33	19	26.67	7.64	90.97
CTC	19	18	17	29	7.72	90.72
DRC	18.33	20	17	26.33	9.01	90.68
Looks Great	17.67	17.67	17	24.67	7.01	84.01
TFR	17	17.67	16	23.33	8.53	82.53

DRC, CrowderGulf , and CTC received the highest scores and were statistically tied if the evaluation was rounded to the nearest whole number. DRC provided the best value from a cost perspective. CrowderGulf presented as the best in subjective categories. CTC represented the most familiarity with the City and its project approach. It would be nearly impossible to go wrong with any of these three options. As a result, we recommend extending contracts to all three firms, allowing the Town the discretion to select **“the best overall value”** from these options when needed. This approach ensures flexibility and readiness in responding to future events. CERES, Looks Great , and TFR, , submitted

quality proposals, demonstrating the high level of competition in the market. They should remain competitive if they seek to respond to future solicitations.

We trust this review and recommendation, based on a thorough and competitive review process, meets your requirements. Should you need any additional information, please do not hesitate to contact me with any questions or concerns.

Thank you,

A handwritten signature in black ink, appearing to read 'Jeff Cousins', with a stylized flourish at the end.

Jeff Cousins  
Director of Monitoring Operations  
Rostan Solutions LLC





## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Kim Ward, Town Clerk

**DEPARTMENT:** Clerk

**MEETING:** Town Council Meeting 7/9/2024

**SUBJECT:** Approval of Council Meeting Minutes

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**BACKGROUND:**

Attached are the meeting minutes from May 30 and June 11, 2024.

**ACTION REQUESTED:**

Review and consider approving under the consent agenda.

# CAROLINA BEACH

Town Council Regular Meeting

Tuesday, June 11, 2024 - 6:00 PM

Council Chambers, 1121 N. Lake Park Boulevard, Carolina Beach, NC



## MINUTES

### CALL TO ORDER

Mayor Barbee called the meeting to order at 6:00 PM, followed by the invocation by Molly Painter and Pledge of Allegiance.

### PRESENT

Mayor Lynn Barbee  
Mayor Pro Tem Deb LeCompte  
Council Member Jay Healy  
Council Member Joe Benson  
Council Member Mike Hoffer

### ALSO PRESENT

Town Manager Bruce Oakley  
Assistant Town Manager Ed Parvin  
Finance Director Debbie Hall  
Town Clerk Kim Ward  
Town Attorney Noel Fox

### ADOPT THE AGENDA

**ACTION:** Motion to adopt the agenda

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

### CONSENT AGENDA

1. Budget Amendments/Transfers
2. Set a Public Hearing for July 9, 2024, for the Creation of the Town’s first Unified Development Ordinance (UDO); Chapters 30, 32, 36, and 40 Will Be Repealed and the Existing Relevant Language Will Be Incorporated into the New UDO  
Applicant: Town of Carolina Beach
3. Set a Public Hearing for July 9, 2024, to Consider a Text Amendment to Chapter 40 Article III Sec. 40-72, Article V Sec. 40-150, and Article IX Sec. 40-261 for Wine and Beer Shops  
Applicant: Town of Carolina Beach
4. Set a Public Hearing for July 9, 2024, to Consider a Conditional Zoning at 2 North Carolina Avenue for a 2-Unit Planned Unit Development  
Applicant: Michael Rose Properties, LLC
5. Approval of Council Meeting Minutes

Council Member Benson said there are a lot of transfers from accounts in June and wondered if this is end-of-fiscal-year housekeeping. Mr. Oakley said yes.

Mayor Pro Tem LeCompte asked if the \$10,000 raised by Pleasure Island Volleyball and the \$10,000 Town match also covers a walkway from the parking lot behind the Community Building to the Senior Center because a lot of senior citizens use the area to walk between facilities. Mr. Oakley said he doesn't think a walkway is in there, but staff can look to possibly find funding to include that.

**ACTION:** Motion to adopt the consent agenda

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

### **SPECIAL PRESENTATIONS**

#### 6. Marketing Advisory Committee Budget Presentation

Jeff Hogan, Chair of the Town's Marketing Advisory Committee, presented the FY 24/25 marketing budget. The total budget is \$1,424,148, a 2.65% increase from the current fiscal year. Mr. Hogan said this is money to be spent on advertising to get more folks into Carolina Beach, adding that when he first became a member of the committee years ago there was only \$250,000 to spend. He said since then Carolina Beach has become part of the Wilmington and Beaches campaign and gotten into magazines, ads, and other spaces that were unreachable with a smaller budget.

Mayor Barbee and Council Member Healy, who is the liaison to the committee, praised the efforts of Mr. Hogan and the other members. Mayor Barbee said the budget is all room occupancy tax (ROT) money paid by visitors and not property taxes.

Mr. Hogan said the committee was approached about funding an I Love CB sign, which would be a spot for visitors to take photos, for \$21,175 as well as an advertising campaign for the Town's centennial celebration proposed at \$100,000. He said both items would come out of the rollover fund. Mr. Hogan said initial conversations focused on a centennial budget of \$25,000 to \$30,000, but the committee was advised that would not be enough to be effective.

Council Member Hoffer asked if the \$155,000 contingency in the budget is general policy each year. Mr. Hogan said the contingency for the upcoming year went down to \$102,000 on the advice from the New Hanover County Tourism Development Authority (TDA) and State government, whose officials say the budget should not become a savings and loan and grow to an unlimited fund. He said the contingency money is mostly used for advertising campaigns following hurricanes.

**ACTION:** Motion to approve the marketing budget as presented

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member

Benson, Council Member Hoffer  
*Motion passed unanimously*

Regarding the I Love CB sign, Council Member Hoffer said he would like to see something real and lasting purchased with the money.

**ACTION:** Motion to approve the sign as presented

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

Regarding the centennial celebration advertising campaign, Council Member Hoffer asked if any of that money would target the Wilmington area. Mr. Hogan said there is a fine line with how that money can be used because it's about getting people to spend the night in hotels, not just come down for the day. Mayor Barbee said this is by State statute. Mayor Pro Tem LeCompte said the Pleasure Island Chamber of Commerce would be in charge of local advertising.

Mr. Hogan said Council can make the centennial celebration advertising campaign any amount, but the committee was advised that anything below \$75,000 to \$80,000 would be ineffective and it would be better to reject it and do nothing.

Council Member Healy said he was unsure at first, but the more he thinks about it he realizes there is only one centennial and the advertising campaign should be done.

Mayor Pro Tem LeCompte said the money is well worth getting people here, and there will be a lot of fun activities for them to enjoy.

**ACTION:** Motion to approve the advertising campaign for the centennial as presented

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

## 7. Manager's Update

Mr. Oakley gave an update on various projects:

- Ocean sidewalk – This has been frustrating for everyone, including staff. They are trying to get on the same page with the N.C. Department of Transportation (DOT) engineer, and there is a sit-down meeting with everyone involved coming up soon. Some of the issues include equipment in the original plan not being made anymore and effects on stormwater.
- Saint Joseph multi-use path – They are working on a temporary construction easement, and plans call for this to go to bid in February with construction beginning in the spring.

- Boardwalk bathroom – The survey is complete, and the Coastal Area Management Act (CAMA) permit is in place. Staff is working on the construction and bid documents, and this will hopefully go out for bid later this summer.
- Lake pump house – There is a meeting this week to finalize the drawings on this, so things are moving forward.
- Marina – Regarding the I Love CB sign previously discussed, there was a meeting this morning about possible locations and other logistics, including what would happen to the sign during a storm. An engineer will work with the artist to see if there is a way to design the sign so it can withstand storms at a certain load. Staff received good feedback during the input session at the grand-reopening celebration, and there will be more about this project later in the budget discussion.
- Sunny Day Flooding Project – Planning Director Jeremy Hardison said officials from this project were here yesterday, and researchers want to come back to give an update at Council's July workshop. He said a 20-member committee was randomly selected from respondents to community surveys sent out recently, and it was productive to get them together and enlightening to hear their perspectives. Mr. Hardison said the purpose of the first meeting was to discuss mitigation strategies, and the next meeting will model those strategies for further discussion.

Regarding the lake pump house, Council Member Hoffer asked if the pumps must be lifted so high. Mr. Hardison said they need to be elevated due to flooding events. He said the current ones were elevated inside the pump house, but this was still a challenge at times.

Council Member Healy said he personally would hate to live behind something that high.

Council Member Hoffer encouraged them to be lifted as high as required but suggested keeping the vertical dimension down as much as possible. Mr. Oakley said the Flood Plain Administrator tells the Town where they need to go. Mr. Hardison said they are looking at a potential mural project on the structure.

Council Member Hoffer asked what is going on with the fountains at the lake. Mr. Oakley said one is back up and running on the west side.

### **PUBLIC COMMENT**

Cindy Dunn, Chair of Town's Beautification Committee, said there is a problem with e-bikes on the Greenway riding through some of the planting areas. She said she would like to see an increase in patrols of the Greenway area and the Town as a whole regarding problems created by young people on e-bikes. Ms. Dunn suggested requiring community service in the gardens if the offenders are caught. Mr. Oakley said there are Police Officers on e-bikes now, so those patrols can be increased. Council Member Hoffer said a police presence never hurts, but a simple solution would be some split-rail fencing.

### **PUBLIC HEARINGS**

8. Consider Adopting the Proposed FY 24/25 Budget

Mr. Oakley presented Budget Ordinance No. 24-1225 for Council's review and approval, and there was a public hearing to receive public input.

**ACTION:** Motion to open the public hearing

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

Mr. Oakley reviewed the calendar for the FY 24/25 budget process:

- Public Hearing for Non-Profit Requests – March 12
- Community Input Public Hearing – April 9
- Budget Workshop – April 23
- Budget Workshop (if needed) – April 30
- Budget Open House and Budget Submitted for Review – May 7
- Revenue and Expense Projections and Public Hearing – May 14
- Budget Message and State of the Town Presentation – May 28
- Budget Adoption – June 11

Mr. Oakley gave the following summary of the proposed FY 24/25 budget:

General Fund – \$22,416,261

- 2-cent tax rate increase – \$100 on a property valued at \$500,000
  - Inflation
  - Strategic goals
  - Employee recruitment and retention
- Fee increases
  - Dockage rates
  - Recreation Center memberships
  - Solid waste – residential/commercial/Boardwalk

Utility Fund – \$10,501,742

- 4% fee increase
  - Infrastructure bond planning
  - Water tank engineering and permitting
  - Lift station (Lewis Drive)
  - Wastewater treatment improvements
  - Stormwater improvements

Mayor Barbee asked if anyone from the public wanted to speak about the budget.

Mohamed Hassan asked why a tax increase is necessary if there are so many houses being built and adding revenue to the budget. Mayor Barbee said that question comes up a lot and explained that the largest piece of property tax is the property itself, whether or not there is a house on it, and there is a lag in the revaluation of a property once the home is built depending on when it's finished. He said

homes do eventually add to tax revenue, but it's not as big a number as many think. Council Member Hoffer pointed out that New York is growing like crazy, but their taxes are still high. Mayor Barbee said the more houses you have, the more Town services you need, which leads to more employees, etc.

No one else requested to speak.

**ACTION:** Motion to close the public hearing

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

Council Member Benson thanked Public Utilities Director Mark Meyer for his time discussing how his department lost a prized employee to another municipality. Mr. Meyer said the employee got a better offer, and this is an example of the competition the Town faces when it comes to staff retention. He said he is thankful for Council's efforts to address this with employee raises.

Council Member Healy said hiring and retaining good people will lead to a successful business, and turnover is when the wheels of motion stop. He said he thinks this budget addresses that.

Council Member Hoffer said the Town hasn't had a lot of turnover in a while, so people may have forgotten how troublesome it can be.

Mayor Pro Tem LeCompte said in the past the Town lost 9 Police Officers at one time, and she doesn't ever want to see that happen again.

Mayor Barbee said the Town's budgets have absorbed inflation over the past 2.5 years, and he still doesn't feel comfortable that a 2-cent tax increase is enough for what will be needed, but he trusts Mr. Oakley's judgment.

Mayor Pro Tem LeCompte said the Town owns its utilities, and residents are investors in the system. She said if the Town was to sell to an entity such as Cape Fear Public Utility Authority (CFPUA), their bottom line is making money and rates would climb, so the Town needs to protect what it has.

Council Member Hoffer said he has never voted to raise taxes and asking people for more money is tough, but he gave this a lot of thought and is prepared to vote for it. He said one of the things that swayed him is the upcoming agenda item about the Lake Park Boulevard sidewalk. Council Member Hoffer said the reason Council can have this discussion is because there is a healthy fund balance, and some of the things that are considered wants instead of needs are worthy of having.

Council Member Benson said Council Members are always welcoming and accessible when it comes to feedback.

Mayor Barbee said the budget process is always evolving, but it has become much more open in recent years. He thanked staff for their time and effort to make the process as transparent as possible. Mr.

Oakley said he is looking for further improvements next year, including more detailed narratives in the budget document.

**ACTION:** Motion to approve Budget Ordinance No. 24-1225 adopting the FY 24/25 budget as presented by the Town Manager

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

## ITEMS OF BUSINESS

9. Text Amendment to Amend Chapter 16, Article II, Division 2, Sec. 16-79 – Sunset Provision for Golf Carts on Streets, for Golf Cart Taxi Businesses

Applicant: Sherice Boyack

In March 2023, Council approved a sunset provision for golf carts on streets to comply with State statute and due to safety concerns because of the growth in tourism and residents in the Town. The Town ordinance states that existing golf carts that received a permit prior to July 1, 2023, are permitted to renew their golf cart permits until December 31, 2027. The low-speed vehicle (LSV) and golf cart definitions in the ordinance are not specifically for taxis but include all vehicles in Town.

Applicant Sherice Boyack is the owner and operator of Beach Adventure Taxi. She has applied for a text amendment to the existing sunset provision for golf carts on streets, specifically for her existing business. Beach Adventure Taxi is the only Town-approved golf cart taxi business.

The applicant currently utilizes golf carts for her taxi business. She would like to add an additional gas-powered cart to her business to keep up with her business needs. Under the current ordinance, she is not permitted to add an additional cart. The Technical Review Committee (TRC) discussed allowing additional permits for the approved business, but the sunset clause would still apply to meet State statute. The applicant understands that the sunset provision will still apply. After December 31, 2027, the applicant would have to convert to electric vehicles.

Senior Planner Gloria Abbotts presented the details. She reviewed definitions in the Town ordinance:

- Golf cart – a vehicle designed for operation on a golf course for recreational purposes; it can't exceed 20mph
- LSV – a 4-wheeled electric vehicle with a top speed greater than 20 mph and less than 25mph; it must be registered with DOT and contain all listed features

Ms. Abbotts said State statutes changed the definition of LSV in 2023, defining it as a 4-wheeled vehicle that is either electrically powered or propelled by gasoline, which is different than the Town's current ordinance language. She said staff is proposing to update the Town's definition to include electric and gas in the LSV definition so it will comply with State statutes.

Mayor Barbee said the Town's goal was always to follow the State statutes, so this proposed change would allow the Town to meet that goal.



Ms. Abbotts said she spoke to someone with the State Department of Motor Vehicles (DMV) who said the definition change was somewhat hidden, and the Town just wants to be in line with it. She said she believes it solves Ms. Boyack's issues by allowing her to use existing vehicles and purchase a gas-powered LSV to add to the business.

Ms. Boyack said the State statute states gas-powered carts are permissible as long as they can be licensed, and therefore a text amendment is not needed and the sunset clause would not apply. She questioned whether the \$500 fee she paid to apply for the text amendment is still necessary.

Mayor Barbee said this is a valid question and will be addressed after Council votes on the ordinance.

**ACTION:** Motion to approve Ordinance 24-1227 to comply with the State statute for low-speed vehicles

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

Mayor Barbee said Ms. Boyack is asking for her \$500 fee to be returned because a text amendment is no longer necessary due to the change in State law that was only recently discovered. Mr. Oakley said it would be helpful for Council to make a motion.

**ACTION:** Motion to refund the applicant's \$500 because this would've had to change either way whether she applied or not

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

#### 10. Sidewalk from Carolina Beach Lake to Carolina Sands

In May 2023, Mr. Oakley was in discussions with DOT about how the Town could get sidewalks added from Carolina Sands to Lake Park. Later that summer, funding from DOT was earmarked for this project. Several on-site meetings occurred with Town staff and DOT. In November 2023, a plan was given to the Town showing the sidewalk meandering from DOT right-of-way to private property. There were multiple conflicts with power poles, mailboxes, utilities, trash bins, signage, etc. The cost of purchasing the additional needed right-of-way was also a significant concern.

Staff worked with DOT on an alternative that would bump out curb and gutter and avoid all the conflicts. DOT met with Town staff on-site again and determined there was adequate drive aisle width to accomplish this task. However, when the estimate came back to the Town, it was \$1,691,153.08.

Staff talked to Council about this issue, and direction was given to see if the Town could get any aspect of the project completed (i.e. one or two blocks). Staff went back to DOT, and they agreed to look at the costs again on a block-by-block basis.

During the second review by DOT, their field crews identified some discrepancies in the stormwater infrastructure that were shown on their as-built surveys. This discovery allowed them to significantly reduce the costs. They were also able to break down the costs by block.

There are no funds allocated in the current proposed budget for this project, which will be run separately from the resurfacing of Lake Park Boulevard. If approved by Council, the project will be managed by DOT. It must be approved for connecting full-block sections. The proposed total cost of the project is \$640,000, and DOT has agreed to allocate \$183,118. The Town's share would be \$552,882, which includes a 15% contingency.

Mr. Parvin presented the details. He said there is no timeline for the project, and the Town will have to pay for any overages through the contingency built into the Town's share.

Council Member Benson asked if DOT's share includes engineering design. Mr. Parvin said he is not sure if they will charge for engineering design or take their labor out of their share. Council Member Hoffer said his understanding was that design and project management were in-kind. Mr. Parvin said DOT has been meeting with the Town for about a year and hasn't charged for any of that.

Mayor Barbee said his only concern is that for this project to be fully effective, it needs to go to Tennessee Avenue. He asked if there is still an opportunity to get pricing for that additional block because it ties into the Wilmington Beach area. Mr. Parvin said staff can work with DOT to get those numbers. Mr. Oakley said they made a request for a new estimate.

Council Member Healy asked if there was any discussion with DOT about doing this project at the same time as the paving project. Mr. Parvin said DOT requested to keep the projects separate, and there is not a timeline for the sidewalk.

**ACTION:** Motion to adopt Budget Ordinance 24-1226 to allocate the funds to build a sidewalk from Carolina Beach Lake to Carolina Sands

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

#### 11. Annual Committee Appointments

The original agenda item was for Council to appoint committee members to terms expiring on June 30, but Mayor Barbee said he would like to address some confusion about alternates and delay the appointments until Council's next workshop. He said the proposal is to remove the alternates and put them on the ballot for full appointments, and this should encompass all committees except the Board of Adjustment, which is a legally required board and should have one alternate position.

**ACTION:** Motion to change the membership definitions for committees that have alternates to remove the alternate positions, putting the current alternates back on the ballot to be appointed to full positions if Council desires, with the exception of the Board of Adjustment, which will keep one alternate position because that's a legally required committee

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

### **COUNCIL COMMENTS**

Council Member Hoffer said he is feeling celebratory that Council passed the Lake Park Boulevard sidewalk project. He said the biggest challenge for bike and pedestrian projects is the fact that there is a highway running through the middle of Town.

Council Member Benson thanked Mr. Hardison for pointing out the Sunny Day Flooding Project committee meeting and said he would like to be a spectator. He said the Canal Drive remediation project was on the agenda for a previous workshop, so this might be a good time to tie in that topic.

Mayor Pro Tem LeCompte reminded everyone about the blood drive tomorrow and asked about the Spartanburg Avenue crosswalk. Mr. Hardison said they are coordinating with design and stormwater, and the engineer now has more details about what can be included in the design. Mayor Pro Tem LeCompte also asked that Council start getting quarterly reports from Pivot Parking again.

Mayor Barbee asked if the Boardwalk bathroom redesign will include a family room. Mr. Oakley said he will have to check. Mayor Barbee said he received some input about consideration of this. Mr. Oakley said he will look into it.

Mayor Barbee said he was convinced money should be allocated for a sidewalk on Lake Park Boulevard, which is a big investment for the Town, when he saw someone pushing a stroller down the street in front of The Veggie Wagon. He said it's the Town's job to give people a safe place to walk to avoid situations like that, so he is excited to get that project started and hopes it can be extended all the way to Tennessee Avenue.

### **ADJOURNMENT**

Mayor Barbee adjourned the meeting at 7:20 PM.

# CAROLINA BEACH

Continued Town Council Regular Meeting

Thursday, May 30, 2024 - 9:00 AM

Council Chambers, 1121 N. Lake Park Boulevard, Carolina Beach, NC



## MINUTES

### CALL TO ORDER

Mayor Barbee called the meeting back to order at 9:00 AM.

### PRESENT

Mayor Lynn Barbee

Mayor Pro Tem Deb LeCompte

Council Member Jay Healy

Council Member Joe Benson

Council Member Mike Hoffer

Mayor Barbee said there were some changes to the agenda for today's meeting, which was originally scheduled to be a workshop. He said items 3 and 4 were workshop items, and item 2 was an addition.

### **ACTION:** Motion to adopt the amended agenda

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

Mayor Barbee said there is no public comment on the agenda, so comments about anything other than the public hearing will not be heard today.

### CONFLICT OF INTEREST

*Members of Town Council shall not vote on recommendations, permits, approvals, or other issues where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member or a member has a close familial, business, or other associational relationship. No member shall be excused from voting except upon those matters as noted, above, or upon those others involving the consideration of his own financial interest or official conduct. (160D-109)*

### PUBLIC HEARINGS

1. Consider a Special Use Permit Modification for Additional Boat Slips Located at 401 Marina Street PID 313115.74.1321.000, 313115.64.9002, and 313115.64.8036 in the Marina Business and R-1B District  
Applicant: CBYC, LLC

Mayor Barbee said this is a quasi-judicial hearing with procedures that are a little more formal than how Council normally operates.

Individuals planning to speak on the matter were sworn in.

Ms. Fox said two attorneys are present tonight – Grady Richardson, representing the applicant, and Wes Hodges, representing Oceana Owners Association – and she has conferred with them about an issue related to standing. She said any arguments related to standing will be reserved for closing arguments and appellate court.

Ms. Fox said this is a quasi-judicial matter, an evidentiary hearing that is much like a court proceeding. She said there are specific procedures required by law in making the decision, which must be based on competent, relevant, and material evidence in the record. She asked if Council Members had any conflict partiality to disclose, recusal to offer, or ex parte communications to report. All Council members said no, and no one objected to any Council Member’s participation.

**ACTION:** Motion to open the evidentiary hearing

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

Applicant Carolina Beach Yacht Club and Marina (CBYC) is requesting a Special Use Permit (SUP) modification. In 2019, the applicant applied to add an eating and drinking establishment and a ship store located on a barge to the marina located at 401 Marina Street. In January 2020, an SUP was denied because it was not passed by Council (2-2 vote). Subsequently, the applicant filed a petition seeking an appeal. The Oceana Owners Association then filed a verified motion to intervene. The hearing of the appeal was canceled based on the parties entering into an agreement. The agreement was executed in December 2020 to issue the SUP with conditions.

The modification under consideration includes expanding the number of boat storage spaces. The marina is approved for 69 boat storage spaces (slips). During a zoning final inspection of the barge, it was discovered that several boat storage spaces were added, including multiple boats being parked in one designated space. Upon another inspection, the added boat storage spaces were removed, but the applicant would like to pursue expanding the marina’s boat storage spaces from 69 to 89. By adding boat storage spaces, it also increases the number of required parking spaces. The parking requirement for commercial marinas per Article V is one parking space per wet boat storage space, one per two dry storage, one per service bay, and one per two employees required for all other on-site uses. Parking is being provided for the wet boat storage space, employees, and all other on-site uses.

The modification consists of splitting 22 boat storage spaces from 45-foot storage spaces into two 22.5-foot boat storage spaces. The following are the proposed modifications to the plan:

- Removed ground floor office space from the building to convert as part of the existing residential unit on second floor.
- Reduced one storage space for the floating barge. It was depicted as two designated boat storage spaces. Staff approved the modification.
- One of the original 69 boat storage spaces that was counted did not transfer to the current owner, as it was previously sold to a property owner of a lot in the Oceana neighborhood.
- The footprint of the approved barge, 40 feet x 120 feet, is larger than what was built on-site, 24 feet by 96 feet, thus decreasing the amount of parking needed for the eating and drinking establishment and retail area.
- Relocating the dumpster closer to Georgia Avenue to accommodate additional parking.
- Expanding the parking area with spaces being added closer to the property lines that do not meet the landscaping requirements; applicant is requesting a waiver.
- Proposed food truck that will be located in the 30-foot Coastal Area Management Act (CAMA) setback buffer. It cannot be permanent and would need to be mobile.

Eleven parking spaces are proposed to be added to accommodate the modifications:

- Four additional spaces are proposed to be located in the parking lot adjacent to the marina building.
- Seven spaces are proposed in the Oceana parking lot.

The marina building parking area is located in the MB-1 zoning district. The Oceana parking lot is located in the R-1B zoning district. The Oceana parking lot is in a residentially zoned area and considered non-conforming, meaning it would not be allowed under the current ordinance to have a parking lot serving a commercial business located in a residential area. Section 40-425 Extension or Enlargement of Non-Conforming Situations, Including Land Uses and Buildings, states that an increase in volume, intensity, or frequency of a non-conforming use may be allowed. The volume, intensity, or frequency of the use of a property where a non-conforming situation exists may be increased and the equipment or processes used at a location where a non-conforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and in no violations of other subsections.

Note: When staff did a final inspection in the Oceana parking lot, a transformer was encroaching on two parking spaces. There was also a neighbor's block fence that was encroaching on a parking space in the parking lot of the marina building. Neither encroachment was depicted on the approved site plan. The applicant opted to relocate these spaces in the Oceana parking lot under a minor modification approved by staff. There has been an appeal to staff's determination that these spaces located in the Oceana subdivision are not allowed under Section 40-425 Extension or Enlargement of a Non-Conforming situation. The Board of Adjustment upheld staff's determination.

Planning Director Jeremy Hardison presented the details. He reviewed the site plan approval process and adjacent uses as well as the seven specific standards and four general conditions to be considered. He said since 2020, the Town installed a fence along the property line to protect the Town well site.

Proposed conditions from staff:

1. Type B 10-foot landscaping requirements to be waived for the additional proposed new parking spaces.
2. Food truck will need to meet Section 14-21.
3. Major changes to approved plans and conditions of development may be authorized only by Council after review and recommendation by the Planning and Zoning Commission in the same manner as outlined in this article for original submission.
4. Dedicate the existing Georgia Avenue pavement area and south of the pavement to the Town.
5. Must meet all Local, State, and Federal requirements.
6. New Hanover County Consent Order conditions shall apply. Mr. Hardison said these are mostly operational conditions vs. site conditions.

Mr. Hardison said the Planning and Zoning Commission unanimously denied the proposal based on it not meeting the following findings:

1. That the use will materially endanger the public health or safety if located where proposed and developed according to the plan as submitted.
2. That the use does not meet all required conditions and specifications.
3. That the use will substantially injure the value of adjoining or abutting property, or that the use is a public necessity.
4. That the location and character of the use if developed according to the plan as submitted and approved will not be in harmony with the area in which it is located and in general conformity with the Town Land Use Plan and policies.

Council Member Benson asked about State review and approval. Mr. Hardison said the applicant has applied for a CAMA permit for additional boat storage spaces, and that application is pending the outcome of this hearing. He said if the Town is agreeable, CAMA staff said it would be consistent with their regulations.

Mayor Barbee asked the applicant to present evidence and legal arguments in support of the request.

Mr. Richardson, representing the applicant, asked to move the staff report into the record. Mayor Barbee agreed to accept it into the record.

Mr. Richardson asked Mr. Hardison if staff supports the SUP modification application. Mr. Hardison said yes. Mr. Richardson asked if traffic impact analysis or stormwater engineering are required for today's application consideration. Mr. Hardison said no.

Mr. Richardson called Chad Cooke, the authorized representative of CBYC, to the stand. During his testimony, Mr. Cooke said the marina has been allowing dockage of two boats of 22.5 feet or less per slip since February 2023, and no one on staff has been contacted about any injuries, mishaps, or damage to boats. He said Freedom Boat Club (FBC) docks the boats.

Mr. Richardson asked Mr. Cooke if they are requesting that the Town release the area north of the pavement of the easement to CBYC to own in fee simple, and Mr. Cooke said yes, adding that this space would help with on-site parking for the marina.

Mr. Hodges, representing Oceana Owners Association, asked Mr. Cooke if CBYC was ordered by the Town to stop double stacking boat slips until a modification was made to the permit. Mr. Cooke said he doesn't recall the conversation. Mr. Hodges asked Mr. Cooke if they'd received a CAMA letter asking for them to cease and desist double stacking until the appropriate approvals were received, and Mr. Cooke said yes. Mr. Hodges asked if they had continued to double stack boats while still under a notice of violation. Mr. Cooke said yes, they applied for this modification in 2023 and have been waiting for it to be heard. Mr. Hodges asked if CBYC rents party or pontoon boats to the public. Mr. Cooke said there are two pontoon rentals at the end of A dock, which are not part of the 69 slips.

Mr. Richardson asked if CBYC has had any meetings at the marina with representatives from the division that enforces CAMA. Mr. Cooke said yes, and double stacking was going on at the time. He said he was never told they were in violation or were going to get fined. Mr. Richardson asked Mr. Cooke if it was his understanding that the division was holding the notice of violation in abeyance until this hearing, and Mr. Cooke said yes. Mr. Richardson asked if anyone has come forward and alleged that the uses of the marina are in violation of any declaration of condominium, and Mr. Cooke said no. Mr. Richardson asked if anyone from the division or the Town has expressed that the pontoon boats are in violation of any ordinance, law, or permit, and Mr. Cooke said no.

Mr. Richardson called Zach Hollenbaugh of FBC to the stand. During his testimony, Mr. Hollenbaugh said FBC opened in October 2019 and that he is in support of the application for the modification of the SUP. He said double stacking would benefit FBC by allowing them to condense their fleet to a smaller footprint, making the operation more efficient. Mr. Hollenbaugh said FBC staff and members are all required to go through training with Coast Guard-licensed captains before they operate vessels, and there have been no injuries or damage as a result of double stacking the boats. Mr. Richardson showed some photos to Mr. Hollenbaugh and asked him if they depicted how the parking lot behind the Oceana gate is usually occupied on any given weekend, and Mr. Hollenbaugh said yes, adding that the lot is consistently underutilized.

Mr. Hollenbaugh said he was involved in an application to the Town of Surf City seeking double stacking of boat slips without any modifications to finger docks. He said the Town of Surf City granted that SUP in December 2023. Mr. Hodges noted an objection for the record, stating that this is an unrelated application under a different municipality with different ordinances. Mr. Richardson asked Mr. Hollenbaugh if there was any opposition to FBC's application for the SUP from the Town of Surf City. Mr. Hollenbaugh said there were concerns about safety, which were addressed, and the logistics of being able to fit two boats into one slip. He said they were able to demonstrate how their operation could make that work.



Mr. Hodges asked Mr. Hollenbaugh to explain how FBC works. Mr. Hollenbaugh said FBC has been around for more than 30 years, and he is the local franchisee that purchased the territory from Carolina Beach to Jacksonville. He said FBC operates similarly to a country club membership, with members paying an entry fee and monthly dues in exchange for access to a fleet of vessels maintained by FBC. Mr. Hodges asked about the reservation process. Mr. Hollenbaugh said there are different membership types, and the 500 members usually book boats in advance for either a half day or full day during a period that starts 30 minutes after sunrise and ends 30 minutes before sunset. Mr. Hodges asked if there may be a situation in which a member who uses a boat during the morning is still on the property hanging out at the bar barge while another member using the boat for the afternoon arrives. Mr. Hollenbaugh said with the amount of time in between reservations, they do not have any overlap at this time. He said there are stickers that go on vehicles to help monitor how long they stay on the property.

Mr. Hodges asked Mr. Hollenbaugh if FBC has sent out texts to members telling them about parking issues at the marina. Mr. Hollenbaugh said they have asked members to be mindful of this, including the fact that they are not allowed to park in the Oceana lot. He said they have told members on-street parking is available. Mr. Hodges asked Mr. Hollenbaugh if he knows there is not sufficient parking within the gravel lot that belongs to CBYC. Mr. Hollenbaugh said yes, and this is a result of Mr. Hodges' client's restrictions on what they are able to do. Mr. Hodges said it is due to the agreement that was signed by the parties. Mr. Richardson noted an objection for the record, stating that this is the subject of litigation. Mr. Hodges asked Mr. Hollenbaugh if FBC members have been directed to park in the spaces for the public park at the intersection of Georgia and Florida avenues, and he said yes. He also said members have been encouraged to carpool.

Mr. Hodges asked Mr. Hollenbaugh if he knew there was a notice of violation from CAMA with respect to the double stacking of slips. Mr. Hollenbaugh said he knows now. Mr. Hodges asked if he just learned this today, and Mr. Hollenbaugh said he previously knew there were conversations about needing to get approvals. Mr. Hodges asked Mr. Hollenbaugh if he notified FBC's insurance company that there was a notice of violation about double stacking, and he said no.

Mr. Richardson asked Mr. Hollenbaugh if FBC received a notice of violation from any agency, and Mr. Hollenbaugh said no. Mr. Richardson asked if FBC memberships here are just for this marina. Mr. Hollenbaugh said members can use the Surf City location as well. Mr. Richardson asked how many of the local FBC members live in Carolina Beach. Mr. Hollenbaugh said about 320. Mr. Richardson asked Mr. Hollenbaugh if it's his understanding that parking for a public park is open to the public on a first-come/first-serve basis, and Mr. Hollenbaugh said yes. Mr. Richardson asked if there was any rule broken by FBC asking members to park there or along the right-of-way of Georgia Avenue, and Mr. Hollenbaugh said no. Mr. Richardson asked who does enforcement for those who park illegally on a Town street. Mr. Hollenbaugh said they receive a ticket from the company that writes tickets for the Town.

Mr. Richardson called Renee Reitzel of Nest Realty to the stand. During her testimony, she said she has shown several homes in Oceana but never had anything under contract there. She said she has never heard any complaints from clients about the proximity of the marina to the homes in Oceana or had anyone cite the marina as a reason why they would not buy a house in the neighborhood. Ms. Reitzel said everyone knows the marina is there because they pass it to enter the community. She referenced a report that shows there has been no drop in prices for homes in Oceana since the double stacking of boats began in February 2023. Ms. Reitzel said the marina has been openly double stacking boats, but that has not affected home prices. She said there is currently only one active listing and there have only been five sales during the period because people hang on to their homes in Oceana once they buy them and there is not much turnover.

Mr. Hodges asked Ms. Reitzel if despite an overall trend of home prices increasing, whether there could be factors that may affect how much they increase. Ms. Reitzel said nobody knows. Mr. Hodges asked Ms. Reitzel if given that fact that she's closed no transactions in Oceana, whether she can say for sure what any of those factors are for any properties bought and sold in Oceana in recent years. Ms. Reitzel said the fact that she has not closed on any of these properties doesn't mean she can't say that, adding that she lives right down the street.

Mr. Richardson asked Ms. Reitzel, who has shown several properties in Oceana and surrounding communities, whether anyone has ever communicated to her that the presence of the marina or the double stacking of boats there is a deterrent for them buying a property nearby. Ms. Reitzel said no.

Mr. Richardson said this concluded the evidence in support of the application and contended he reserves the right of rebuttal of evidence and testimony.

Mr. Hodges called Mr. Hardison back to the stand to ask questions about the staff report. During his testimony, Mr. Hardison said he was on the marina property doing a final inspection pursuant to the original Conditional Use Permit (CUP) that was issued pursuant to the settlement agreement when he first noticed the double stacking. He said he notified CBYC to stop this process and that he would not be able to sign off on anything until conditions were consistent with the CUP approval. Mr. Hardison said he was aware of the notice of violation from CAMA, and he agreed one of the reasons for asking CBYC to stop double stacking prior to getting approval would be because required parking was not in place.

Mr. Hodges mentioned the floating barge structure, also referred to as a houseboat, which according to the settlement agreement must be used for residential purposes or as a marina office. He asked Mr. Hardison if he previously heard Mr. Cooke equate FBC's use of that structure as its office with the marina's use of that office, and Mr. Hardison said yes. Mr. Hardison said one parking space is required for that structure, previously reduced from two based on the fact that it is being counted as one boat storage space.

Mr. Hodges asked Mr. Hardison what the parking requirement is for a professional office. Mr. Hardison said it is one parking space per 300 square feet. Mr. Hodges asked Mr. Hardison if the parking requirement would be five parking spaces if that structure was 1,500 square feet and sitting on land, and Mr. Hardison said yes. Mr. Hodges asked Mr. Hardison if he was aware a boat is being parked behind the houseboat structure. Mr. Hardison said no and that he told Mr. Cooke it should be used as one storage space for the houseboat only. Mr. Hodges presented Google Earth aerial photographs showing a boat being parked behind the houseboat for over a year. He asked Mr. Hardison if he took it upon himself to figure out how that slip was being used. Mr. Hardison said CBYC did not propose to change the use and has not applied for an application to change the use.

Mr. Hodges mentioned the boat storage space that was taken out of the count of 69 due to it previously being sold to Ricky Young, the property owner of a lot in Oceana. He asked Mr. Hardison if he received a letter from Mr. Young's attorney. Mr. Hardison said he doesn't recall. Mr. Hodges presented a letter dated December 22, 2023, to Mr. Hardison and others regarding Mr. Young's slip and deed. Mr. Hodges asked Mr. Hardison if he eliminated a parking space for that slip despite the fact that Mr. Young bought this slip that included an interest in the common elements and a right under the declarations that were then assigned to CBYC of the right to use the parking area. Mr. Richardson noted an objection for the record, stating that this calls for a legal conclusion and adjudication that only a judge can give. Mr. Hodges said he is simply asking why a parking space for that slip was backed out of the parking calculation. Mr. Hardison said it was based on the proposal and application, and he did not investigate Mr. Young's right to use those parking areas.

Mr. Hodges asked Mr. Hardison if two parking spaces would equate to four employees. Mr. Hardison said yes, and four employees were shown in the application. Mr. Hodges asked Mr. Hardison what he did to confirm there were only four employees at CBYC. Mr. Hardison said he must rely upon the application. Mr. Hodges said every parking space matters in this situation, as there is no leeway for the calculations, and Mr. Hardison confirmed, agreeing that if one more parking space is required the applicant would not meet code. Mr. Hodges asked if the application included any parking spaces allocated for FBC employees. Mr. Hardison said the proposal was specific to the marina. Mr. Hodges asked Mr. Hardison if FBC has applied for any CUP or SUP with the Town, and Mr. Hardison said no. Mr. Hodges mentioned that water-oriented businesses require Conditional Zoning (CZ) approval, and Mr. Hardison confirmed this is correct under the table of uses. Mr. Hodges asked if that hasn't been done here with respect to FBC because staff's interpretation is that FBC is not part of an existing marina, and Mr. Hardison said that's correct.

Mr. Hodges asked Mr. Hardison if at the time parking calculations were done whether he was aware that CBYC also rents pontoon boats, and Mr. Hardison said yes. Mr. Hardison said when he did the inspection, there were 69 boat storage spaces and no other vessels outside of them. He added that if there was a vessel parked on-site, then it needs to be calculated in parking. Mr. Hodges asked if the pontoon boats, which hold up to 10 passengers each, are kept on the property somewhere outside of the 69 spaces whether those would require additional calculations for parking, and Mr. Hardison said

that is correct. Mr. Hodges asked if Mr. Hardison had done any investigation into the pontoon boat rentals. Mr. Hardison said no, other than being aware that they are part of the operations.

Mr. Hodges asked Mr. Hardison if he has the authority to request a reasonable amount of parking spaces for additional uses. Mr. Hardison said for unlisted uses, yes, adding that the pontoon boat rentals, the houseboat being used as a commercial office, and FBC employees were not part of the application and therefore were not allocated any additional parking requirements. Mr. Hodges asked if any employee parking had been allocated for employees of the food truck depicted on the site plan. Mr. Hardison said no, but the food truck would have to meet Town regulations for food trucks.

Mr. Hodges said the Town Land Use Plan states a goal of reducing traffic and parking congestion and ensuring adequate access for emergency services. He also mentioned the document referencing the north end of Town being a “vulnerable isthmus” with future intensification not being encouraged in this area.

Mr. Richardson asked Mr. Hardison if it’s staff’s practice to accept an application as true and not act as a judge. Mr. Hardison said yes, he must apply the ordinance to what’s on the application. Mr. Richardson asked if something is found in violation of an approved site plan or permit if the Town has remedies to handle this. Mr. Hardison said yes, this would be an enforcement issue.

Mr. Richardson asked Mr. Hardison if the maximum capacity of a vessel is part of the calculation for parking under the Town’s regulations, and Mr. Hardison said no. Mr. Richardson asked if it’s his client’s burden to stay within the authorization of a permit and bring itself into compliance if it’s in violation, and Mr. Hardison said yes. Mr. Richardson asked if staff found that the application before Council today is consistent with the Land Use Plan and was found to be harmonious with the surrounding areas, and Mr. Hardison said yes.

Mr. Hodges called Olin Furr, President of the Ocean Owners Association, to the stand. During his testimony, Mr. Furr said parking and traffic congestion issues at the entrance to the subdivision began last year on busy weekends and culminated with cars parking up and down Georgia Avenue. He said these cars were initially being ticketed, but parking enforcement officers were told by the Town to stop ticketing. Mr. Richardson noted an objection for the record, stating that this testimony is inadmissible due to hearsay. Mayor Barbee said he feels comfortable that Council can hear from the witness and figure out his competency. Ms. Fox said Council was given instructions about what can be considered in their decision, and a reminder will be issued at the end.

Mr. Furr said parking in the neighborhood is strained, with people walking down the street after parking because there are no sidewalks and cars are circling and pulling over wherever they can. He said he has concerns about emergency vehicle access and thinks the parking spaces staff added inside the CBYC lot behind the Oceana gate should have been considered a major modification. Mr. Furr said Oceana residents don’t want additional parking in this area and thought they had it settled that it would remain a 56-space parking lot.

Mr. Furr described the process for obtaining parking passes for the lot and said he is in charge of it. He said FBC is a large driver of traffic because it is a business running two shifts with 36 employees and not just people coming to use their boats occasionally, as with a marina. Mr. Furr said the FBC people are nice and he gets along well with them, but CBYC does not have the parking to take care of this water-oriented business operating inside of it.

Mr. Hodges showed the deed of easements that was part of the settlement in late 2020, which indicated there should be parking based on 70 boat storage spaces. He noted that the number should actually be 69, and he is unsure how it became 70. Mr. Hodges said the application showed four CBYC employees, which equates to two parking passes, but Mr. Furr said there are currently seven parking passes issued to CBYC employees.

Mr. Hodges asked Mr. Furr if FBC is using the floating house. Mr. Furr said they occupy both floors, and the structure is about 1,300 or 1,400 square feet. Mr. Hodges asked how many parking passes have been issued to FBC employees who work at the marina. Mr. Furr said there are now 36. Mr. Hodges asked Mr. Furr if he thinks those employees have been factored into the parking calculations for the proposed modification, and Mr. Furr said no.

Mr. Hodges asked Mr. Furr if he had seen the pontoon boats going out and coming in. Mr. Furr said yes, they usually come out of the transient slips. He said FBC also has pontoon boats. Mr. Furr said he's only seen people in the pontoon boats once, and there were at least eight people aboard.

Mr. Hodges asked Mr. Furr how the proposed modification will affect the dumpster. Mr. Furr said the dumpster used to sit on the corner and it was a mess, but after the current CUP was agreed upon it was moved to inside of the lot up against the fence inside of a corral. He said this is the best spot for it because it's away from everyone and hidden. Mr. Furr said the proposed dumpster would go at the entrance of Oceana's main gate and point toward Marina Street, which is the subdivision's easement. He said trash trucks will come in and overburden that easement. Mr. Furr said it is a slap in the face for someone to put a dumpster at the entrance to a subdivision, which is a situation that likely can't be found anywhere else in the Town.

Mr. Furr said two people have moved out of Oceana because of the marina. He asked Council to dig into the regulations and look at how they are being applied regarding parking. Mr. Hodges pointed out the consent ordinance entered into as part of the settlement between the Town, Oceana, and CBYC and said one of the provisions agreed to is that any future permit applied for by CBYC requesting additional uses of the property not contemplated in the current permit may be contested by Oceana.

Mr. Richardson asked Mr. Furr if all 69 boat storage spaces were in existence when he bought his house over six years ago. Mr. Furr said yes, but they were operated differently. Mr. Richardson asked Mr. Furr if he had any photographic evidence showing usage of the parking lot behind the Oceana gate

being maxed out, and Mr. Furr said no. Mr. Richardson asked if the parking lot has ever been maxed out at any time since the settlement agreement, and Mr. Furr said no.

Mr. Richardson asked who has the duty to enforce whether a vehicle in the Oceana parking lot is validly authorized. Mr. Furr said Oceana is the administrator of adhering the barcodes and keeping a database, and CBYC is supposed to hire a towing company to ride through and monitor the parking lot to ensure all vehicles have a barcode on them. He said there have been dozens of instances of unauthorized vehicles being in the lot, even since the settlement agreement, but they worked through it. Mr. Furr said the agreement works well if it's followed.

Mr. Richardson asked if all traffic concerns outside the gate have come about because there is an underutilized parking lot facility behind the Oceana gate because of the restrictions on parking that Oceana's position has taken. Mr. Furr said there were never parking problems in Oceana due to the marina until CBYC showed up. He said the way they operate pushes the limit and maxes out everything.

Mr. Richardson asked if anyone had moved out of Oceana because of the marina since the settlement. Mr. Furr said no, the agreement has worked and it needs to be kept like it is. Mr. Richardson said the proposed dumpster site is not at the Oceana entrance and is located on his client's property. He asked Mr. Furr how many parking spaces he contends the application should have. Mr. Furr said 130 to 140. Mr. Richardson asked what his basis is for these figures, and Mr. Furr said there are others who will testify with that information, but when pressed by Mr. Richardson he said FBC is the driver of the need for more parking because it is a boat rental time share business running multiple shifts, creating a traffic problem on Georgia and Florida avenues. Mr. Richardson asked Mr. Furr if he knows every vehicle parked in that area belongs to patrons of the marina. Mr. Furr said they come back from boats and get in those cars to leave, so it's obvious that's who they are. He said some slips have not had barcode stickers issued because some people would rather park along the street instead of inside Oceana because that puts them closer to their boats.

Mr. Hodges called James Sanderford, Vice President of Oceana Owners Association, to the stand. Mr. Sanderford said he is a Professional Engineer licensed in Arizona and North Carolina, and he gave details about his education and experience. He said he has prepared a review of the plans being considered tonight. Mr. Richardson noted an objection for the record, stating that witnesses are required to give testimony in the form of questions and answers rather than a narrative. Mr. Hodges said Mr. Sanderford has been sworn in and was asked if he has prepared a review and what his findings are, and Mr. Richardson is free to object to anything he says. Mayor Barbee said he tries to err on the side of letting people speak, although he hears Mr. Richardson's concerns and respects his right to interject at any time. Mayor Barbee asked Mr. Sanderford to stay on track and limit his presentation to the review he performed.

During his testimony, Mr. Sanderford said he used existing parking calculations in the Town ordinances to come up with a total of 132 parking spaces that should be required, taking square footage of the

floating structure and employees for both CBYC and FBC into account. He presented photos that he contends show public safety issues and conflict among Town policies regarding off-street parking in the neighborhood. Mr. Sanderford said some of these photos were taken last summer before the bar barge was open, and others were taken recently. They showed cars parked along Georgia Avenue, including some flowing onto adjacent side streets such as Maryland Avenue, and people walking in the roadway because the shoulder is full of cars. Mr. Sanderford said he recently called 911 because of a car protruding into the road, causing what he believes was a fire code issue regarding fire vehicle access along the road. He said the area never had this issue before, and the reason so much traffic is being generated now is due to FBC operating inside CBYC. Mr. Sanderford said FBC is a water-oriented business and should require a CUP.

Mr. Sanderford brought up concerns about access to handicapped parking spaces. He said not complying with the Americans with Disabilities Act (ADA) is a very serious issue. Mr. Sanderford also handed out printed material to Council. Mr. Richardson noted a renewal of his previous objection for the record, citing the narrative aspect of Mr. Sanderford's testimony and stating that the distributed report appears to contain a large amount of hearsay. Mr. Sanderford said the report contains a complaint dealing with the modification, a complaint dealing with the first CUP, and a complaint filed with the Office of State Fire Marshal, which is currently being investigated. He said parking spaces are not ADA-compliant, required sight triangles will cause parking spaces to be lost, and the proposed location of the dumpster will encroach into a sight triangle.

Mr. Sanderford said the proposal is an expansion, so everything must be brought up to current standards, adding that there is no such thing as grandfathering in ADA parking spaces. He also mentioned landscaping issues and not enough room for the required recovery area at the edge of the travel way. Mr. Sanderford said the proposed location of the dumpster will destroy Oceana's roads, citing information about the typical thickness and construction of dumpster pads.

Mr. Sanderford said all the issues he's found with the plans are related to traffic flow, and he believes this will be a problem for emergency vehicles because time matters when there are medical issues and having parking impeded will make a difference. He said something needs to be done about the parking situation. Mayor Barbee said Mr. Sanderford was asked to present his findings and now sounds like he's going into giving his opinion. Mr. Sanderford said his presentation is over and he's currently talking as a concerned citizen. He said there have been a lot of mistakes that should have been checked before things got to this point.

Mr. Richardson asked Mr. Sanderford if the marina was in existence when he bought his property, and Mr. Sanderford said yes. Mr. Richardson asked if Mr. Sanderford had filed an ADA complaint against his client. Mr. Sanderford said he has notified the proper agencies of what he perceives as a public safety issue. Mr. Richardson asked how many complaints have been found to be valid and enforced against the marina. Mr. Sanderford said currently none, but they are still in progress. Mr. Richardson pointed out that Mr. Sanderford is not a disinterested expert or witness because he lives in Oceana and is

opposed to the marina's application. Mr. Sanderford said this is correct, but he has used ordinances and not his opinion to support his claims.

Mr. Richardson asked Mr. Sanderford how many times he has called 911 regarding the marina. Mr. Sanderford said once, and Mr. Richardson pointed out that it was just before this hearing. Mr. Sanderford said other people have called, and he thought another call was warranted when he went outside the gate and saw people and cars in the road. He added that the issues with the roadway started with FBC because it is a business operating inside of a business.

Mr. Sanderford said Georgia Avenue is 18 feet wide, which doesn't meet the fire code of 20 feet on its own but is further problematic due to cars parking on the street. Mr. Richardson asked Mr. Sanderford how he calculated the figure of 18 feet. Mr. Sanderford said he measured from asphalt to asphalt in the area of Georgia Avenue as it approaches Oceana. Mr. Richardson asked Mr. Sanderford if he believes a roadway is only considered to be pavement. Mr. Sanderford said yes, the shoulder is not included as part of the roadway per the fire code. Mr. Richardson asked Mr. Sanderford if he had made any complaints about the narrowness of the road. Mr. Sanderford said no, but he is making a complaint today. Mr. Richardson pointed out that the Fire Department is one of the Town departments that has reviewed the site plan as part of the standard Technical Review Committee (TRC) process, but Mr. Sanderford said he doesn't believe the site plan showed that cars were being parked on part of the road.

Mr. Richardson asked Mr. Sanderford about his complaint against a land surveyor. Mr. Sanderford said this was because the handicap spaces are not ADA-compliant, and the surveyor left the easement off the plan. Mr. Richardson said Mr. Sanderford filed this complaint, another against an engineer, and one with the Office of State Fire Marshal only after his client filed the application being considered tonight. Mr. Sanderford said he questions who approved the handicap spaces that currently exist. Mr. Richardson asked Mr. Sanderford how many ADA citations have currently been filed against his client. Mr. Sanderford said they're coming, but there have been none yet. Mr. Richardson pointed out that if violations were issued, his client would have the opportunity to respond and bring the issue into compliance. Mr. Sanderford said someone could file a lawsuit regarding ADA compliance at this point, but Mr. Richardson said just because someone files a lawsuit doesn't mean they will win.

Mr. Richardson asked Mr. Sanderford if he contends that the marina's parking spaces are encroaching on Oceana property. Mr. Sanderford said yes, that's what's shown on the plan. Mr. Richardson asked if a lawsuit has been filed against his client for trespassing, and Mr. Sanderford said not yet.

Mr. Richardson asked Mr. Sanderford if he believes that patrons of the marina and its employees cannot park inside of the easement area. Mr. Sanderford said easement areas must be kept clear and it's not safe to have vehicles sticking out into the road. Mr. Richardson asked if this is part of any of Mr. Sanderford's formal complaints. Mr. Sanderford said he is addressing it now before Council.



Mr. Richardson pointed out that the dumpster is on the marina's property. Mr. Sanderford said this is correct, but you can't get a dumpster truck in there and he doesn't know why it was approved.

Mr. Hodges called Ramey Kemp, a Professional Traffic Operations Engineer with RFK Engineers in Raleigh, to the stand. Mr. Kemp detailed his education, work experience, membership in professional organizations, and awards and said he is registered in North Carolina, Virginia, and Florida. He also gave a brief overview of many local projects on which he has worked. Mr. Hodges asked Mr. Kemp if he had the opportunity to review the applicant's proposed modification and what that means with respect to double stacking of the 22 slips, the presence of FBC inside the existing commercial marina, and the traffic impact that will have on the community. Mr. Kemp said yes. Mr. Hodges asked Mr. Kemp if he has formed an opinion as to whether or not that use will materially endanger public health or safety if approved. Mr. Kemp said yes, and he has based this on his research of materials used over the years to guide marina developers on how much parking is needed for a marina. He said it's a good idea for FBC to go into a marina that's already developed, but the extra demand for parking can be problematic. Mr. Kemp said the responsible way to handle parking would be to find it on-site or shuttle it in from an off-site location. He said otherwise people will be parking on the streets, and if the asphalt is 18 feet and a vehicle encroaches 2 feet then the amount of pavement is down to 16 feet or even less if people start parking on both sides of Georgia Avenue.

Mr. Hodges asked Mr. Kemp to explain the report he prepared. He mentioned concerns about pontoon boats adding to the number of people parking near the marina, especially when you factor in delivery trucks, garbage trucks, and emergency vehicles. Mr. Kemp said boats are mostly used from June to August, with the peak week being July 4. He said FBC is a great business idea but must come with some responsibility to handle the traffic that it will generate, especially during the hour between morning and afternoon shifts. Mr. Kemp referenced a study by the International Marina Institute that studied 8,000 marinas worldwide and determined that there should be two parking spaces per one boat on the water. He said when you also factor in employees and the boat slips that aren't used by FBC, it all adds up to 141 spaces needed for the facility. Mr. Kemp said most of the congestion occurs between 11:00 AM and 2:00 PM during the summer, especially on weekends and holidays. He said if cars park on both sides of Georgia Avenue it essentially becomes a one-way street, making it unsafe for Oceana residents and FBC members. Mr. Hodges asked Mr. Kemp if it's his opinion that the use as proposed by CBYC will materially endanger public health or safety if it's approved. Mr. Kemp said based on all the reasons why we have ordinances and safety rules, yes.

Mr. Richardson asked Mr. Kemp how many marinas he has designed. Mr. Kemp said he designed one in Beaufort five or six years ago. Mr. Richardson said during his career, Mr. Kemp's name has popped up many times but never as a marina designer.

Mr. Richardson mentioned Mr. Kemp's assumption that FBC boat usage shifts are 8:00 AM to noon and 1:00 PM to 5:00 PM. He asked Mr. Kemp if he heard Mr. Hollenbaugh's earlier testimony that shifts are actually from 30 minutes after sunrise until noon and 2:00 PM until 30 minutes before sunset. Mr.

Kemp said he did not hear that, and having two hours between shifts would change a little bit of what he said.

Mr. Richardson asked Mr. Kemp if his testimony was based on the assumption that all 44 boats would be going out for both morning and afternoon shifts with two parking spaces per boat needed for each shift, and Mr. Kemp said yes. Mr. Richardson asked Mr. Kemp if he has any firsthand knowledge that FBC has all 44 boats going out in the morning and afternoon. Mr. Kemp said it's a business, and it's their goal to make that happen by determining how many members they can have. When pressed by Mr. Richardson, Mr. Kemp said he does not know about the internal workings of FBC. Mr. Richardson asked Mr. Kemp if he would be surprised to learn that FBC doesn't make extra revenue based on the number of boats that get taken out during the day, and Mr. Kemp said yes. Mr. Richardson asked Mr. Kemp if he would be surprised to learn that FBC charges a member initiation fee and a monthly fee irrespective of how many times a member uses a boat. Mr. Hodges noted an objection for the record, stating that Mr. Hollenbaugh did not testify to this information during his time on the stand. Mr. Richardson said Mr. Kemp is making assumptions, and he's trying to crystalize the assumptions that are being made when Mr. Kemp has no firsthand information about FBC. Mr. Kemp said he had to make assumptions about FBC operations based on what he read and what he thought might occur.

Mr. Richardson asked if the assumptions about all boats going out during both daily shifts are based on every day during what Mr. Kemp considers to be boating season. Mr. Kemp said he considers it to be the second week of June to the third week of August, the prime period, with a peak on July 4. Mr. Richardson asked Mr. Kemp why his parking calculations were not supported by the numbers in Town ordinances. Mr. Kemp said he did look at Town code, but a boat club is a new idea and he doesn't think there is another one operating in the Town, so he wanted to come up with real numbers that project the real need. Mr. Richardson asked Mr. Kemp if the number of parking spaces he used for marina and FBC employees were irrespective of whether those employees were actually on-site working during any given time, and Mr. Kemp said yes.

Mr. Hodges asked Mr. Kemp if it's typical to look at maximum anticipated use when trying to come up with an appropriate number of parking spaces, and Mr. Kemp said yes. Mr. Hodges pointed out that Town ordinances state that maximum, not minimum, anticipated use is what the Planning Director must use to determine parking requirements for uses that aren't specially delineated in the regulations. Mr. Kemp compared it to Walmart, which has a huge parking lot that sometimes looks empty but fills up during certain times on the weekend. He said parking is designed to accommodate a maximum number.

Mr. Hodges asked to move the reports of Mr. Kemp and Mr. Sanderford into the record. Mr. Richardson noted an objection for the record, stating that Mr. Kemp's report is not based on the Town code of ordinances' expectations and standards that govern his client's application and Mr. Sanderford's is not impartial, it references things that he's not an expert and competent to give

testimony about, it contains hearsay, and it is irrelevant in material. Mayor Barbee noted the objection.

Mr. Hodges said he has no further witnesses. Mayor Barbee asked if there are others who wish to speak.

David Sadler of 211 Georgia Avenue said there is a traffic problem in the area and speed bumps don't seem to slow down motorists, so he would like Council to think about adding another one. He said he's heard a lot about all the reviews of this project provided by government, but he said the Space Shuttle Challenger was reviewed extensively and there was one engineer who kept saying there was a problem and not to launch it, but it was done anyway. Mr. Sadler urged Council to listen to the two engineers who have spoken tonight and weigh their testimony carefully because it sounds like they have a lot of experience. He said it's disturbing that evidence shown today suggests drawings that were submitted with the application didn't include easements and therefore do not provide a complete set of information for those doing reviews for the basis of their assessments. Mr. Sadler suggested the package may need to be resubmitted with more accurate information. He also expressed concerns about environmental considerations, including sea turtles, an endangered species, living in the canal and a lack of contingency planning for possible sewer or hazardous chemical spills from the barge. He asked how long it will take to detect a spill and how much will be spilled before it's detected.

Mayor Barbee asked Mr. Sadler to refrain from asking questions and instead limit his testimony to factual information about how the project does or does not meet the standards of the Town. Mr. Sadler said he was done with his comments. Mr. Richardson said based on Mr. Sadler's testimony, he does not believe Mr. Sadler establishes standing and therefore his testimony should be disregarded.

Kerry Machovec of 309 Georgia Avenue said she has owned her property since 2015 and has seen major changes since then. She said there were no parking issues until last year when FBC expanded and believes it is a huge disservice to the community to not include FBC staff and additional marina staff in the count for parking requirements. Ms. Machovec said the operation is expanding into the residential community, and she and her neighbors should not have to deal with the influx of traffic. She said she has sent photos to the Police Chief and Parking Manager showing you could not get around the corner of Florida Avenue due to the number of cars. Ms. Machovec said there are also issues with speeding and alcohol, and children under the age of 6 live in the neighborhood. She said she has personally observed 10 to 15 FBC staff on the docks on the weekends, and that doesn't include workers in the office. Ms. Machovec said all of this creates a public safety issue. She also said she has had people from the marina come onto her property, including intoxicated, underage staff members fighting under her house and slamming each other against her garage doors at 2:30 AM. She said the situation affects the neighborhood property values and is not in harmony with a residential community. Ms. Machovec asked Council not to approve placement of the dumpster at the corner of Georgia Avenue and Marina Street because of possible odors from the food being disposed of there, and she also mentioned stormwater concerns. She said FBC is trying to operate beyond its means, and

that property cannot support the amount of traffic it generates without it trickling into the residential area.

Jeannie Mintz of 205 Georgia Avenue said common sense shows it is a problem to allow a business to come into the middle of a residential neighborhood, and the restaurant should never have been allowed. She said she has lived there for 42 years since it was a dirt road, and there is no consideration for residents who have been there paying taxes for years. Ms. Mintz said while property values may have gone up because that is the overall trend, people do not want to buy in the area because of all the problems. She said the application is not in harmony with the neighborhood, and she believes that Bobby Harrelson gave the nearby park to the Town to be used by the public, not as a parking lot for FBC. Ms. Mintz said residents should not have to call every single time there is a code or parking violation, and she asked if it's illegal for cars to park in a manner that doesn't allow emergency vehicles to pass. Mayor Barbee reminded her to refrain from asking questions and instead testify. Ms. Mintz approached Council Members to show a photo on her phone. Ms. Fox asked that the photo not be shown to any other members of Council. Mayor Barbee said any photo evidence should have been provided to all parties in advance. Ms. Mintz said the Town should take action and protect taxpayers.

Mr. Richardson asked Ms. Mintz if she ever testified in opposition to the restaurant at the prior proceeding. Ms. Mintz said she did not because she was busy with a terminally ill family member. Mr. Richardson asked if she ever sought to intervene after the fact. Ms. Mintz said she thought the Town could handle the issue on its own.

Mr. Hodges asked Ms. Mintz if she took the photo on her phone. Ms. Mintz said yes, it's from a recent Monday or Tuesday around 11:00 AM and shows both sides of Georgia Avenue covered in traffic. Mr. Hodges requested that she publish the photograph to Council Members and email a copy to Mr. Hardison for inclusion in the record. Mayor Barbee said he will allow it and asked her to email it to the Town Clerk.

No one else requested to speak.

Mayor Barbee said Council Members may ask questions before the evidentiary hearing is closed.

Mayor Barbee asked about zoning for the marina and surrounding area. Mr. Hardison said the marina is Marina Business, and Oceana, Spinnaker Pointe, and the residents along Georgia Avenue are R-1B. Mayor Barbee asked if the application is considered a change of use. Mr. Hardison said no, it's a modification to an existing marina. Mayor Barbee asked what the process is if someone doesn't conform to conditions that Council puts on the issuance of a permit. Mr. Hardison said it's up to staff to ensure those conditions are met through the code enforcement process.

Mayor Barbee said the Town put some rules in place a couple years ago regarding parking on the right-of-way requiring permitting in a certain area and asked if that does not apply here. Mr. Hardison said it does not apply here. Mayor Barbee asked if residents could petition the Town to change those parking

regulations. Mr. Hardison said yes, or they may ask to designate it as a no-parking zone. Mayor Barbee asked if there have been any requests from anyone to change parking regulations in that area, and Mr. Hardison said not to his knowledge.

Council Member Benson asked if there was any public opposition to the application at the TRC meeting. Mr. Hardison said there were no members of the public present. Council Member Benson asked if there were staff concerns. Mr. Hardison said no, other than what was presented as a recommendation from staff regarding the easement of the Georgia Avenue extension. Council Member Benson asked if the Town were to abandon that whether there would be anything lost underground. Mr. Hardison said regarding the area outside the pavement, there are no utilities there.

Council Member Healy asked what the maximum number of FBC employees is out there at any given time. Mr. Hardison said he doesn't know that number. Council Member Healy said it's important to know in terms of parking spaces. Ms. Fox said this information should be in previous testimony, and Council will have to weigh the testimony. Mr. Hodges said Ms. Machovec testified that there are 10 to 15 FBC employees out there on any given day.

Council Member Healy asked about landscaping requirements. Mr. Hardison said there is a grassy area now, but if they expand a couple of parking spaces closer to the property lines as proposed, then that area should have landscaping. Council Member Healy asked if that's the only spot. Mr. Hardison said they are also proposing to move the sign and put the dumpster where there is some landscaping closer to the property line.

Council Member Hoffer asked if the plans would have never gotten to Council if TRC didn't like them. Mr. Hardison said if there's an ordinance with which the plans are inconsistent, that would need to be changed before moving forward. Council Member Hoffer asked if it's allowable for cars to back out into the right-of-way in Marina Business. Mr. Hardison said that is private property not adjacent to a right-of-way, and the easement is just to access the well site and not for the general public to traverse. He said the Town does not have authority to prevent parking from backing up there per the code. Council Member Hoffer asked if staff feels CBYC has been maintaining landscape standards required with the previous permit. Mr. Hardison said they had a landscape waiver at that time.

Mayor Pro Tem LeCompte said one of the conditions is to convert the easement space to a right-of-way, so she questioned whether that would make backing out into the street against regulations. Mr. Hardison said that is a proposed condition that is not yet in effect. He said parking is already existing, and it's important for that easement to be open for the public and to have adequate turnaround. He said this is not an already established right-of-way, so the regulation about backing out would not apply.

Council Member Benson pointed out that the current parking requirement for the houseboat is one space, but he asked what the parking requirement would be for commercial use of that space. Mr. Hardison said it would be one parking space per 300 square feet.

There were no other questions from Council Members. Ms. Fox suggested allowing each attorney to make final statements on behalf of their clients.

Mr. Richardson said he would like to make his statements last so he only has to speak once with no rebuttal.

Mr. Hodges requested that Council confirm the unanimous recommendation of the Planning and Zoning Commission to deny the application. He said if Council finds that just one more parking space is needed beyond the proposed number of 104, then the proposed modification must fail. Mr. Hodges said although Mr. Hardison is relying upon the information provided in the application, sometimes garbage in means garbage out. He said to get to the figure of 104, they had to remove a parking space that Mr. Young has a right to use with the boat slip he purchased, and they also counted only one parking space for the floating house, even though the CAMA permit shows that as two slips that would require two parking spaces. Mr. Hodges said the number of parking spaces for the floating house should actually be six due to the requirement of one parking space per 300 square feet and an additional space for the boat parked behind it. He said once you take all of this into account, along with the 35 FBC employees who are currently registered for security passes and the seven security passes currently registered to CBYC employees, this takes you even further over the figure of 104, and this doesn't even count the pontoon rentals or the food truck. Mr. Hodges said FBC has caused the problem and there has been no allocation for bringing that additional business into the equation. He said this changes the use, and under Town code a water-oriented business must either have its own permit or employees associated with that use must be factored into parking calculations, neither of which has been done here. Mr. Hodges said changing the nature of the marina has caused major traffic snarls in the area, creating safety concerns, the application does not meet all required conditions and specifications, and it is not supported by the Town's Land Use Plan because it encourages future intensification. He said there have been several comments about how the applicant can be cited for a violation and fix issues if everything has not been done right, but this is thumbing their nose at Council because they have already received a cease-and-desist letter from CAMA last year and they were ordered by Mr. Hardison to stop double stacking boats, but they have kept doing it anyway. Mr. Hodges said the application fails to meet general conditions 1, 2, and 4, and he asked Council to confirm the unanimous recommendation of the Planning and Zoning Commission.

Mr. Richardson passed out information from the UNC School of Government and the State Supreme Court. He said his client's application is to be judged based upon the Town's code of ordinances at the time of submission, not on how some people think the Town's ordinances should be or what future changes may be made. Mr. Richardson said the application has passed the TRC process, and they have heard nothing from staff to suggest the application is deficient in any way under the Town's zoning ordinances. He said if complaints arise about issues such as ADA compliance, his client will have to deal with them in a court of law. Mr. Richardson said much of the testimony focused on parking congestion despite the fact that no traffic impact analysis is required. He said Oceana is causing parking congestion due to the current position that anyone using the parking lot behind the Oceana gate must have a

barcode sticker affixed to their vehicle. Mr. Richardson said before that practice, there were 61 parking spaces off all the neighborhood streets that were available to FBC members and marina patrons in a parking facility that is underutilized. He said Mr. Kemp's report is based upon maxed-out assumptions that will never happen, and none of it is required under the Town's code of ordinances, which is what governs this application process. Mr. Richardson said his client is being blamed for every vehicle being parked outside of the marina facility, even though on-street parking is allowed in this area and there is nothing illegal about people parking at a public park and going to the marina. He said his client can't be blamed for every traffic congestion problem in a place that has grown exponentially. Mr. Richardson said the Land Use Plan indicates the Town should max out water-oriented businesses, and staff says the site plan is consistent with the Land Use Plan. He said there has been no testimony about any measurable diminution in property values around the area, and he questions what's not harmonious about 22 boats being added, all of which will be located on existing finger docks that can accommodate 45-foot boats. Mr. Richardson said his client has no problem eliminating both pontoon boats as a concession, even though there's no requirement in Town code about this common-area space. He said his client is also willing to take the boat docked in front of the houseboat, which is a training vessel, out of the equation and agree to park no more training boats in that space. Mr. Richardson said Ms. Machovec testified that Spinnaker Pointe residents were likely to be the most affected by the smell from the dumpster, but nobody from there has ever testified in opposition to the first permit application or this proposed modification. He said a dumpster truck would have to use the area of Marina Street and Georgia Avenue to access the dumpster in the parking facility irrespective of where it's located.

Mr. Richardson said the marina has been highly scrutinized by Oceana, other surrounding neighbors, and Town staff, so it's not realistic to think they are trying to get away with not complying with zoning ordinances. He said since his client filed this modification application, Oceana has filed three zoning complaints, all of which have been denied by staff and are at various stages of appeal but to date have been found to have no merit. Mr. Richardson said Council has a duty to follow the law, irrespective of how vocal opposition is, and he cited examples to demonstrate that the application must be approved as long as it meets the general conditions and specific standards. He said his client has carried its burden through TRC approval and the presentation of substantial, material, and competent evidence to show why the application satisfies Town ordinances. Mr. Richardson said opponents have not presented substantial, material, and competent evidence but instead referenced mostly hearsay. He said Mr. Kemp's testimony relies upon maxed-out assumptions for boat usage and employees on-site at one time and uses parking calculations that are not required under Town ordinances. Mr. Richardson said Mr. Kemp's report also relied on incorrect information about the amount of time between FBC boat usage shifts. He said there is no evidence to support complaints about fire violations and emergency vehicles not being able to pass through the nearby streets. Mr. Richardson asked Council to follow the law and approve the modification application based on the standards set forth in the law, Town staff's position, and other evidence heard today.

**ACTION:** Motion to close the evidentiary hearing  
Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

Ms. Fox reminded Council Members that their decision must be based on competent, material, and substantial evidence rather than personal preferences, and she said they must disregard evidence that doesn't meet the legal standard.

Mayor Barbee said Council's job is to look at the ordinances that exist and decide if the applicant meets them, regardless of whether or not they like it or how they'd feel if they lived there. He said he does not consider this a change in use, and staff has indicated that the application meets Town ordinances. He said concerns about traffic do not weigh into the decision because what matters is whether witnesses from the opposing side presented evidence that shows the general conditions and specific standards were not met, and he does not think they did.

Council Member Benson said staff determined compliance based on the parking plan submitted with the application, but evidence was discovered during the hearing indicating that plan did not paint a true picture of what should be considered in determining parking requirements, including the true use of the houseboat.

Council Member Healy said he feels there were a lot of gray issues discussed today, including safety concerns because nobody knows what the future will bring. He said the houseboat having only one parking space does not make sense to him, and when you factor in the pontoon boats, the training vessel, Mr. Young's boat slip, and employees of FBC not being in the calculation, he thinks required parking spaces are missing from the calculation. Council Member Healy said he plans to vote for denial based on general condition 2, which states "that the use does not meet all required conditions and specifications."

Council Member Hoffer said he found it difficult to sort through what was legitimate evidence vs. anecdotal testimony. He said he wishes the two parties could've sorted out the parking lot issue before coming to Council. Council Member Hoffer said he thinks the use has definitely changed due to the addition of boats and employees. He said he does not think the modification application meets general conditions 1, 2, and 4 and believes based on the evidence that parking requirement calculations are way off.

Mayor Pro Tem LeCompte said also thinks this is a change of use because this was originally a marina where individuals dock their boats, but it's now turned into a time share. She said based on testimony and evidence, she plans to vote for denial based on failure to meet general conditions 2 and 4 as well as specific standard 5 dealing with landscaping requirements. Mayor Pro Tem LeCompte added that the parties need to work together to solve their issues.



Mayor Barbee asked Mr. Hardison to display acceptable uses in the Marina Business district based on the Town's zoning code.

Council Member Hoffer asked if the number of FBC members given earlier includes people who split memberships. Ms. Fox reminded him that the evidentiary hearing was over.

Mr. Hardison said the Marina Business district allows for a mix of residential and commercial uses, and he read a list of them.

Mayor Barbee asked those who think there is a change of use at the marina to cite what they believe the current use is from that list because he doesn't see it. Council Member Hoffer said a use for boat rentals is on that list. Mayor Barbee asked what is considered the current use for this marina. Ms. Fox said Council will need to reopen the evidentiary hearing if they are going to expect Mr. Hardison to answer questions.

**ACTION:** Motion to open the evidentiary hearing

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

Mr. Hardison said this is a commercial marina, which can provide goods and services to the general public. Mayor Barbee asked if Mr. Hardison is saying that in his professional opinion he does not believe this is a change of use. Mr. Hardison said that is correct, and historically the Town has not calculated additional parking spaces to a charter boat or other commercial business operating inside of a marina beyond the requirement necessary for the slip being occupied, offering the Pedal Pub as an example.

Council Member Hoffer said he thinks the fact that boat sales and rentals are on the list Mr. Hardison read from supports his point that this is a change of use. Mayor Barbee said if it's a change of use, then operating a commercial marina with boat slip rentals or ownership is not allowed anymore. Council Member Hoffer said they are splitting the business in two.

**ACTION:** Motion to close the evidentiary hearing again

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

Mayor Barbee said he sees nothing that tells him they are making a change of use.

Council Member Benson said he goes back to what was presented to TRC and what was discovered today, indicating that the parking requirement is contrary to the number that was given.

Mayor Pro Tem LeCompte said she agrees with Council Member Benson.

**ACTION:** Motion to deny the Special Use Permit presented to Council for the expansion of 20 boat storage spaces in that it does not meet specific standards and general conditions; denial is based on condition 2, that the use does not meet all required conditions and specifications, and 4, that the location and character of the use if developed according to the plan as submitted and approved will not be in harmony with the area in which it is to be located and in general conformity with the Town Land Use Plan and policies

Motion made by Council Member Benson

Voting Yea: Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

Voting Nay: Mayor Barbee

*Motion passed 4-1*

Mayor Barbee suggested moving item 3 to Council's next workshop, stating it is just a discussion with no action required.

**ACTION:** Motion to table item 3 until the next workshop

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

## ITEMS OF BUSINESS

### 2. Discussion on Sidewalk from Carolina Beach Lake to Carolina Sands

In May 2023, Mr. Oakley was in discussions with N.C. Department of Transportation (DOT) about how the Town could get sidewalks added from Carolina Sands to Lake Park. Later that summer, funding from DOT was earmarked for this project. Several on-site meetings occurred with Town staff and DOT. In November 2023, a plan was given to the Town showing the sidewalk meandering from DOT right-of-way to private property. There were multiple conflicts with power poles, mailboxes, utilities, trash bins, signage, etc. The cost of purchasing the additional needed right-of-way was also a significant concern.

Staff worked with DOT on an alternative that would bump out curb and gutter and avoid all the conflicts. DOT met with Town staff on-site again and determined there was adequate drive aisle width to accomplish this task. However, when the estimate came back to the Town, it was \$1,691,153.08.

Staff talked to Council about this issue, and direction was given to see if the Town could get any aspect of the project completed (i.e. one or two blocks). Staff went back to DOT, and they agreed to look at the costs again on a block-by-block basis.

During the second review by DOT, their field crews identified some discrepancies in the stormwater infrastructure that were shown on their as-built surveys. This discovery allowed them to significantly reduce the costs. They were also able to break down the costs by block.

There are no funds allocated in the current proposed budget for this project, which will be run separately from the resurfacing of Lake Park Boulevard. If approved by Council, the project will be managed by DOT. It must be approved for connecting full-block sections. The proposed total cost of the project is \$640,000, and DOT has agreed to allocate \$183,118. The Town's share would be \$552,882, which includes a 15% contingency.

Mr. Parvin presented the details. He said allowing DOT to manage the project will result in significant cost savings for the Town because this could potentially cost an extra six figures. He said Council must commit funds now, or the DOT share goes away.

Mayor Barbee said he doesn't like hearing the cost of this, but all Council Members have said bike and pedestrian safety is important. He said he thinks the most critical part is getting Spartanburg Avenue, and there will be an opportunity to come back later for the rest. He asked if Council and residents would be willing to raise taxes to do this. Mr. Parvin said taking the money out of the fund balance is another option.

Council Member Healy said it's a matter of public safety.

Council Member Hoffer asked what happens if the Town's share turns out to not be enough. Mr. Oakley said he doesn't know how DOT handles change orders and who would be responsible. Mr. Parvin said he added the 15% contingency to the Town's share because he was concerned about the same thing. He said there is no timeline yet, but he assumes it would happen after the Lake Park Boulevard paving project.

Mayor Barbee said as much as he wants to see a sidewalk go to Carolina Sands and Tennessee Avenue, he's not comfortable spending a half-million dollars. He said he thinks the money is there, but he's uncomfortable being asked to spend this large amount while getting ready to vote on a budget request that he thinks is underfunded.

Council Member Hoffer asked if they could sleep on this. Mr. Parvin said if Council doesn't make a decision today, it should be done during the next meeting.

Mayor Barbee said this project is important enough to him that he's comfortable doing up to section 3, Spartanburg Avenue, for \$242,382, and possibly adding more in the future.

Council Member Hoffer said it's clear how he feels in general about this project, but he has an aversion to voting on things he just saw a few minutes ago.

Mayor Pro Tem LeCompte said this really has no impact on the next budget, so she doesn't have a problem looking at it again at the next meeting.

Mayor Barbee said the consensus of Council is to have this issue on the June meeting's agenda, and he asked everyone to come back with how much of the Town's money in the bank they would be willing to spend on this project.

Mr. Parvin said he will ask DOT about a timeline and who would handle cost overruns.

Council Member Hoffer said he has slight concerns about giving away all the control over this project.

3. Discussion on Canal Drive Flooding Remediation Efforts

(This item was tabled until June 11.)

4. FY 24/25 Town Manager's Budget Message

Mr. Oakley presented the FY 24/25 budget message. He said the proposed budget includes a 2-cent tax increase and 4% rate increase. Mr. Oakley said some projects were cut, but the proposed budget still accomplishes goals set forth by Council. He said it also includes a staff salary increase due to a pay study and a 3% cost-of-living adjustment.

### **COUNCIL COMMENTS**

Mayor Pro Tem LeCompte said the Seabreeze celebration is tomorrow at 10:30 AM at South Seabreeze Road and Carolina Beach Road.

Council Member Healy said the Ashley High School boys' baseball team is playing for the State championship on Saturday and the girls' soccer team is playing for the State championship on Friday. He said if they win, he would like Council to celebrate their victory.

Council Member Benson said an official with the U.S. Army Corps of Engineers was in the area yesterday and signaled a commitment to continue to fight for money to dredge the Atlantic Intracoastal Waterway, which includes Snow's Cut, and he acknowledged the cost value of putting the sand on Freeman Park. Council Member Benson also said he spoke to consultant Marc Horstman about a scaled-down \$15,000 study to review a handful of potential properties to explore for infiltration.

Mayor Barbee said the Wilmington Urban Area Metropolitan Planning Organization (WMPO) voted to consider tolling for the Cape Fear Memorial Bridge just for the purposes of seeking funding, and this has resulted in the bridge moving up on the priority list for DOT scoring. He said the State has committed \$60 million or \$70 million and the vote doesn't mean there will be a tolled bridge, but grants and Federal funds may now be pursued. Mayor Barbee said a tolling decision, if needed, won't be for over a year. He also said he thinks the Town is already headed for another tax increase next year, and that concerns him because he doesn't want to do two in a row.

### **ADJOURNMENT**

Mayor Barbee adjourned the meeting at 5:15 PM.



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Kim Ward, Town Clerk

**DEPARTMENT:** Clerk

**MEETING:** Town Council Meeting 7/9/2024

**SUBJECT:** Grant Award Presentation by the Terry Benjey Bicycle Foundation

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**BACKGROUND:**

A representative from the Terry Benjey Bicycle Foundation will present a grant award to the Carolina Beach Police Department.

**ACTION:**

No action needed from Council.



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Bruce Oakley, Town Manager

**DEPARTMENT:** Executive

**MEETING:** Town Council 7/9/2024

**SUBJECT:** Manager's Update

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**BACKGROUND:**

Town Manager Bruce Oakley will give an update on current and future projects.



## AGENDA ITEM COVERSHEET

**PREPARED BY:** Gloria Abbotts, Sr Planner

**DEPARTMENT:** Planning &  
Development

**MEETING:** Town Council July 9, 2024

**SUBJECT:** Conditional Zoning to consider a 2-unit PUD at 2 North Carolina Avenue to reduce the 15' separation requirement

Applicant: Michael Rose Properties, LLC

### **BACKGROUND:**

Michael Rose Properties, LLC, has applied for a Conditional Zoning application for a Planned Unit Development project in the MF, Multi-Family Residential District, proposing two units. While Planned Unit Developments with four units or fewer are permitted by right, the applicant seeks to reduce the 15' separation requirement to 12.5', necessitating conditional zoning approval.

The Conditional Zoning District allows a particular use to be established only in accordance with specific standards and conditions pertaining to each individual development project. Some land uses are of such a nature or scale that they have significant impacts on both the immediately surrounding area and on the entire community which cannot be predetermined and controlled by general district standards. There are also circumstances in which a general district designation allowing such a use by right would not be appropriate for a particular property even though the use itself could, the review process provides for the accommodation of such uses by a reclassification of property into a conditional zoning district, subject to specific conditions which ensure compatibility of the use with the use and enjoyment of neighboring properties.

All applications shall include a site plan and any development standards to be approved concurrently with the rezoning application. Development standards may include such things as parking, landscaping, design guidelines, and buffers. When evaluating an application for the creation of a conditional zoning district, the Planning & Zoning Commission shall consider the following:

1. The application's consistency to the general policies and objectives of the Town's CAMA Land Use Plan, any other officially adopted plan that is applicable, and the Zoning Ordinance.
2. The potential impacts and/or benefits on the surrounding area, adjoining properties.
3. The report of results from the public input meeting.

Prior to scheduling a public hearing on the rezoning application, the applicant shall conduct one (1) public input meeting and file a report of such results with the Zoning Administrator. In approving a petition for the reclassification of property to a conditional zoning district, the Planning and Zoning Commission may recommend that the applicant add reasonable and appropriate conditions to the approval of the petition. Any such conditions should relate to the relationship of the proposed use to the impact on the following:

1. Town services
2. Surrounding properties
3. Proposed support facilities such as parking areas and driveways
4. Pedestrian and vehicular circulation systems
5. Screening and buffer areas
6. Timing of development
7. Street and right-of-way improvements
8. Infrastructure improvements (i.e. water)
9. Provision of open space
10. Other matters that the participants in the public input meeting, staff, Planning and Zoning Commission, and the Town Council find appropriate, or the petitioner may propose

If the applicant does not agree with the Planning and Zoning Commission or staff's recommendations of additional conditions, the Town Council shall have the authority to accept none, any, or all of the conditions forwarded from the review process.

No permit shall be issued for any development activity within a conditional zoning district except in accordance with the approved petition and applicable site plan, subdivision plat, and/or permit for the district.

**Proposal:**

The applicant is proposing to construct an additional home on the property at 2 North Carolina Avenue. The project will include 2 single family homes. The existing home is a 1 story cottage with 3 bedrooms that was built in 1964. The additional home would be 2-3 stories with 3 bedrooms. The purpose of the MF, Multi-Family Residential District is to provide for moderate to high-density single-family and multifamily residential uses and other compatible uses of varying types and designs. It functions as an alternative housing type near or in direct relationship to single-family detached housing while in harmony with and maintaining the integrity of the residential district.

Residential planned unit developments are conditional zoning uses intended to encourage innovation, flexibility of design, and better land use by allowing deviations from the standard requirements of the Town's specific zoning districts. 2-unit PUDs are permitted by right; however, the applicant proposes a departure from the minimum required setback. Any departure from the required setbacks for a planned unit development must be approved with conditional zoning.



The maximum lot coverage is 40%, which includes the footprint of the building, decks, and steps. The applicants proposed total lot coverage equals 1,973 square feet or 36.46%. Twenty five percent of the gross acreage of a residential planned unit development shall be permanent open space. The applicant is providing 2,527 square feet or 50.54%. The structures will not exceed the 50' height limit.

The applicant does not meet the minimum separation between structures because structures are defined as anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. The applicant proposes stairs and landings between the two buildings on site. The face of each building meets the 15' separation requirement, but the setback between the stairs is 12.5'. The ordinance states that setbacks may depart from the minimum requirement if there is a recommendation for approval by the Town's fire marshal and meet extra provisions as provided by the fire marshal. The departure from the required setback must be recommended for approval or denial by the Planning and Zoning Commission and formally approved by the Town Council.

The fire marshal recommends approval of the staircases in the 15' setback area if they are constructed with a non-combustible material. This addresses safety concerns associated with the proximity of structures and ensures compliance with fire safety.

Setbacks in the MF district are 10' (front), 10' (rear), and 7.5' (sides). HVAC and stairs are permitted to encroach in the minimum setbacks. The proposed structure meets all minimum setbacks for the district. The applicant is providing the minimum required 3 parking spaces per unit for a total of 6 parking spaces. No landscape buffer is required for a 2-unit PUD. The maximum density in the MF district is 17 units/acre. The total density allowed on this 5,000 square foot lot is 2 units. The driveway width at the property line may not exceed 36'.

**Conditional Zoning Process:**

As part of the application process a community meeting is required. The applicant held the required meeting on April 23, 2024. The applicant has provided summary comments from the meeting. Based off the comments from the meeting, the applicant can place conditions on the project to help mitigate the impacts and concerns from the neighboring properties.

**Proposed Conditions:**

1. All federal, state, and local ordinances shall be met.
2. Stairs and landing shall be constructed of non-combustible materials.

**Recommendation:**

Staff recommend approval of the project as proposed.

Planning and Zoning recommended unanimous approval.

**Land Use Plan:**

The project is in general conformity with the 2020 Land Use Plan for Medium Density Residential. Mostly medium-sized lots (min. 5,000 sq ft) with primarily single-family detached residences.

**ACTION REQUESTED:**

Consider recommending approval or denial of a conditional zoning for a 2-unit PUD at 2 North Carolina Avenue.

**MOTION:**

Approval – whereas in accordance with provisions of the NCGS, the Council does hereby find and determine that the adoption of the Conditional Use District to allow for a 2-unit PUD located at 2 North Carolina Avenue is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans.

Denial – based on inconsistencies with the goals and objectives of the adopted Land Use Plan and/or other long-range plans and the potential impacts on the surrounding areas.

1121 N. Lake Park Blvd.  
 Carolina Beach, NC 28428  
[permits@carolinabeach.org](mailto:permits@carolinabeach.org)  
 Phone (910) 458-2999



Permit # \_\_\_\_\_

## TOWN OF CAROLINA BEACH Conditional Zoning Application

The Conditional Zoning process for the Town of Carolina Beach may be found in the ordinance (Sec. 40-527).

Prior to the application submission, the applicant must conduct a Public Input Meeting. The following are the public meeting requirements:

- The applicant must mail notice of said meeting to all property owners within 500 feet of the perimeter of the project bounds no less than 10 days prior to the meeting.
- The notice must include time, date, location, and project description.
- The applicant must maintain and submit to with their application a:
  - o A copy of the letter announcing the meeting
  - o A list of property owners contacted
  - o An attendance roster from the meeting
  - o A summary of the issues discussed
  - o The results and any changes related to the proposal based on meeting discussions

Each application submitted to staff must be legible, contain the public scoping meeting required information, and provide all other required materials to be accepted as a completed application. Supplemental application materials may include, but not be limited to, site plans, building designs, engineered drawings, stormwater designs, landscaping plans, project narratives, Federal and/or State permits/permissions, and Traffic Impact Analyses. **It is strongly suggested that the applicant set up a meeting with Planning Staff prior to the submission deadline, to ensure the application is complete.**

The Planning Department, Technical Review Committee, Planning and Zoning Commission and/or Town Council reserve the right to require additional information if needed to assure that the use in its proposed location will meet be developed in accordance with the Code of Ordinances of the Town of Carolina Beach.

Application fees. The owner or owners, or their duly authorized agent, of the property included in the application for Conditional Zoning shall submit a complete application and supplemental information to the Planning Department. **A fee in accordance with the Town's adopted schedule of fees, payable to the Town of Carolina Beach, must accompany each application.** For the purposes of determining the fee, the Zoning Administrator shall categorize each such Conditional Zoning Permit Application as either "major" or "minor", depending upon the complexity of review. Generally, Planned Residential (over 7 units), Mixed Uses, Business Developments, and similarly complex projects shall be categorized as "major", while projects such as Planned Residential (5-6 units), bed and breakfast inns, small day care services, etc. shall be categorized as "minor".

<b>Major Conditional Zoning Permit</b>	<b>=</b>	<b>\$ 1,000.00</b>
<b>Minor Conditional Zoning Permit</b>	<b>=</b>	<b>\$ 500.00</b>

This permit will be scheduled for the next possible Technical Review Committee, provided the public scoping meeting has taken place and the application is otherwise complete.



## 2024 Submission Deadlines & Meeting Dates

Technical Review Committee		Planning & Zoning Commission		Town Council	
Submission	Meeting	Submission	Meeting	Submission	Meeting
Jan 2	Jan 16	Jan 25	Feb 8	Feb 27	Mar 12
Feb 6	Feb 20	Feb 29	Mar 14	Mar 26	Apr 9
Mar 4	Mar 18	Mar 28	Apr 11	Apr 30	May 14
Apr 1	Apr 15	Apr 25	May 9	May 28	June 11
May 6	May 20	May 30	June 13	June 25	July 9
June 3	June 17	June 27	Jul 11	July 30	Aug 13
July 1	July 15	July 25	Aug 8	Aug 27	Sept 10
Aug 5	Aug 19	Aug 29	Sept 12	Sept 24	Oct 8
Aug 30	Sept 16	Sept 26	Oct 10	Oct 29	Nov 12
Sept 30	Oct 14	Oct 31	Nov 14	Nov 26	Dec 10
Nov 4	Nov 18	Nov 27	Dec 12	Jan 2025	Jan 2025
Dec 2	Dec 16	Jan 2025	Jan 2025	Feb 2025	Feb 2025
Jan 2025	Jan 2025	Feb 2025	Feb 2025	March 2025	March 2025
Board		# Copies Full Size		# Copies Electronic	
TRC		2		1	
P&Z		2		1	
Town Council		2		1	

**PURPOSE**

Conditional zoning allows flexibility with regard to the zoning regulations. Subject to high standards of planning and design, certain uses may be allowed in certain districts or on properties provided they can be developed to minimize any adverse effects they might have on surrounding properties. Conditional Zoning allows for public and governing board input to help any proposed project meet its goals while also contributing to the positive development of Carolina Beach.

Please complete all sections of the application.

A. Property Information

Address(es): 2 NORTH CAROLINA AVE CAROLINA BEACH 28428

PIN(s): 209014-012-011-000

Project Name SURFLIFE BEACH Cottage II

Size of lot(s): 50x100'

B. Application for Conditional Zoning

Application is hereby made for a Conditional Zoning for use of the property described above as a (please provide a brief description of the use):

BUILD BEACH HOUSE BEHIND CURRENT BEACH HOUSE. PROPERTY IS ZONED MULTI FAMILY

C. Applicant Contact Information

MICHAEL ROSE PROPERTIES LLC  
Company/corporate Name (if applicable):

MICHAEL ROSE  
Applicant's Name

10505 WINDING WOOD TRAIL  
Mailing Address

Raleigh, NC 27613  
City, State, and Zip Code

919-943-3993  
Telephone

SURFLIFE@YAHOO.COM  
Email

D. Owner Contact Information (if different)

Owner's Name

Mailing Address

City, State, and Zip Code

Telephone

Email

**Check the box beside each item verifying that the item has been submitted with this application**

### **I. Site Plan Criteria**

For new construction all boxes in this section shall be marked yes by the applicant to be considered a complete application.

**Yes No N/A**

- The name, address, and phone number of the professional(s) responsible for preparing the plan if different than the applicant.
- An appropriate scaled plan
- Title block or brief description of project including all proposed uses
- Date
- North Arrow
- Property and zoning boundaries
- The square footage of the site
- Lot coverage (buildings, decks, steps)
- Location of all existing and proposed *structures* and the setbacks from property lines of all affected structures to remain on-site
- Design of driveways and parking
- Adjacent right-of-ways labeled with the street name and right of way width
- Location of all existing and/or proposed easements

Additional information or data as determined necessary by town staff and/or other reviewing agencies including but not limited to the following may be required:

**Yes No N/A**

- Location and design of refuse facilities
  - Approximate locations and sizes of all existing and proposed *utilities*
  - Existing and/or proposed fire hydrants (showing distances)
  - Adjacent properties with owners' information and approximate location of structures
  - Distances between all *buildings*
  - Number of *stories* and height of all *structures*
  - Locations of all entrances and exits to all *structures*
  - Calculate the *gross floor area* with each room labeled (i.e. kitchen, bedroom, bathroom)
  - Exterior lighting locations with area of illumination illustrated as well as the type of fixtures and shielding to be use
  - Location of flood zones and finished floor elevations
  - CAMA Areas of Environmental Concern (AEC) and CAMA setbacks
  - Delineation of *natural features* and wetlands with existing and proposed topography with a maximum of two-foot contour intervals
  - Proposed landscaping including percentages of *open space*
  - Stormwater management systems
  - Cross-sectional details of all streets, roads, ditches, and *parking lot* improvements
  - Building* construction and occupancy type(s) per the building code
  - Location of fire department connection(s) for standpipes
  - Turning radii, turnarounds, access grades, height of overhead obstructions
  - Dimensions and locations of all *signs*
  - A vicinity map drawn with north indicated
  - Submit the total daily water flow usage and sewer design flow by a design professional
- I have provided two hard-copies and one scaled electronic version of each required drawing
- I am prepared to pay the application fee today

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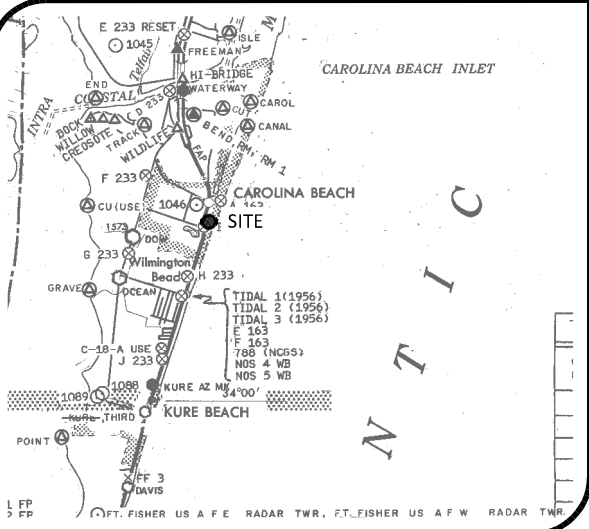
**SUPPLEMENTAL INFORMATION REQUIRED WITH THE APPLICATION**

1. Detailed project narrative describing the proposed site and request.
2. Agent form if the applicant is not the property owner.
3. Request for site specific vesting plan shall be submitted in accordance with Chapter 40 Article XIII

**OWNER'S SIGNATURE:** In filing this application for a conditional zoning, I/we as the property owner(s), hereby certify that all of the information presented in this application is accurate to the best of my knowledge, information and belief.

  
Signature

4/10/24  
Date



VICINITY MAP  
NOT TO SCALE

NOTES:

1. THE PURPOSE OF THE DEPICTED SURVEY IS TO SHOW THE EXISTING & PROPOSED CONDITIONS ON LOT.
2. ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES UNLESS OTHERWISE NOTED.
3. NEW HANOVER COUNTY PIN NO: R09014-012-011-000.
4. FEMA ZONE X PER FEMA MAP NO.3720313000K EFFECTIVE DATE: AUGUST 28, 2018.
5. THIS OFFICE HAS NOT PERFORMED A FULL TITLE REPORT. SURVEY IS SUBJECT TO ANY EASEMENTS / RIGHT OF WAYS / ENCUMBRANCES A FULL TITLE REPORT MAY REVEAL.

NEW HANOVER COUNTY  
NORTH CAROLINA

I, BENJAMIN F. FARROW III, CERTIFY THAT THIS EXISTING CONDITIONS SURVEY WAS FIELD LOCATED AND DRAWN UNDER MY DIRECT SUPERVISION; THE SUBJECT PARCEL IS REFERENCED IN THE NEW HANOVER COUNTY DEED BOOK 6205 PAGE 2995; THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES FROM REFERENCED RECORD INFORMATION; THAT THIS SURVEY DOES NOT MEET NCGS 47-30 STANDARDS AND IS NOT FOR RECORDATION, CONVEYANCE OR SALES.

*Ben F. Farrow III*

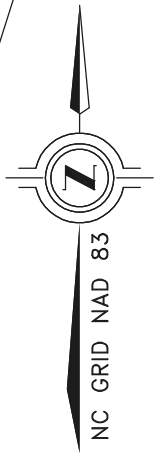
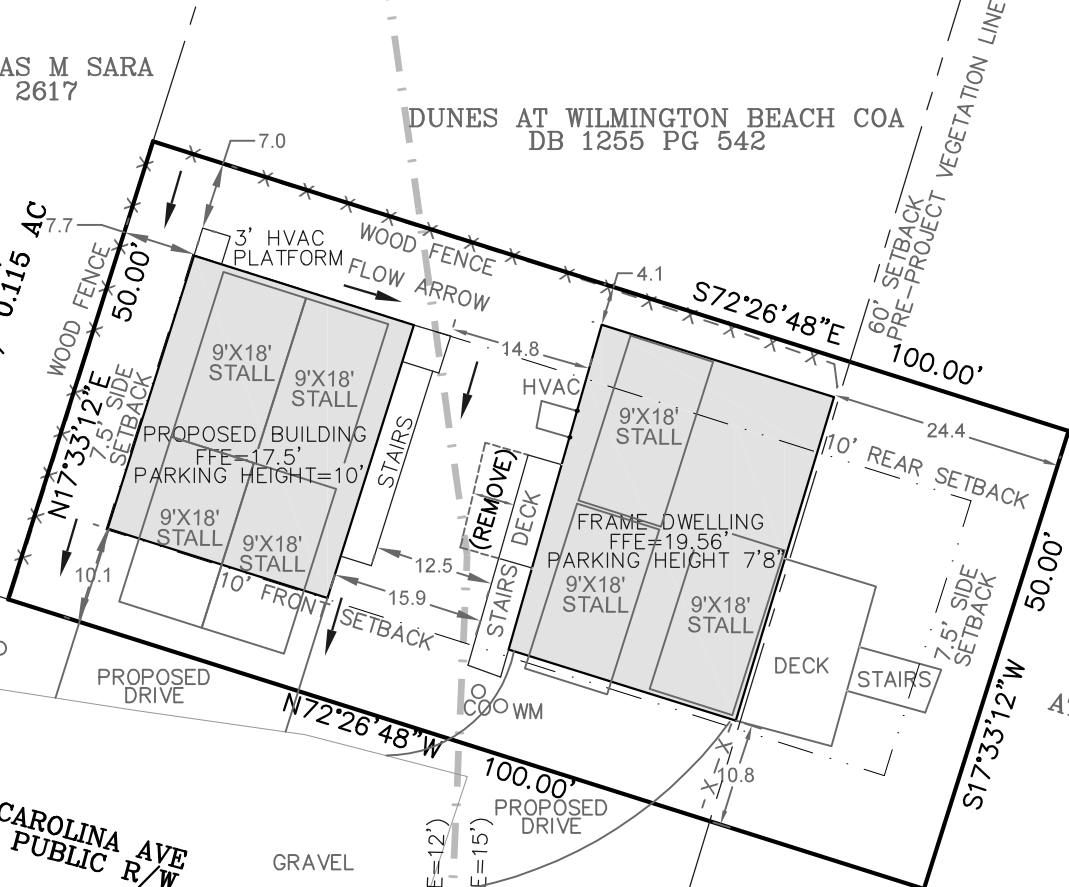
N.C. PROFESSIONAL SURVEYOR L-5104



WARMUTH THOMAS M SARA  
DB 6205 PG 2617

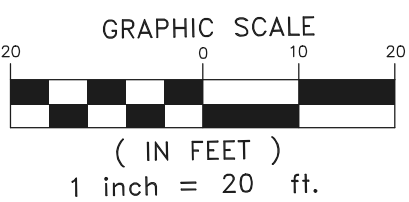
DUNES AT WILMINGTON BEACH COA  
DB 1255 PG 542

MICHAEL ROSE PROPERTIES LLC  
DB 6205 PG 2955  
MB 3 PG 37  
5000 SF / 0.115 AC



ATLANTIC OCEAN

N CAROLINA AVE  
50' PUBLIC R/W



LEGEND

● EIP.....EXISTING IRON PIPE	.....LINE NOT SURVEYED
● NIR.....NEW IRON REBAR	.....BOUNDARY LINE
● EIR.....EXISTING IRON REBAR	.....RIGHT OF WAY
LP..... LIGHTPOLE	.....FENCE LINE
SS.....SANITARY SEWER MANHOLE	.....SETBACK LINE
DI.....DROP INLET	
C.....CABLE PEDESTAL	
T.....TELEPHONE PEDESTAL	

DATE 5/28/24	SCALE 1" = 20'
DRAWN BY L.S.P.	CHECKED BY B.F.F.
EXISTING CONDITIONS	
SHEET 1 OF 1	

PERMIT PLAN  
FOR:  
**MICHAEL ROSE**  
LOT 1, BLOCK 6, WILMINGTON BEACH  
2 N CAROLINA AVE  
Wilmington, North Carolina  
New Hanover County

BENJAMIN F FARROW III, PLS  
3223 KELLERTON PL  
WILMINGTON NC, 28409  
910-524-9595  
LICENSE: L-5104



**From:** [Mike Rose](#)  
**To:** [Gloria Abbotts](#)  
**Subject:** Re: Non Combustible Material  
**Date:** Thursday, May 30, 2024 4:34:44 PM  
**Attachments:** [image001.png](#)

---

**Be Advised: This email originated from outside of the Town of Carolina Beach, NC**

Hi Gloria,

I am looking at building a 2-3 story beach house of approximately 1500-1700 sq. ft. with 3 bedrooms and 2.5 baths. We don't have a final plan. We are unable to put together a design until we get through this phase with the conditional zoning approval.

Because of the narrow footprint, having the steps on the side between my existing house and the new house, allows for parking of four cars under the new house, rather than having to park between the houses. This will make it much better than having cars parked along the buildings. It would allow for better interior living space and make the space under the house more usable. If we have to put the steps under the house within the existing footprint, it would take up two car parking spaces which would mean cars would have to park next to the house instead of underneath the house. The steps will be on the side next to my existing house and will have no impact on any other property. It will also allow us to not have to go to four stories to get the living space that would be required for the highest and best use of this property. If we have to go taller, it would have a more negative impact on the surrounding properties as it would negatively affect their views. After speaking with the immediate neighbors, they prefer that we don't have to go higher. This conditional zoning would be beneficial for everyone.

Please confirm that you did receive my updated plan in my previous email.

Thanks,

Mike

---

**From:** Gloria Abbotts <gloria.abbotts@carolinabeach.org>  
**Sent:** Thursday, May 30, 2024 1:12 PM  
**To:** Mike Rose <surf4life@yahoo.com>  
**Subject:** RE: Non Combustible Material

Hi Mike,

Along with your updated site plan can you please send me a narrative (it can be over email) for the

March 13, 2024

RE: 2 NC Ave Beach House Project Conditional Zoning Meeting

Dear Neighbor,

My name is Michael Rose, I am the owner of the property at 2 North Carolina Ave, Carolina Beach. I will be holding a meeting on **Tuesday, April 23 at 11:00 at 2 North Carolina Ave., Carolina Beach** to discuss a conditional zoning request that I will be submitting to the Town as part of a new beach house that I will be building on my property. This meeting is for residents that live with 500' of my property, of which, I have mailed this letter to all.

2 North Carolina Ave is zoned multifamily and currently has my existing beach house on the oceanfront. I am submitting a survey to the Town and will be submitting plans to build an additional beach house that will require a setback of 11' to accommodate a set of steps and a landing on the east side of the building between my existing house and the new house. The set back requirement between structures is 15'. Due to the size of the building footprint (24'x30') we will be requesting that we be allowed to put the steps in the 15' set back to allow us to have parking underneath the new beach house. This conditional zoning will have no impact on any existing surrounding structures excluding my property at 2 North Carolina Ave. I am required to notify you to allow you to attend the meeting and voice any concerns or answer any questions. A copy of the survey will be available at the meeting.

Thank you for your time,

Michael Rose

OWN1  
Mailing Address  
City, State, Zip

NEMOS NIRVANA COA  
PO BOX 72  
CAROLINA BEACH, NC 28428

1305 BOWFIN LANE HOA  
PO BOX 2473  
WILMINGTON, NC 28402

HENDERSON NEIL  
PO BOX 2331  
CAROLINA BEACH, NC 28428

1220 BOWFIN LANE HOA  
PO BOX 2473  
WILMINGTON, NC 28402

HEFFNER JUDITH MAPLES  
PO BOX 302  
SOUTHERN PINES, NC 28388

SEA MIST COA  
PO BOX 2125  
CAROLINA BEACH, NC 28428

1310 BOWFIN LANE HOA  
PO BOX 7914  
WILMINGTON, NC 28406

1218 SOUTH LAKE PK COA  
PO BOX 1  
CAROLINA BEACH, NC 28428

1308 BOWFIN LANE COA  
PO BOX 7914  
WILMINGTON, NC 28406

TRADEWINDS TOWNHOMES HOA  
PO BOX 480  
KURE BEACH, NC 28449

VAN VLEET DAVID E SUSAN ETAL  
10 GINGERWOOD LN  
DURHAM, NC 27713

OROL BRIAN S DEBORAH S  
10104 BUSHVELD LN  
RALEIGH, NC 27613

GAILEY ROBIN C  
104 NORTH CAROLINA AVE UNIT 2  
CAROLINA BEACH, NC 28428

WARMUTH THOMAS M SARA  
106 SEAWARD CT  
KURE BEACH, NC 28449

1215 BOWFIN LANE HOA  
108 ROYAL GLEN DR  
CARY, NC 27518

KQ LUXURY LLC  
1119 MATTEO DR APT 306  
WILMINGTON, NC 28412

HAYES PATRICIA RICHARD T V  
1200 PORCHES DR  
WILMINGTON, NC 28409

GOLDEN SANDS RESORT LLC  
1211 LAKE PARK BLVD  
CAROLINA BEACH, NC 28428

ROTHROCK JEFFREY Y CARMEN M  
1213 BOWFIN LN  
CAROLINA BEACH, NC 28428

STUART TIMOTHY  
1214 LAKE PARK BLVD UNIT 2  
CAROLINA BEACH, NC 28428

HIGGINS DANIEL J KIMBERLY B  
1215 BOWFIN LN UNIT 1  
CAROLINA BEACH, NC 28428

1220 S LAKE PARK CONDOS COA  
1220 LAKE PARK BLV S  
CAROLINA BEACH, NC 28428

POMEROY ROBERT L JR MINNA S  
1220 LAKE PARK BLV S UNIT 1  
CAROLINA BEACH, NC 28428

PHELPS MITCHELL  
1221 LAKE PARK BLVD S  
CAROLINA BEACH, NC 28428

LUSSIER PAUL BETTY  
1222 LAKE PARK BLVD S  
CAROLINA BEACH, NC 28428

PRICKITT CHARLES N MARTHA C  
1223 LAKE PARK BLV S  
CAROLINA BEACH, NC 28428

DUNES AT WILMINGTON BEACH COA  
1225 LAKE PARK BLV  
CAROLINA BEACH, NC 28428

1306 BOWFIN LANE COA  
1306 BOWFIN LN C/A  
CAROLINA BEACH, NC 28428

DILLENBACK CALDWELL JR  
1306 LAKE PARK BLV UNIT 2  
CAROLINA BEACH, NC 28428

1313 BOWFIN LANE HOA  
1313 BOWFIN LN  
CAROLINA BEACH, NC 28428

PIPERS POINT HOA  
1314 LAKE PARK BLV S B7  
CAROLINA BEACH, NC 28428

MAISEL STANLEY JOSEPH  
13512 ARROWWOOD LN  
BOWIE, MD 20715

1218 BOWFIN LANE HOA  
155 RIVIERA DR E  
LINDENHURST, NY 11757

TOLL INVESTMENT GROUP LLC  
1605 MORNING DOVE DR  
WILMINGTON, NC 28403

SEA COLONY HOA INC  
1628 DOCTORS CIR  
WILMINGTON, NC 28401

PATEL NITIN PUJA H  
1730 MINLEY WAY  
APEX, NC 27502

GAY JAMES M JOAN M  
1816 WESCOTT DR  
RALEIGH, NC 27614

WATSON DOUGLAS W MARY A  
190 ANOLIS  
PITTSBORO, NC 27312

BEACHES BE CRAZY LLC  
203 NORTH CAROLINA AVE  
CAROLINA BEACH, NC 28428

FLINCHUM PHILLIP CAROLYN ETAL  
208 GREEN FOREST CT  
CARY, NC 27511

LAMB DOUGLASS JENNIFER LIV TR  
221 LOCHVIEW DR  
CARY, NC 27511

ROOF EMMA TRUST  
221 LOCHVIEW DR  
CARY, NC 27511

BIDDLE WAYLON C  
2311 SHIRLEY RD  
WILMINGTON, NC 28405

MULLIN VINCENT R JR LESLIE M  
26 CANAL ST  
PLAINVILLE, CT 06062

104 NORTH CAROLINA HOA INC  
2676 GLENCROFT RD  
VIENNA, VA 22181

DR PROPERTIES 1 LLC  
2719 GRAVES DR SUITE 21  
GOLDSBORO, NC 27534

JONES DEREK B TIFFANY J  
2913 BELLEMONT ALAMANCE RD  
BURLINGTON, NC 27215

NELSON JEANETTE N  
3 CAROLINA AVE N  
CAROLINA BEACH, NC 28428

RICE WILLIAM J RACHEL C ETAL  
300 MERIDIAN CT  
NEW BERN, NC 28562

SNYDER PAUL D CHARO C  
307 GLASGOW RD  
CARY, NC 27511

HICKEY MICHAEL MELISSA  
3137 JONES FERRY RD  
CHAPEL HILL, NC 27516

1212 BOWFIN ASSOCIATION  
315 FRIDAY DR  
WILMINGTON, NC 28411

STANLEY RICHARD KENT  
3219 CHALMERS DR  
WILMINGTON, NC 28409

STANLEY RICHARD KENT  
3219 CHALMERS DR  
WILMINGTON, NC 28409

MAHER ERIN M  
330 3RD AVE S  
KURE BEACH, NC 28449

1311 BOWFIN LANE HOA  
3333 BOUGAINVILLEA WAY  
WILMINGTON, NC 28409

JENNINGS JUSTIN  
40 BOOM LN  
BRICK, NJ 08723

KECHLEY DAVID S 2015 REV TRUST  
400 PINE COBBLE RD  
WILLIAMSTOWN, MA 01267

SIEGEL RANDALL J LOMA C  
422 BENJAMIN AVE  
WILMINGTON, NC 28403

GOOLEY CHRISTOPHER G KATHY A  
5 COBURN RD  
HOPKINTON, MA 01748

ZIMMERMAN JEFFREY GLORIA  
5 LORI LN 105  
HOLMDEL, NJ 07733

SEAS THE MOMENT CB LLC  
500 ST JOSEPH ST #3201  
CAROLINA BEACH, NC 28428

WOOTERS THOMAS E NATALIE L  
5033 MCKITTRICK LN  
DURHAM, NC 27712

AKINLI ERGUN LEYLA TRUSTEES  
5122 TROON LN  
DURHAM, NC 27712

1315 BOWFIN LANE COA  
5826 SAMET DR 105  
HIGH POINT, NC 27265

1309 BOWFIN LANE UNIT OWNERS ASSN  
5826 SAMET DR 105  
HIGH POINT, NC 27265

SWAN STEVEN L  
620 EMERSON AVE  
BALDWIN, NY 11510

LOSA PEDRO S FRANCESCA C  
6210 TREE LAKE CT  
WILMINGTON, NC 28411

1214 SOUTH LAKE PARK BLVD UOA  
6320 HAWKSBILL DR  
WILMINGTON, NC 28409

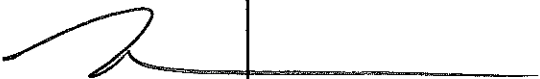
BORESIGHT PROPERTIES II LLC  
651 HIGHWAY 183 N 335  
LEANDER, TX 78641

GRING PHILLIP R JANICE L  
8400 KINTAIL DR  
CHESTERFIELD, VA 23838

CHRISTIAN JAMES J ELIZABETH T  
8405 SLATE ST  
TERRELL, NC 28682

NUXOLL THOMAS J LINDA S  
9509 BELLS VALLEY DR  
RALEIGH, NC 27617

2 North Carolina Ave Public MEETING ATTENDEES  
4/23/24 @ 11:00 a.m.

NAME (PRINT)	Signature	Address	TELEPHONE #
CHARLIE & MARTY PRICKITT	Charlie Prickitt Marty Prickitt	1223 Lake Park Blvd S	910 458-1937
<p>These people attended, no concerns and no changes to plans.</p> 			

**RE: Non Combustible Material**

Buddy Thompson &lt;buddy.thompson@carolinabeach.org&gt;

Thu 5/30/2024 4:28 PM

To: Gloria Abbotts &lt;gloria.abbotts@carolinabeach.org&gt;; Alan Griffin &lt;alan.griffin@carolinabeach.org&gt;

Good Afternoon,

Any fire retardant or fire resistant material would be acceptable.

Buddy

---

**From:** Gloria Abbotts <gloria.abbotts@carolinabeach.org>**Sent:** Thursday, May 30, 2024 1:10 PM**To:** Buddy Thompson <buddy.thompson@carolinabeach.org>; Alan Griffin <alan.griffin@carolinabeach.org>**Subject:** FW: Non Combustible Material

Hello!

The applicant for the 2 unit PUD at 2 North Carolina that was discussed at the last TRC proposes to use the material below? Does this meet fire requirements for the staircase within the 15' separation setback?

Thanks for your help!

**Gloria Abbotts**

Sr Planner

Town of Carolina Beach

1121 N. Lake Park Blvd.

Carolina Beach, NC 28428

Office: 910-458-8380

[www.carolinabeach.org](http://www.carolinabeach.org)**\*\* TOCB [Online Permitting Portal](#) - For instructions on using Portal, click [here](#)\*\*****\*\* All Building Permits must be applied for through [NHC COAST](#) \*\***

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**From:** Mike Rose <[surf4life@yahoo.com](mailto:surf4life@yahoo.com)>**Sent:** Wednesday, May 29, 2024 10:05 AM**To:** Gloria Abbotts <[gloria.abbotts@carolinabeach.org](mailto:gloria.abbotts@carolinabeach.org)>**Subject:** Non Combustible Material**Be Advised:** This email originated from outside of the Town of Carolina Beach, NC

Hi Gloria,

I meant to add this link for the non-combustible materials for the stairs and landing.

Mike

Item 8.



[Fire Retardant Treated Wood | FlameFreez by YellaWood](#)  
[yellawood.com](http://yellawood.com)

Sent from my iPhone



# Ordinance 24-1229

Town of Carolina Beach  
Town Council



## CONDITIONAL ZONING DISTRICT

**An Ordinance Amending the Official Zoning Map of the Town to Rezone property containing 5,000 square feet of land located at 2 North Carolina Avenue, in the Multi-Family Residential District (MF) to Conditional Zoning (CZ) for 2 units**

### LEGISLATIVE INTENT/PURPOSE:

WHEREAS NCGS §§ 160D-102, 160D-108(d), 160D-603, and 160D-702 authorizes local governments to change or modify zoning boundaries within their jurisdiction; and

WHEREAS the amendment set out below is made in accordance with NCGS § 160D-601 and Article XVII, of the Carolina Beach Land Development Code.

### THEREFORE, IT BE ORDAINED:

**SECTION 1:** The Official Zoning Maps of the Town of Carolina Beach are hereby amended by removing hereinafter described tract of land from the present MF and putting it in the Planned Unit Development Conditional District (CD) classification, said tract being more particularly described as follows:

Legal Description for Conditional Rezoning of 2 North Carolina Avenue

2 NORTH CAROLINA AVE

LOT 1 BLK 6 WILMINGTON BEACH

PARID: R09014-012-011-000

As more specifically described on Deed Recorded in Book 6205, Page 2955 of the New Hanover County Register of Deeds.

**SECTION 2:** The following rules, regulations, and conditions shall apply to the property described in this ordinance

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1. The use and development of the subject property shall be in substantial accordance with the site plan submitted and approved by which was prepared by Benjamin F Farrow III, PLS dated 5/28/2024.
2. The use and development of the subject property shall comply with all regulations and requirements imposed by the Land Development Code, the Town of Carolina Beach Technical Standards and Specifications Manual and any other applicable federal, state or local law, ordinance or regulation, as well as any condition stated below.
3. Approval of this conditional district rezoning does not constitute technical approval of the site plan. Final approval by the Technical Review Committee and the issuance of all required permits must occur prior to the release of the project for construction.
4. If, for any reason, any conditional approval is found to be illegal or invalid or if the applicant should fail to accept any condition following approval, the approval of the stie plan for the district shall be null and void and of no effect and proceedings shall be instituted to rezone the property to its previous zoning classification.
5. The use and the development of the subject property shall be in substantial accordance with the site plan as submitted and approved.
6. The proposed use shall be limited to 2 residential units.
7. The minimum setbacks required by the MF district shall be met.
8. The stairs and landing located within the 15' separation setback shall be constructed of non-combustible materials.
9. A stormwater plan shall be submitted and approved prior to the issuance of a building permit.
10. All structures shall be limited to 50' in height.
11. The final project must be designed to provide the required 6 parking spaces and must comply with Article 7 of the Carolina Beach Zoning Ordinance.
12. An as-built survey and certification shall be provided that all improvements, including but not limited to zoning, paving, drainage, stormwater, landscaping shall be constructed and maintained according to the site plan approved prior to Certificate of Occupancy.
13. Approval of this site-specific vesting plan establishes a vested right under G.S. 160D-108. Unless terminated at an earlier date, the vested right shall be valid until 7/9/2026.

**SECTION 3:** The Town Clerk and the Planning Director are hereby authorized and directed under the supervision of the Town Manager to change the Zoning Maps on file in the office of the Town Clerk and the Planning Division, to conform with this ordinance.

**SECTION 4:** That any person violating the provisions of this ordinance, including the approved site plan, shall be subject to the penalties set forth in ARTICLE XV of the Land Development Code.

**SECTION 5:** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

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**SECTION 6:** If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

**SECTION 7:** That this ordinance shall be effective upon its adoption by Town Council, and the Town’s receipt of written acceptance by the Applicant of all conditions adopted by the Town.

Be it ordained by the Town Council of the Town of Carolina Beach. Adopted this 9<sup>th</sup> day of July, 2024.

TOWN OF CAROLINA BEACH

\_\_\_\_\_  
Albert L. Barbee, Mayor

ATTEST:

\_\_\_\_\_  
Kimberlee Ward, Town Clerk

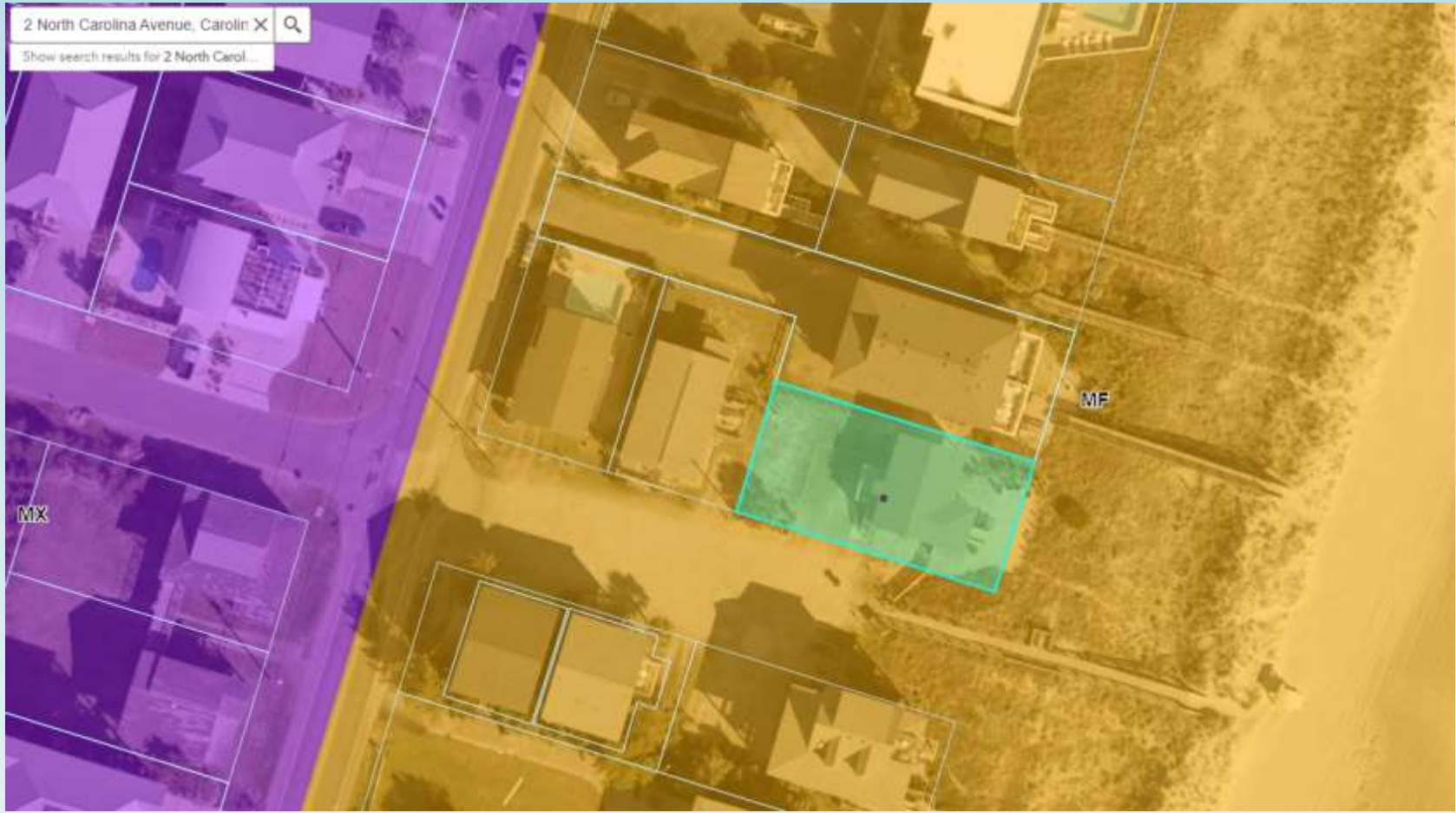


Conditional Zoning to consider a Planned Unit Development project consisting of 2 in the Multi-Family Residential (MF) zoning district

Located at 2 North Carolina Avenue  
Applicant: Michael Rose Properties, LLC



# 2 North Carolina Avenue



Current Use: single-family home

MF District:

- Moderate to high-density single-family and multifamily residential uses

Surrounding uses: 6-unit condo, 2 single-family



Item 8.

# Adjacent Property Owners



**Sec. 40-72. - Table of permissible uses.**

# Ordinance

USES OF LAND	MF
Planned unit development, residential units ≤ 4	P

**Sec. 40-355. Residential PUD regulations.**

(1) *Minimum setback requirements*

b. *Minimum setback from property lines.* A written request must be made and submitted along with application for a conditional zoning for a departure from the standard district regulations (section 40-74) and must be recommended for approval or denial by the Town’s fire marshal and meet extra provisions as provided by the fire marshal and must be recommended for approval by the Planning and Zoning Commission and formally approved or denied by Town Council.

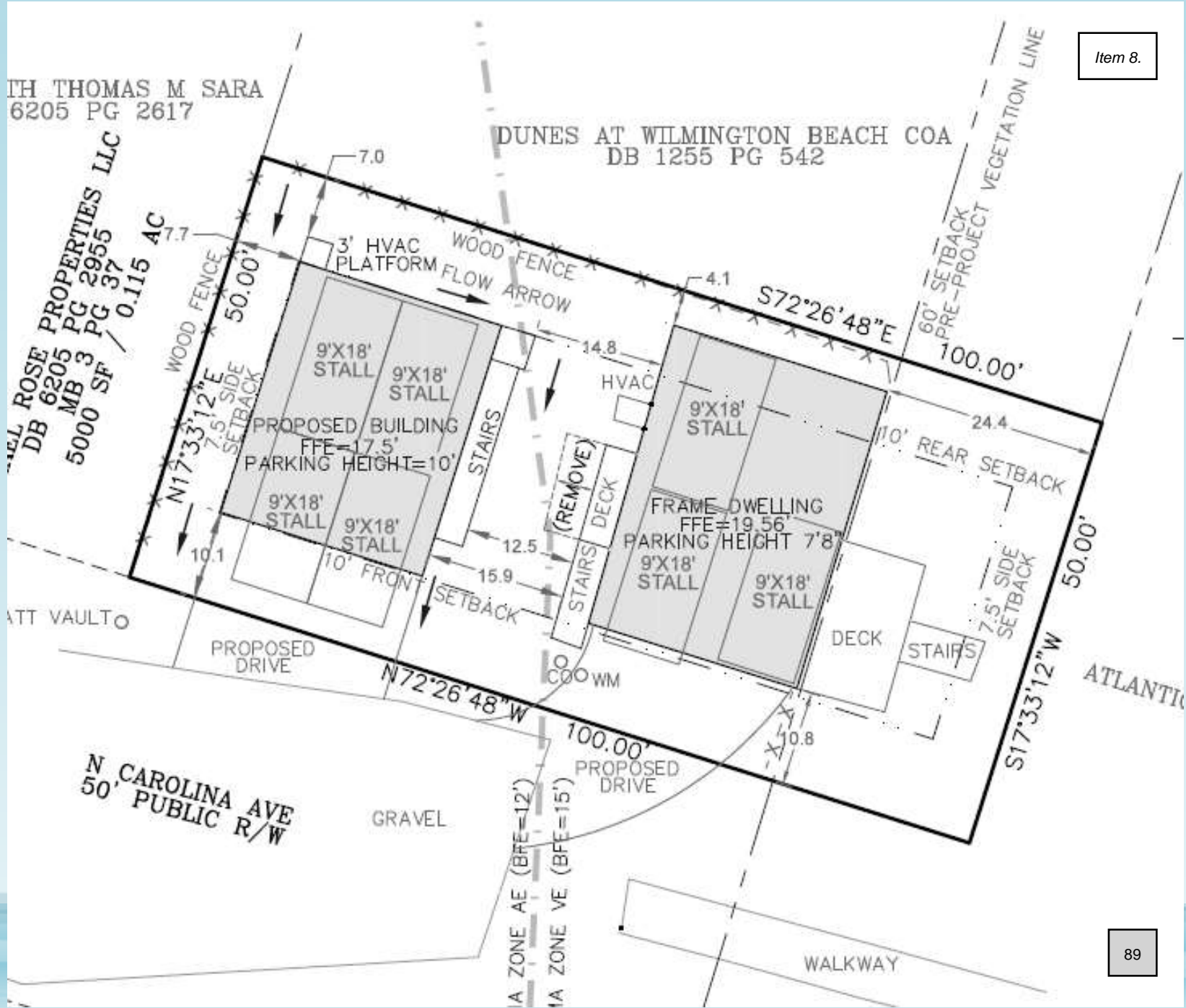
c. *Minimum separation between on site structures.* Fifteen feet unless otherwise granted in subsection (1)b. of this section. In addition, other applicable setbacks may be recommended by the Planning and Zoning Commission and approved by Town Council.

**Sec. 40-548. Definitions**

*Structure* means anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Structures include buildings, manufactured homes, walls, fences, signs and billboards, swimming pools and other similar type uses.



	Requirement	Proposed
Lot Coverage	40%	36.46%
Open Space	25%	50.54%
Height Limit	50 ft	Less than 50 ft
Parking	3 per unit	7 spaces
Landscaping	4 trees – 100' frontage	Will verify at CO
Setbacks	10' front, 7.5' sides, 10' rear	10.1' front, 7.7' side, 10' rear
Density	17 units/acre	2 units
Separation	15'	12.5'
Driveway width	36' max	36'



# Criteria

- When evaluating the Commission shall consider the following:
  - The application’s consistency to the general policies and objectives of the Town’s CAMA Land Use Plan, any other officially adopted plan that is applicable, and the Zoning Ordinance.
  - The potential impacts and/or benefits on the surrounding area, adjoining properties.
  - The report of results from the public input meeting.



# Conditional Zoning Process

- Public Meeting - Tuesday, April 23, 2024
- 2 people attended
- No concerns or changes to plans

# Conditions

## Staff Proposed Conditions

1. All federal, state, and local ordinances shall be met.
2. Stairs and landing shall be constructed of non-combustible materials.

P&Z may include additional standards such as landscaping, design guidelines, buffers, infrastructure improvements (i.e. water), pedestrian, street and right-of-way improvements.

# Land Use Plan

- The project is in general conformity with the 2020 Land Use Plan for the medium density residential character area.
- Staff recommends approval.
- P&Z recommended unanimous approval.



## Medium Density Residential

Mostly medium-sized lots (min. 5,000 sq ft) with primarily single family detached residences. Smaller-scale, attached residences (two-family homes and townhomes) allowed occasionally if contextually compatible. Some small-scale commercial, restaurants, or offices are encouraged at select locations with good access. Low- to medium-traffic streets with pedestrian facilities.



**MOTION:**

Approval - whereas in accordance with the provisions of the NCGS, the Planning and Zoning Commission does hereby find and determine that the adoption of the Conditional Use District to allow for a 2-unit townhome project located at 2 North Carolina Avenue is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans and the potential impacts on the surrounding area, are mitigated by the approved conditions.

Denial - based on inconsistencies with the goals and objectives of the adopted Land Use Plan and/or other long-range planning documents and the potential impacts on the surrounding areas.





## AGENDA ITEM COVERSHEET

**PREPARED BY:** Wes MacLeod, AICP, ASLA

**DEPARTMENT:** Cape Fear Council of Governments

**MEETING:** Town Council July 9<sup>th</sup>, 2024

**SUBJECT:** Consider approving the final draft of the Unified Development Ordinance (UDO) repealing Ch. 30, 32, 36, and 40 and the existing relevant language will be incorporated into the UDO.

Applicant: Town of Carolina Beach

Please find the attached draft of the Town's first Unified Development Ordinance (UDO). To create the Town's first UDO, the respective Chapters relating to land use (Chapters 30, 32, 36, and 40) contained in the Town's General Code will be repealed and the existing relevant language incorporated into the new UDO. This ordinance process began in July 2022, with the first Planning and Zoning Commission held in October 2022. An audit of all existing land development ordinances was completed to identify areas in need of change. The Town's staff and Planning and Zoning Commission have provided valuable oversight throughout the nearly two-year long process. This editorial draft contains strikethrough (language proposed for deletion) and underline (new language) formatting. A public hearing held before the Planning and Zoning Commission and Town Council is required prior to adoption.

### UNIFIED DEVELOPMENT ORDINANCE UPDATES

The following items have been completed as part of the draft update:

- Updates and modification for overall organization and clarity. Reduction in overall text and clarification of many ambiguous and unclear provisions.
- Consolidation of procedures, roles, responsibilities, and administrative items into one article (Article 2).
- Revision to the table of permitted uses to consolidate use types where feasible and incorporate additional uses required by case law or NC General Statutes.
- Establishment of impervious coverage limit of 65% for all zoning districts, with the exception of the HB, CBD, and T-1 zoning district. The 65% limit is based upon an assessment of existing site conditions throughout the Town's planning jurisdiction.



- Restriction on the use of site fill to raise the elevation of a lot. The placement of fill is restricted to one foot above the crown of the adjacent street or alley. An exception is provided for lots impacted by tidal flooding. The CBD and HB zoning districts are exempt from this requirement.
- Consolidation of development standards such as fences, parking, sidewalks, and driveways into one article (Article 3).
- Update to off-street parking requirements to allow up to 20% of the required parking spaces to be utilized for golf cart or LSV parking.
- Restriction of the use of private streets in future subdivisions.
- Removal of the allowance of bonding or financial guarantees for the installation of infrastructure.
- Update to the Wireless article in accordance with NC General Statutes.

Please do not hesitate to send any comments, questions, or concerns to our office regarding the draft Unified Development Ordinance (UDO). Lastly, it has been a pleasure to work with Town staff and the Planning and Zoning Commission on this important task.

Best Regards,

Wes MacLeod, AICP, ASLA  
Local Government Services Director  
Tel: 910.274.0352  
Email: [wmacleod@capefearcog.org](mailto:wmacleod@capefearcog.org)

# Ordinance 24-1230

Town of Carolina Beach  
Town Council



**AN ORDINANCE TO REPEAL CHAPTERS 30, 32, 36, AND 40 OF THE TOWN'S GENERAL CODE AND ADOPT THE UPDATED UNIFIED DEVELOPMENT ORDINANCE (DATED: MAY 23, 2024) FOR THE TOWN OF CAROLINA BEACH, NORTH CAROLINA**

**THAT WHEREAS**, the Town has enacted land development ordinances that control development within the Town's incorporated and extraterritorial jurisdiction areas; and

**WHEREAS**, in order to promote the public health, safety and general welfare and to promote the best interests of the Town and community, it is necessary from time to time for the Planning and Zoning Commission and Town Council to consider appropriate revisions, modifications and updates to the Town's Unified Development Ordinance; and

**WHEREAS**, the Town Council charged the Planning and Zoning Commission with the responsibility of reviewing existing land development ordinances and providing oversight in the drafting of the Town's first Unified Development Ordinance; and

**WHEREAS**, the Planning and Zoning Commission, with the assistance of Cape Fear Council of Governments, has drafted the Unified Development Ordinance which contains land development regulations from previous codes; and

**WHEREAS**, the Planning and Zoning Commission recommends adoption of the proposed repeal of land use Chapters 30, 32, 36, and 40 and the adoption of the Town's first Unified Development Ordinance (UDO) and finds (i) it to be consistent with the Town's comprehensive plan (2020 CAMA Land Use Plan) and all other applicable plans and policies adopted by the Town, which includes the following action step: "Review existing zoning districts, dimensional standards regulations, and land development regulations...." and (ii) that it is in the public interest because it will advance the public health, safety, and/or welfare of the Town of Carolina Beach; and

Town of Carolina Beach  
Ordinance No. 24-1230

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# Ordinance 24-1230

Town of Carolina Beach  
Town Council

**WHEREAS**, pursuant to N. C. General Statutes and Town ordinances, public hearings, properly noticed, were held before the Planning and Zoning Commission on June 20, 2024, and before the Town Council on July 9, 2024, where public comment was heard and considered regarding this issue; and

**WHEREAS**, the Town Council hereby finds that the proposed repeal of land use Chapters 30, 32, 36, and 40 and the adoption of the Town’s first Unified Development Ordinance (UDO) is (i) consistent with the Town’s comprehensive plan (2020 CAMA Land Use Plan) and all other applicable plans and policies adopted by the Town, which includes the following action step: “Review existing zoning districts, dimensional standards regulations, and land development regulations...” and (ii) that it is in the public interest because it will advance the public health, safety, and/or welfare of the Town of Carolina Beach.

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of Carolina Beach that the Chapters 30, 32, 36, and 40 of the Town’s General Code is hereby repealed and that the draft Unified Development Ordinance (dated May 23, 2024) is hereby adopted and shall become effective on August 9, 2024.

Be it ordained by the Town Council of the Town of Carolina Beach. Adopted this 9<sup>th</sup> day of July, 2024.

TOWN OF CAROLINA BEACH

\_\_\_\_\_  
Albert L. Barbee, Mayor

ATTEST:

\_\_\_\_\_  
Kimberlee Ward, Town Clerk

Town of Carolina Beach, NC:

# Unified Development Ordinance (UDO)



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## Article 1: General Provisions

### 1.1 TITLE

This ~~chapter~~ ordinance shall be known as the "Unified Development Ordinance Zoning Ordinance" of the Town of Carolina Beach, North Carolina," and may be cited as the Unified Development Ordinance (UDO) zoning ordinance. The map herein referred to, which is identified by the title "Town of Carolina Beach Zoning Map," shall be known and may be cited as the zoning map. This ordinance may be referred to as "this ordinance" of which contains zoning, subdivision, signage, stormwater, wireless telecommunication, floodplain, and other land development regulations.

### 1.2 EFFECTIVE DATE

The provisions in this ordinance were originally adopted \_\_\_\_\_ and became effective on \_\_\_\_\_ and as subsequently amended.

### 1.3 PURPOSE AND VISION POLICY

- A. Purpose. The ~~zoning-land development~~ regulations and zoning districts as set forth herein are designed to lessen congestion in the streets; secure safety from fire, panic, and other dangers; promote health and the general welfare; provide adequate light and air; prevent the overcrowding of land; avoid undue congestion of population; facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. They have been designed with consideration given to the character of each district and its suitability for various uses, with a view toward conserving the value of buildings and property, and for encouraging the most appropriate use of land throughout the community.
- B. Vision policy. The ~~zoning-land development~~ regulations and zoning districts as set forth herein are also intended to effectuate the general vision policy of the town, as set forth in the current Carolina Beach Land Use Plan adopted by the Town Council:
1. We, the residents, business, and property owners of the Town of Carolina Beach, shall seek to preserve and enhance our community as both an appealing destination resort and year-round place in which to live. We will continually strive to protect and nurture the natural and manmade features of our community which make it so unique. These features include our boardwalk/amusement area, marina and boat basin, Carolina Beach Lake, Carolina Beach State Park, and our stable, permanent single-family residential neighborhoods. As the inherent value of our community continues to increase over the coming years, and the forces of investment and change influence that growth, the town's mission shall be to positively direct growth such that the quality of each of these features is continually enhanced within the context of a small, family-oriented beach resort town.

### 1.4 AUTHORITY

- A. Zoning provisions enacted herein are under the authority of NCGS 160D, which extends to towns/cities the authority to enact regulations which promote the health, safety, morals, or the general welfare of the community. It is further authorized under NCGS

160D-703 which authorizes local governments 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. ~~The Town enacts this chapter in pursuance of the authority granted by G.S. ch. 160D.~~

- B. Subdivision provisions enacted herein are under the authority of NCGS 160D-804 which provide for the coordination of streets within proposed subdivisions with existing or planned streets 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 (1) neighborhood in the immediate area, and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding.
- C. This UDO, which combines zoning and subdivision authority, is further enacted under NCGS 160D-103.
- D. Whenever any provision of this ordinance refers to or cites a section of state law 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.

## 1.5 JURISDICTION

- A. This ordinance shall be effective throughout the town's planning jurisdiction. The town's planning jurisdiction comprises the area within the corporate boundaries of the town as well as the town's extraterritorial jurisdiction. Such planning jurisdiction may be modified from time to time in accordance with state law.
- B. A copy of the zoning map showing the boundaries of the town's planning jurisdiction shall be available for public inspection in the planning department.

## 1.6 OFFICIAL ZONING MAP

- A. The boundaries of each zoning district are hereby established as shown on the official zoning map of the town, as amended, which accompanies and is hereby declared to be a part of this ordinance.
- B. The official zoning map and ordinance shall be properly attested and shall be on file in the office of the ~~town Zoning~~UDO Administrator. Regardless of the existence of purported copies of the official zoning map, the official zoning map shall be the final authority as to the current zoning status of land, buildings, or other structures in the town and its extraterritorial planning jurisdiction.
- C. If, in accordance with the provisions of this ordinance, changes are made in district boundaries or other references on the official zoning map, such changes shall be entered on the official zoning map after the amendment has been approved by the Town Council. No changes of any nature shall be made on the official zoning map except in conformity



with the procedures ~~set forth in article XVII of this chapter~~ required for any zoning map amendment.

D. When the zoning map is officially replaced, unless the prior map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining, shall be preserved together with all available records pertaining to its adoption or amendment.

~~D.E.~~ Copies of the zoning district 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 NCGS 160A-79, shall be admissible into evidence and shall have the same force and effect as would the original map.

## 1.7 INTERPRETATION OF ZONING DISTRICT BOUNDARIES

A. The ~~Zoning~~ UDO Administrator shall decide the exact location of any zoning district boundary lines whenever uncertainty exists about the boundary lines shown on the official zoning maps, subject to appeal to the Board of Adjustment ~~provided for in article XVI of this ordinance~~. The determination of the exact location of a zoning district boundary shall be based upon the following rules:

1. Boundaries indicated as approximately following or within a street, alley, or railroad right-of-way, or utilities (electrical, gas, water main, etc.) easement shall be construed to be in the center of such right-of-way easement;
2. Boundaries indicated as following shore lines shall be construed to follow such shorelines, and, in the event of change in the shorelines, shall be construed as moving with the actual shoreline; boundaries indicated as approximately following the centerlines of streams, rivers, creeks, or other bodies of water shall be construed as following such centerlines;
3. Boundaries indicated as approximately following plotted lot lines shall be construed as following such lot lines;
4. Boundaries indicated as approximately following town limits shall be construed as following town limits; and
5. Boundaries indicated as parallel to or extension of features indicated in subsections (1), (2), (3) and (4) of this section shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map.
6. In the event that a district boundary line on the zoning map divides a platted lot held in one ownership on the date of passage of the ordinance from which this ordinance is derived, each part of the lot so divided shall be used in conformity with the district in which such part is located.
7. Where any further uncertainty exists, the UDO Administrator shall interpret the intent of the map as to location of such boundaries.

## 1.8 RELATIONSHIP TO EXISTING DEVELOPMENT REGULATIONS

~~A. — To other laws. It is not intended by this chapter to repeal, abrogate, annul or in any way to impair or interfere with other Town ordinances not contained in this chapter.~~

~~B. — Zoning provisions. When inconsistencies are identified within this chapter, the more restrictive zoning language shall apply.~~

~~C.A. Italicized words. All words in this chapter that are shown in italics have special meaning. Each italicized term is specifically defined in either article VI, VIII or XVIII of this chapter. Any defined term that is inadvertently shown without italics shall in no way allow the term to be utilized in a way that was unintended by this chapter.~~

To the extent that the provisions of this ordinance are the same in substance as the previously adopted development regulations, they shall be considered as continuations thereof and not as new enactments unless otherwise specifically provided. In particular, a situation that did not constitute a lawful, nonconforming situation under the previously adopted development regulations does not achieve lawful nonconforming status under this ordinance merely by the repeal of the former development regulations.

## 1.9 INTERPRETATION AND CONFLICT

A. 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 or 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.

A.B. Where one or more articles of this UDO are in conflict with one another, the most restrictive requirements shall apply.

## 1.10 EFFECT ON PENDING AND FUTURE PROSECUTIONS

All suits at law or in equity and/or all prosecutions resulting from violations of any ~~zoning ordinance~~ and development regulations heretofore in effect, which are now pending in any of the courts of the United States or this state shall not be abated or abandoned by reason of the adoption of the ordinance from which this ordinance is derived, but shall be prosecuted to their finality the same as if this ordinance had not been adopted; any and all violations of the existing zoning ordinances, prosecutions for which have not been instituted, may be hereafter filed and prosecuted pursuant to the terms and provisions of this ordinance; and nothing in this ordinance shall be construed to abandon, abate, or dismiss any litigation or prosecution now pending, and/or which heretofore have been instituted or prosecuted.

## 1.11 COMPUTATION OF TIME

Unless otherwise specifically provided, the time within which an act is to be done shall be computed by excluding the first and including the last day. If the last day is a Saturday, Sunday, or legal holiday, that day shall be excluded. When the period of time prescribed is less than seven (7) days, intermediate Saturdays, Sundays, and holidays shall be excluded.

## 1.12 FEES

A. Reasonable fees sufficient to cover the costs of administration, permits, inspections, publication of notice, and similar matters may be charged to applicants for ~~zoning permits, building permits/inspections, conditional zoning, special use permits, temporary use permits, driveway permits, ordinance amendments, rezone requests, variances and~~

~~other administrative relief~~ various permit types. The amount of the fees charged shall be as set forth in the town's budget or as established by resolution of the Town Council filed in the office of the town clerk.

- B. Fees established in accordance with subsection (a) of this section shall be paid upon submission of a signed application or notice of appeal.

### 1.13 SEVERABILITY

- A. Should any article, section, subsection, paragraph, sentence, clause, phrase, or district boundary of this ordinance and/or the zoning map which is a part of this ordinance herein or hereafter adopted be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of these regulations and the zoning map as a whole or any part thereof other than the part so decided to be unconstitutional or invalid. The Town Council hereby declares that it would have adopted this ordinance and zoning map, irrespective of the fact that any one or more articles, sections, subsection, paragraphs, sentences, clauses, phrases, or district boundaries be declared unconstitutional or invalid.
- B. If any section or specific provision or standard of this ordinance or any regulating district boundary arising from it is found by a court to be invalid for any reason, the decision of the court shall not affect the validity of any other section, provision, standard, or district boundary of these regulations except the provision in question. The other portions of these regulations not affected by the decision of the court shall remain in full force and effect.

## Article 2: Administration and Procedures

### 2.1 GENERAL

This article contains powers and duties, approval procedures, amendment procedures, and enforcement mechanisms. The following bodies and town staff have powers and responsibilities in administering this ordinance, reviewing applications for development/subdivision proposals, hearing matters of a quasi-judicial nature, or amendments under this ordinance:

- A. Town Council
- B. Planning and Zoning Commission
- C. Board of Adjustment
- D. Technical Review Committee
- E. UDO Administrator

### 2.2 TOWN COUNCIL

- A. Powers and duties of the Town Council as pertaining to planning and zoning matters. The Town Council shall execute the following powers and duties:
  - 1. Zoning amendments. The Town Council, as the governing body of the town, shall act in its legislative capacity when considering proposed amendments to the text of this ordinance or to the zoning map ~~and shall observe the procedural requirements set forth in article XVII of this chapter.~~
  - 2. Special use permits. The Town Council, as the governing body of the town, shall act in its quasi-judicial capacity when reviewing special use permits.
    - a) ~~Special use permits for particular uses. In reviewing applications for a special use permit for a particular use, the Town Council shall follow the development standards for particular uses contained in article IX of this chapter, as well as procedures for reviewing special use applications as set forth in article XI of this chapter, special uses.~~
    - b)a) ~~Special use permits to allow a change of one nonconforming use to another. In reviewing applications for a change of nonconforming use, the Town Council shall follow the standards established in article XIV of this chapter, as well as procedures for reviewing special use applications as set forth in article XI of this chapter, special uses.~~
  - 3. Voting matters. When considering amendments to this ordinance or the zoning map, or in considering the issuance of a special use permit, the Town Council shall follow the regular voting, and other requirements as set forth in other provisions of the Town Code, the Town Charter, or general law (NCGS 160A-75(a)).
  - 4. Oath of office. Every person elected by the people or appointed to any town office shall, before entering upon the duties of the office, take and subscribe the oath of office prescribed in North Carolina General Statutes. Oaths of office shall be administered by some person authorized by law to administer oaths, and shall be filed with the town clerk.
  - 5. Minutes. The board shall keep minutes of its proceedings.

6. Conflict of interest. Members of Town Council shall not vote on recommendations, permits, approvals, or other issues where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member or a member has a close familial, business, or other associational relationship. No member shall be excused from voting except upon those matters as noted, above, or upon those others involving the consideration of his/her own financial interest or official conduct (NCGS 160D-109).

## 2.3 PLANNING AND ZONING COMMISSION

- A. Establishment. A Planning and Zoning Commission, consisting of seven (7) members, is hereby established, appointed by the Town Council. All members shall reside within the corporate limits of the town. Members shall serve without compensation, but may be reimbursed for actual expenses incidental to the performance of their duties within the limit of funds available to the commission.
- B. Oath of office. Every person elected by the people or appointed to any town office shall, before entering upon the duties of the office, take and subscribe the oath of office prescribed in North Carolina General Statutes. Oaths of office shall be administered by some person authorized by law to administer oaths, and shall be filed with the town clerk.
- C. Tenure. Members of the Planning and Zoning Commission shall be appointed by the Town Council to serve terms of three (3) years, and until their respective successors have been appointed and qualified. The terms of the original members may be staggered so that all terms do not expire simultaneously. Vacancies shall be filled for the unexpired term only.
- D. Officers. The Planning and Zoning Commission shall elect one (1) member to serve as chairperson and preside over its meetings, and shall create and fill such offices and committees as it may deem necessary. The term of the chairperson and other officers shall be one (1) year.
- E. Powers of the Planning and Zoning Commission. The Planning and Zoning Commission shall have the following powers and duties related to the administration of this ordinance:
  1. Review petitions for proposed amendments to the ordinance text and/or map and make recommendations to the Town Council.  
~~Reserved.~~
  2. Initiate proposed amendments to the ordinance text and/or map ~~and make recommendations to the~~ subject to the discretion of the Town Council.
  3. Prepare studies and plans related to controlling and creating orderly growth and development of the town.
  4. Develop and recommend to the Town Council plans, goals, and objectives as well as policies, ordinances and administrative procedures, or other means for carrying out the studies and plans referenced above.
  5. Perform any other duties assigned by the Town Council as authorized in NCGS 160D-301.

- F. Planning and Zoning Commission administration.
1. The commission shall adopt rules of procedures and regulations for the conduct of its affairs.
  2. All meetings of the commission shall be open to the public. ~~Regular monthly meetings shall be held on the second Thursday of each month at 6:00 p.m. in the council room of the Town hall.~~
  3. The commission shall keep a record of its meetings, including the vote of each member on every question, a complete summary of the evidence submitted to it, documents submitted to it and all official actions.
  4. ~~Special use permits, zoning text and/or zoning map amendments shall be considered by the commission for recommendations to Town Council at a scheduled meeting. It is the intent of this section to provide adequate public notice to all affected and interested property owners concerning proposed zoning map amendments and special use permits in order to enhance and facilitate a sound recommendation from the Planning and Zoning Commission to the Town Council. It is, however, not the intent of this section to delay or cause to delay a public meeting by the commission due to advertising and/or noticing errors either on the part of the Town or by others. Within 25 days of the meeting:~~
    - a) ~~Special use permits, zoning text and/or zoning map amendments: Two advertisements posted in a newspaper of general circulation within the Town.~~
    - b) ~~Special use permits and zoning map amendments: Notice sent by first class mail to the owner of that parcel of land, those directly across any right-of-way, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing.~~
    - c) ~~Zoning map amendments that directly affect more than 50 properties, owned by a total of at least 50 different property owners:~~
      - i) ~~Mailed notice provided for in subsection (e)(4)b. of this section;~~  
~~or~~
      - ii) ~~As an alternative, elect to publish notice of the hearing as listed by subsection (e)(4)a. of this section, but provided that each advertisement is no less than one-half of a newspaper page in size and provisions of subsection (e)(4)a. of this section apply for property owners who reside outside of the newspaper circulation area, in accordance with the address listed on the most recent property tax listing.~~
    - d) ~~Special use permit and zoning map amendments: Notice posted on site.~~
    - e) ~~If the adoption or modification of the ordinance 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 Town shall provide a written notice of the proposed changes by certified mail, to the commander of the military base not less than ten days nor more than 25 days before the date fixed for the hearing date.~~

- G. The person acting as chairperson of the commission [or the hearing officer] is authorized to administer oaths to any witnesses in any matter coming before the commission.
- H. Any member of the Planning and Zoning Commission who misses more than three (3) consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his status as a member of the commission, and shall be replaced or reappointed by the Town Council as appropriate. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the commission, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.
- I. The board shall keep minutes of its proceedings.
- J. Quorum and vote required.
  - 1. A quorum of the commission, necessary to conduct any business of the commission, shall consist of a simple majority.
  - 2. A simple majority vote of those present shall be necessary to conduct routine business of the commission.
- K. Conflict of interest. Members of planning and zoning shall not vote on recommendations, permits, approvals, or other issues where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member or a member has a close familial, business, or other associational relationship. No member shall be excused from voting except upon those matters as noted, above, or upon those others involving the consideration of his own financial interest or official conduct (NCGS 160D-109).

## 2.4 BOARD OF ADJUSTMENT

- A. Establishment. A Board of Adjustment is hereby created. The term "board," when used in this section, shall be construed to mean the Board of Adjustment.
- B. Number of members; appointments. The board shall consist of five (5) regular members and two (2) alternate members; all members shall be citizens and reside within the corporate limits of the town. Members shall be appointed by the Town Council. While attending any regular or special meeting of the board and serving in the absence of a regular member, the alternate member has and may exercise all the powers and duties of a regular board member. An alternate member may not vote on cases before the board when he/she is not filling in for an absent member.
- C. Oath of office. Every person elected by the people or appointed to any ~~city~~ town office shall, before entering upon the duties of the office, take and subscribe the oath of office prescribed in ~~Article VI, § 7 of the Constitution~~ North Carolina General Statutes. Oaths of office shall be administered by some person authorized by law to administer oaths, and shall be filed with the town clerk.
- D. Length of terms. The term of office of members of the board shall be for three (3) years.
- E. Vacancies. Vacancies occurring for reasons other than expiration of terms shall be filled in the same manner as other appointments, as they occur, for the period of the unexpired term.
- F. Compensation. The members of the board shall receive no compensation for their services.

- G. Officers, rules of procedure and conduct of meetings.
1. The Board of Adjustment shall annually elect one (1) member to serve as chairperson and preside over its meetings and elect one (1) member to serve as vice-chairperson to preside in the absence of the chairperson.
  2. The board shall adopt rules of procedure for the conduct of its affairs and in keeping with the provisions of this ordinance. Such rules of procedure shall not be effective until approved by the Town Council. A complete listing of all officers, terms of office, and rules of procedure shall be maintained for public record by the secretary of the board and a copy of which shall be kept on file in the planning department.
  3. All meetings of the board shall be open to the public and held in accordance with NCGS 143-318.10 et seq., or as may be amended. The board shall follow quasi-judicial procedures as outlined in NCGS 160D-302, NCGS 160D-406 and ~~in subsection 40-490(n), conflict of interest~~ as provided herein.
  4. Reserved.
  5. Conflict of interest. Members of Board of Adjustment 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 ~~vote on recommendations, permits, approvals, or other issues where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member or a member has a close familial, business, or other associational relationship. No member shall be excused from voting except upon those matters as noted, above, or upon those others involving the consideration of his own financial interest or official conduct~~ (NCGS 160D-109).

## 2.5 TECHNICAL REVIEW COMMITTEE AND PROCEDURE

- A. The purpose of the Technical Review Committee is to facilitate communication and coordination between departments responsible for development review.
- B. The technical review procedure may be used to review all applications for any application for development approval. The Technical Review Committee shall provide recommendations, as provided herein, regarding the application under its review. Such procedure shall consist of a review by the appropriate technical staff and departments at the discretion of the UDO Administrator. Any findings or recommendations shall be provided to the applicant and applicable approval authority for review purposes.
- C. The Technical Review Committee may include, but not necessarily be limited to, the following individuals/departments: UDO Administrator, building inspector, town manager, fire department, police department, public works department, Division of Coastal Management, NC Department of Environmental Quality, NC Department of Public Safety, and/or US Army Corp of Engineers.



D. The UDO Administrator may request the participation of professional experts or a representative from county, regional, or state agencies if the UDO Administrator determines that such entities can provide expertise concerning the proposed development.

A.E. Such committee may provide recommendations through digital communications or during a scheduled in-person meeting at the discretion of the UDO Administrator.

## 2.6 UDO ZONING ADMINISTRATOR

A. The UDO Administrator, to be designated by the town manager, is hereby authorized and it shall be his/her duty to enforce the provisions of this ordinance. It is the intention of this ordinance that all questions arising in connection with enforcement and interpretation shall be presented first to the UDO Administrator and/or designated agent. Appeal of his/her decision may be made to the Board of Adjustment. ~~The provisions of this chapter shall be administered by the Town Manager through his designee, typically the zoning administrator.~~ All references in this ordinance to the ~~zoning~~ UDO Administrator shall also include, therefore, any other official designee of the town manager. The ~~zoning~~ UDO Administrator shall have the following powers and duties in the administration of the provisions of this ordinance:

1. To make inspections of buildings or premises as necessary in the performance of his/her duties in the enforcement of this ordinance. ~~In exercising this power, staff are~~ the UDO Administrator is authorized to enter any premises within the jurisdiction of the town 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; and
2. To make all necessary determinations and interpretations as required by this ordinance; and
3. To propose and promulgate administrative regulations necessary to implement the provisions of this ordinance.

B. Under no circumstance is the UDO Administrator ~~zoning administrator~~ permitted to make changes in this ordinance or to grant exceptions to the actual meaning of any clause, standard, or regulation contained in this ordinance.

C. Conflict of interest. No staff member shall make a final decision on an administrative decision 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, the decision shall be assigned to another staff member.

D. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under NCGS 160D 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 their duties or with the interest of the town (NCGS 160D-109c).

## 2.7 - 2.11 RESERVED

### 2.12 COMMON REVIEW PROCEDURES

#### A. COMPLETE APPLICATIONS

1. All applications for any approval required by this ordinance must be complete. Applicants who submit incomplete applications will receive a written notice stating the information needed to complete the application.
2. If a permit application is placed on hold at the request of the applicant for a period of six (6) consecutive months or more, or the applicant fails to respond to comments or provide additional information reasonably requested by the town for a period of six (6) consecutive months or more, the application review is discontinued and the development regulations in effect at the time permit processing is resumed apply to the application.
3. 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.
4. Upon receipt of an application, the UDO Administrator shall determine if the application is complete. A complete application shall include the following:
  - a) Contains all information and materials established by the UDO Administrator and/or the requirements of this ordinance as required for submittal of the particular type of application.
  - b) Is in the form established by the UDO Administrator as required for submittal of the particular type of application.
  - c) Includes information in sufficient detail to evaluate the application to determine whether it complies with the appropriate substantive standards of this ordinance.
  - d) Is accompanied by the fee established for the particular type of application.
  - e) Is signed by the property owner, a designated owner's agent, or a contract purchaser of a property with a signed statement that the applicant is officially acting on the owner's behalf. Written proof of authority must be submitted with every application.
- ~~1.5.~~ An approved application for a development approval shall be issued in writing by the UDO Administrator. The UDO Administrator 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.

#### B. ZONING PERMIT

1. A zoning permit shall be required for changes of use or of any of the following: all new principal and accessory structures; enlargements of existing structures; construction/installation of fences/walls, piers, docks, decks, stairs, and signs;

and/or any activity which proposes to increase the amount of impervious square footage on a lot.

2. It shall be unlawful to commence site preparation or excavation for 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, or the paving, site disturbance, tree removal, or other installation or construction of a hardened surface upon the site, until the UDO Administrator has issued a zoning permit or other applicable permit for such work or use.
3. Zoning permits shall be void after one (1) year from date of issue if the use has not commenced. Unless substantial progress has been made or a building permit has been issued, an applicant must reapply for a zoning permit or submit an application for approval of vested rights in accordance with provisions of this ordinance.
4. Zoning permits are transferable so long as the land or structures or any portion thereof covered under a permit continues to be used for the purposes for which the permit was granted.
5. A completed application form for a zoning permit shall be submitted to the UDO Administrator. An application for a zoning permit must be accompanied by any applicable site plan type required by this ordinance.
- ~~4.~~6. The UDO Administrator shall issue the zoning permit if the proposed activity set forth in the application is in conformity with the provisions of this ordinance and any applicable approved plans (e.g., conditional zoning, PUD, preliminary subdivision plat, etc.).

#### C. BUILDING AND DEMOLITION PERMIT

1. Before commencing the construction, erection, repair, alteration, addition to, or moving of any building or structure, or part thereof, or before commencing any excavation for such building or structure, or any form of activity that is within the scope of NCGS Ch. 160D, Art. 11 and chapter 6 (buildings and building regulations) of the town's his C-code of ordinances, a building permit for the same shall be obtained from the applicable building inspector.
2. Before commencing the removal or demolition of any building or structure or part thereof, a building permit authorizing said removal or demolition shall be obtained from the building inspector.
3. The applicable building inspector and any other town official or its designee with responsibility over building code and related matters shall have all those powers set forth in NCGS Ch. 160D; NCGS ch. 143, art. 9, and the town's code of ordinances, chapter 6 (buildings and building regulations).

#### D. CERTIFICATE 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 use shall be

made in any existing building or part thereof, until a certificate of occupancy has been issued therefor.

2. A temporary certificate of occupancy may be issued for a stated period of time for a portion or portions of a building which may safely be occupied prior to final completion and occupancy of the entire building or for other temporary uses.
3. The certificate of occupancy shall be issued after all final inspections have been made.
4. 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, a certificate of occupancy shall be issued 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.
- 1.5. A certificate of occupancy may be withheld pending the UDO Administrator determination of compliance with any other requirements of this ordinance.

#### E. FLOODPLAIN DEVELOPMENT PERMIT

Floodplain development permits shall be issued by the UDO Administrator for all development located within the Special Flood Hazard Area (SFHA) in accordance with Article 5: Flood Damage Prevention Ordinance.

#### F. STORMWATER PERMITS

Applicable stormwater permits, including fill and grade, and clearing, shall be issued by the Stormwater Administrator in accordance with Article 6: Stormwater Management.

#### G. SIGN PERMIT

1. The UDO Administrator or his/her designee shall issue a sign permit for the erection or construction for a sign which meets the requirements of the sign section in Article 3: Zoning and is not subject to exemption from permitting requirements. Each application shall include the following:
  - a) Name and address of the owner of the sign.
  - a)b) A scaled drawing displaying the location of the sign on the associated lot, the sign dimensions, construction, height, setbacks from all lot lines, lighting, electrical, and all other elements associated thereto.
  - b)c) Total number of signs existing on site, including the dimensions of each.
  - e)d) Payment of the permit fee.
  - e) All permanent signs shall be designed and constructed to meet the requirements of the state building code. Depending on the type of sign construction, the building inspector may require engineered certified plans.
  - f) The value of the sign or sign structure.
  - g) The method and type of illumination, if any.
  - h) The location proposed for such signs in relation to property lines, zoning district boundaries, right-of-way lines, and existing signs.

- ~~e~~) A graphic representation (hand drawn if necessary), including color scheme, lighting, and landscaping of the proposed sign.

#### H. CAMA PERMIT

CAMA permits shall be issued by the Division of Coastal Management or designated town local permit officer for any development within a regulated Area of Environmental Concern as defined by NCGS 113A-113.

#### I. OUTDOOR SEASONAL SALES AND TEMPORARY STORAGE CONTAINER PERMITS

1. Outdoor seasonal sales and temporary ~~uses~~ storage container permits shall be issued by the UDO Administrator.
2. Where temporary structures, tents, mobile offices, accessory uses, existing structures, or similar uses are required in connection with the temporary use, a site plan generally drawn to scale shall be submitted and shall show the location or placement of the temporary uses, structures, and accessory uses in conjunction with adjacent streets, parking, attendant accessory uses, existing or proposed structures, and traffic movement or flow pattern, and entrances and exits.

#### J. HARDSCAPE PERMITS (PATIOS, DRIVEWAYS, SIDEWALKS, ETC.)

1. Permit requirements.
  - a) New construction or replacement of driveways. Application and issuance of a driveway permit is required prior to construction. The application shall include a site plan that meets all requirements listed within this section. If the proposed driveway will interfere with existing town infrastructure, such as sidewalks, plans for reconstruction shall be provided with the application.
  - b) Repair or modification of existing driveways. Proposed changes to the size or location of the existing driveway shall be subject to meeting new construction standards.
  - c) A site plan is required with any application for all new or reconstructed driveways. Site plans shall be drawn to scale and include the following information at a minimum:
    - i) The location of proposed or existing driveways with dimensions and the distances from other streets and driveways.
    - ii) Labeled public rights-of-way and widths.
    - iii) Existing infrastructure such as sidewalks, drainage pipes, utility poles, hydrants, or any other features.
    - iv) Erosion control and sedimentation plan.
  - d) The fee for the permit will be specified in the town's annual fee schedule.
  - e) Prior to the issuance of any driveway permit located within a state maintained right-of-way, a copy of an approved NCDOT driveway permit shall be provided to the Town.

#### K. FENCE PERMITS AND OTHER MISCELLANEOUS PERMITS

Such permits shall be issued in accordance with the requirements of this ordinance.

## 2.13 MODIFICATION, REVOCATION, AND RESUBMISSION OF A DENIED PERMIT

### A. MODIFICATION OF PERMITS OR APPROVALS

1. Minor changes to a permit issued or approval granted by the Town Council, the Planning and Zoning Commission, the Board of Adjustment, or the UDO Administrator are permissible and the UDO Administrator may authorize such minor changes unless classified as a major change as provided below.
- 1.2. Major changes to approved permits, plans, and conditions of development may be authorized only by the permit issuing authority in the same manner as outlined in this ordinance for original submission. Major changes include, but are not limited to:
  - a) Change in use.
  - b) Increase in intensity of the development; such as increase in density of units, whether residential, office, commercial, or industrial; an increase in number of off-street parking or loading spaces; an increase in height; or an increase in impervious surface area.
  - c) An increase in overall ground coverage by structures.
  - d) A change in any site dimension by more than 10%.
  - e) A reduction in approved open space or screening.
  - f) A change in access and internal circulation design.
3. Minor changes, which are not deemed as major changes by the ~~zoning administrator in consultation with the director of planning and development~~ UDO Administrator, may be authorized by the ~~zoning administrator~~ UDO Administrator if required by engineering or other physical circumstances not foreseen at the time of approval. The UDO Administrator shall determine whether amendments to and modifications of permits constitute a minor or major change as described herein.
4. A developer requesting approval of changes shall submit a written request for such approval to the UDO Administrator, and that request shall identify the changes. Approval of all changes must be given in writing.
- 2.5. Any changes to approved plans and conditions of development in consequence of enforcement actions ~~under article XV of this chapter~~ of this ordinance are not changes subject to this section.

### B. PERMIT REVOCATION

1. Any permit issued under this ordinance may be revoked by the permit-issuing authority by the same process as was used for the approval (in accordance with the provisions of this section) if the following occurs:
  - a) The permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this ordinance, or any additional requirements lawfully imposed by the permit-issuing board, or
  - b) The permit was issued based on erroneous information.
2. Before a special use permit may be revoked, all of the notice and hearing requirements shall be complied with. The notice shall inform the permit recipient

of the alleged grounds for the revocation. Any expiration provisions subject to the initial approval are applicable without regard to revocation requirements.

3. Before permits other than a special use may be revoked, the UDO Administrator shall give the permit recipient 10 days notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of his/her right to request an informal hearing on the allegations. If the permit is revoked, the UDO Administrator shall provide to the permittee a written statement of the decision and the reasons therefor. Appeals of revoked permits may be made to the Board of Adjustment.

1.4. No person may continue to make use of land or building in the manner authorized by any permit issued under this ordinance after such permit has been revoked in accordance with this ordinance.

#### C. RESUBMISSION OF A DENIED PETITION

1. Whenever an application for a permit or approval authorized by this ordinance is denied, on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered within a 12 month period unless explicitly specified by this ordinance or the applicant clearly demonstrates that:

a) Circumstances affecting the property that is the subject of the application have substantially changed or new information is available that could not with reasonable diligence have been previously presented. A request to be heard on this basis must be filed in writing with the UDO Administrator.

2. Once a petition for rezoning or ordinance text amendment has been denied, no resubmission of the same request for rezoning or ordinance text amendment may be filed within ~~one year~~12 months from the date of such denial by the Town Council ~~(or Planning and Zoning Commission)~~, unless the Town Council shall unanimously find that changing conditions in the area or new information concerning the property requested for rezoning warrant a resubmission for change in this chapter or map. Provided that the ~~one year~~12 month waiting period shall not be applicable or otherwise be involved in the filing of a new application for rezoning all or any part of the property previously considered by the Planning and Zoning Commission or the Town Council where the new application requests rezoning to a different zoning district classification. Nevertheless, not more than two (2) applications may be filed for rezoning and/or part of the same property within any 12-month period.

## 2.14 SPECIFIC REVIEW PROCEDURES

### A. PURPOSE AND INTENT

1. It is the purpose of the review procedures of this article to ensure:

a) All applicable town regulations associated with a property and of adjacent land have been recognized and evaluated.

- b) A clear and understandable decision can be made concerning proposed development.
- 2. It is further the purpose of the review procedures of this article to ensure regulations are enforced that will:
  - a) Ensure the health, safety, and welfare of the community and its natural environment.
  - b) Conserve and enhance property values.
  - c) Preserve adequate space for vehicular and transportation facilities associated with new development.
  - d) Provide for effective traffic movement without congestion and hazards.
  - e) Provide for effective stormwater management and control.
  - f) Assure that public utilities and services are provided in a safe and healthful manner, consistent with applicable regulations and standards.
- 3. It is the intent of ~~this article~~ all applicable review and approval procedures to ensure:
  - a) Staff will be involved in providing supporting information on the process for ~~approval of a site~~ any development approval plan.
  - b) The burden of ~~laying out a site plan and~~ preparing any development approval application and providing proof of compliance lies with the applicant.

#### B. MINOR SITE PLAN

- 1. Purpose. Minor site plan review is intended to ensure that the layout and general design of low-intensity development is compatible with all applicable standards in this ordinance and all other applicable town regulations.
- 2. Applicability. The following development types must submit a minor site plan as specified in this ordinance:
  - a) Changes of use.
  - b) Proposals for single-family residential uses and residential structures consisting of four (4) or fewer dwelling units or for renovation/rehabilitation projects that will modify an existing structure's footprint.
  - c) Accessory structures, construction/installation of fences/walls, piers, docks, decks, stairs, signs, driveways, and/or similar ancillary support items.
  - d) Increase in intensity or units of residential development consisting of four (4) or fewer existing dwelling units and to include any of the following:
    - i) an increase in number of off-street parking or loading spaces; or an increase in impervious surface area.
    - ii) An increase in overall ground coverage by structures.
    - iii) A reduction in approved open space or screening.
    - iv) A change in access and internal circulation design.



3. Application Materials and Submittal. One (1) digital copy of the minor site plan shall be submitted with all such applications. Minor site plans shall be submitted for review along with the typical building permit application, when required. When a building permit is not required, a copy of the plan should be submitted directly to the UDO Administrator for review and approval. Minor site plans shall be prepared and sealed by a licensed land surveyor, landscape architect, or engineer registered to practice in the State of North Carolina.
  - a) Accessory structures less than 325 square feet; the increase in impervious surfaces on a site by less than 325 square feet; and construction/installation of fences/walls, piers, docks, decks, stairs, signs, and driveways do not require a site plan to be prepared by a licensed professional unless otherwise required by this ordinance. For example, development within the Special Flood Hazard Area will be subject to all applicable site plan requirements of the Flood Damage Prevention Ordinance.
  - b) A site plan is not required for changes of use whereby no increase in impervious square footage is proposed or any other modification of exterior site characteristics is to be proposed.
4. Minor site plan criteria. All minor site plans shall include the following, where applicable:
  - a) The name, address, and phone number of the professional(s) responsible for preparing the plan if different than the applicant.
  - b) Engineer's scale one (1) inch equals 40 feet or larger.
  - c) Title block or brief description of project including all proposed uses.
  - d) Date.
  - e) North arrow.
  - f) Property and zoning boundaries.
  - g) The square footage of the site.
  - h) Lot coverage (buildings, decks, steps).
  - i) Impervious coverage.
  - j) Location of all existing and proposed structures and the setbacks from property lines of all affected structures to remain on-site.
  - k) Design of driveways and parking/loading areas with parking spaces individually numbered in sequential order.
  - l) Adjacent rights-of-way labeled with the street name and right-of-way width.
  - m) Location of all existing and/or proposed easements.
  - n) Location of flood zones and finished floor elevations.
  - o) Vision clearance area.
  - p) CAMA areas of environmental concern (AEC) and CAMA setbacks.
5. Minor site Plan Review Procedure:
  - a) Within 30 working days of receipt of a complete application for a minor site plan, the UDO Administrator shall review the plans and make a

- determination to approve or disapprove plans based on this ordinance and other applicable land development ordinances.
- b) If it is determined that more information is needed or that a significant number of changes must be made before the plan can be approved, the applicant shall make the necessary changes; and resubmit the plans. All resubmissions shall contain a list of the changes made. A new 30-day review period may begin on the date of the re-submission of a required information.
- c) If plan approval is denied, the reasons for this action shall be communicated to the applicant in writing.
- d) Minor site plan approval expires 24 months from the date of approval.
- e) Zoning permits may be issued once the minor site plan is approved.
- 6. In the event of failure to comply with an approved minor site plan or condition related thereto, the plan shall immediately become void and of no effect, no further permits for construction or compliance shall be issued and existing permits may be suspended or revoked by the UDO Administrator.

C. MAJOR SITE PLAN

- 1. Purpose. Major site plan review is intended to ensure that the layout and general design of proposed development is compatible with all applicable standards in this ordinance and all other applicable town regulations.
- 2. Applicability. The following development types must submit a site plan as specified in this ordinance:
  - a) Residential uses of five (5) or more units.
  - ~~a)~~b) New nonresidential (office, commercial, or industrial, etc.) use.;
  - ~~b)~~c) Increase in intensity of the nonresidential development or residential development consisting of five (5) or more existing dwelling units to include any of the following:
    - i) ~~an~~such as increase in density of units, whether residential, office, commercial, or industrial; an increase in number of off-street parking or loading spaces; or an increase in impervious surface area;
    - ii) An increase in overall ground coverage by structures;
    - iii) A reduction in approved open space or screening;
    - iv) A change in access and internal circulation design.
  - d) All other development not subject to minor site plan, conditional zoning, subdivision, or special use permit approval.
- 3. Application Materials and Submittal. One (1) digital copy and one (1) hard copy of the major site plan shall be submitted with all such applications. Site plans shall be submitted for review along with the typical building permit application, when required. When a building permit is not required, a copy of the plan should be submitted directly to the UDO Administrator for review and approval. Site plans shall be prepared and sealed by a licensed land surveyor, landscape architect, or engineer registered to practice in the State of North Carolina.

~~2-4.~~ Major site plan criteria. All major site plans shall include the following, where applicable:

- a) The name, address, and phone number of the professional(s) responsible for preparing the plan if different than the applicant.
  - b) Engineer's scale one (1) inch equals 40 feet or larger.
  - c) Title block or brief description of project including all proposed uses.
  - d) Date.
  - e) North arrow.
  - f) Property and zoning boundaries.
  - g) The square footage of the site.
  - h) Lot coverage (buildings, decks, steps).
  - ~~h~~i) Impervious coverage.
  - ~~i~~j) Location of all existing and proposed structures and the setbacks from property lines of all affected structures to remain on-site.
  - ~~j~~k) Design of driveways and parking/loading areas with parking spaces individually numbered in sequential order.
  - ~~k~~l) Adjacent rights-of-way labeled with the street name and right-of-way width.
  - ~~l~~m) Location of all existing and/or proposed easements.
- ~~Supplemental information required. Additional information or data as determined necessary by town staff and/or other reviewing agencies, including, but not limited to, the following, may be required:~~
- ~~m~~n) Location and design of refuse facilities.
  - ~~n~~o) Approximate locations and sizes of all existing and proposed utilities.
  - ~~o~~p) Existing and/or proposed fire hydrants (showing distances).
  - ~~p~~q) Adjacent properties with owners information and approximate location of structures.
  - ~~q~~r) Distances between all buildings.
  - ~~r~~s) Number of stories and height of all structures.
  - ~~s~~t) Locations of all entrances and exits to all structures.
  - ~~t~~u) Calculation of the gross floor area with each room labeled (i.e., kitchen, bedroom, bathroom).
  - ~~u~~v) Exterior lighting locations with area of illumination illustrated, as well as the type of fixtures and shielding to be used.
  - ~~v~~w) Location of flood zones and finished floor elevations.
  - ~~w~~x) CAMA areas of environmental concern (AEC) and CAMA setbacks.
  - ~~x~~y) Delineation of natural features and wetlands with existing and proposed topography with a maximum of two (2) foot contour intervals.
  - ~~y~~z) Proposed landscaping including percentages of open space.
  - aa) Stormwater management systems.
  - bb) Species identification of all trees greater than three (3) inches diameter at breast height (DBH).
  - z)cc) Vision clearance area.

- ~~aa)~~ dd) Cross-sectional details of all streets, roads, ditches, and parking lot improvements.
- ~~bb)~~ ee) Building construction and occupancy type(s) per the building code.
- ~~cc)~~ ff) Location of fire department connection(s) for standpipes.
- ~~dd)~~ gg) Turning radii, turnarounds, access grades, height of overhead obstructions.
- ~~ee)~~ hh) Dimensions and locations of all signs.
- ~~ff)~~ ii) A vicinity map drawn with North indicated.
- jj) Submission of ~~Submit~~ the total daily water flow usage and sewer design flow by a design professional.

5. Major ~~S~~ite Plan Review Procedure:

- a) Within 30 days of receipt of a complete application for a site plan, the UDO Administrator and Technical Review Committee (if applicable) shall review the plans. Following any applicable TRC review and within 30 days of receipt of the complete application, the UDO Administrator shall make a determination to approve or disapprove plans based on this ordinance and other applicable land development ordinances.
- b) If it is determined that more information is needed or that a significant number of changes must be made before the plan can be approved, the applicant shall make the necessary changes; and resubmit the plans. All resubmissions shall contain a list of the changes made. A new 30-day review period may begin on the date of the re-submission of the required information.
- c) If plan approval is denied, the reasons for this action shall be communicated to the applicant in writing.
- d) Major site plan approval expires 24 months from the date of approval.
- e) Zoning permits may be issued once the site plan is approved.

- ~~3-6.~~ In the event of failure to comply with an approved site plan, the plan shall immediately become void and of no effect, no further permits for construction or compliance shall be issued and existing permits may be suspended or revoked by the UDO Administrator.

D. SPECIAL USE PERMIT

- 1. Special use permits (S.U.P.) add flexibility to this ordinance. Subject to high standards of planning and design, certain property uses may be allowed in certain districts where these uses would not otherwise be acceptable. By means of controls exercised through the special use permit procedures, property uses which would otherwise be undesirable in certain districts can be developed to minimize any adverse effects they might have on surrounding properties.
- 2. Special use permits shall only be considered where a major change of a previously issued conditional or special use permit is proposed. Special use permits seeking major changes may be granted by the Town Council ~~for all uses of land and buildings requiring a S.U.P. as listed in each zoning district, as may be~~

- ~~applicable, after Planning and Zoning Commission review and recommendation, and after a public hearing as applicable.~~
3. The owner or owners, or their duly authorized agent, of the property included in the application for a special use permit shall submit a complete application and supplemental information to the UDO Administrator. A fee in accordance with the town's adopted schedule of fees, payable to the town, must accompany each application. ~~For the purposes of determining the fee, the zoning administrator shall categorize each such special use permit application as either "major" or "minor," depending upon the complexity of review. Generally, planned residential, mixed uses, business developments, and similarly complex projects shall be categorized as "major," while projects such as bed and breakfast inns, small day care services, etc., shall be categorized as "minor."~~
  4. A site plan shall be prepared in accordance with the plan submittal requirements ~~of section 40-3942.14.B.7~~ for major site plans and shall be included in the application for a S.U.P.; however, the review procedures for special use permits shall be governed by this article, as set forth in the paragraphs following.
  5. Upon determination that a S.U.P. permit application is complete, within 30 days of the submittal date, the UDO Administrator and the Technical Review Committee (if applicable) shall review the application and make a recommendation to the Town Council as to compliance with this ordinance. The S.U.P. application will be placed on the agenda of the next regularly scheduled Town Council meeting following 60 days of submittal of a complete application.
  6. The ~~Planning and Zoning Commission~~ Technical Review Committee and UDO Administrator may recommend, and the Town Council in granting the permit may designate, such conditions in addition and in connection therewith as will in its opinion assure that the use in its proposed location will be harmonious with the spirit of this article. All such additional conditions shall be entered in the minutes of the meeting at which the permit is granted and also on the certificate of the special use permit or on the plans submitted therewith. All specific conditions shall run with the land and shall be binding on the original applicants for the special use permit, their heirs, successors, and assigns.
  7. In addition to the specific conditions imposed by the regulations of this ordinance and whatever additional conditions the Town Council deems reasonable and appropriate, all special uses shall comply with the height, yard area, and parking regulations for the district in which they are to be located.
  8. Notice of quasi-judicial hearing. Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose 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. 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 town 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. ~~Notice and public~~

~~hearing. No S.U.P. shall be issued by the Town Council until after public notice and hearing, at which parties in interest and citizens shall have an opportunity to be heard. Notice of public hearing shall be published in accordance with G.S. 160D-601, that is, notice of the public hearing shall be given once a week for two successive weeks in a newspaper of general circulation in the Town prior to the date set for the public hearing. The first publication of such notice shall be made no less than ten days nor more than 25 days prior to said hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. The zoning administrator shall be required to post a sign on-site describing the project at least 15 days prior to the council meeting date. Said sign shall be posted in such a manner as to be visible from the dominant public right of way adjacent to, or in the vicinity of, the associated property. First class mailed notice(s) of the project shall be deposited in the mail by Town staff to property owners whose property abuts the subject project site not less than ten days before the meeting date but not more than 25 days prior to the council meeting date.~~

9. ~~Public Quasi-judicial hearing procedure. The applicant shall present the request in the following manner~~All applications for a special use permit shall follow quasi-judicial procedures as required by NCGS 160D-406.:
- ~~a) — All persons shall be sworn before presenting evidence to the Town Council, unless waived by the petitioner;~~
  - ~~b) — All persons shall offer only competent material and substantial evidence in any presentation to the council. Competency shall be determined by the council in its decision;~~
  - ~~c) — All persons participating in the hearing or their representatives shall have an opportunity to cross-examine adverse witnesses and to inspect any evidence presented;~~
  - ~~d) — The applicant shall be allowed the opportunity to offer competent evidence in explanation or rebuttal to objecting participants;~~
  - ~~e)a) — Following the presentation of all evidence both for and against the application for special use permit, the hearing may be continued until the next regularly scheduled meeting of the Town Council or as soon thereafter as possible, at which time the Town Council will render its decision on the application and will state its reasons, orally or in writing, for approving or disapproving the application.~~
10. Specific standards. No special use shall be granted by Town Council unless the following provisions and arrangements, where applicable, have been made to the satisfaction of the council:
- a) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
  - b) Off-street parking and loading areas where required, with particular attention ~~to the items in subsection (c)(1) of this section~~to ingress/egress

- and the economic, noise, glare, or odor effects of the special use on adjoining properties and properties generally in the district.
- c) Refuse and service area, with particular reference to the subsections concerning ingress/egress to the property and off-street parking and loading(c)(1) and (2) of this section.
  - d) Utilities, with reference to locations, availability, and compatibility.
  - e) Screening and buffering with reference to type, dimensions, and character.
  - f) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.
  - g) Required yards and other open space and preservation of existing trees and other attractive natural features of the land.
11. General conditions. The Town Council, in granting the permit, must also find that all four (4) of the following conditions exist:
- a) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved by the issuance of the S.U.P.
  - b) That the use meets all required conditions and specifications.
  - c) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
  - d) The location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the Town's comprehensive plan-land use plan and policies.
12. A finding of the Town Council that the four (4) required conditions exist, or a finding that one (1) or more of the four (4) required conditions do not exist, shall be based on sufficient and competent evidence presented to the Town Council at the hearing at which the special use permit is requested.
13. Issuance, denial of permit. When issuing or denying special use permits, ~~the Town Council shall follow the procedures for boards of adjustment except that no vote greater than~~ a majority vote shall be required for the Town Council to issue such permits, and every such decision of the Town Council shall be subject to review by the superior court by proceedings in the nature of a certiorari. Appeals of special use permit decisions shall be in accord with NCGS 160D-406(k).
14. Issuance, non-exemption from normal site plan review. Issuance of a special use permit based upon a schematic site plan does not exempt the applicant from normal site plan review requirements ~~as may be applicable under article XIII of this chapter~~ of this ordinance.
15. The ~~official with responsibility under article XV of this chapter~~ UDO Administrator shall ensure compliance with plans approved by the Town Council and with any other conditions imposed upon the special use permit. ~~Enforcement of the plans approved by the Town Council and with any other conditions imposed upon the~~

~~special use permit shall be pursuant to those procedures set forth in article XV of this chapter regarding administration, enforcement and review of approvals and subject to applicable administrative review and appeal procedures.~~ Further, ~~in the event of an article XV decision~~, finding a failure to comply with the plans approved by the Town Council and with any other conditions imposed upon the special use permit, and subject to applicable administrative review and appeal procedures, no building permits for further construction shall be issued, and all completed structures shall be regarded as nonconforming uses subject to the provisions of ~~the Town's zoning~~this ordinances.

16. A special use permit, issued by the Town Council, shall ~~become null and void~~expire if start of construction or occupancy of the proposed use as specified on the special use permit has not commenced within 24 months of the date of issuance. At the request of the permittee, and for good cause shown, the Town Council may extend said period required for start of construction or occupancy for up to 12 months. Expiration shall occur following this 24 month period if the UDO Administrator finds that common law vesting is not applicable to the site. The special use permit shall expire regardless of notice from the UDO Administrator.
17. ~~Any special use permit revoked under applicable terms of this ordinance or otherwise terminated, expired, rescinded, revoked or rendered null or void under any applicable law may only be reinstated by a new special use permit effective as of the date of issuance of the new permit, after the full application review and approval process set forth in this article.~~

#### E. VARIANCE

1. An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the UDO Administrator. A site plan shall accompany the variance application where applicable, based upon the criteria established for major and minor site plan submittals.
2. Notice of quasi-judicial hearing. Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose 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; and to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. 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 town 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.
3. A variance may be approved by the Board of Adjustment if it concludes that, by granting the variance, all the following findings of fact are met by the Board of Adjustment's decision and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure. The Board may reach these conclusions if they find that:



- a) Unnecessary hardship would result from a strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
  - b) 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;
  - c) The hardship did not result from actions taken by the applicant or property owner. The act of purchasing property with knowledge that circumstances exist that might justify a variance shall not be considered as a self-created hardship;
  - d) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice achieved.
- 4. In granting variances, the Board of Adjustment may impose such reasonable conditions, as to ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.
  - 5. The Board of Adjustment may take a separate vote and vote affirmatively by a four-fifths (4/5) majority on each of the four (4) required statutory findings as provided in NCGS 160D-705(d). Insofar as practicable, a motion to make an affirmative finding on all of the requirements set forth in NCGS 160D-705(d) shall include a statement of the specific reasons or findings of fact supporting such a motion.
  - 6. A motion to deny a variance may be made on the basis that any one (1) or more of the four (4) criteria set forth in NCGS 160D-705(d) are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the Board of Adjustment's decision if supported by more than one-fifth (1/5) of the Board's membership (excluding vacant seats).
  - 7. Findings of fact made by the Board of Adjustment under this section shall be based upon only the evidence presented at the hearing at which the variance is considered.
  - 8. The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this ordinance.
  - 9. No change in permitted uses may be authorized by variance.
  - 10. A variance may be issued for an indefinite duration or for a specified duration only.

11. The decision of the Board of Adjustment shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective, by the town clerk.
- ~~1.~~12. An aggrieved person may appeal a decision by the Board of Adjustment on an application for appeal to the Superior Court. Such appeal shall be in the nature of certiorari and must be filed within 30 days of the effective decision and as provided by NCGS 160D-406(k).

#### F. APPEAL

1. An appeal from any final order or decision of the UDO Administrator or official charged with enforcement of the UDO or other ordinance that regulates land use or development may be taken to the Board of Adjustment by any party who has standing under NCGS 160D-1402(c). Appeals of a final subdivision decision may be made in accordance with NCGS 160D-1403(b). The official who made the decision shall give written notice to the owner of the property and the party who sought the decision, if different. A notice of appeal, specifying the grounds therefore, shall be considered filed with the official and the Board of Adjustment when delivered to the town clerk, and the date and time of filing shall be entered on the notice by the clerk.
2. An appeal must be taken within 30 days after the date of the decision or order appealed from. Any person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the final decision or notice of determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to NCGS 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.
3. Notice of quasi-judicial hearing. Notice of hearings conducted pursuant to this section 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. 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 town 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.
4. Whenever an appeal is filed, the official shall forthwith transmit to the Board of Adjustment all the papers, documents and exhibits constituting the record relating to the action appealed from, with a copy provided to the appellant and land owner, if the landowner is not the appellant.
5. 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 NCGS 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.

6. 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 town 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.
7. The official who rendered the determination that has been appealed shall appear at the hearing as a witness. The Board of Adjustment by majority vote may reverse or affirm (wholly or partly) or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the case before it. To this end the board shall have all the powers of the officer from whom the appeal is taken. The board shall continue the hearing if new issues are presented at the hearing that were not in the notice of appeal and immediate consideration might unduly prejudice a party of interest or the town.
8. The final written decision of the Board of Adjustment shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective, by the town clerk.
9. An aggrieved person may appeal a decision by the Board of Adjustment on an application for appeal to the Superior Court. Such appeal shall be in the nature of certiorari and must be filed within 30 days of the effective decision and as provided by NCGS 160D-406(k).

## 2.15 CREATION OF NEW LOTS/DIVISION OF LAND

### A. GENERAL

No land within the town's planning jurisdiction shall be subdivided, combined, or re-subdivided and offered for sale, gifted, exchanged, or in any other way conveyed until a plat thereof has been approved as herein provided. No plat shall be recorded by the New Hanover County Register of Deeds until this approval is entered in writing on the face of the plat as herein provided.

B. EXEMPT PLAT REVIEW

1. Applicability. Divisions or land and creation of lots which do not meet the statutory definition of subdivision in accordance with NCGS 160D-802 or are as provided in this section. In accordance with NCGS 160D-802(a)(1) and (4), newly created lots must be equal to or exceed the dimensional standards of the zoning district in which they are located.
2. Application Materials and Submittal. The applicant shall submit one (1) digital copy and one (1) hard copy of the final plat so marked to UDO Administrator for approval. The final plat shall be prepared by a licensed land surveyor or engineer registered to practice in the state of North Carolina. The final plat shall conform to the provisions for plats, subdivisions, and mapping requirements set forth in NCGS 47-30 and the Standards of Practice for Land Surveying in North Carolina.
3. Property owners or their authorized agents must present a paper or recordable map to the UDO Administrator for determination of whether the action created by the recording of the map meets the ordinance standards to be exempt.
4. In addition to the divisions of land identified in NCGS 160D-802(a)(1) through (4), the following divisions of land shall not be included within the definition of the term “subdivision” and shall not be subject to the lot dimensional standards in this ordinance: (1) the division of land for the purpose of creating a lot for use as a site for a public utility; (2) the creation of a lot to be conveyed to the town or to a non-profit entity for the purpose of creating public parks, public access, or public open space, provided that the plat and the deed creating such parcel shall specifically state that the parcel created may not be used for any other purpose; and (3) the division of land owned by a governmental entity to facilitate the conveyance of a portion of said land to another governmental entity for governmental or public use.
5. If the proposal meets the exemptions listed in this ordinance or in NCGS 160D-802 the UDO Administrator shall sign an exemption note on the face of the recordable map before it is recorded. Such approval shall be granted within 14 days of submittal of a complete application therefor.
6. If the proposal does not meet the exemptions, the UDO Administrator shall return the unsigned map to the property owner or authorized agent with a written description of why the map does not qualify to be exempt.
7. The applicant shall file any approved exempt plat with the Register of Deeds of New Hanover County within 30 days of approval; otherwise, such approval shall be null and void.
- ~~1-8.~~ The exempt plat shall include all of the required certificates as provided in Appendix A: Submission Requirements.

C. EXPEDITED MINOR SUBDIVISION REVIEW

1. Applicability. The town only requires submittal of a final plat for review of an expedited minor subdivision if it meets the criteria as provided in NCGS 160D-802(c).

2. Application Materials and Submittal. The applicant shall submit one (1) digital copy and one (1) hard copy of the final plat so marked to the UDO Administrator for approval. The final plat shall be prepared by a licensed land surveyor or engineer registered to practice in the state of North Carolina. The final plat shall conform to the provisions for plats, subdivisions, and mapping requirements set forth in NCGS 47-30 and the Standards of Practice for Land Surveying in North Carolina.
3. The UDO Administrator shall review the final plat and shall proceed with approval, conditional approval with modifications to bring the plat into compliance, or disapproval of the final plat with reasons within 14 days of initial receipt of a complete application for an expedited minor subdivision plat.
4. The applicant shall file any approved final plat with the Register of Deeds of New Hanover County within 30 days of approval; otherwise, such approval shall be null and void.
5. The minor subdivision plat shall include all of the required certificates as provided in Appendix A: Submission Requirements.

D. MINOR SUBDIVISION PRELIMINARY PLAT

1. Applicability. Subdivisions of five (5) or fewer lots, regardless of right-of-way dedication or utility extension.
2. Application Materials and Submittal. One (1) digital copy and one (1) hard copy of the minor subdivision preliminary plat shall be submitted with all applications for such.
3. The minor subdivision preliminary plat shall be prepared by and sealed by a licensed land surveyor or engineer registered to practice in the state of North Carolina, and shall include all of the required certificates as provided in Appendix A: Submission Requirements in addition to any other required information in Article 4: Subdivision Regulations.
4. Minor subdivision preliminary plat review procedure:
  - a) The UDO Administrator or his/her designee will review the minor subdivision preliminary plat. If the UDO Administrator determines that more information is needed or that a significant number of changes must be made before the plat can be approved, the applicant shall make the necessary changes; and re-submit the plat. All re-submissions shall contain a list of the changes made. A new 30-day review period may begin on the date of the re-submission of a required information.
  - b) Upon determination that a minor subdivision preliminary plat application is complete, within 30 days of the submittal date, the UDO Administrator and the TRC (if applicable) shall review the plat. Following any applicable TRC review and within 30 days of receipt of the complete application, the UDO Administrator shall approve, conditionally approve, or disapprove the preliminary plat. If the plat is disapproved, the reasons shall be set forth in writing and refer specifically to those parts of this

ordinance or other land development ordinances with which the plat does not comply.

~~a)c)~~ Approval of the minor subdivision preliminary plat by UDO Administrator is authorization for the subdivider to proceed with the construction of the required improvements in preparation for submission of the final plat.

~~2.5.~~ The minor subdivision preliminary plat shall contain or be accompanied by all of the following information.

- a) Description.
  - i) Proposed name of subdivision.
  - ii) Name of owner, surveyor, and designer.
  - iii) Graphic scale, true and grid north points, and date of preparation.
  - iv) ~~Locational sketch~~-Vicinity map showing relationship of the subdivision site to the surrounding area, ~~at a scale of one inch to 800 feet.~~
- b) Existing conditions.
  - i) Topography by contours at vertical intervals of not more than two (2) feet tied to mean sea level datum.
  - ii) Zoning district classification (if there is more than one classification, the dividing lines should be shown) on land to be subdivided and on adjoining lands.
  - iii) Names of adjoining property owners or subdivisions.
  - iv) The boundary lines of the tract to be subdivided, drawn accurately with all bearings and distances.
  - v) Acreage to be subdivided.
  - vi) In case of resubdivision, a copy of existing plat.
  - vii) Location of streams, lakes, ocean, and swamps with direction of flow and elevations.
  - viii) Location of existing and platted property lines. Location, width, and names of all platted roads, railroads, utility rights-of-way, public areas, existing buildings, or structures, and planning region boundary lines. Existing sewers, water mains, drains, culverts, or other underground facilities within the tract or within the right-of-way of boundary roads, with pipe sizes, grades, and invert elevations from public records. Location of these facilities in adjoining tracts or subdivisions if proposed for use or extension.
  - ix) Regulatory flood elevations and boundaries of flood-prone areas, including floodways, if known.
  - x) Identify any lots located in the CAMA AEC.
- c) Proposed conditions.
  - i) Layout and elevation of roads, alleys, and public crosswalks, with widths noted; road names or designation; grades and cross sections.
  - ii) Layout of all lots and building sites including building setback lines and lot divisions; scaled dimensions of all lots and lots on curvilinear

sections of roads; utility easements with width and use on all lots; total number of lots.

- iii) Preliminary plan of on-site waste disposal systems including disposal sites for lands subject to flooding or sanitary sewers with grade, pipe size, points of discharge.
- iv) Where public water and/or public sewer is not available for extension to each lot in the subdivision, a written statement from the county health department shall be submitted with the preliminary plat indicating that each lot has adequate land area and soil conditions to accommodate the proposed methods of water supply and sewage disposal.
- v) Preliminary plan of the drainage system with grade, pipe size, and location of outlet.
- vi) Preliminary plan of the water supply system, if any, with pipe sizes and location of hydrants.
- vii) Proposed fill or other structure elevating techniques, levees, channel modifications, seawalls and other methods to overcome flood- or erosion-related hazards.
- viii) In subdivisions where a lot or lots or street right-of-way will be created by land filling, additional data shall be provided regarding the sources of fill; types of fill; method of filling; method of disposing of vegetation and other undesirable materials; proposed elevations; test boring analysis of fill material; and/or preliminary letter of review and comment by the United States Soil Conservation Service/United States Army Corps of Engineers;
- ix) Designation of all land to be reserved or dedicated for open space, recreation use, or school sites. Acreage should be shown for total of land uses.
- x) Draft of proposed restrictive covenants (if any) to be imposed and areas subject to special restrictions.
- xi) ~~If the subdivider desires variations or exceptions from the regulations of this article, the preliminary plat shall be accompanied by a written petition pursuant to the provisions of section 36-32.~~

#### E. MAJOR SUBDIVISION PRELIMINARY PLAT

1. Applicability. Subdivisions of six (6) or more lots.
2. Pre-Application Meetings. Applicants may request a pre-application meeting with the UDO Administrator prior to submission of an application to discuss procedural and substantive matters related to the proposed application.
3. Application Materials and Submittal. One (1) digital copy and one (1) hard copy of the major subdivision preliminary plat shall be submitted with all applications for such.
4. The major subdivision preliminary plat shall be prepared by and sealed by a licensed land surveyor or engineer registered to practice in the state of North

Carolina, and shall include all of the required information for minor subdivision preliminary plats and certificates as provided in Appendix A: Submission Requirements in addition to any other required information in Article 4: Subdivision Regulations.

5. Major subdivision preliminary plat review procedure:

a) The UDO Administrator or his/her designee will review the major subdivision preliminary plat. If the UDO Administrator determines that more information is needed or that a significant number of changes must be made before the plat can be approved, the applicant shall make the necessary changes; and re-submit the plat. All re-submissions shall contain a list of the changes made. A new 30-day review period may begin on the date of the re-submission of a required information.

b) Upon determination that a major subdivision preliminary plat application is complete, within 30 days of the submittal date, the UDO Administrator and the Technical Review Committee (if applicable) shall review the plat and make a recommendation to the Planning and Zoning Commission as to compliance with this ordinance. The major subdivision preliminary plat will be placed on the agenda of the next regularly scheduled Planning and Zoning Commission meeting following 30 days of submittal of a complete application for a major subdivision preliminary plat.

~~a)c)~~ The Planning and Zoning Commission shall review and take final action on each preliminary plat within 45 days of their first meeting. ~~Upon completion of the preliminary plat review, the Planning and Zoning Commission shall forward its recommendation to the Town Council for final approval.~~

d) If the plat is approved, approval shall be noted on at least two (2) copies of the plat by the ~~clerk of the Town Council~~ Planning and Zoning Commission chairperson. One (1) copy shall be retained by the ~~Town Council~~ UDO Administrator as record of its proceedings; one (1) copy shall be returned to the subdivider.

e) Installation/arrangement of plat improvements. Upon approval of the preliminary plat by the ~~Town Council~~ Planning and Zoning Commission, the subdivider may proceed with the installation or arrangement for required improvements in accordance with the approved preliminary plat and the requirements of this ordinance, and then may proceed with the preparation of the final plat.

6. The approval granted by the Planning and Zoning Commission shall expire 24 months from the date of action by the Planning and Zoning Commission, unless subject to vesting as a multi-phased development in accordance with NCGS 160D-108. However, extensions may be granted upon application and request for such to the Planning and Zoning Commission. Such time limits shall expire automatically unless extended by the Planning and Zoning Commission, and once lapsed shall not be extended except through a new application process.



F. MINOR AND MAJOR SUBDIVISION FINAL PLAT

1. Applicability. Minor and major subdivisions whereby a subdivision preliminary plat (if applicable) has been approved and all necessary and/or required improvements have been installed in accordance with Article 4: Subdivision Regulations. No final plat will be accepted for review by the UDO Administrator unless such plat is accompanied by executed certificate statements attesting to sufficient completion of any required improvement.
- ~~1.2.~~ The final plat shall constitute only that portion of the preliminary plat, which the subdivider proposes to record and develop at the time; such portion shall conform to all requirements of this ordinance.
- ~~2.3.~~ All improvements required by Article 4: Subdivision Regulations shall be installed, inspected, and approved prior to approval of any final plat. All required improvements, except the final inch of asphalt on roadways; landscaping; and sidewalks shall be installed, inspected, and approved prior to approval of any final plat. A Subdivision Improvement Agreement shall be entered into for the purpose of guaranteeing the proper installation of the final lift of asphalt, landscaping, and sidewalks.
4. Subdivision Improvement Agreements. The UDO Administrator shall have the authority to review and approve all subdivision improvement agreements. The Subdivision Improvement Agreement shall guarantee completion of all eligible on-site and off-site public improvements no later than one (1) year following the date upon which the final plat is recorded unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one (1) year from the date the bond is issued, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are secured by the guarantee or any extension. If the improvements are not completed to the specifications of town, and the current improvement guarantee is likely to expire prior to completion of the required improvements, the guarantee shall be extended by the UDO Administrator for additional period not to exceed six (6) months. An extension under this subdivision shall only be for a duration necessary to complete the required improvements. The applicant shall bear the responsibility to prepare a Subdivision Improvement Agreement. The town attorney shall approve any Subdivision Improvement Agreement as to form.
  - a) Performance Security. Whenever an applicant is subject to enter into a Subdivision Improvement Agreement, the applicant shall be required to provide sufficient security to ensure completion of the required public improvements. The security shall be in any form authorized by NCGS 160D-804.1(1). If in the form of a surety bond, the bond shall be reviewed annually.
  - b) The letter of credit, cash escrow, or surety bond, or other approved guarantee shall be in an amount reflecting 125% of the cost of the

improvements and shall be sufficient to cover all promises and conditions contained in the Subdivision Improvement Agreement. An engineer selected by the town shall review and approve the estimated cost of improvements before the agreement is executed. The applicant shall be required to be pay for the cost of such services. The estimated cost shall be broken down separately for each element of the agreement. In addition to all other security, when the town participates in the cost of an improvement, the applicant shall provide a performance bond from the contractor, with the town as a co-obligee. The issuer of any surety bond shall be subject to the approval of the town attorney and the UDO Administrator.

- c) If security is provided in the form of a cash escrow, the applicant shall deposit with the town finance director a cash amount or certified check endorsed to the escrow agent for a face value in an amount not less than the amount specified herein. The surety bond or cash escrow account shall accrue to the town for administering the construction, operation, and workmanship of the improvements. Where oversized facilities are required, the UDO Administrator and applicant shall specify a reimbursement procedure in the Subdivision Improvement Agreement.
- d) Release of Performance Security. Upon completion of all improvements required by the Subdivision Improvement Agreement, the UDO Administrator shall have the work inspected. If the UDO Administrator determines that the work is satisfactory and complete, the letter of credit, cash escrow, or surety bond shall be released. The UDO Administrator shall also require evidence from the subdivider that all contractors have been paid in full prior to the release of the performance security.
- e) Failure to Complete Improvements. If a Subdivision Improvement Agreement has been executed, security has been posted, and required public improvements are not installed pursuant to the terms of the Agreement, the UDO Administrator may:
  - i) Declare the Agreement to be in default 30 days prior to the expiration of the guarantee instrument, and require that all public improvements be installed regardless of the extent of completion of the development at the time the agreement is declared to be in default;
  - ii) Obtain funds pursuant to the surety and complete the public improvements by itself or through a third party;
  - iii) Assign its right to receive funds pursuant to the surety in whole or in part to any third party, including a subsequent owner of the subdivision or addition for whom the public improvements were not constructed, in exchange for the subsequent owner's agreement to complete the required public improvements; and/or
  - iv) Exercise any other rights available under the law.

5. Pre-Application Meetings. Applicants may request a pre-application meeting with the UDO Administrator prior to submission of an application to discuss procedural and substantive matters related to the proposed application.
6. Application Materials and Submittal. One (1) digital copy and (1) hard copy of the subdivision final plat shall be submitted with all such applications.
7. Final As-Built Drawings are required for all plats which are subject to the installation of required improvements. Accompanying the application for a subdivision final plat approval will be digital copies of as-built drawings showing the actual construction, location, and materials used in the installation of all required improvements as required by Article 4: Subdivision Regulations. These drawings will become a part of the public record of the town.
8. The subdivider shall within 24 months of the date of minor or major subdivision preliminary plat approval or approval with conditions, unless subject to vesting as a multi-phased development in accordance with NCGS 160D-108, to submit to the UDO Administrator a complete application for approval of a final plat. If the preliminary plat was approved with conditions, the final plat shall show the modifications made to meet the conditions attached to the preliminary plat approval. Final plats can continue to be submitted for subsequent sections of the subdivision beyond the 24 months provided the first phase receives final approval during the initial 24-month period. Each successive final plat for a stage of the subdivision shall be submitted for approval within 24 months of the date of approval of the previous final plat for a stage of the subdivision.
- ~~3-9.~~ The subdivision final plat shall be prepared by and sealed by a licensed land surveyor or engineer registered to practice in the state of North Carolina. The final plat shall constitute only that portion of the approved preliminary plat which the subdivider proposes to record and develop at the time and shall include all of the following required information in addition certificates as provided in Appendix A: Submission Requirements and any other required information in Article 4: Subdivision Regulations. ~~The final plat shall be prepared by a surveyor or engineer licensed to practice in the state.~~ The final plat shall be drawn to the same scale and on the same size sheets as was the preliminary plat and shall conform to the preliminary plat as it was approved. ~~The submittal shall include one copy of the final plat and shall be drawn in ink on linen or film suitable for reproduction and one electronic copy.~~ The final plat shall contain the following information:
  - a) ~~All information required on the preliminary plat including, but not limited to, r~~Regulatory flood elevations ~~boundaries of flood-prone areas, building sites (including waste disposal areas for flood-prone lands), fills, flood or erosion protective works,~~ and areas subject to special deed restrictions;
  - b) Sufficient engineering data to ~~determine readily and~~ reproduce on the ground every straight or curved boundary line, street line, lot line, right-of-way line, and setback line, including dimensions, bearings, or deflection angles, radii, arcs, chords, central angles, and tangent

- distances for the centerline of curved streets and curved property lines that are not the boundary of curved streets. All dimensions shall be measured to the nearest one-hundredth of a foot and all angles to the nearest minute;
- c) The accurate locations and descriptions of all monuments, markers, and control points;
  - d) The blocks numbered consecutively throughout the entire subdivision and the lots numbered consecutively throughout each block;
  - e) Minimum building setback lines;
  - f) The widths, and names where appropriate, of all proposed streets and alleys, and of all adjacent streets, alleys, and easements which shall be properly located;
  - g) ~~The plans for water mains, sanitary sewers, and storm sewers showing sizes, outfalls, and hydrants;~~
  - h) The name of the subdivision, the owner, and the surveyor or engineer.
  - i) The date of the survey and plat preparation, a north arrow indicating whether true or magnetic, and graphic scale;
  - j) A statement indicating whether deed restrictions exist and the subject and location of same.;
  - k) ~~A notation of all variations and exceptions approved by the Planning and Zoning Commission;~~
10. ~~Any other information considered by either the subdivider or the Planning and Zoning Commission to be pertinent to the review of the final plat.~~
12. Minor and Major Subdivision Final Plat Review procedure:
- a) The UDO Administrator or his/her designee shall review the subdivision final plat. If the UDO Administrator determines that more information is needed or that a significant number of changes must be made before the plat can be approved, the applicant shall make the necessary changes; and re-submit the plat. All re-submissions shall contain a list of the changes made. A new 30-day review period may begin on the date of the re-submission of a required information.
  - b) Upon determination that the final plat application is complete, within 30 days of the submittal date, the UDO Administrator and the Technical Review Committee (if applicable) shall review the plat and provide any necessary comments or revisions to the applicant.
  - c) The UDO Administrator shall approve or disapprove, according to the provisions of this ordinance, the final plat within 30 days after receipt of the complete application for a final plat.
  - d) If the UDO Administrator disapproves the final plat, the reasons shall be set forth in writing and refer specifically to those parts of this ordinance or other land development ordinances with which the plat does not comply.
  - e) Within 30 days after the approval of the final plat, the subdivider shall file the final plat with the New Hanover County Register of Deeds. Failure

to file an approved final plat within 30 days shall make such approval null and void.

## 2.16 - 2.19 RESERVED

## 2.20 UDO TEXT AND ZONING MAP AMENDMENTS

### A. INITIATION OF AMENDMENTS

1. The Town Council may from time to time, after public notice and hearing as provided by law, amend, supplement or change, modify, or repeal the boundaries or regulations herein or subsequently established. Proposed amendments may be initiated by the Town Council, ~~Planning and Zoning Commission, board of adjustment,~~ town administration, or by any interested person ~~who resides or owns property within the zoning jurisdiction of the town.~~ Amendments may be initiated by the Planning and Zoning Commission and Board of Adjustment at the discretion of Town Council.
2. No amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor shall it be 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 town (NCGS 160D-601).

### B. PETITION FOR AN AMENDMENT

1. The following action shall be taken by the applicant:
  - a) Application. An application for any amendment shall contain:
    - i) A description of the current and proposed zoning regulation or district boundary to be applied;
    - ii) For zoning map amendments, A surveyor's map along with a written metes and bounds description of the property involved, or a reference to lots in an approved subdivision;
    - iii) The names and addresses of the owners of the property involved, and of adjacent property owners. ~~(See subsection (4) of this section.)~~
  - b) Filing period of application. Such completed application shall be filed with the planning department no later than ~~28 working~~30 days prior to the Planning and Zoning Commission meeting at which the application is to be considered.
  - c) Fees. A fee in accordance with the town's adopted fee schedule shall be submitted to the ~~Zoning~~UDO Administrator with each application. No refund of the fee or any part thereof shall be made once the application has been advertised for public hearing.
  - d) ~~Letters of notification. Whenever a petition for a change in zoning is submitted, all property owners immediately adjacent thereto shall be mailed a notice by the applicant of proposed petition or application by first class mail. As part of the application, and to facilitate this process, the applicant shall submit a list of names of owners, their addresses and the tax map and parcel numbers of the properties immediately adjacent~~

~~to the property of the request, including the property owners directly opposite the proposed request but separated by a street or alley right-of-way.~~

- ~~e) Mailing. The planning department shall mail a letter of notification containing a description of the request, and the time, date and location of the required public hearing at least ten calendar days prior to the public hearing. The Zoning Administrator shall certify to the Planning and Zoning Commission or council that such notices have been mailed, and such certification shall be deemed conclusive in absence of fraud.~~
- ~~f) Failure to receive; effect. If any of the addresses of such letter of notification do not receive such letter, this shall not invalidate or affect subsequent action on the petition for rezoning and such requirement shall not be construed as a legal precedent to the official approval. Exemption. Town agencies are exempt from subsections (2), (3) and (4) of this section.~~

### C. ACTION BY PLANNING AND ZONING COMMISSION

1. In any case where the Planning and Zoning Commission will consider a change in the zoning classification of a parcel of land (rezoning) a public hearing will be held. Notice of the proposed hearing shall be mailed by first class mail to the owner of the parcel of land involved in the change and all abutting property owners as shown on the New Hanover County tax listing at the addresses listed for such property owners on the New Hanover County tax abstracts, at least 10 days and not more than 25 days prior to the Planning and Zoning Commission meeting at which the rezoning is to be considered. The town 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 in a proposed zoning map amendment, a posting of each individual site is not required, but the town shall post sufficient notices to provide reasonable notice to interested persons. Notice of such a public hearing shall also be published once a week for two (2) successive calendar weeks in a local newspaper of general circulation in the town at least 10 days prior to the hearing and not more than 25. The UDO Administrator or his or her designee shall certify to the Planning and Zoning Commission that such notices have been made.
2. In any case where the Planning and Zoning Commission will consider an amendment to the zoning code text, notice of the amendment to be considered shall be published once in a newspaper having general circulation in the area. The notice shall be published once a week for two (2) successive calendar weeks in a local newspaper of general circulation in the town at least 10 days prior to and not more than 25 days prior to the Planning and Zoning Commission meeting at which the text amendment will be considered.~~The Planning and Zoning Commission shall consider and make recommendations to the Town Council~~

~~concerning each proposed zoning amendment at a scheduled meeting held and advertised in accordance with section 40-487. In lieu of separate consideration, the Planning and Zoning Commission may review an amendment in a joint meeting with the Town Council at a public hearing held in conformity with the requirements of this chapter.~~

3. The Planning and Zoning Commission shall advise and comment on whether the proposed text amendment or zoning map amendment is consistent with the adopted comprehensive plan and any other applicable officially adopted plans. The Planning and Zoning Commission shall provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the board, but a comment by the Planning and Zoning Commission that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Town Council. If a zoning map amendment qualifies as a large-scale rezoning under NCGS 160D-602(b), the Planning and Zoning Commission 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.

#### D. ACTION BY TOWN COUNCIL

1. Notice and public hearing. No amendment shall be adopted by the Town Council until after public notice and hearing, at which ~~parties in interest~~interested parties and citizens shall have an opportunity to be heard. Notice of public hearing shall be published in accordance with NCGS 160D-601, that is, notice of the public hearing shall be given once a week for two (2) successive weeks in a newspaper of general circulation in the town prior to the date set for the public hearing. The first publication of such notice shall be made no less than 10 days nor more than 25 days prior to said hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Additionally, if the adoption or modification of the ordinance would result in changes to the zoning map or would change or affect the permitted uses of land located five (5) miles or less from the perimeter boundary of a military base, the town shall provide a written notice of the proposed changes by certified mail, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the hearing date. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the Town Council shall take the comments and analysis into consideration before making a final determination on the ordinance. The ~~zoning administrator~~UDO Administrator shall be required to post a sign describing the proposed change at least 10 days and no more than 25 days prior to the meeting at which the request is to be heard. Said sign shall be posted in such a manner as to be visible from the dominant public right-of-way adjacent to or in the vicinity of the associated property.

2. Mailed notices and property posting. Whenever there is a zoning map amendment, notices shall be mailed to the owner of the affected parcel of land, those directly across any right-of-way, and to owners of all parcels of land abutting that affected parcel of land. The notices shall be mailed in accordance with NCGS 160D-602~~1~~, that is:
  - a) The town shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least ~~ten~~ 10 but not more than 25 days prior to the date of the public hearing. The person or persons mailing such notices shall certify to the Town Council that fact, and such certificate shall be deemed conclusive in the absence of fraud.
  - b) The first class mail notice required under subsection (2)(a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the town elects to use the expanded published notice provided for in this subsection. In this instance, the town may elect to either make the mailed notice provided for in subsection (2)(a) of this section or may as an alternative elect to publish notice of the hearing as required by NCGS 160D-602~~1~~, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which 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 (2)(a) of this section.
  - c) When a zoning map amendment is proposed, the town shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the town shall post sufficient notices to provide reasonable notice to interested persons. The said posting shall be by the ~~zoning administrator~~ UDO Administrator and shall occur at least 10 days and no more than 25 days prior to the meetings at which the request is to be heard and shall be effected.
3. Consideration. Before taking such lawful action as it may deem advisable, the Town Council shall consider the Planning and Zoning Commission's recommendations on each proposed zoning amendment.
  - a) ~~Petitions (applications) for amendments that receive a favorable recommendation from the Planning and Zoning Commission, or petitions~~



~~on which the Planning and Zoning Commission fails to take any action within 30 days after the Planning and Zoning Commission's public meeting, shall be scheduled for public hearing before the Town Council.~~

~~b) — Petitions (applications) for amendments that receive an unfavorable recommendation from the Planning and Zoning Commission may be appealed within ten calendar days of the date of such adverse decision to the Town Council by filing with the Town Clerk a notice, in writing, stating therein the action of the Planning and Zoning Commission and the amendment requested.~~

4. Plan consistency and reasonableness. When adopting or rejecting any zoning or map amendment, Town Council shall approve a brief statement describing whether the action is consistent or inconsistent with the ~~T~~town's ~~CAMA~~ ~~land comprehensive use~~ plan, is reasonable, and in the public interest. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the board that at the time of action on the amendment the board was aware of and considered the ~~planning board's~~ Planning and Zoning Commission's recommendations and any relevant portions of the comprehensive plan. Should Town Council adopt a zoning amendment after finding that such an action is inconsistent with an adopted comprehensive plan, the zoning amendment shall have the effect of also amending any future land use map in the approved plan. A plan amendment and a zoning amendment may be considered concurrently. When adopting or rejecting any petition for a zoning ~~text or~~ map amendment, a brief statement explaining the reasonableness of the proposed rezoning shall be approved by the board. The statement of reasonableness and plan consistency statement may be approved as a single statement. The statement of reasonableness may consider, among other factors:
- a) The size, physical conditions, and other attributes of any areas proposed to be rezoned;
  - b) The benefits and detriments to the landowners, the neighbors, and the surrounding community;
  - c) The relationship between the current actual and permissible development and the development under the proposed amendment;
  - d) Why the action taken is in the public interest; and
  - e) Any changed conditions warranting the amendment (NCGS 160D-605).

#### E. CITIZEN COMMENTS

In accordance with NCGS 160D-603 as may be amended from time to time, if any resident or property owner in the town submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance to the clerk to the board at least two (2) business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to the Town Council. If the proposed change is the subject of a quasi-judicial proceedings under NCGS 160D-705, 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.

## 2.21 CONDITIONAL ZONING

### A. PURPOSE

1. A conditional zoning district allows particular uses to be established only in accordance with specific standards and conditions pertaining to each individual development project. Some land uses are of such a nature or scale that they have significant impacts on both the immediately surrounding area and on the entire community which cannot be predetermined and controlled by general district standards. There are also circumstances in which a general district designation allowing such a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of these regulations, the adopted land use plan, adopted area plans and other long-range plans. The review process established in this section provides for the accommodation of such uses by a reclassification of property into a conditional zoning district, subject to specific conditions which ensure compatibility of the use with the use and enjoyment of neighboring properties. A conditional zoning district is generally not intended for securing early zoning for a proposal, except when that proposal is consistent with an approved district or area plan or the proposal can demonstrate that public infrastructure needed to serve the development will be made available within a reasonable time period.
2. All uses listed as part of any application shall be in the same format and description as listed in the table of uses.
3. A conditional zoning and a zoning map amendment are occurring simultaneously in a conditional zoning ~~hearing~~ application process. Therefore, except as provided herein, all applications to establish a conditional zoning district shall follow the regulations related to conditional zoning in addition to the standard zoning map amendment (rezoning) process as described in this section.

### B. APPLICATION AND CONDITIONAL ZONING REVIEW PROCEDURE.

1. The application for a conditional rezoning approval shall also be accompanied by an application to amend the zoning map (rezoning) to a conditional development zoning district. The rezoning application shall be submitted concurrently with the conditional zoning site plan. ~~The procedure for such shall be followed as outlined in article 17.~~ The approved site plan shall provide the framework for development in the conditional zoning district. All applications shall include a site plan meeting ~~article 13~~ the requirements of this article (Section 2.14) and any development standards to be approved concurrently with the rezoning application. Development standards may include such things as parking, landscaping, design guidelines, and buffers.
2. All proposals for a conditional zoning application shall abide by the uses and the dimensional standards required by the underlying base zoning district for which the proposal is located. An application for conditional zoning approval shall be

accompanied by ~~three (3)~~ one (1) hard copyies and one (1) ~~a~~ digital copy of a conditional zoning site plan.

3. When evaluating an application for the creation of a conditional zoning district, the Planning and Zoning Commission and Town Council shall consider the following:
  - a) The application's consistency to the general policies and objectives of the ~~Town's~~ CAMA Land Use Plan comprehensive plan, any other officially adopted plan that is applicable, and the Zoning Ordinance UDO.
  - b) The potential impacts and/or benefits on the surrounding area, adjoining properties.
  - c) The report of results from the public input meeting.

#### C. PUBLIC INPUT MEETING

1. Prior to scheduling submittal of an application for conditional zoning ~~a public hearing on the rezoning application~~, the applicant shall conduct one (1) public input meeting and file a report of the results with the Zoning UDO Administrator.
2. The staff report for the public hearing application will include a summary of the public input meeting.
3. The applicant shall mail a notice for the public input meeting to the owners of all properties located within 500 feet of the perimeter of the project bounds not less than 10 days prior to the scheduled meeting.
4. The notice shall include the time, date, and location of the meeting as well as a description of the proposal.
5. The applicant's report of the meeting shall include:
  - a) A copy of the letter announcing the meeting.
  - b) A list of adjoining property owners contacted.
  - c) Attendance rosters.
  - d) A summary of the issues discussed.
  - e) The results of the meeting including changes to the project's proposal, if any.

#### D. CONDITIONS TO APPROVAL OF PETITION

1. In approving a petition for the reclassification of property to a conditional zoning district, the Planning and Zoning Commission may recommend, and the Town Council may request that the applicant add reasonable and appropriate conditions to the approval of the petition.
2. Any such conditions should relate to the relationship of the proposed use to the impact on the following details:
  - a) Town services.
  - b) Surrounding property.
  - c) Proposed support facilities such as parking areas and driveways.
  - d) Pedestrian and vehicular circulation systems.
  - e) Screening and buffer areas.
  - f) Timing of development.
  - g) Street and right-of-way improvements.
  - h) Infrastructure improvements (i.e. water).

- i) Provision of open space.
  - j) Other matters that the participants in the public input meeting, staff, Planning and Zoning Commission, and Town Council find appropriate or the petitioner may propose.
3. Such conditions to approval of the petition may include right-of-way dedication, easements for streets, water, sewer, or other public utilities necessary to serve the proposed development. 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 any condition or requirement not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of NCGS 160D-702(b), driveway-related improvements in excess of those allowed in NCGS 136-18(29) and NCGS 160A-307, or other unauthorized limitations on the development or use of land. Conditions and site-specific standards imposed in a conditional zoning district shall be limited to those that address the conformance of the development and use of the site to town ordinances, plans adopted pursuant to NCGS 160D-501, or the impacts reasonably expected to be generated by the development or use of the site.
4. The petitioner shall consider and respond to any such conditions after the Planning and Zoning Commission meeting and within three (3) days prior to the staff report for the Town Council being published. If the applicant does not agree with the Planning and Zoning Commission or staff's recommendations of additional conditions, the Town Council shall have the authority to accept none, any, or all of the conditions forwarded from the review process.
5. If any condition required at approval is later found to be illegal, the petition shall be returned to Town Council to reevaluate and adjust any conditions accordingly.

#### E. EFFECT OF APPROVAL

1. If a petition for conditional zoning is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the district's classification, the approved site plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the zoning maps.
2. Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the zoning maps by the appropriate district designation. A parallel conditional zoning shall be identified by the same designation as the underlying general district followed by the letters "CZ" (for example "CBD-CZ"). No permit shall be issued for any development activity within a conditional zoning district except in accordance with the approved petition and applicable site plan, subdivision plat, and/or permit for the district.
3. Any violation of the approved regulations and conditions for the district shall be treated the same as any other violation of this section and shall be subject to the same remedies and penalties as any such violation.

## 2.22 - 2.24 RESERVED

## 2.25 VESTED RIGHTS AND PERMIT CHOICE

### A. PURPOSE

This section provides for the establishment of certain vested rights for the following reasons:

1. To provide reasonable certainty, stability, and fairness in the land-use planning process;
2. Secure the reasonable expectations of landowners;
3. Foster cooperation between the public and private sectors in the area of land-use planning;
4. ~~The town recognizes~~ Recognizing that approval of land-use development typically follows significant landowner investment in site evaluation, planning, development costs, consultant fees, and related expenses; and
5. These provisions strike an appropriate balance between private expectations and the public interest.

### B. ESTABLISHMENT OF A ZONING VESTED RIGHT FOR A SITE-SPECIFIC VESTING PLAN

1. A vested right shall be deemed established with respect to any property upon approval, of a site-specific vesting plan, subject to all conditions, specifications, procedures and any applicable required findings as listed under article XVII of this chapter, conditional zoning approval process of the approval process.
2. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site-specific vesting plan including any amendments thereto.
3. A site-specific vesting plan shall be deemed approved upon the effective date of the Town Council's action. Town Council shall hold a public (legislative) hearing with notice as required by NCGS 160D-602 prior to taking any action on a request for approval of vesting conferred by a site-specific vesting plan.
4. Any property owner wishing to establish vested right shall make their intentions known in writing to the town at the time of submittal of the site-specific vesting plan.
5. A vested right may be established only for uses that are currently permitted by right or by conditional zoning in the appropriate zoning district.

### C. REQUIREMENTS FOR SITE-SPECIFIC VESTING PLANS

1. A site-specific vesting plan shall meet ~~the site plan requirements as listed in article XIII of this chapter~~ the applicable submittal requirements of the approval type. In addition, the submittal shall include all of the following:
  - a) The site-specific vesting plan may be conditioned to require that the entire development or any phase of it be commenced or completed within a specified period of time.
  - b) A description of public facilities that will service 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.

- c) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property.
- d) A description of all local development permits approved or needed to be approved for the development of the property, together with a statement indicating that the failure of the approval to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing their permitting requirements, conditions, terms, or restrictions.
- e) A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens.
- f) ~~Reserved.~~
- g)f) Each part or phase of a site-specific vesting plan shall clearly describe what is being proposed in accordance with ~~article XIII of this chapter~~ the applicable submittal requirements of this ordinance (i.e., the labeling of "future development" shall not constitute a vested right without specific details).
- h)g) Each site-specific vesting plan which obtains a vested right under this chapter shall contain the following notation: "Approval of this site-specific vesting plan establishes a vested right under NCGS 160D-108. Unless terminated at an earlier date, the vested right shall be valid until (date)."

#### D. DURATION

1. Six (6) months—Building permits. Pursuant to NCGS 160D-1109, a building permit expires six (6) months after issuance unless work under the permit has commenced. Building permits also expire if work is discontinued for a period of 12 months after work has commenced.
2. One (1) year—Other local development approvals. Pursuant to NCGS 160D-403(c), unless otherwise specified by statute or local ordinance, all other local development approvals expire one (1) year after issuance unless work has substantially commenced. Expiration of a local development approval shall not affect the duration of a vested right established under this section or vested rights established under common law.
3. Two (2) to five (5) years—Site-specific vesting plans.
  - a) Town Council may provide that rights shall be vested for two (2) but not exceeding five (5) 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. These determinations shall be in the sound discretion of the Town Council.
  - b) Following approval of a site-specific vesting plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals by the

town to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with said original approval. Nothing in this section shall prohibit the Town Council from revoking the original approval for failure to comply with applicable terms and conditions of the approval or this ~~chapter~~ ordinance.

- c) Upon issuance of a building permit, the provisions of NCGS 160D-1109 and 160D-1113 shall apply, except that a permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding.
  - d) A right which has been vested as provided in this section shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.
  - e) If a site-specific vesting plan receives approval by Town Council for less than five (5) years, then the Town Council may vote to extend the site-specific development without going back through the approval process. Any such approval shall be at the request of the landowner and for good cause shown. In no circumstance shall the statutory vesting of a site-specific vesting plan exceed five (5) years without going back through the conditional zoning approval process under the current code requirements.
4. Seven (7) years—Multiphase ~~d~~Developments. A multiphase development shall be vested for the entire development with the zoning regulations, subdivision regulations, and unified development ordinances in place at the time a site plan approval is granted for the initial phase of the multiphase development. This right shall remain vested for a period of seven (7) years from the time a site plan approval is granted for the initial phase of the multiphase development.
5. Indefinite—Development ~~A~~reements. A vested right of reasonable duration may be specified in a development agreement approved under Article 10 NCGS 160D.

E. SUBSEQUENT CHANGES PROHIBITED; EXCEPTIONS

- 1. A vested right, once established as provided for in this section, precludes any zoning action which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved vested right, except:
  - a) With the written consent of the affected landowner;
  - b) Upon findings, after notice and an evidentiary hearing, that natural or manmade 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 approved vested right;
  - 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 consultant's fees incurred after approval by the town, together with interest as is provided in NCGS 160D-106. Compensation shall not include any diminution in the value of the property that is caused by such action;
- d) Upon findings, after notice and an evidentiary hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the town of the vested right; or
  - e) Upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the approved vested right, in which case the town may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, after notice and an evidentiary hearing. For example, in no case does an approval of a site-specific vesting plan supersede federal or state regulations such as the rules defined by the National Flood Insurance Program (NFIP) or Coastal Area Management Act (CAMA).
- 2. The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does 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 town land use regulations, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations shall 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 shall not preclude, change or impair the authority to adopt and enforce zoning ordinance provisions governing nonconforming situations or uses.
  - 4. A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a vested right under this section, all successors to the original landowner shall be entitled to exercise such rights.
  - 5. Nothing in this ordinance shall prevent the town from amending this ~~chapter~~ ordinance or official map in such a way that a development project for which a vested right has been established is rendered nonconforming in any way.

#### F. VOLUNTARY ANNEXATION

- 1. A petition for annexation filed with the town under NCGS 160A-31 or NCGS 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under NCGS 160D-108; 108.1.
- ~~1.2.~~ A statement that declares that no zoning vested right has been established under NCGS 160D-108; 108.1, or the failure to sign a statement declaring whether or



not a zoning vested right has been established, shall be binding on the land owner and any such zoning vested right shall be terminated.

G. LIMITATIONS

Nothing in this section is intended or shall be deemed to create any vested right other than those established pursuant to NCGS 160D-108; 108.1.

H. PERMIT CHOICE

1. If an application made in accordance with town regulation is submitted for a development approval required pursuant to this ordinance and a development regulation changes between the time the application was submitted and a decision is made, the applicant may choose which version of the development regulation will apply to the application.
  - a) If the development permit applicant chooses the version of the rule or ordinance applicable at the time of permit application, the development permit applicant shall not be required to await the outcome of the amendment to the rule, map, or ordinance prior to acting on the development permit.
  - b) This section applies to all development approvals issued by the state and by the town. The duration of vested rights created by development approvals is as set forth in NCGS 160D-108(d).

## 2.26 SUMMARY DEVELOPMENT APPROVAL PROCEDURES

### A. PURPOSE

A generalized submittal deadline and decision timeframe is provided for various development approval types. This table is provided for summary purposes and should accompany the actual binding ordinance text contained in this article which provides all applicable requirements.

Table 2.1 Submittal Deadline and Action Timeline			
Application Type	Number of Plan/Schematic Copies	Deadline for Submittal	Generalized Timeline for Action on Complete Application [1]
Zoning Permit, Sign Permit, Floodplain Permit, Tree Removal Permit	One (1) digital	NA	30 days
<u>Minor and Major Site Plan</u>	One (1) digital <del>three (3) hard copies</del>	14 days prior to TRC meeting	30 days
Special Use Permit (major change)	One (1) digital <del>three (3) hard copies</del>	30 days prior to TRC meeting	60 days
Exempt Plat, Expedited Minor Subdivision Plat	One (1) digital <del>one (1) hard copy</del>	NA	14 days
Minor Subdivision Preliminary Plat	One (1) digital <del>three (3) hard copies</del>	14 days prior to TRC meeting	30 days
Major Subdivision Preliminary Plat	One (1) digital <del>three (3) hard copies</del>	30 days prior to TRC meeting	75 days
Minor and Major Subdivision Final Plat	One (1) digital <del>three (3) hard copies</del>	14 days prior to TRC meeting	30 days
Text Amendment, Zoning Map Amendment (Rezoning)	One (1) digital	30 days prior to TRC Meeting	60 – 90 days [2]
Conditional Zoning District, Planned Unit Development (greater than <u>four (4)</u> units)	One (1) digital <del>three (3) hard copies</del>	30 days prior to TRC Meeting	75 – 90 days [2]
<p>1. Any such timeline provided is not binding. See ordinance text for specific approval timeline requirements. This is provided for reference purposes.</p> <p>2. Final decisions for any legislative action are at the discretion of the Town Council, including a determination whether to pursue action on any duly submitted application. Applicants for any legislative decision are not guaranteed action on any proposed application.</p>			

## 2.27 REVIEW PROCEDURE SUMMARY

Table 2.2: Review Procedures Summary						
Application Type	Advisory or Decision-Making Body					
	Town Council	Planning and Zoning Commission	Board of Adjustment	UDO Administrator	CAMA LPO	Building Inspector
FD = Final Decision; R = Advisory Recommendation; PH = Public Hearing; QJ = Quasi-judicial Hearing						
Complete Application				FD		
Zoning Permit, Sign Permit, Floodplain Permit, Tree Removal Permit				FD		
Building Permit						FD
CAMA Minor Permit					FD [1]	
Major and Minor Site Plan				FD		
Special Use Permit	FD-QJ			R [2]		
Variance, Appeal			FD-QJ			
Exempt Plat, Minor Subdivision Preliminary Plat				FD		
Major Subdivision Preliminary Plat		FD				
Minor and Major Subdivision Final Plat				FD		
Text Amendment, Zoning Map Amendment (Rezoning)	FD-PH	R		R		
Conditional Zoning District, Planned Unit Development (greater than four (4) units)	FD-PH	R		R		
[1] CAMA general and major permits are decided by the NC Division of Coastal Management and Coastal Resources Commission.						
[2] Such recommendation shall only be in regards to the application's compliance with ordinance requirements.						

## 2.28 PUBLIC NOTIFICATION REQUIREMENTS

Table 2.3: Public Notification Summary				
Application Type	Advisory or Decision-Making Body	Published Notice [1]	Mailed Notice [2]	Posted Notice [3]
<b>X = Notification Required; PH = Public Hearing; QJ = Quasi-judicial Hearing</b>				
Special Use Permit	Town Council		X-QJ	X-QJ
Variance	Board of Adjustment		X-QJ	X-QJ
Appeal	Board of Adjustment		X-QJ	X-QJ
Text Amendment	Planning and Zoning Commission	X-PH		
	Town Council	X-PH	X-PH [4]	
Zoning Map Amendment, Conditional Zoning District	Planning and Zoning Commission	X-PH	X-PH	X-PH
	Town Council	X-PH	X-PH	X-PH
Statutory Zoning Vested Rights	Town Council		X-PH	X-PH

[1] Published notice provided once a week for two (2) successive calendar weeks, with the first notice between 10 and 25 days before the hearing.  
 [2] Mailed notice provided to affected owners and landowners abutting the subject lot between 10 and 25 days before the hearing.  
 [3] Posted notice provided on site or adjacent street between 10 and 25 days before the hearing.  
 [4] Mailed notice subject NCGS 160D-601(b).

## 2.29 ADMINISTRATION, ENFORCEMENT, AND REVIEW

### A. PURPOSE

1. The purposes of this ~~article~~ section are to provide:
  - a) Clearer and fairer ways to deal with ~~situations and conditions~~ violations of this ordinance;
  - b) Reasonable opportunities for certain persons concerned with ~~situations and conditions~~ violations to be heard under the circumstances; and
  - c) Remedies and enforcement procedures ~~concerning situations and conditions~~ to remedy any violation of this ordinance to the fullest extent available and not prohibited or limited by law.
2. This section and applicable administrative review and appeal ordinance provisions are to be construed to accomplish the purposes of this article to the fullest extent allowed by law. This section does not affect:
  - a) Powers of the town under the code or state statute;

- b) Authority as granted by statute or ordinance to confer, restrict, modify, extend, rescind, revoke, terminate, impose conditions upon, or declared as expired, statutory, or ordinal vested rights; or
  - c) Separate procedures regarding statutory or ordinal vested rights.
3. ~~Nor do any provisions of the Code limit the provisions of this article or applicable administrative review and appeal ordinance provisions.~~

B. UDO ADMINISTATOR REVIEW AND ENFORCEMENT

- 1. The ~~official~~ UDO Administrator shall administer, review and enforce under this article the town's ordinances and all approvals, ~~and make decisions consistent with this article and in its considered and informed discretion.~~ Any appeal from a decision of the official is subject to ~~applicable administrative review and appeal provisions in this chapter~~ appeal heard by the Board of Adjustment.
- 2. The town through its duly authorized officials shall have the power to summarily remove, abate, or remedy all ~~situations and conditions~~ violations.
- 3. The ~~official~~ UDO Administrator shall have the power and duty to implement policies and procedures appropriate to accomplishing the purposes and provisions of this ordinance, to enforce ~~this chapter and~~ all development approvals, to issue decisions and orders in its considered and informed discretion, and to take all such and further actions in accord with this ordinance, including, but not limited to, the following:
  - a) Investigating, compiling information, responding to reports and complaints concerning whether this ordinance or approval violations have occurred, identifying persons liable in connection with violations, communicating with persons liable and any other persons in connection with the same, resolving alleged or potential situations and condition through informal communications on the same, making decisions determining whether violations exist, issuing decisions finding a public nuisance exists, and making other decision(s) in connection with the said ~~situations and conditions~~ violations and public nuisances;
  - b) Working with applicable law enforcement agencies as appropriate.
  - c) Issuing orders to resolve ~~situations and conditions~~ violations and matters in connection with the same.
  - d) Imposing civil charges on person(s) liable for ~~situations and conditions~~ violations.
  - e) Issuing notices identifying ~~situations and conditions~~ violations, applicable ~~chapter~~ ordinance and approval provisions violated by the same, remedies and enforcement mechanisms available to the town in consequence of the same.
  - f) Issuing orders directing person(s) liable to correct, remediate, remove, and abate ~~situations and conditions~~ violations, to post a bond to secure performance of the same.

- g) Authorizing the incurring of expenses and executing agreements (in accord with applicable town procedures) for correction, remediation, removal, and abatement of ~~situations and conditions~~ violations.
  - h) Collecting in the nature of a debt (and, to the extent allowed by law, in the nature of unpaid taxes), all amounts owed by persons liable in connection with ~~situations and conditions~~ violations.
  - i) Obtaining liens on property located within the town's applicable jurisdiction in order to secure payment of amounts owed by persons liable in connection with ~~situations and conditions~~ violations, enforcing the same, and imposing liens to the extent allowed and not prohibited by law.
  - j) Imposing enforcement or remedial related conditions and provisions on any and all approvals for defined periods of time in the course of dealing with ~~situations and conditions~~ violations.
  - k) Pursuing chronic violator procedures.
  - l) Pursuing all forms of legal processes and remedies available in connection with ~~situations and conditions~~ violations through the courts of competent jurisdiction.
  - m) ~~Making a decision in the form of filing a motion for the board of adjustment to revoke an approval;~~ and
  - n) Employing any, all, or any combination of enforcement mechanisms and remedies available under this article, and otherwise provided by law.
4. In addition to powers and duties of the official enumerated herein, the official shall have all those powers set forth in ~~section 40-490, and~~ NCGS 160A-175, 160A-193, 160A-200.1, and 160D-404(c).

#### C. COMPLAINTS REGARDING VIOLATIONS

Whenever the UDO Administrator receives a complaint alleging a violation of the ordinance, he/she shall investigate the complaint, take whatever action is warranted, and inform the complainant what actions will be taken. Complaints can be accepted in any manner and shall be confidential. The building inspector shall be responsible for enforcement matters pertaining to the Town and State Building Code.

#### D. PERSONS LIABLE

The holder of any applicable approvals, owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, person in authority, permittee, licensee, or other person who participates in, assists, directs, creates, maintains, or is otherwise responsible for any violation, and who may thereby be held responsible for the same and be made subject to all enforcement mechanisms, remedies, and sanctions as provided in this ordinance and other land development ordinances, and any additional enforcement mechanisms, remedies, sanctions, and legal processes that may be otherwise permitted by law.

#### E. PROCEDURES UPON DISCOVERY OF VIOLATIONS

1. If the UDO Administrator finds that any provision of this ordinance is being violated, either as a result of a town investigation or through a written complaint, he/she shall send a written notice to the person responsible for such violation, indicating the nature of the violation and ordering the action necessary

to correct it. Additional written notices may be sent at the UDO Administrator’s discretion. 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 town clerk that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud.

2. The final written notice, and the initial written notice may be the final notice, shall state what action the UDO Administrator intends to take if the violation is not corrected and shall advise that the UDO Administrator’s decision or order may be appealed to the Board of Adjustment.
3. Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this ordinance or pose a danger to the public health, safety, or welfare, the UDO Administrator may seek enforcement without prior written notice by invoking any of the penalties or remedies as described herein.

#### F. PENALTIES AND REMEDIES FOR VIOLATIONS

1. Violations of this ordinance shall subject the offender to a civil penalty in accordance with the fee schedule as established by the Town Council to be recovered by the town in a civil action in the nature of debt if said civil penalty is not paid by the offender within 72 hours after being cited for the violation.
2. Any provision of this ordinance or any other town 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.
3. Each day that any violation continues after notification by the UDO Administrator that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this section. Separate notices will not be provided for each violation.
- 1.4. Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this ordinance.

## Article 3: Zoning

### DIVISION 1. ZONING DISTRICTS AND USES

#### 3.1 GENERAL

##### A. INTRODUCTION

1. This article contains the specific use and area regulations for each zoning district found in the town's planning jurisdiction. The material has been divided into the following sections:
  - a) Zoning districts described. The intended application for each district, guiding its placement in relation to either existing or proposed development, and ~~setting the density therein, along with any particular regulations~~ describing generalized densities and regulations unique to that district.
  - b) Table of permitted uses. The listing of land uses permitted by right, by conditional zoning, or by special use in each district.
  - c) Table of dimensional standards for lots and principal structures. The tabular listing of standards concerning lot sizes, setbacks or yards, height limitations and other dimensional requirements for lots and principal structures in each district.
  - d) Table of dimensional standards for accessory structures. The tabular listing of standards concerning lot sizes, setbacks or yards, height limitations, and other dimensional requirements for accessory structures in each district.
  - e) General ~~requirements~~ development standards ~~for all districts. Several general statements~~ Requirements regarding standards of development that apply within ~~any~~ some or all of the town's zoning districts. These include such things as parking, landscaping, and sidewalks.
2. The use of separate sections to describe the various standards for each district does not relieve any person from complying with all the requirements for the same district.

##### B. COMPLIANCE WITH DISTRICT REGULATIONS

1. ~~Subject to article XIV of this chapter (nonconforming situations), n~~ No person may use, occupy, or sell any land or buildings or authorize or permit the use, occupancy, or sale of land or buildings under his control except in accordance with all of the applicable provisions of this ~~chapter ordinance, and the Town subdivision regulations,~~ and subsequent amendments thereto, and other applicable town regulations.
2. For purposes of this section, the "use" or "occupancy" of a building or land relates to anything and everything that is done to, on, or in that building or land.



### 3.2 ZONING DISTRICTS ESTABLISHED

To regulate the height and size of buildings; to regulate the intensity of land usage; to regulate areas for open space; to regulate the location of land uses; to provide for the improved environment; and to promote the health, safety, and general welfare of its citizens, the town and its extraterritorial planning jurisdiction are hereby divided into the following zoning districts:

Table 3.1: Zoning Districts	
District	General Purpose
R-1	Residential District
R-1B	Residential District
R-2	Residential District
R-3	Residential District
C	Conservation District
MH	Residential, Manufactured Home District
MF	Residential, Multifamily District
MX	Mixed Use, Transitional District
CBD	Central Business District
NB	Neighborhood Business District
HB	Highway Business District
MB-1	Marina Business District
T-1	Tourist District
I-1	Industrial District
FP	<u>Floodplain Overlay District</u>
HOD	Height Overlay District

### 3.3 ZONING DISTRICTS DESCRIBED

- A. R-1, Residential District (Single- and Two-family Dwellings).
  - 1. Purpose. The R-1 district is established to provide for moderate to high-density single-family and two-family residential use.
  - 2. Intent. The regulations of this district are intended to discourage any use which, because of its character, would not be in harmony with the residential community and which would be detrimental to the residential quality and value of the district.
- B. R-1B, Residential District (Single-family Dwellings).

1. Purpose. The R-1B district is established to provide for moderate density, single-family residential use.
  2. Intent. The regulations of this district are intended to discourage any use which, because of its character, would not be in harmony with the residential community and which would be detrimental to the residential quality and value of the district.
- C. R-2, Residential District (Single-family Dwellings).
1. Purpose. The R-2 district is established to provide for moderate density single-family residential use and other compatible uses.
  2. Intent. The regulations of this district are intended to discourage any use which, because of its character, would not be in harmony with the residential community and which would be detrimental to the residential quality and value of the district.
- D. R-3, Residential District (Single-family Dwellings).
1. Purpose. The R-3 district is established to provide for moderate to low density single-family residential use and other compatible uses.
  2. Intent. The regulations of this district are intended to discourage any use which, because of its character, would not be in harmony with the residential community and which would be detrimental to the residential quality and value of the district.
- E. C, Natural Resources Conservation District.
1. Purpose. This district is established to preserve the economic, aesthetic, and unique and irreplaceable natural resource assets of the land, vegetation, surface waters, and underground waters of this district, while also providing for an environmentally compatible setting for appropriately designed and located single-family residential development. In doing so, the public health and safety and welfare shall be preserved.
- F. MF, Multifamily Residential District.
1. Purpose. This district is established to provide for moderate to high-density single-family and multifamily residential uses and other compatible uses of varying types and designs. It functions as an alternative housing type near or in direct relationship to single-family detached housing while in harmony with and maintaining the integrity of the residential district.
  2. Intent. The regulations of this district are intended to discourage any use which, because of its character, would not be in harmony with the residential community and which would be detrimental to the residential quality and value of the district.
- G. MH, Residential District (Mobile Homes, Single- and Two-family Dwellings).
1. Purpose. This district is established to provide for moderate to high-density mobile home, single, and two-family residential uses and other compatible uses.
  2. Intent. The regulations of this district are intended to discourage any use which, because of its character, would not be in harmony with the residential community and which would be detrimental to the residential quality and value

of the district. [Note—The connection of mobile homes to form multiple units is prohibited.]

- H. MX, Mixed Use Transitional District.
  - 1. Purpose. This district is established to provide for an area of transitional land uses between intensified use districts or elements and residential districts. This district includes an area of mixed land uses between the intensive, commercial, central part of town and the quiet residential areas and may also be employed as a transitional area between busy major thoroughfares and quieter residential areas.
  - 2. Intent. The regulations of the district seek to maintain a modest scale of structures, as well as a pedestrian-oriented nature, so that uses in the district may provide a suitable transition from commercial to residential areas. Permitted uses include a mixture of single-family homes, two-family dwellings, and small-scale office and institutional uses. Small hotels and motels and multifamily housing of modest density and size may also be permitted in this district.
- I. T-1, Tourist District.
  - 1. Purpose. This district is established to provide land for the town's tourist industry, and as a complementary district to the CBD Central Business District.
  - 2. Intent. The primary land uses intended for this zoning district are moderate- to high-density residential development, as well as hotels, motels, and restaurants.
- J. NB, Neighborhood Business District.
  - 1. Purpose. This district is established to accommodate and provide for the development of small, pedestrian-oriented shopping and service activities providing necessity goods and personal services to the immediate neighborhood. This district also provides for single-family detached homes and related residential uses. Such districts should be located at the intersection of a major street or collector. Uses in NB districts should have architecture and site layouts which are compatible with nearby residential structures and uses.
  - 2. Intent. The regulations of this district are intended to discourage any use which, because of its character, would not be in harmony with the residential community or which would be detrimental to the surrounding residential uses.
- K. CBD, Central Business District.
  - 1. Purpose. This district is established to accommodate, protect, rehabilitate, and maintain the traditional Central Business District and boardwalk area of the town. This area accommodates a wide variety of pedestrian-oriented, commercial and service activities, including retail, business, office, professional, financial, entertainment, and tourism.
  - 2. Intent. The regulations of this district are intended to encourage the use of land for concentrated development of permitted uses while maintaining a substantial relationship between land uses and the capacity of the town's infrastructure. Developments which would significantly disrupt the historic balance between pedestrians and automobiles within the district, thereby destroying the pedestrian-oriented nature of the area, are specifically discouraged. Large, off-

street parking areas are encouraged to locate outside the district. Similarly, buildings and structures should have pedestrian-oriented activities at ground level.

- L. HB, Highway Business District.
  - 1. Purpose. This district is established to accommodate businesses oriented toward the motoring public and which require a high volume of traffic.
  - 2. Intent. ~~In many cases,~~The regulations of this district are intended to support businesses ~~in the HB district~~that serve the entire community and beyond. For the most part, they are located on major thoroughfares so that they can be conveniently reached by automobile and to avoid sending heavy automobile traffic through smaller streets or residential areas. Certain wholesale activities are also permitted in HB district.
- M. MB-1, Marina Business District. This district is established to reserve areas along the water's edge for maritime uses, water dependent uses, and water-oriented uses. This district also provides for certain residential and other non-water dependent uses which are closely aligned with water-oriented uses. Land uses, which would wall off the public from public trust waters, are specifically discouraged.
- N. I-1, Industrial District. This district is established to provide for warehousing, storage, and light industrial activities compatible with a small, tourist-oriented, environmentally sensitive, coastal community. Light industries are generally characterized as having small physical plants, lower land requirements, and higher worker-to-land ratios. Such industries typically generate few objectionable impacts in terms of noise, lights, heavy truck traffic, fumes, smoke, dust, odor, or other similar characteristics. Furthermore, any negative environmental impacts associated with these industries may generally be mitigated through proper site planning, buffering, and operations management. This district is located in areas that are readily accessible from major thoroughfares, so as to minimize traffic impacts on non-industrial areas of the community.
- O. FP, Floodplain Overlay District.
  - 1. Purpose; intent. The 100-year floodplain as depicted on the latest National Flood Insurance Program's (NFIP) flood insurance rate map is hereby incorporated by reference as part of the official zoning map for the town. Development within the 100-year floodplain must conform with all provisions of ~~chapter 30~~Article 5, Flood Damage Prevention. It is the intent of the Town Council to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in ~~specific areas~~Special Flood Hazard Areas (SFHA) through compliance with ~~chapter Article 5 30~~, Flood Damage Prevention, ~~noted in this subsection (o)(1).~~
  - 2. Density. ~~The standards of the underlying zoning district shall apply, except as may be required in any special regulations applicable to this area.~~
- P. Height Overlay District (HOD). This district is established to preserve the character of the town's traditional single-family residential neighborhoods. This area can be described as having a high concentration of permanently occupied homes in comparison to seasonal units. The regulations of this district limit height to 45 feet.

### 3.4 TABLE OF USES

- A. Generally. ~~The table in section 40-72~~ Table 3.2 sets forth the permitted, conditional zoning, and special uses allowed in each zoning district.
1. Permitted by right (P). The letter "P" in the zoning district column opposite the listed use means the use is permissible by right in the zoning districts in which it appears.
  2. Permitted use with standards (PS). Uses with additional standards are denoted with a "PS."
  3. Conditional zoning (CZ). The letters "CZ" in the zoning district column opposite the listed use means that conditional zoning, as set forth in ~~article XVII~~ Section 2.21 of this ~~chapter~~ ordinance, must be obtained before the use may be created. Use standards may also be required for certain conditional zoning uses.
  4. Special use permit (S). The letter "S" in the zoning district column opposite the listed use means that a special use permit, as set forth in ~~article XI~~ Section 2.14(C) of this ~~chapter~~ ordinance, must be obtained before the use may locate in the district in which it appears.
  5. Prohibited. A use specifically prohibited in the table of permissible uses for every zoning district. Any use listed as prohibited has been reviewed and considered as having a detrimental impact on the health and safety of the community.
- B. Use designation.
1. If a "P" or "CZ" or "PS" does not appear in a zoning district column opposite a listed use, the use is not permitted in that zoning district.
  2. Uses not listed. The uses listed may not address all possible uses. In determining if a use is permitted, the UDO Administrator shall consider which category of expressed uses most closely matches the use proposed and apply the regulations pertaining to that category to the proposed use.~~The permitted, not permitted or conditional status of any use not listed in the table of uses shall be determined by the zoning administrator based upon the administrator's comparison of similar uses as allowed in similar locations. The zoning administrator may refer any unlisted use to the board of adjustment for interpretation. The zoning Administrator's determination may also be appealed to the Board of Adjustment in accordance with the provisions of article XVI of this chapter.~~ No interpretation shall be made which would change the character of a zoning district relative to the purpose of such zoning district and the other uses allowed.
    - a) Interpretation of unlisted uses. Where a proposed use is not specifically listed in the table of permissible uses, the ~~zoning administrator~~UDO Administrator may permit the proposed use upon a determination that the proposed use has an impact similar in nature, function, and/or duration similar to another permitted used listed in the table of permissible uses. The ~~zoning administrator~~UDO Administrator shall give due consideration to the purpose and intent statements in this section concerning the base zoning district(s) involved, the character of the uses specifically identified, and the character of the use(s) in question.

- b) Standards for ~~approving~~ determining unlisted uses. In determining the use which most closely matches the proposed use, the UDO Administrator shall consider ~~In order to determine if a proposed use(s) has an impact that is similar in nature, function, and duration to the other approved uses allowed in a specific zoning district, the zoning administrator shall assess~~ all relevant characteristics of the proposed use, including but not limited to the following:
- i) The volume and type of sales, retail, wholesale, etc.
  - ii) The size and type of items sold and nature of inventory on the premises.
  - iii) Any processing done on the premises, including assembly, manufacturing, warehousing, shipping, distribution.
  - iv) Any dangerous, hazardous, toxic, or explosive materials used in the processing.
  - v) The nature and location of storage and outdoor display of merchandise, whether enclosed, open, inside, or outside the principal building; predominant types of items stored (such as business vehicles, work-in-process, inventory, and merchandise, construction materials, scrap and junk, and raw materials including liquids and powders).
  - vi) The type, size, and nature of buildings and structures.
  - vii) The amount and nature of any nuisances generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation, and fumes.
  - viii) Any special public utility requirements for serving the proposed use type, including but not limited to water supply, wastewater output, pre-treatment of wastes and emissions required or recommended, and any significant power structures, and communications towers or facilities.
  - ix) The impact on adjacent lands created by the proposed use.
  - x) If requested, the applicant shall submit evidence to the UDO Administrator of the anticipated traffic, noise, light, or odor of the proposed use. Reports prepared by the applicable professional trade may be required (e.g. transportation engineer, environmental scientist, etc.).
- c) Decision by zoning administrator. A final determination on the proposed use shall be provided in writing to the applicant and subject to appeal by the Board of Adjustment.
- i) ~~Typical use: Added to ordinance. In making the determination, the zoning administrator shall recommend a text amendment to this section if it is determined the proposed use is common or likely to recur frequently, or that omission of specific inclusion and reference in the table of permitted uses is likely to lead to public uncertainty and confusion. Until final action is taken on a~~

~~proposed amendment, the interpretation of the zoning administrator shall be binding.~~

ii) ~~Atypical uses. In making a determination whether to approve a proposed use that is not listed in the table of permissible uses, an unlisted use, the zoning administrator interpretation shall be binding. Aggrieved parties may appeal the interpretation to the BOA.~~

Table 3.2: Table of Uses Uses of Land	P = Permitted by Right; CZ = Conditional Zoning (Use Standard noted); PS = Permitted Use with a Use Standard													Use Standard	
	R-1	R-1B	R-2	R-3	C	MH	MF	MX	CBD	NB	HB	MB-1	T-1		I-1
<b>Accessory Uses (3.6)</b>															
<u>Accessory structure or use, nonresidential</u>								<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>3.6.B</u>
Accessory uses and structures, <u>residential including garages, carports, etc. (See sections 40-261, 40-548)</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>3.6.C</u>
Home occupations, customary <u>(See sections 40-261, 40-548)</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>		<u>3.6.D</u>
<u>Outdoor display</u>								<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>3.6.E</u>
<u>Outdoor seasonal sales</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>		<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>3.6.F</u>
Swimming pools, private <u>(See sections 40-261, 40-548)</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>		<u>PS</u>		<u>PS</u>	<u>PS</u>		<u>3.6.G</u>
<u>Temporary healthcare structures</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>		<u>PS</u>		<u>PS</u>	<u>PS</u>		<u>3.6.H</u>
<u>Temporary storage container</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>3.6.I</u>
Trailer, temporary construction <u>(See section 40-261)</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>3.6.J</u>
<b>Residential Uses (3.7)</b>															
Dwelling, multifamily (Triplex; quadraplex; Units <= 4)							P	P				P	P		
Dwelling, multifamily (Units > 4)							CZ	CZ				CZ	CZ		<u>3.7.A</u>
Dwelling, single-family detached	P	P	P	P	P	P	P	P		P		P	P		
Dwelling, two-family	P					P	P	P				P	P		
<u>Family care home</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>		<u>PS</u>		<u>PS</u>	<u>PS</u>		<u>3.7.B</u>
Manufactured home, on standard, single-family lot <u>(See section</u>						P									<u>3.7.C</u>

Table 3.2: Table of Uses		P = Permitted by Right; CZ = Conditional Zoning (Use Standard noted); PS = Permitted Use with a Use Standard													Use Standard		
Uses of Land	R-1	R-1B	R-2	R-3	C	MH	MF	MX	CBD	NB	HB	MB-1	T-1	I-1			
<del>40-261</del> Class AA, A, and B)																	
Manufactured home (Class C)	Prohibited																
Attached single-family residential	-	-	-	-	-	-	P	P	-	P	-	P		P	-		
<b>Planned Unit Development (Section 3.8)</b>																	
Planned unit development, business (See article XII of this chapter)										CZ	CZ	CZ	CZ	CZ		3.8.B	
Planned development, industrial															CZ	3.8.C	
Planned unit development, residential (See article XII of this chapter) Units <= 4	PS		PS			PS	PS	PS				PS	PS	PS		3.8.D	
Planned unit development, residential (See article XII of this chapter) Units > 4	CZ		CZ			CZ	CZ	CZ				CZ	CZ	CZ		3.8.E	
<b>Nonresidential Uses (Section 3.9)</b>																	
Adult entertainment establishment (See sections 40-261, 40-548)															CZ	3.9.A	
Aircraft takeoff and landing zone (See sections 40-261, 40-548)	Prohibited																
Animal care facility															P		
Animal care facility with outdoor area (See section 40-261)															CZ	3.9.B	
Art galleries (See section 40-548)									P	P	P	P	P				
Auction sales										P					P		
Automotive, major Automobile repair garages, including engine overhauls, body and paint shops and similar operations in enclosed buildings (See sections 40-261, 40-548)															CZ	PS	3.9.C
Vehicle sales lot and rental lot (See section 40-261)															P		P



Table 3.2: Table of Uses Uses of Land	P = Permitted by Right; CZ = Conditional Zoning (Use Standard noted); PS = Permitted Use with a Use Standard												Use Standard			
	R-1	R-1B	R-2	R-3	C	MH	MF	MX	CBD	NB	HB	MB-1		T-1	I-1	
Automotive, minor Automobile service stations and convenience stores									PS	PS	PS					3.9.D
Car wash (See section 40-548)											P					
Bakery, retail, on-premises sales only								P	P	P						
Bakery, retail, off-premises sales wholesale										P				P		
Bed and breakfast inn (See section 40-261)	CZ						CZ	CZ	CZ	CZ	CZ		CZ			3.9.E
Boat and personal water craft (PWC) sales and rental									P		P	P	P	P		
Boat repair facility											PS	PS		PS		3.9.G
Body piercing and tatoo facility											CZ					
Bus terminal									P		P					
Cafeteria or dining room for employees of permitted uses															CZ	
Cemeteries, public and private (See section 40-261)														CZ		3.9.I
Commercial indoor recreation, such as bowling alleys, etc.									P		P					
Arcades, rides, games in enclosed buildings									P		CZ					
Theaters, in enclosed structure									P		P					
Commercial outdoor recreation, such as miniature golf, golf driving ranges, par 3 golf courses, go-carts and similar enterprises (See section 40-261)									CZ		P CZ			PS		3.9.J
Outdoor amusements, carnival and rides									CZ		CZ					
Theaters, open air drama									CZ		CZ				CZ	
Contractors offices, no outdoor storage									P		P			P		
Day nurseries, day care centers and preschools (See sections 40-261, 40-548)	CZ	CZ	CZ	CZ		CZ	CZ	CZ	CZ	CZ	CZ	PS	PS	PS		3.9.K

Table 3.2: Table of Uses	P = Permitted by Right; CZ = Conditional Zoning (Use Standard noted); PS = Permitted Use with a Use Standard													Use Standard		
	Uses of Land	R-1	R-1B	R-2	R-3	C	MH	MF	MX	CBD	NB	HB	MB-1		T-1	I-1
Drop-in child care providers (See sections 40-261, 40-548)	CZ	CZ	CZ	CZ		CZ	PS	PS	PS	PS	PS	PS	PS	PS	PS	3.9.L
Dwelling for caretaker on premises where employed											P	P			P	
Drive-in/through facility											P					
Dry stack storage facilities												PS				3.9.M
Ear piercing facility											P					
Exhibition buildings									CZ		P				P	
Exterminator service business offices, no outdoor storage of materials or equipment									P		P				P	
Fire stations, emergency services, nonprofit	CZ	CZ	CZ	CZ		CZ	CZ	CZ	CZ		CZ				CZ	
Funeral homes and crematoriums									P		P					
Gardens, arboretums nurseries, and greenhouses, items for sale									P	P	P				P	
Nursery, garden and landscaping, display and sales											P				P	
Government/public facilities and utilities (See section 40-261)	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	3.9.P
Group care/rehabilitation facility										CZ					CZ	
Laundries and dry cleaning, delivered by customers									P	P	P					
Laundromats, self-service									P	P	P					
Libraries	CZ		CZ	CZ				P	P	P	P					
Live entertainment complex in enclosed buildings									CZ		CZ					
Marinas, docks and/or piers, private	P	P	P		CZ				P			P				
Marinas, docks and/or piers, public or commercial	CZ				CZ		CZ		P			CZ				
Fishing piers; public and private									PCZ							

Table 3.2: Table of Uses	P = Permitted by Right; CZ = Conditional Zoning (Use Standard noted); PS = Permitted Use with a Use Standard													Use Standard	
	R-1	R-1B	R-2	R-3	C	MH	MF	MX	CBD	NB	HB	MB-1	T-1		I-1
Medical and dental clinics								P	P		P			P	
Meeting facilities	CZ	CZ	CZ	CZ		CZ	CZ	CZ	P		P			P	
Mixed use <del>commercial nonresidential-residential (See section 40-261)</del>								PS	PS	PS	PS	PS	PS		3.9.Q
Motels and hotels								CZ	CZ		CZ		CZ	CZ	
Motels and hotels, operated with a marina												CZ			
Multi-use facility								P	P	P	P	P	P	P	
Museums					P				P		P		P	P	
Offices, <del>public, private or civic</del> <u>general</u>								P	P	P	P	P	P	P	
Parking lot, commercial—permanent (See section 40-261)									PSCZ						3.9.R
Parking lot, town operated (See section 40-261)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Parking, municipal decks									P						
Parking, private decks									CZ						
<del>Parking and loading areas serving uses in the same zoning district, on same or contiguous lot (See article V of this chapter)</del>	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
<del>Parking and loading areas serving uses in the same zoning district, on non-contiguous lot (See article V of this chapter)</del>	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	P	CZ	CZ	CZ	CZ	CZ	
<u>Personal service establishment</u>								CZ	P	P	P			P	
<del>Banks/financial institutions</del>									P		P				
<del>Barber shops</del>									P	P	P				
<del>Postal mailing services, commercial</del>									P		P			P	
<del>Photographic studio</del>								P	P	P	P				
<del>Printing/reprographics</del>									P		P			P	
<del>Radio, computer, television and appliance repairs and rental service</del>									P		P				
<del>Tailor shops</del>								P	P		P				

Table 3.2: Table of Uses Uses of Land	P = Permitted by Right; CZ = Conditional Zoning (Use Standard noted); PS = Permitted Use with a Use Standard													Use Standard	
	R-1	R-1B	R-2	R-3	C	MH	MF	MX	CBD	NB	HB	MB-1	T-1		I-1
<del>Spa health club</del>									P		P				
<del>Studios, artist, designers, gymnasts, musicians, sculptures</del>								CZ	P		P				
Pet shops and pet supply stores									P		P				
Post offices									P		P			P	
Religious institution <del>Churches/places of worship/parish houses</del>	CZ	CZ	CZ	CZ		CZ	CZ	CZ	P		CZ				
Rental of any item, the sale of which is permitted in the district									P		P	P			
Rental of golf carts, mopeds, e-bikes and scooters (See section 40-261)*								PS	PS	PS	PS	PS		PS	3.9.T
Repair of any item, the sale of which is permitted in the district									P		P	P			
<del>General Retail sales</del>								P	P	P	P	P		P	
<del>Furniture stores</del>											P				
Rooming house	Prohibited														
Schools, commercial for specialized training									P		P			P	
Schools, public and private	CZ	CZ	CZ	CZ		CZ	CZ	CZ	CZ		CZ			CZ	
<del>Schools, private, general instruction</del>	CZ	CZ	CZ	CZ		CZ	CZ	CZ	CZ		CZ			CZ	
Seafood production and/or processing and/or dockage, wholesale and retail												CZ		CZ	
Shooting range														CZ	3.9.T
Shopping centers/big box								CZ	CZ	CZ	CZ	CZ	CZ	CZ	
Swimming pools, public (See sections 40-261, 40-548)	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ		3.9.U
<del>Telephone exchange</del>									P		P			P	
Tennis courts, commercial (See section 40-261)									CZ		CZ				3.9.W
Tennis courts, private (See section 40-261)	CZ	CZ	CZ	CZ		CZ	CZ	CZ	CZ		CZ	CZ	CZ	CZ	3.9.W
<del>Trailer, business</del>									CZ						
<del>Trailer park, travel (See section 40-548)</del>															
Utilities, private (See section 40-261)	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	P	P	P	P	P	P	

Table 3.2: Table of Uses	P = Permitted by Right; CZ = Conditional Zoning (Use Standard noted); PS = Permitted Use with a Use Standard													Use Standard	
	R-1	R-1B	R-2	R-3	C	MH	MF	MX	CBD	NB	HB	MB-1	T-1		I-1
Water oriented businesses									CZ			CZ			
Wholesale sales									P		P	P		P	
Wireless telecommunications facilities (see <del>article X of this chapter</del> Division 4, Wireless Telecommunication)															
<b>Eating and/or drinking establishments (Section 3.10)</b>															
Bars and taverns ( <del>See section 40-261</del> )									CZ		CZ	CZ	CZ	CZ	<u>3.10</u>
Beer shop (On-premise)									<u>PS</u>	<u>PS</u>	<u>PS</u>				<u>3.10</u>
Breweries ( <del>See section 40-261</del> )									<u>PS</u>	<u>PS</u>	<u>PS</u>			<u>PS</u>	<u>3.10</u>
Distillery									<u>PS</u>		<u>PS</u>			<u>PS</u>	<u>3.10</u>
Event venue/bar									CZ		CZ				3.10
Ice cream stores								P	P	P	P				
Standard restaurants and eateries								P	P	P	P	P	P	P	
Wine shop (Retail/Off-on premise)									<u>PS</u>	<u>PS</u>	<u>PS</u>	PS			<u>3.10</u>
<b>Manufacturing, Assembly, Storage, and Processing (Section 3.11)</b>															
Beverages, bottling works														P	
Flammable liquid storage, <del>&gt;1,000 gallons aboveground only (See section 40-261)</del>														CZ	<u>3.11.A</u>
Ice manufacture, sales and storage											P			P	
<u>Manufacturing, artisan</u>									<u>P</u>	<u>P</u>	<u>P</u>			<u>P</u>	
<del>General assembly and repair</del>											CZ			<u>P</u>	
<del>Manufacturing and assembly, processing, and packaging, except those uses identified in section 40-261</del>														<u>P</u>	
<del>Manufacturing incidental to retail business, sold on premises only, maximum of five manufacturing operators</del>									<u>P</u>		<u>P</u>			<u>P</u>	
<u>Manufacturing, limited</u>											CZ			<u>P</u>	

Table 3.2: Table of Uses Uses of Land	P = Permitted by Right; CZ = Conditional Zoning (Use Standard noted); PS = Permitted Use with a Use Standard											Use Standard			
	R-1	R-1B	R-2	R-3	C	MH	MF	MX	CBD	NB	HB		MB-1	T-1	I-1
Sign painting and sign fabrication											P			P	
Recreational vehicle/boat storage, yard <del>(See section 40-261)</del>											PS	PS		PS	<u>3.11.B</u>
Towing service impound yard, <u>salvage operation</u>											CZ			PS	<u>3.11.B</u>
Warehouses, <u>mini storage, Self-service storage facility, <del>Large and mini</del></u>														P	
Woodworking shops														P	

### 3.5 USE STANDARDS FOR PARTICULAR USES

This article provides regulations, standards, and conditions for certain uses, which are unusual in their nature or complexity or are potentially incompatible with their surroundings unless special protective restrictions are applied. Each use listed in this article shall comply with the regulations of the district in which it is located, with the requirements specified.

### 3.6 ACCESSORY USE STANDARDS

#### A. ACCESSORY USE OR STRUCTURE, GENERAL STANDARDS

1. These general standards apply to allow accessory uses and structures.

~~1-2.~~ In no case shall there be more than one (1) customary accessory building on the lot except for the exemptions ~~listed in section 40-75(d)~~ provided herein.

- a) The following shall be exempted from the one (1) customary accessory building:
  - i) Fence.
  - ii) Flagpole.
  - iii) Dog house not to exceed 16 square feet.
  - iv) Pump house not to exceed 16 square feet.
  - v) Playhouse not to exceed 36 square feet nor eight (8) feet in height.
  - vi) Private swimming pools and their associated decks, fencing, and equipment.
  - vii) ~~As may be allowed for under article XI of this chapter (conditional zoning approval process)~~
  - viii) Structural beach crossover.
  - ~~vii~~ix) Marinas.
  - ~~viii~~x) Electric (EV) charging station.

- b) The exemptions shall not have sewer, electrical, and plumbing, except for marinas, beach crossovers, pools, and pump houses, where applicable.
- c) These exemptions are not considered as part of the lot coverage for bulk purposes. Impervious coverage limitations are still applicable.

B. ACCESSORY USE OR STRUCTURE, NONRESIDENTIAL

- 1. Accessory structures associated with nonresidential uses shall:
  - a) Be included when calculating the total allowable lot coverage.
  - b) Not be permitted within any required front or side yard, or within five (5) feet of the rear lot line.
  - c) Not exceed the size of the primary structure.
  - d) Not be used as a dwelling unit.
  - ~~e) Require a building permit and meet state building code requirements.~~

C. ACCESSORY USE OR STRUCTURE, RESIDENTIAL

- 1. Accessory structures associated with residential uses shall:
  - a) Be included when calculating the total allowable lot coverage, and shall not constitute a proportionate size greater than 25% of the principal building's lot coverage, regardless of the lot size.
  - b) Be limited to 15 feet in height.
  - c) Not be permitted within any required front or side yard, or within five (5) feet of the rear lot line.
  - d) Not be occupied, leased, rented, or otherwise used for profit, income, or for gain.
  - e) Not be used as a dwelling unit.
  - f) Contain no more than three (3) internal plumbing fixtures (water heater is exempt).
  - ~~g) Maintain a residential appearance and shall not produce impacts detrimental to adjacent properties as a result of traffic, noise, light, refuse, parking, or other activities.~~
  - ~~h)g) Meet State Building Code requirements if any dimension is greater than 12 feet.~~

D. HOME OCCUPATIONS, CUSTOMARY

- 1. Home occupations shall adhere to the following regulations:
  - a) The use of the dwelling unit for a home occupation shall be clearly incidental and subordinate to its use for residential purpose by its occupants, and not more than 25% of the floor area of a single level of the dwelling unit shall be used in the conduct of the home occupation.
  - b) No home occupation shall be conducted in any accessory building.
  - c) There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation.

- d) No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood. A resident of the premises may park only one (1) commercial vehicle with manufacturer's rating of not more than 2,000 pounds or a payload capacity of 6,000 pounds off-street for use in the home occupation. Vehicles used primarily as passenger vehicles, including pickup trucks and step-type vans only, shall be permitted in connection with the conduct of the customary home occupation.
- e) Any need for parking generated by the conduct of such home occupation shall be restricted to the property boundaries. ~~Parking for clients and occupants shall be provided in accordance with article V of this chapter.~~
- f) Only one (1) person other than members of the family residing on the premises shall be engaged in such occupation.
- g) No equipment or process shall be used in such home occupation, which creates noise, vibration, glare, fumes, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuations in line voltages off the premises.
- h) No display of products shall be visible from off-site and the selling of merchandise or the manufacture of merchandise for sale, except baking, sewing, and/or handicrafts normally made in the home is prohibited.
- i) Instruction in music, dancing, or tutoring of academic subjects shall be limited to four (4) students at a time.
- j) Home occupations are restricted to residential dwellings and limited to office, off-site services, on-site sales/manufacturing ~~as described in subsection (g)(8) of this section.~~ Home occupations shall not include day nurseries, day care centers, adult day care centers, day care home, preschool, or drop-in child care.

#### E. OUTDOOR DISPLAY

- 1. The purpose of this section is to promote business through the creative use of outdoor space by providing businesses the opportunity to display products in a manner that enhances commerce while maintaining the town's property values. Outdoor displays allow businesses an opportunity to attract the public by offering a sample of the products which are available inside an enclosed building.
- 2. Businesses may display their merchandise outdoors on private property under the following criteria:
  - a) All outdoor displays shall be secured during any hours that the business is not open.
  - b) No additional signage shall be allowed for outdoor displays beyond the allowances ~~under article IX of chapter 40, sign regulations~~ permitted in accordance with the sign requirements of this ordinance.
  - c) Outdoor display areas shall:



- i) Be located no more than 4.5 feet from the principal building; and/or
  - ii) Cover no more than 5% of the lot.
- d) Outdoor displays shall be located on a durable surface and shall not be located in required landscaping areas.
- e) Where an outdoor display is located on a private sidewalk and/or walkway, an unobstructed portion of the sidewalk and/or walkway, measuring not less than three (3) feet in width shall be continuously maintained for pedestrian access.
- f) No point of access or egress from any building shall be blocked at any time by an outdoor display.
- g) All outdoor display areas must be maintained and displayed in a neat, orderly, and safe manner.
- h) No outdoor display areas shall be located in the sight distance triangle.
- i) Vending and ice machines outside of the building shall be located against and parallel to the building.
- j) No outdoor displays shall be allowed in areas set aside, required, or designated for driving aisles, driveways, maneuvering areas, emergency accessways, required off-street parking, or unloading/loading.
- k) Tents shall meet the following when used in conjunction with the outdoor display area:
  - i) Limited to a maximum of 100 square feet.
  - ii) Removed when the business is not open.
  - iii) Secured with tie downs on each pole while tent is in use.
- l) Rooftop displays are prohibited.
- m) Sale, display, or rentals of vehicles associated with a legally permitted use are exempt from these requirements.

#### F. OUTDOOR SEASONAL SALES

1. Outdoor seasonal sale permits shall ~~be permitted in all zoning districts subject to the following regulations~~ be issued by the UDO Administrator in accordance with the following:
  - a) Operations shall be limited to 90 days per calendar year.
  - b) The activity shall be located at:
    - i) ~~Institutional uses such as churches~~ Churches, places of worship, parish houses, or schools; or
    - ii) An existing legally permitted nonresidential use. ~~business in Carolina Beach.~~
  - c) The use shall not involve the construction of permanent structures.
  - d) One (1) temporary sign may be allowed in accordance with the temporary sign standards in ~~chapter 40, zoning~~ Article 4 Zoning.
  - e) One (1) temporary structure (i.e., tent) may be allowed with the approval of the fire marshal.

- f) No part of the operation shall be located in any required setback, site triangle, or required buffer.
- g) No structure shall be located within required parking spaces or drive aisles.

G. SWIMMING POOL, PRIVATE (INCLUDING HOT TUBS)

1. Private swimming pools. All outdoor private swimming pools shall be enclosed by a fence or other permanent barrier which discourages climbing and is designed so as to minimize the possibility of unauthorized or unwary persons entering the pool area. Entrances through the barrier shall be provided with self-closing gates having simple positive self-latching closure mechanisms with hardware provided for padlocking. The barrier shall not be less than 48 inches in height above the adjacent ground surface outside the barrier. Fencing will be required around all sides of the swimming pool. ~~All private swimming pool enclosures shall be completely installed within 30 days of the pool completion. All private swimming pools shall have a walk or deck around the entire perimeter of the pool of a minimum of three (3) feet of unobstructed clear distance.~~
2. Swimming pools setbacks. For the purposes of this ordinance, setbacks provided herein shall also be applicable to private hot tubs.
  - a) Setbacks for swimming pools less than 30 inches above the ground level of the graded lot:
    - i) Front ~~yard~~setback: As required for the zoning district
    - ii) Side ~~yard~~setback: Five (5) feet
    - iii) Corner ~~yard~~setback: Five (5) feet
    - iv) Rear ~~yard~~setback: Five (5) feet
  - b) Setbacks for swimming pools more than 30 inches above the ground level of the graded lot:
    - i) Front ~~yard~~setback: As required for the zoning district
    - ii) Side ~~yard~~setback: Five (5) feet
    - iii) Corner ~~yard~~setback: 7.5 feet
    - iv) Rear ~~yard~~setback: Five (5) feet

H. TEMPORARY HEALTH CARE STRUCTURES

1. The purpose of allowing temporary health care structures is to accommodate the need for living quarters for ill family members on the same lot as a family caregiver. The following regulations shall apply:
  - a) Allowed as an accessory use to a single-family unit only.
  - b) Only one (1) temporary family health care structure shall be allowed on a lot in addition to the one customary accessory structure.
  - c) Shall comply with all setbacks and lot coverage requirements that apply to the district it is located.
  - d) Maximum size is 300 square feet of indoor gross floor area.
  - e) Required to connect to water, sewer, and electric utilities serving the property.

- f) Must be used by an individual who is the named legal guardian of the mentally or physically impaired person and is used to provide care for the mentally or physically impaired person.
- g) Limited to one (1) occupant who shall be the mentally or physically impaired person with a doctor's certification.
- h) An annual permit is required with the renewal of a doctor's certification.
- i) Any temporary family health care structure shall be removed within 60 days in which the mentally or physically impaired person is no longer receiving or is no longer in need of the assistance.
- j) Complies with applicable provisions of the State Building Code and NCGS 143-139.1.
- k) Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.
- l) ~~The Town may revoke the permit granted pursuant to subsection c of this section if the permit holder violates any provision of this section or G.S. 160A-202. The city may seek injunctive relief or other appropriate actions or proceedings to ensure compliance with this section or G.S. 160A-202.~~

#### I. TEMPORARY STORAGE CONTAINERS

- 1. Temporary storage containers, ~~as defined in section 40-548,~~ shall conform to the following requirements and other requirements as applicable:
  - a) A storage container may not exceed 160 square feet in size, nor be more than eight (8) feet in height.
  - b) Container must not be located within the right-of-way.
  - c) A temporary storage container must be removed within 30 days of its initial placing on a lot and shall not be replaced for six (6) months from the date of removal. Temporary storage containers for residential use may be placed on property twice during a calendar year.
  - d) Dumpsters placed for the purpose of collecting waste from construction shall be exempt from these rules.
  - e) Temporary storage containers in commercial areas shall not encroach into any required parking or landscaping area.
  - f) Temporary storage containers shall not be used as living space.
- 2. Container shall be removed within 48 hours of an event of a hurricane or immediately upon flood warning notification.

#### J. TRAILER, TEMPORARY CONSTRUCTION

Trailers for office, security, or storage purposes are permitted on construction sites provided they are located at least five (5) feet off the property lines and 10 feet off public rights-of-way. Temporary construction trailers are subject to a permit authorized by the Building Inspector.

### 3.7 RESIDENTIAL USE STANDARDS

#### A. DWELLING, MULTI-FAMILY (UNITS > 4)

1. The purpose of this section is to establish criteria for the development of multi-family housing with due consideration of harmony with the surrounding community and existing zoning district.
2. All proposed multi-family developments of five (5) or more units shall comply with the dimensional requirements, density specifications, and lot coverage requirements for the district in which the use is to be located.
3. No principal structure shall be located closer than 15 feet to another principal structure on site.
- ~~1.4.~~ A minimum of 25% of the gross acreage of a multi-family development of five (5) or more units shall be permanent open space.

#### B. FAMILY CARE HOME

Where permitted, the following shall apply:

1. Up to six (6) special needs persons may reside in a group home setting in accordance with the family care home provisions of NCGS 160D-907.
2. Family care homes shall be separated by a half-mile radius from other family care homes within the zoning jurisdiction of the Town of Carolina Beach.
3. Any such family care home shall comply with the applicable dimensional requirements for a single-family dwelling.

#### C. MANUFACTURED HOMES

- ~~1. — The use of manufactured homes, Class AA and/or A, shall be permitted by right anywhere in the MH zoning district or other permitted areas of the Town.~~
- ~~2.1. The use of manufactured homes, Class B, shall be permitted by right within any approved manufactured home park (i.e., land lease community) and in the MH zoning district.~~
- ~~3.2. All new or replacement manufactured homes must be designed to withstand winds of 110 miles per hour in accordance with Wind Zone H~~shall comply with the applicable NC Wind Zone requirement.
- ~~4.3. Manufactured housing, appearance criteria. The following appearance criteria shall be used to determine the class within which a manufactured home falls as defined under subsection (q)(1) of this section and, in turn, shall govern the placement of manufactured homes within the MH zoning district required for all manufactured housing units, as specified under subsection (q)(2) of this section:~~
  - a) The manufactured home shall be set up in accordance with the standards established by the state department of insurance.
  - b) A continuous, permanent masonry foundation or masonry curtain wall constructed in accordance with the standards of the state uniform residential building code for one- and two-family dwellings, unperced

- except for required ventilation and access, shall be installed under the perimeter of the manufactured home.
- c) The towing apparatus, wheels, axles, and transporting lights shall be removed and shall not be included in length and width measurements.
  - d) Stairs, porches, entrance platforms, ramps, and other means of entrance and exit to and from the manufactured home shall be installed or constructed in compliance with the standards of the State Building Code, attached firmly to the primary structure and anchored securely to the ground. Wood stairs shall be only used in conjunction with a porch or entrance platform with a minimum of 24 square feet.
  - e) The manufactured home shall have the HUD sticker, ~~affixed to all of manufactured housing units constructed since July 1, 1976.~~
  - ~~f) The exterior siding shall consist of one or more of the following:
    - i) Vinyl or aluminum lap siding reflectivity not to exceed that of a flat white paint
    - ii) Cedar or other wood siding
    - iii) Wood grain, weather resistant press board siding
    - iv) Stucco siding
    - v) Brick or stone, which shall be compatible in composition, appearance, and durability to the exterior siding commonly used in standard residential construction.~~
  - ~~g) The pitch of the roof shall have a minimum vertical rise of 2½ feet for each 12 feet of horizontal run.~~
  - ~~h) The roof shall be finished with a Class C or better roofing material that is commonly used in standard residential construction.~~
  - ~~i) All roof structures shall provide an eave projection of no less than six (6) inches, which may include a gutter.~~
  - j) The manufactured home shall have a minimum width of 16 feet.
  - k)g) The manufactured home shall have a length not exceeding four (4) times its width, with the length measured along the longest axis and width measured perpendicular to the longest axis at the narrowest part.

### 3.8 PLANNED UNIT DEVELOPMENT STANDARDS

#### A. PURPOSE

1. Residential, business, and industrial planned unit developments are ~~conditional zoning uses~~ intended to encourage innovation, flexibility of design, and better land use by allowing deviations from the standard requirements of the town's specific zoning districts. The purpose of providing for these ~~conditional zoning uses~~ is to promote:
  - a) Improved compatibility of new development with existing residential neighborhoods, commercial enterprises, and industrial uses.
  - b) Flexibility of design to take greatest advantage of a site's natural and developmental qualities.

- c) Accumulation of large areas of usable permanent open space to preserve important natural resources.
- d) Efficient use of land that may result in lower development and public service cost.
- 2. All proposed planned unit developments units shall comply with the dimensional requirements, density specifications, and lot coverage requirements for the district in which the use is to be located. With the exception of townhouse lots, any lots created within a planned unit development shall be subject to the minimum lot size for the district in which the site is located.
- 3. No principal structure shall be located closer than 15 feet to another principal structure on site.
- ~~3.4.~~ Where a planned unit development proposes structures to be located on the same lot and behind another existing or proposed structure, a minimum 12 foot permanent access easement shall be established and perpetually maintained to grant access to the adjoining street frontage and driveway connection.
- ~~4.5.~~ Planned unit developments shall not be permissible where a property is subject to an existing nonconforming situation. Any existing nonconforming situation shall be ameliorated prior to the issuance of a zoning permit for a planned unit development.

#### B. BUSINESS PLANNED UNIT DEVELOPMENT REGULATIONS

- 1. The following regulations shall apply to business planned unit developments:
  - ~~Establishment of lots within development. Any non-cluster lots created within planned unit developments, with the exception of townhouse development, whereby the lot size is determined by the structure foundation in that the lot shall not exceed the perimeter of the structure foundation and located immediately beneath such, shall be subject to the minimum area and other requirements of the zoning district in which located and processed as a subdivision in conjunction with the planned unit development.~~
  - a) ~~Minimum setback requirements:~~
    - i) ~~Minimum setback from public or private street rights-of-way. Setbacks from public or private rights-of-way must meet the district regulations as written in section 40-74. A setback of 10 feet, unless otherwise written in this chapter, shall be the minimum allowed for a planned unit development. A written request must be made and submitted along with application for a conditional zoning for a departure from the standard district regulations (section 40-74) and must be recommended for approval or denial by the Planning and Zoning Commission and formally approved or denied by Town Council.~~
    - ii) ~~Minimum set back from property or lot line. Setbacks from property lines must meet the district regulations as written in section 40-74. Ten feet, unless otherwise written in this chapter,~~

~~shall be the minimum allowed for a planned unit development. A written request must be made and submitted along with application for a conditional zoning for a departure from the standard district regulations (section 40-74) and must be recommended for approval or denial by the town's fire marshal and meet extra provisions as provided by the fire marshal and must be recommended for approval or denial by the Planning and Zoning Commission and formally approved or denied by Town Council.~~

~~iii) Minimum separation between on-site structures. 15 feet.~~

~~iv) Note: Building codes and other applicable state and/or federal regulations may mandate setbacks greater than those specified or recommended.~~

~~b) Maximum site coverage. As established in section 40-74.~~

e)a) Permanent open space. At least 10% of the gross acreage of the planned business development shall be designated as a permanent open space and landscaped according to an approved landscaped plan. Landscaping required as a buffer may be counted toward the required 10%.

#### C. INDUSTRIAL PLANNED UNIT DEVELOPMENT REGULATIONS

1. The following regulations shall apply to industrial planned unit developments:

a) Acreage requirements. The minimum size for an industrial planned unit development is three (3) acres. This acreage requirement may be waived by the Town Council after a favorable recommendation for such a waiver by the Planning and Zoning Commission.

~~b) Minimum setback requirements.~~

~~i) Minimum set back from public or private street right-of-way. Setbacks from public or private rights of way must meet the district regulations as written in section 40-74. A setback of 20 feet, unless otherwise written in the Town's zoning ordinance shall be the minimum allowed for an industrial planned unit development.~~

~~ii) Minimum setback from property or lot lines. Setbacks from property lines must meet the district regulations as written in section 40-74. Fifteen feet, unless otherwise written in this chapter, shall be the minimum allowed for a planned unit development. In addition, other applicable setbacks may be recommended by the Planning and Zoning Commission and approved by Town Council.~~

~~iii)j) Note: Building codes and other state and federal regulations may mandate setbacks greater than those specified or recommended.~~

e)b) Permanent open space. At least 10% of the gross acreage of an industrial planned unit development shall be designated as permanent open space

and landscaped according to an approved a landscape plan. Landscaping required as a buffer shall not be counted towards the required 10%.

~~d)c)~~ Maximum ~~site~~ lot coverage. The maximum coverage of the site by structures shall be 50% of the ~~buildable site coverage~~ net buildable area.

D. RESIDENTIAL PLANNED UNIT DEVELOPMENT REGULATIONS (UNITS <= 4)

1. The following regulations shall apply to residential planned unit developments of four (4) or fewer units.
  - a) Residential planned unit developments in this category may be comprised of up to four (4) individual structures not to exceed four (4) total dwelling units.
  - b) No subdivision of lots below the minimum lot area for the district within which the use is located shall be permitted except through the townhouse approval process.
  - c) For townhouse projects, no unit shall be connected on more than two (2) sides by common walls. All yard dimensional requirements shall apply to the property lines of the entire development. The minimum lot size and setback requirements of the base zoning district shall only apply to the parent parcel. Zero lot lines may be utilized for individual units.
  - ~~a)d)~~ No residential PUD structure subject to this section shall exceed 40 feet in height.

E. RESIDENTIAL PLANNED UNIT DEVELOPMENT REGULATIONS (UNITS > 4)

1. The following regulations shall apply to residential planned unit developments.
  - ~~a)~~ Minimum setback requirements. The minimum setback requirements for this conditional zoning use shall be as follows:
    - ~~i)~~ Minimum setback from public or private street rights-of-way. Setbacks from public or private rights-of-way must meet the district regulations as written in section 40-74. A setback of 10 feet, unless otherwise written in this chapter, shall be the minimum allowed for a planned unit development. A written request must be made and submitted along with application for a conditional zoning for a departure from the standard district regulations (section 40-74) and must be recommended for approval or denial by the Planning and Zoning Commission and formally approved or denied by Town Council.
    - ~~ii)~~ Minimum setback from property lines. Setbacks from property lines must meet the district regulations as written in section 40-74. Five (5) feet, unless otherwise written in this chapter, shall be the minimum allowed for a planned unit development. A written request must be made and submitted along with application for a conditional zoning for a departure from the standard district regulations (section 40-74) and must be recommended for approval or denial by the town's fire marshal and meet extra provisions as provided by the fire marshal and must be



- ~~recommended for approval or denial by the Planning and Zoning Commission and formally approved or denied by Town Council.~~
- ~~iii) Minimum separation between on-site structures. Fifteen feet, unless otherwise granted in subsection (1)b. of this section. In addition, other applicable setbacks may be recommended by the Planning and Zoning Commission and approved by Town Council.~~
- ~~iv) Note: Building codes and other state and federal regulations may mandate setbacks greater than those specified or recommended.~~

~~b)a) Townhouse. A single family dwelling unit constructed in a series or group of attached units with property lines separating such units shall be reviewed through the planned unit development process. A separate subdivision plat must be submitted in conjunction with the planned unit development application. All yard dimensional requirements shall apply to the property lines of the entire development. The minimum lot size and setback requirements of the base zoning district shall only apply to the parent parcel. Zero lot lines may be utilized for individual units.~~

2. ~~Density. For those zoning districts in which residential planned unit development is a conditional zoning use, the maximum allowable density for multi-family and single-family (cluster type) development shall meet the density requirements as established in section 40-74. For lots impacted by wetlands, exceptions may be allowed up to one-fourth times the maximum allowable density for the district in which the development is located. For the zoning districts which do not specify densities, the determination criterion for density purposes shall be 40 percent of land coverage and may not exceed height regulations established in section 40-73(6).~~

3. ~~Permanent open space. A minimum of 25% of the gross acreage of a residential planned unit development shall be permanent open space, as defined below. For the purposes of this section, permanent open space shall be defined as any land to be utilized as landscaped green space, parks, playgrounds, parkway medians, active recreational uses, or for other similar functions; areas required as setbacks or for separation between structures may be utilized in calculating a projects permanent open space requirements. Manmade lakes or other watercourses may be used to fulfill the requirements of this section. Designated wetlands or marsh may not be calculated as part of the permanent open space requirement nor utilized in calculating density.~~

~~Establishment of lots within planned unit developments. Any non-cluster lots created within planned unit developments, with the exception of townhouse development, whereby the lot size is determined by the structure foundation in that the lot shall not exceed the perimeter of the structure foundation and located immediately beneath such, shall be subject to the minimum area and other requirements of the zoning district in which located and processed as a subdivision in conjunction with the planned unit development.~~

- ~~4. Maximum site coverage. The maximum coverage of the site by structures shall be 40% of the gross site acreage after excluding wetlands, marsh or other non-buildable land.~~
4. Proposals should limit the height of structures to 40 feet. In the instance that an increase in height above 40 feet is proposed, the following factors and information shall be considered:
- a) The applicant shall provide the height of all existing structures abutting the subject site and within a 100 foot linear distance from the property line of the subject site. The height of all inventoried structures shall be provided in a table format as part of the application.
  - b) Consideration should be made to reduce the building footprint in favor of the proposed height increase above 40 feet. The applicant should consider increasing the required setbacks by two (2) feet for every one (1) foot of additional height above 40 feet.
5. Commercial uses. Except in residential ~~zones~~ zoning districts, residential planned unit developments may contain commercial development (planned business development) not exceeding 10% of the total development project area. Such commercial development shall be located and designed so as to be functionally and architecturally compatible with a residential neighborhood. Requirements shall include modest, subdued signage and outdoor lighting in keeping with a residential area, minimal, well landscaped, off-street parking, and easy access by bicycle or on foot via connecting sidewalks. Traffic from outside the planned unit development wishing to gain access to the commercial businesses associated with the development shall not be permitted to cut through a residential area to reach the business location.

F. REVIEW CRITERIA: PUD CONDITIONAL ZONING USES ONLY

1. The following review criteria are established as general guidelines for the Planning and Zoning Commission and the Town Council in their deliberations and decision making regarding planned unit developments:
- a) Degree of departure of the proposed planned unit development from surrounding areas in terms of character or density. Type of use shall be limited to those which are permitted or conditionally permitted in the underlying zoning district.
  - b) Compatibility within the planned unit development and relationship with the surrounding neighborhoods.
  - c) Prevention of the erosion of property values and degrading of surrounding area.
  - d) Provision for future public recreational facilities, transportation, water supply, sewage disposal, surface drainage, flood control, and for soil conservation as shown in the development plans.
  - e) The nature, intent, and compatibility of permanent open space, including the proposed method for the maintenance and conservation of said permanent open space.

- f) The feasibility and compatibility of the specified stages contained in the preliminary development plan to exist as an independent development.
- g) The availability and adequacy of water and sewer service to support the proposed planned unit development.
- h) The availability and adequacy of primary streets and thoroughfares to support traffic to be generated within the proposed planned unit development, including the promotion of bicycling, walking, and other alternatives to the automobile. The adequacy of internal turnaround movements and access to any structures located to the rear of any proposed developments. Pavement widths for transportation access shall be no less than 20 feet.
- i) The benefits within the proposed development and to the general public to justify the requested departure from the standard zoning district requirements.
- j) The conformity and compatibility of the planned unit development with any adopted development plan of the town.
- k) The conformity and compatibility of the proposed open space, primary and secondary uses within the proposed planned unit development.
- l) Provision for emergency vehicle access and service to the proposed development.
- m) Preservation of important natural amenities on the site of the proposed development.

#### G. PERFORMANCE BOND

To ensure the full completion of any required public infrastructure of planned unit development projects, a performance bond shall be posted for each PUD by the contractor prior to the issuance of a ~~conditional zoning~~ certificate of occupancy. The amount of the performance bond and timeframe for completion of the infrastructure shall be determined after the CZ is reviewed and issued by the Planning and Zoning Commission and Town Council, respectively.

### 3.9 NONRESIDENTIAL USE STANDARDS

#### A. ADULT ENTERTAINMENT ESTABLISHMENT

- 1. Adult entertainment establishments designated as Class II, as defined in Code of Ordinances Chapter ~~section 14-63(b)~~, are prohibited within the jurisdictional limits of the town except by issuance of a conditional zoning ~~approved by the Planning and Zoning Commission for an adult entertainment establishment approval~~. Adult entertainment establishments may be located within the I-1 zoning district by issuance of a conditional zoning, subject to requirements of the zoning district and provided that:
  - a) Each adult entertainment establishment shall be located a minimum of 1,500 feet from any existing adult entertainment establishments. Such measurement shall be the minimum distance measured in a straight line from the closest point of the building of the proposed business to the nearest property line ~~horizontal distance between the nearest property~~

~~lines of the proposed and~~ an existing adult entertainment establishments.

- b) 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 minimum distance measured in a straight line from the closest point of the building of the proposed business to the nearest property line ~~horizontal distance between the nearest property line of the proposed adult entertainment establishment and the nearest~~ of a residential use, ~~residential or property line of~~ any place of worship, school, public or private park, or recreational facility.

B. ANIMAL CARE FACILITIES

- 1. Animal care facilities with outdoor areas shall meet the following standards:
  - a) Shall maintain compliance with all federal and state regulations.
  - b) Located 200 feet from a residential use in a residential district as measured in a straight line distance from the closing point of the building of the proposed use to the nearest property line of the residential use.
  - c) Shall not be located in the front ~~yard setback~~ and must meet a minimum setback of five (5) feet from the side and rear property lines.
  - d) Shall provide a minimum six (6) foot barrier that has a minimum 80% opacity. Barriers larger than six (6) feet in height may be approved as a condition of the conditional zoning.

C. AUTOMOTIVE, MAJOR ~~AUTOMOBILE REPAIR GARAGES~~

- 1. All work shall be conducted entirely within an enclosed structure so as to protect surrounding properties and uses from objectionable characteristics of repair activity.
- 2. No outside storage of junk vehicles or parts shall be permitted.
- 3. In applicable districts, wrecked or inoperable automobiles actually in process of repair may be stored outside, provided that such vehicles shall be concealed from view by a fence, wall, or vegetative buffer at least six (6) feet high and offering 100% opacity.
- 4. Vehicle sales and rental lots shall be subject to the following:
  - a) No encroachments of displayed vehicles within 20 feet from the street right-of-way or within areas designated as vehicle sight distance at street or driveway intersections.
  - b) Provide egress and ingress to and from the property in a forward movement.
  - c) All display surface areas to be paved or stoned and proper drainage provided.
  - d) Provide buffering of vegetation or fencing, or combination thereof, along all side and rear property lines in conformance with this ordinance.
  - e) All lighting shall be directed to the interior of the property so as not to cause impact upon adjacent properties or to street rights-of-way.

- f) No establishment shall contain outdoor storage of junk vehicles, vehicles in disrepair, or other items associated thereto.
- g) ~~Signage shall be in conformance with the requirements as specified by this chapter.~~
- h) Areas utilized for wash areas shall provide for the proper drainage and retention of water runoff. No water shall leave the site. Any wash areas shall be comprised of a hardscape surface not to include gravel, turf, or vegetative ground cover.
- i) All structures shall be subject to the requirements of the zoning districts, building codes, and other applicable regulations of the town.

C. AUTOMOTIVE, MINOR

- 1. Car wash facilities shall be subject to the following requirements:
  - a) Car wash facilities shall only be permitted as an accessory to an automotive use in the CBD and NB zoning districts. No principal use car wash shall be permitted in those respective zoning districts.
  - b) Vacuuming, drying, and polishing facilities may not be located in any required setback or buffer area.
  - c) At least two (2) staging spaces and one (1) drying space per wash bay shall be provided.
  - d) Hours of operation may be from 8:00 AM to 9:00 PM only, when adjoining a residential zoning district.
  - e) All vehicular accessible areas on the lot shall be at least 100 feet from any interior lot line separating the lot from a residential zoning district.
  - ~~b)f~~ Security light must be shielded from adjacent residential zoned properties to prevent undo bright lights from shining onto/into dwellings.
- 2. Minor automotive establishments engaged in repair work shall be prohibited from the storage of vehicles on-site for more than 10 days, otherwise such use shall be deemed a major automotive use or outdoor storage yard.

E. BED AND BREAKFAST INNS

- 1. Only one (1) person other than the members of the family residing on the premises shall be engaged in such business.
- 2. Other than normal maintenance and improvements necessary to comply with the applicable regulations, no change to the exterior appearance of the building or premises shall occur which reflect visible evidence of the business.
- 3. The owner must reside within the structure on the premises.
- 4. Signage must comply with the applicable regulations with minimum illumination.
- 5. One (1) additional parking space will be required for each room available for rent.  
~~Allowed in R1 north of Scallop Lane by conditional zoning.~~

F. BOAT REPAIR FACILITY

1. Limitations shall be placed on outdoor repair areas to protect surrounding properties and uses from any objectionable characteristics resulting from repair activities.
  - a) The size of outdoor repair area shall not exceed 30% lot coverage.
  - b) Minimum setbacks for outdoor repair areas shall be 15 feet from all property lines.
  - c) Any outdoor repair areas shall be completely shielded from streets and adjacent properties by buildings and/or fencing that is at least six (6) feet high and offers 100% opacity.
  - d) No outside storage of junk boats, trailers, or parts shall be permitted.

G. BODY PIERCING AND/OR TATTOO FACILITY

1. A conditional zoning shall be required if alcohol is proposed for on-premises consumption.
2. All approval letters from New Hanover County Health Department and North Carolina Department of Health and Human Services and/or any subsequent government entity that regulates this activity shall be posted on-site.
3. Hours of operation shall be limited from 8:00 AM to 9:00 PM.
4. Separation requirements: Body piercing and/or tattoo facility shall be located a minimum distance measured in a straight line from the closest point of the building of the proposed business to the nearest property line of any of the following:
  - a) 200 feet of a residential district.
  - b) 200 feet of any religious institution or school.
  - c) 200 feet of any public parks, playgrounds, or libraries.
  - d) 400 feet of any other body piercing or tattoo facility establishments.

~~a) Residential districts 200 feet.~~  
~~b) Church or school 200 feet.~~  
~~c) Public parks, playgrounds, or libraries 200 feet.~~  
~~d) Other body piercing facility 400 feet.~~

H. CEMETERIES, PUBLIC AND PRIVATE

In the development of new cemeteries, particular attention shall be given to the prevention of groundwater contamination and other regulations of state permit requirements.

I. COMMERCIAL OUTDOOR RECREATION

When subject to a conditional zoning approval, commercial outdoor recreation, such as a miniature golf, golf driving ranges, par 3 golf courses, standard golf courses, miniature racers, go-carts, and similar enterprises, shall consider the nearness to residential districts/structures and hours of operation uses shall consider the following-:

1. Presence of flashing lighting whether intermittent, moving, or animated.
2. The emission of smoke or steam.
3. Characters or animals that may be animated (i.e. inanimate life size replicas of birds and animals indigenous to the area are permitted).

- 4. Sound levels of any proposed sound system and proximity to residential districts/structures.
- ~~1-5.~~ Proposed hours of operation and proximity to residential districts/structures.
- ~~2-6.~~ Occupancy levels and availability of parking.

J. DAY NURSERIES, DAY CARE CENTERS, ADULT DAY CARE CENTERS, DAY CARE HOME, OR PRESCHOOL ~~AND DROP-IN CHILD CARE~~

- 1. Institutions for the care or instruction of preschool age children, such as day nurseries, day care centers, or kindergartens, or for the care and/or recreation of elderly and/or handicapped adults, shall meet the following standards:
  - a) A kindergarten or nursery school, which is a program operated for only a part of the day and focused on educational purposes, must meet the standards provided by the state department of public instruction or its successor agency.
  - b) Day nurseries, day care centers, or day care homes must meet the standards provided by the division of social services of the state department of human resources or its successor agency.
  - c) For institutions which care for 10 children or less, the minimum lot area and lot width shall be the same as for a single-family dwelling in the district in which the institution is located. Institutions which care for more than 10 children shall provide an additional 1,000 square feet of lot area for each 10 children.

K. DROP-IN CHILD CARE PROVIDERS

- 1. Register and post a notice stating that the facility is not regulated by the state per G.S. 110-86.
- 2. Drop-ins are recommended to follow state day care student/teacher ratios.
- 3. Occupancy of drop-in child care facilities shall adhere to the State Building Code.
- 4. Exterior play areas shall be fenced to a minimum height of four (4) feet~~the same standards of day care centers.~~
- 5. ~~Background checks of all employees and providers shall be furnished to the Town prior to operating a drop-in facility. The police department may prohibit the employer or employees from providing child care if it is determined that the provider is unfit to have responsibility for the safety and well-being of children based on their criminal history.~~

L. DRY STACK STORAGE FACILITY

- 1. Intent: Carolina Beach is a boater friendly community. Dry stack storage facilities offer infrastructure to support a boating community. Despite this, some dry stack storage facilities may have adverse secondary impacts. To address possible adverse impacts and in order to ensure the health, safety, and well-being of the citizens and visitors of the town, all persons requesting dry stack storage facilities shall comply with the following regulations:
  - a) Boats located in a dry stack storage facility shall not be used for living purposes, sleeping, housekeeping, or business purposes.

- b) Any outdoor storage of boats shall meet ~~article IX of this~~ the requirements for the use type storage yards, outdoor provisions as provided in this ordinance.
- c) Junk boats or parts associated with the dry stack storage facility shall be located in a building.

M. GOVERNMENT/PUBLIC FACILITIES AND UTILITIES

- 1. In residential districts, all buildings shall ~~be in character with the surrounding residences or~~ provide buffering with landscaping and/or fencing suitable to screen the activity from surrounding residential properties.
- 2. Minor structures such as hydrants, telephone or light poles, pole transmitters or transformers, or similar equipment shall not be subject to these regulations.

N. MIXED USE ~~NONRESIDENTIAL COMMERCIAL~~-RESIDENTIAL

- 1. The purpose of the mixed ~~commercial~~ use ~~nonresidential~~-residential use is to accommodate commercial and/or residential uses within a building and/or development.
  - a) The first habitable floor shall have 50% of the building footprint ~~being~~ dedicated to a ~~commercial nonresidential~~ use. Such nonresidential use shall be located along the primary street frontage. No residential uses shall be visible along any street lot line on the first habitable floor.
  - b) In a VE flood zone the ~~commercial nonresidential~~ use may be reduced to 25% of the building footprint.
  - c) For each lot that is 10 acres or greater, subsections ~~(b)~~ and (b) above shall not apply, and cumulative ~~commercial nonresidential~~ uses shall occupy a minimum of 3,000 square feet per acre. Stand-alone residential buildings shall not be located any closer than three (3) times the setback distance to a major thoroughfare (Lake Park and Dow).
  - d) There shall be pedestrian connectivity between all ~~commercial nonresidential~~ uses.
  - e) Mixed use ~~commercial nonresidential~~-residential developments located in the CBD shall ~~have a building's front~~ have the primary building façade and at least one (1) ingress/egress point located adjacent to a public right-of-way/street lot line, or town property.
  - f) A conditional zoning shall be required if the mixed-use ~~commercial nonresidential~~-residential development meets any of the following:
    - i) Mixed use buildings that are cumulatively more than 25,000 square feet of gross floor area.
    - ii) Building height that exceeds 50 feet.

O. PERMANENT COMMERCIAL PARKING FACILITY

- 1. Parking lot purpose. The purpose of allowing freestanding parking lots is to augment Central Business District (CBD) businesses that have limited or no parking due to the layout of the CBD and boardwalk area, to relieve traffic



congestion in the streets, to minimize any detrimental effects of off-street parking areas on adjacent properties, and to increase public access to beach and sound front areas.

2. Goals. The regulations in this section are set forth to accomplish the following:
  - a) Protect the adjacent properties from any negative impacts associated with developed/impervious areas.
  - b) Promote development of long-term viable uses in the town's Central Business District.
  - c) Stay consistent with the landscaping and development goals of this ordinance.
  - d) Increase the public health and safety of the residents and visitors.
  - e) Ensure the property's intended use is clearly delineated on-site.
3. Parking lots are permitted to accommodate two (2) axle vehicle parking. Parking lot design shall meet all minimum requirements of ~~article V of this chapter~~, off-street parking and loading requirements of this ordinance, and building code requirements including ADA requirements for handicap spaces.
4. ~~Permanent commercial p~~Parking lot requirements:
  - a) Landscaping shall be installed in accordance with a "Type A" buffer yard as defined in ~~article VI of this chapter~~, the landscaping and development specification standards of this ordinance.
  - b) Number of accessible handicap parking spaces shall be provided in compliance the North Carolina State Building Code.
  - c) Trash receptacles shall meet the following.
    - i) To be maintained as to not impact adjoining properties (i.e. smell, debris).
    - ii) The number of trash receptacles shall be located on-site equivalent to the number of handicap spaces. Trash receptacles shall be a minimum of 55 gallons contained in a secured structure.
  - d) Concrete or asphalt aprons shall be installed from the property line to the connecting street.
  - e) Signage required.
    - i) Towing signage shall be posted in accordance with Chapter 16, Article VII of the Town's General Code.
    - ii) A minimum of two (2) foot by two (2) foot permanent sign posted at all entrances and pay stations stating that town decals, stickers, license plates, and any other identification of permission by town are not accepted in the lot.
    - iii) Signs shall include the operator and the operator's contact information.
    - iv) The sign structure displaying the required information shall be clearly displayed in letters not less than one (1) and one-half-inch (1.5) in height on a contrasting background.

- v) Additional allowed signage ~~A frame signage and off-premises directional signage in accordance with article VIII of this chapter~~ shall be installed accordance with the requirements of this ordinance.
- 5. Shall meet ~~Chapter 32~~ all Stormwater Management Regulations.
- 6. Any temporary commercial parking lot which operated in 2021 shall be considered a non-conforming use and will be required to comply with requirements one (1) through four (4) stated above immediately but shall have 24 months from the adoption of this text amendment to meet requirement five (5) and all applicable stormwater regulations ~~outlined in Chapter 32, Storm Management Regulation of the Town Ordinances.~~

P. RENTAL OF GOLF CARTS, MOPEDS, E-BIKES, AND SCOOTERS

- 1. Any operation, whether as principal or accessory, that plans to rent golf carts, mopeds, and/or scooters shall meet the following requirements:
  - a) No rental item shall be permitted to encroach into any public right-of-way or site triangle in accordance with ~~section 40-150(7)~~ the off-street parking design and construction standards for vision clearance.
  - b) All exterior display areas shall be paved or stoned with proper drainage provided.
  - c) All lighting shall be directed to the interior of the property and shall not impact adjacent properties or public rights-of-way.
  - d) Rental, maintenance, and all related functions shall be conducted within a permanent building having restrooms facilities for patrons and employees.
  - e) Any rental item that is viewable by a patron, whether inside or outside, shall be considered “displayed for rent” and shall meet the requirements for on-site parking where applicable. Display areas may be indoors or outdoors, but shall not be located in required parking or landscape buffer areas.
  - f) A minimum of \$1,000,000 liability insurance policy shall be secured by the operator and the town shall be named as an additional insured party.
  - g) It shall be the responsibility of the operator to ensure that all federal, state, and local safety and motor vehicles laws are adhered to.
  - h) Rental of these items may be permitted in the designated zoning districts as an accessory use to other permitted commercial uses if parking and other standards can be met.

Q. SHOOTING RANGE

- 1. This section is intended to regulate the establishment and operation of shooting range facilities. Such recreational and training complexes, due to their potential noise impacts and safety concerns, merit careful review to minimize adverse effects on adjoining properties. Further, the regulations of this section have been made with reasonable consideration among other things, as to the character of

the town and its areas and their peculiar suitability for these businesses and recreational facilities.

2. All new shooting facilities shall be designed, constructed, and operated in strict compliance with National Rifle Association (herein referred to as the NRA) standards, specifically the most recent edition of "The Range Manual, A Guide to Planning and Construction," In addition, construction standards shall comply with all appurtenant North Carolina Building Codes and verified by a professional engineer.
3. Outdoor shooting stations shall be prohibited within the planning jurisdiction of the town. Only indoor ranges shall be permissible.
4. Distance from occupied dwelling. All shooting range stations shall be located at least 500 feet from ~~any occupied dwelling~~ a residential district as measured in a straight line distance from the closest point of the proposed building to the nearest property line of a residential district. A shooting range lawfully operating as a conforming use shall not be rendered nonconforming by the subsequent location of a residence within the 500 feet separation requirement.
5. The permittee shall be required to carry a minimum of \$1,000,000 of liability insurance. Such insurance shall name the town as an additional insured party and shall save and hold the town, its elected and appointed officials, and employees acting within the scope of their duties harmless from and against all claims, demands and causes of action of any kind or character, including the cost of defense thereof, arising in favor of a person or group's members or employees or third parties on account of any property damage arising out of use of the range, or in any way arising out of the acts or omissions of the permittee, his/her group, club, or its agents or representatives. The town shall be notified of any policy changes or lapses in coverage.
6. Permit display. Permits shall be kept and displayed in a readily visible location on the shooting range facility and at all times be available for public inspection.
7. Changes or expansions. If any shooting range facility is intended to be substantially changed or expanded to include types of ranges, operations, or activities not covered by an approved permit or otherwise cause nonconformance with this section, a new permit for the entire facility shall be secured.
8. Abandonment and discontinuance. When an existing shooting range is discontinued without the intent to reinstate the range use, the property owner shall notify the town of such intent by providing written notice to the UDO Administrator.
9. Hours of operation shall be limited to 10:00 AM to 9:00 PM.

#### R. SWIMMING POOLS, PUBLIC

1. Public or shared use swimming pools shall meet all applicable requirements of the town, the county, and the county health department (Rules Governing Public Swimming Pools 15A-NCAC 18A.2500).

2. The developer shall submit plans, drawn to scale, depicting all elements associated with the swimming pool, including size, volume, depth, decking or walkway, mechanical, plumbing, proposed method of water supply, sewage and other wastewater disposal, drainage, method and description of discharge area, and relation to lot and other structures, as applicable.
3. The plan shall show evidence of all applicable approvals of the town, the county, and the county health department prior to transmittal to the approval commissions and/or council, and issuance of a conditional zoning.
3. All outdoor swimming pools shall be enclosed by fencing and contain adequate walk or deck around the pool perimeter in compliance with county health department standards (rules governing swimming pools, 15A NCAC 18A .2500. For the purposes of this ordinance loose gravel or stone, sod, grass, artificial turf, or similar groundcovers shall not be utilized as the perimeter materials of a pool. Poured concrete, decking, and pavers are the preferred perimeter materials for pools.

#### S. TENNIS COURTS

Provisions shall be made to compensate for impervious surfaces and drainage runoff containment, and meeting the requirements of the town. Lighting, if used, shall be shielded so as not to shine on adjoining properties.

#### T. UTILITIES, PRIVATE

1. Utility stations or substations, not including service or storage yards, and radio, television, telephone communication towers. Utility stations, including telephone repeater stations; relay stations; water supply reservoirs, wells, filter beds, sewage treatment plants and pumping stations, electric power, and gas substations, but not including service or storage yards or radio, television, telephone communication (i.e., cellular telephone) towers or co-located antennae. Such utility stations shall be subject to the following standards of development:
  - a) Suitable fencing shall be required to protect the public, along with enough landscaping and planting to effectively screen the activity from surrounding residential property. Other conditions may be attached by the reviewing board to prevent nuisance to surrounding property, because of noise, smoke, gas, odor, heat or vibration, the emission of which shall not be permitted in any residential district.
  - b) Suitable off-street parking space for maintenance, service, or other vehicles shall be provided.
  - c) Minor structures, such as hydrants, telephone or light poles, pole transmitters or transformers, or similar equipment, shall not be subject to these regulations.
  - d) The provisions of this section shall apply to public utility transmitting or relay stations, provided that no such station shall be permitted on a site less than one (1) acre in area, and provided further that no site shall

- have a horizontal dimension less than twice the height of the tallest structure on the site.
- e) In residential districts, all buildings shall be in character with surrounding residences.
2. Utility transmission lines. Transmission lines for use by a public utility serving the local or regional area, including telephone, electric light, and power lines, shall be subject to the following standards:
- a) The provisions of this section shall not apply to telephone, electric light, and power lines carrying less than 33,000 volts and usually located along public highways, or to local underground conduits, cables, gas, sewer, and water mains or pipes.
  - b) It is clearly demonstrated that the establishment of the particular use in the area is necessary for the operation of the public utility system, or required to supply utility service to the local area.
  - c) The location and construction of any transmission line shall be such as not to endanger the public or surrounding property. A right-of-way of sufficient width shall be required to permit the safe construction and maintenance of the transmission line and to prevent any hazard to surrounding property. On a one- or two-circuit transmission line, the distance from the tower base to the nearest boundary of the transmission line, right-of-way shall be no less than 25 feet; on a three- or four-circuit transmission line, the distance from the tower base to the nearest boundary of the transmission line right-of-way shall be no less than 50 feet. When subject to a conditional zoning request, suitable fencing or landscaping of a tower base may be required when, in the opinion of the reviewing board, it is necessary to protect the public or conserve the values of surrounding property.
  - d) Gas booster stations or storage tanks shall not be permitted in residential districts.
  - e) Any sub-station along such transmission lines shall be subject to the requirements for utility stations set forth in this article.

### 3.10 EATING AND/OR DRINKING ESTABLISHMENTS

- A. Eating and/or drinking establishments are businesses that cater to the public and are strongly encouraged by the town due to their support of a resort market niche and year-round residency. Despite this, some eating and/or drinking establishments may have adverse secondary impacts. To address possible adverse impacts and in order to ensure the health, safety, and well-being of the citizens of the town, as well as that of the tourists and visitors to the town, all persons requesting to open an eating and/or drinking establishment shall sign a statement of agreement to abide by the following regulations. Failure to comply with these regulations shall constitute a violation of this ~~chapter~~ subject to the enforcement procedures as outlined in article XV of this chapter ordinance.
- B. Standards for all eating and/or drinking establishments:

1. Shall not provide any material misrepresentation, misstatement, or omission, concerning information required to be provided for approval.
  2. Shall comply with all provisions of the North Carolina Alcohol Beverage Commission (ABC) Commission and/or North Carolina Alcohol Law Enforcement (ALE) requirements, if applicable. Any eating and/or drinking establishment that receives a permit from the ABC Commission as a private club shall be considered a bar/tavern and shall meet all requirements for that use.
  3. Shall adhere to standards and regulations of the town's noise ordinance. Offenses shall be subject to the regulations as listed in Section 18-140, of the Town's General Code violations. If applicable, all violations shall be submitted to ABC Commission by the town to ensure all operators stay in compliance with all provisions of the ABC Commission.
  4. Shall meet fire codes and limit occupancy to the maximum number allowed for the establishment.
  5. At the time of application and excluding bar/taverns, all eating and/or drinking establishments shall provide the town with a menu having a food and/or non-alcoholic beverage as the primary business.
  6. Outdoor areas.
    - a) Proposed temporary outdoor entertainment areas that are not identified on the approved site plan shall be reviewed in accordance with Chapter 14, Article IX, of the Town's General Code [special events].
    - b) Outdoor artificial lighting fixtures shall not be designed and positioned so that the point source of light (light bulb) is directly visible from adjacent properties, rights-of-way, or ocean and sound front areas.
- C. A conditional zoning shall be required if an eating and/or drinking establishment meets any of the following:
1. Meets the criteria for a bar/tavern; or
  2. Any establishment other than a standard restaurant, wine shop, beer shop, distillery, or brewery that proposes to serve alcohol for on-premises consumption.
- D. Standards for bars/taverns.
1. Bars/taverns which because of their nature may have serious adverse secondary impacts, and are therefore required to meet the minimum separation requirements ~~of subsection (1)(3)b of this section~~ as provided herein.
  2. No new bars/taverns shall be permitted within straight line distance from the closest point of the building of the proposed business to the nearest property line of any of the following:
    - a) 200 feet of an established ~~church~~ religious institution or school.
    - b) 200 feet of any residential district.
- E. Standards for beer shops (on-premise).
1. All beer shops shall meet all requirements of the ABC Permit.
  2. Any indoor or outdoor areas shall be located three (3) times the minimum setback yard ~~for the district from any lot line and/or any residential use. The~~

~~additional setbacks shall not apply to property lines adjacent to the right-of-way from any residential district.~~

- F. Standards for breweries.
  - 1. Generally. Breweries are establishments that are encouraged by the town due to their support of a resort market niche and year-round residency. Despite this some brewery establishments may have adverse secondary impacts. To address possible adverse impacts and in order to ensure the health, safety, and well-being of the citizens of Carolina Beach, as well as that of the tourists and visitors to the town, all persons requesting to open a brewery shall follow the regulations below.
    - a) No outdoor production operation shall be visible from adjacent properties or rights-of-way.
    - b) Breweries may provide on-premises consumption of malt-beverage or unfortified wines that are not manufactured on site.
    - c) Shall comply with all provisions of the ABC Commission, if applicable. Any brewery establishment that receives a permit from the ABC Commission as a private club shall be considered a bar/tavern and shall meet all requirements for that use.
    - d) Breweries located in the Central Business (CBD) and Highway Business (HB) shall be limited to 6,000 square feet of indoor gross floor area.
- G. Standards for distilleries.
  - 1. ~~An establishment which meets the definition of distillery shall be permitted in the CBD, HB, and I-1 zoning districts by right and otherwise must adhere to all state and local ABC, building, and zoning requirements.~~
  - 2. Shall comply with all provisions of the ABC Commission, if applicable. Any distillery establishment that receives a permit from the ABC Commission as a private club shall be considered a bar/tavern and shall meet all requirements for that use.
- H. Standards for event venue/bar.
  - 1. On-premises alcohol sales are limited to the duration of the event.
  - 2. Alcohol point of sale shall be:
    - a) Indoors or
    - b) outdoor area located a minimum of 20 feet from any property line.
  - 3. Outdoor areas designated for point of sales and consumption shall be designated on the site plan and shall have a barrier that is four (4) to six (6) feet in height. Any changes to the outdoor areas shall be considered a major modification of the conditional zoning approval.
  - 4. The 200 foot requirement for separation may be waived by Town Council for event venue/bars located adjacent to the MX zoning district.
- I. Standards for wine shops (on-premise).
  - 1. All wine shops shall meet all requirements of the ABC Permit.
- J. Provisions construed as consistent with state law. The provisions of this section are:
  - 1. Not to be construed as regulating any activity which the town is forbidden by state law to regulate.

2. Not to be construed as applying to any activity the town is prohibited from regulating because the North Carolina General Assembly has so clearly expressed its intent in the course of providing a complete and integrated regulatory scheme that municipalities are prohibited from enacting provisions concerning matters covered by the regulatory scheme.
3. Not to be interpreted or construed as imposing requirements different from those that are imposed by the state.
4. To be interpreted so that they are consistent with any requirements and regulations imposed by the state.
5. State law reference(s)—Authority, G.S.160A-174, 160A-181, 18B-100.

### 3.11 MANUFACTURING, ASSEMBLY, STORAGE, AND PROCESSING USES

#### A. FLAMMABLE LIQUID STORAGE ~~OF MORE THAN 1,000 GALLONS~~

1. Aboveground storage of flammable and combustible liquids in quantities greater than 1,000 gallons ~~may be permitted in industrial districts,~~ shall be subject to the following requirements:
  - a) The requirements of the fire prevention code of the National Board of Fire Underwriters American Insurance Association shall be met.
  - b) All storage tanks and loading facilities shall be located at least 25 feet from any exterior property line.
  - c) All storage tanks and loading facilities shall be located at least 100 feet from any exterior property line bordering a residential district.
  - d) As a prerequisite to the approval of a conditional zoning, the reviewing board shall find that the use of the proposed site for flammable liquid storage will not endanger the safety of residential or other properties in the area, and that vehicular access to the storage facility will be provided from major thoroughfares and will not require the use of residential streets for access to the site.
  - e) Off-street parking and loading shall be provided in accordance with ~~article V of this chapter~~ the requirements of this ordinance.

#### B. STORAGE YARDS, OUTDOOR

1. In the HB zoning district, outdoor storage yards shall only be allowed on conforming lots of at least 10,000 square feet that are no greater than 25,000 square feet.
2. RV/boat storage yards shall be located a minimum of 100 feet from North Lake Park Boulevard. No impound yards shall be located on lots abutting Lake Park Boulevard. All outdoor storage yards shall be located a minimum of 20 feet from residential districts. Plantings equivalent to those required for a Type B buffer yard shall be located adjacent to any residential district ~~in accordance with the minimum sizes listed under section 40-176~~.
3. Perimeter fencing a minimum of six (6) feet in height with interior security lighting shall be required. When an outdoor storage yard is in HB or adjacent to a residential district, a wood fence eight (8) feet in height and 80% in opacity shall



be required. Fence material, opacity, and height requirements shall not apply to outdoor storage yards adjacent to the conservation zoning district that is designated as a military buffer zone.

4. No junked vehicles shall be stored on-site. General maintenance only shall be allowed. No repairs shall be conducted that result in dismantling any portion of the vehicle or vehicle’s engine. In the event a wrecked vehicle is towed to an outdoor storage yard it may be stored temporarily for up to 30 days.
5. Vehicles located in an outdoor storage yard shall not be used for living purposes, sleeping, housekeeping, or business purposes.
6. All access and internal circulation shall be designed to provide adequate maneuverability. Parking design and surfacing shall be constructed in accordance with the requirements of this ordinance~~subsection 40-150€~~. No parking spaces are required to accommodate employees or patrons.
7. Storage yards shall be consistent with all provisions of this ordinance and Town Code, to include, but not be limited to, Chapter 16, Article VII, Wrecker/towing Services and Impoundment.

**3.12 RESERVED**

**3.13 DIMENSIONAL REQUIREMENTS**

**A. GENERAL**

1. The following dimensional standards shall be regarded as the minimum required for each zoning district. The minimum lot sizes, widths, setbacks, or other open spaces required by this ordinance, including those provisions regulating intensity of use, for each and every building hereafter erected or structurally altered shall not be encroached upon, unless specifically authorized by this ordinance.
- ~~1.2.~~ The location of required front, side, and rear setbacks on irregularly shaped lots shall be determined by the UDO Administrator. Such determinations shall be based on the spirit and intent of the district regulations to achieve spacing and locations of buildings or groups of buildings on individual lots. This provision shall be adhered to, particularly in the case of lots which have lost land surface area due to the actions of tidal waters.

Table 3.3 Dimensional Standards for Lots and Principal Structures, Residential Districts									
Zoning District	Min. Lot Size (square feet)	Min. Lot Width (feet)	Min. Front Setback (feet)	Min. Rear Setback (feet) [2]	Min. Side Setback (feet) [2][3]	Residential Max. Density	Max. Height (feet) [1]	Max. Lot Coverage	Max. Impervious Coverage
R-1	5,000	50	20	10	7.5	15 units/acre	50 [4]	40%	65%
R-1B	5,000	50	20	10	7.5	8.7 units/acre	50	40%	65%
R-2	7,000	70	25	10	7.5	6.2 units/acre	45	40%	65%

R-3	12,000	80	25	10	7.5	3.6 units/acre	40	40%	<u>65%</u>
C	80,000	200	30	20	20	0.5 units/acre	50	15%	<u>65%</u>
MH	5,000	50	20	10	7.5	15 units/acre	50	40%	<u>65%</u>
MF	5,000	50	10	10	7.5	17 units/acre	50	40%	<u>65%</u>

1. ~~Portions of this district may be located in an overlay district as shown on the Town's official zoning map and listed as part of this section. Maximum height of this district may be different than listed~~ may differ if the structure is located within the height overlay district contained on the town's official zoning map.
2. ~~Front yard setback is 50 feet if abutting a major thoroughfare See section 40-73(9), yard requirements, for structures exceeding maximum height regulations.~~
2. Landscaping buffer requirements ~~in article VI of this chapter~~ of this ordinance may be greater than the required side or rear yard setbacks.
3. All corner lots shall not ~~be have~~ less than a 12.5 feet on-foot setback on a side street lot line.
4. The building height maximum may be exceeded by up to eight (8) feet when renovating existing multi-family residential structures of more than 35 units when the additional height is directly attributable to ensuring compliance with the North Carolina Elevator requirements for adequate overhead clearance. Building height allowance does not include elevator equipment.

**Table 3.4 Dimensional Standards for Lots and Principal Structures, Other Districts**

Zoning District	Primary Permitted Uses	Min. Lot Size (square feet)	Min. Lot Width (feet)	Min. Front Setback (feet)	Min. Rear Setback (feet) [2]	Min. Side Setback (feet) [2][3]	Residential Max. Density	Height (feet) [1]	Max. Lot Coverage	Max. Impervious Coverage
CBD	Commercial Uses and Services, Entertainment	None	None	None	None, or same as abutting residential <del>use of</del> district	None, or same as abutting residential <del>use of</del> district	NA	50 [4]	None	<u>None</u>
NB	<u>Single-family</u> , Neighborhood Goods and Services	5,000	50	20	10	7.5	8.7 units/acre	50	40%	<u>65%</u>
HB	Highway Commercial	10,000	100	30	15, or 20 if abutting a residential district	10	NA	50	60%	<u>None</u>
MB-1	Water-Oriented Businesses, Single-family/Two-family	10,000	100	30	10	10	<u>17 units/acre</u> <del>N/A</del>	50	40%	<u>65%</u>
MX	Residential, Commercial Services, Tourism Accommodations	5,000	50	20	10	7.5	17 units/acre	50	40%	<u>65%</u>
T-1	Hotels and Motels 15 units or less	20,000	100	20	10	7.5	32 units/acre	50	40%	<u>65%</u> [5]
	Hotels and Motels Greater than 15 units	25,000	50	<u>20</u>	<u>10</u>	<u>7.5</u>	60 units/acre	<u>50</u>	<u>40%</u>	<u>65%</u> [5]
	Restaurants/Businesses	6,000	50	<u>20</u>	<u>10</u>	<u>7.5</u>	<u>N/A</u>	<u>50</u>	<u>40%</u>	<u>65%</u> [5]

	<del>Residential</del> Single/Multi-Family	6,000	50	20	10	7.5	29 units/acre	50	40%	65% [5]
I-1	Industrial	None. (Min. district size: 5 acres)	<del>None</del> 50	30	None. 20 if lot line abuts a residential lot or use district	None. 20 if lot line abuts a residential lot or use district	None	50	None	65% [5]
HOD	See underlying districts for use and dimensional requirements	N/A	N/A	N/A	N/A	N/A	N/A	45-ft.	N/A	

1. ~~Portions of this district may be located in an overlay district as shown on the Town's official zoning map and listed as part of this section. Maximum height of this district may be different than listed~~ may differ if structure is located within the height overlay district contained on the town's official zoning map.
2. ~~Front yard setback is 50 feet if abutting a major thoroughfare. See section 40-73(9), yard requirements, for structures exceeding maximum height regulations.~~
2. Landscaping buffer requirements ~~in article VI of this chapter~~ of this ordinance may be greater than the required side or rear yard setbacks.
3. Except within the CBD district, all corner lots shall not ~~be~~ have less than a 12.5 ~~feet on~~ foot setback on a side street lot line.
4. In ~~this the~~ CBD district, the ~~standard maximum~~ 50-foot ~~height building~~ limitation may be exceeded for sprinklered structure(s) ~~and which shall be subject to a conditional zoning approval. maximum building height shall be solely based on conditional zoning review~~
5. In the T-1 zoning district, the impervious coverage percentage may exceed 65% but not more than 80%.

B. ADDITIONAL DIMENSIONAL REQUIREMENTS

1. ~~Other special dimensional standards.~~ In addition to the dimensional standards set forth ~~in sections 40-74 and 40-75~~ by zoning district, the following special dimensional standards are established:
  - a) Corner lots. Except within the CBD district, all corner lots shall not ~~be~~ have less than a 12.5 ~~feet on~~ foot setback on a side street lot line. Accessory structures on corner lots shall also be subject to this requirement.
  - b) Front ~~yards setbacks~~ on through lots. On through lots, the minimum front ~~yards setbacks~~ for the respective zoning districts shall apply wherever such lots have frontage on a street.
  - c) Sight distance at intersections. On corner lots abutting to vehicular traffic rights-of-way, no planting, fence, wall, sign, or structure or other type of obstructions not specifically exempted shall be permitted in the space between 30 inches above ground level and 10 feet above ground level within a sight distance triangle that abuts a right-of-way. A sight distance triangle shall be the visually unobstructed area of a street/driveway corner as determined by measuring a distance of 30 feet along the intersecting curb lines, or edges of pavement of the intersecting street/driveway if curbs are not present, and connecting the two (2) points by a straight line to form a triangular shaped area over the corner. One (1) support post not to exceed five (5) square feet may be utilized in the sight triangle to support the cantilever floors above. Structures deemed essential for public utilities, as determined by the Public Works or Public Utilities Director, may be exempt.
  - d) Jurisdictional wetlands shall not be considered a part of a lot or open space for the purpose of meeting open space or density requirements,

except where modified (i.e., filled or drained) by permission from U.S. Army Corps of Engineers or the state division of coastal management.

C. REDUCTION OF FRONT YARD SETBACK

1. A front yard setback may be reduced to no less than the calculated average front yard setback distance for existing buildings on all lots located wholly or partly within 200 feet, as measured from each side lot line, of the subject property. Calculating the average front yard setback shall be subject to the following criteria:
  - a) All lots being in the same zoning district.
  - b) All lots shall front on the same side of the same street.
  - c) All lots shall be considered as having the minimum required front yard setback if the lot is vacant.
  - d) In no instance shall the calculated average front yard setback be reduced to less than 50% of the required setback.

D. SETBACK EXCEPTIONS

1. Allowable intrusions into required yard setbacks. Any structure or portion of a structure may be located within a setback area up to 30 inches above the ground level of the graded lot. Examples include a platform deck without guardrails, a raised wooden sidewalk, and/or pool decking.
2. It is not the intent of this provision to allow or encourage structures to overbuild on lots but, rather, to provide for minor architectural embellishments and necessary mechanical appurtenances within required setbacks that are consistent with the State Building Code.

Table 3.5 Setback Exceptions	
Type	Distance of allowed encroachment (feet)
Heating and air conditioning units, heat pumps and meters with or without platforms	4
Utility platform stairs and support post	3
Cantilevered architectural features cumulatively not more than 25% per side of the building*	2.5
Roof overhangs	2.5
Roof overhangs with cantilevers	3
Termination of a set of stairs	2.5
Outdoor shower enclosures	4
Electric car charging station	4

\*Cantilevers, excluding roof overhangs, shall be the only intrusion in the table above that is used in determining lot coverage. In addition, where front setbacks have been reduced as result of ~~subsection (b)(5) of this section~~ ~~article~~, no front cantilevers shall be allowed.

3. Fences, walls, poles, posts, and other customary yard accessories, ornaments, and furniture may be permitted in any yard setback.
4. One (1) trellis may be permitted per lot that encroaches into a setback area as long as it meets the following regulations:
  - a) Maximum trellis height nine (9) feet.
  - b) Twenty-four inches spacing between all horizontal cross rafters on the top of the trellis with no other temporary or permanent structural members allowed, including lattice, cloth, fabric canvas, etc.

- c) Vertical supports shall not occupy more than 10% per side of the structure. The purpose of this condition is to maintain openness of the trellis structure.
- d) A trellis shall be freestanding with no connections to other structures.
- e) A trellis may encroach four (4) feet into either the side or rear yard, but not both.
- f) Where a trellis is placed in the side yard, the rear yard setback for that zoning district shall be observed. Where a trellis is placed in the rear yard, the side setback for that zoning district shall apply.

E. HEIGHT REGULATIONS

- 1. ~~With the exception of a conditional zoning proposal within the CBD zoning district, structures shall not exceed 50 feet in height in conjunction with subsections (b)(5)a – d of this section.~~
- 2. ~~Within the CBD zoning district, any proposed structure which exceeds 50 feet in height shall be equipped with sprinkler fire suppression systems, and plans of said proposal shall be submitted for review and approval as a conditional zoning in compliance with the applicable process and with subsection (b)(8) of this section request.~~
- 3. Structures in the height overlay district as defined by the official town zoning map shall not exceed 45 feet in height.
- 4. Exceptions to height requirements. Exceptions to the building heights are as follows:
  - a) Regulations, including height limitations, for ~~cellular communication towers and similar such structures are set forth in article X of this chapter,~~ wireless telecommunication towers and facilities as provided in this ordinance.  
~~Hotels: Appurtenances 10 feet or less in height shall be exempted from the height measurement.~~
- 5. ~~Yard Setback~~ requirements for structures exceeding maximum height regulations. ~~Yards Setbacks~~ may be increased as a condition of approval for structures exceeding maximum height requirements. Where structures are permitted to exceed the 50 feet maximum height regulation the following shall apply:
  - a) The minimum required front ~~yard setback~~ shall be increased by one (1) foot for each foot in height exceeding the maximum height requirements.
  - b) The minimum required side ~~yard setback~~ shall be increased by one (1) foot cumulatively for each foot in height exceeding the maximum height requirements.

F. DEVELOPMENT LINE AND/OR CAROLINA BEACH BUILDING LINE

No individual or privately owned structure shall encroach over the Carolina Beach Development Line as recorded in deed book 62, page 145 in the New Hanover County Register of Deeds. Allowed exceptions are limited to beach crossovers, piers, and sand fencing permitted under CAMA regulations. This is the oceanfront setback line required for the Town of Carolina Beach.

## G. STRUCTURAL BEACH CROSSOVER

1. Structural Beach Crossover. It is the intent of this section to recognize that there is a need for allowances to be granted to protect the dunes system with proper location and design of structures while preserving scenic and natural ecological conditions of the barrier dune and beach systems. Structural beach crossover shall be permitted across ~~primary sand~~ dunes so long as they are designed and constructed in a manner that entails negligible alteration on the ~~primary sand~~ dune subject to the following regulations:
  - a) The crossover shall be no greater than six (6) feet in width.
  - b) Height above grade shall be at least 12 inches, but no more than an average of 18 inches.
  - c) Handrails and guardrails shall be open on any private access and shall be limited to 42 inches in height, unless otherwise required by the State Building Code.
  - d) Horizontal development shall meet the following:
    - i) Maximum 200 square feet west of the CAMA static vegetation line.
    - ii) Maximum 40 square feet east of the CAMA static vegetation line.
    - iii) Horizontal development shall not cumulatively exceed 200 square feet.
  - e) East of the CAMA static vegetation line, no vertical development shall be allowed with the exception of handrails up to 42 inches.
  - f) The crossover shall be raised on posts or pilings of five (5) feet or less depth, so that wherever possible only the posts or pilings touch the frontal dune.
  - g) Public crossovers, municipal boardwalks, and fishing piers are exempt from the beach crossover requirements.

## DIVISION 2. DEVELOPMENT STANDARDS

### 3.14 GENERAL DEVELOPMENT STANDARDS

#### A. ZONING AFFECTS USE OF LAND AND STRUCTURES

1. The regulations established herein for each district shall be the minimum regulations unless specified otherwise and shall apply uniformly to each class or kind of land or structure, except as hereinafter provided.
2. No land or structure shall be used or occupied, and no structure or parts shall be constructed, erected, altered, or moved unless in conformity with all of the regulations herein specified for the district which it is located.
3. Every building hereafter erected or structurally altered shall be located on a lot meeting the requirements of the district in which it is located.
4. A use or building not expressly permitted by right, by conditional zoning, or granted by a special use permit shall not be allowed in a zoning district ~~unless such use is permitted in accordance with subsection 40-490(a)(2) (zoning administrator's determination) or sections 40-424 and 40-425 (nonconforming situations)~~ with the exception of lawfully established nonconforming situations).

5. The minimum setbacks, yards, and other open spaces, including the intensity of use provisions contained in this ordinance, for every building hereafter erected or structurally altered, shall not be encroached upon or considered as yard, open space requirements, or intensity of use requirements for any other building unless specifically permitted. This provision shall be adhered to, particularly in the case of lots which have lost land surface area due to the actions of tidal waters.
6. Rights-of-way, public or private, for streets and road shall not be considered a part of a lot or open space, or front, side, or rear yard for the purpose of meeting yard requirements.
7. In no case shall there be more than one (1) principal building unless otherwise allowed by this ordinance. More than one (1) principal structure devoted to a nonresidential, PUD, or multi-family use may be located on a lot subject to all applicable requirements of this ordinance.

B. EVERY LOT SHALL HAVE ACCESS TO A STREET

1. Every structure hereafter erected or moved shall be on a lot adjacent to a street ~~as defined in section 40-548~~, or to a right-of-way, or easement which was platted and recorded prior to the adoption of the ordinance from which this article is derived. The following are exempt from the requirements of this section:
  - a) Lots of record prior to the adoption date of the initial zoning ordinance (April 24, 1979) that have sufficient area to meet the minimum requirements of the district in which they are located.
  - b) Single- and/or two-family dwellings on a lot having access over an existing private access easement.
  - c) No building permit for any structure shall be issued which requires NCDOT or town approval for a driveway permit until said permit has been approved. Evidence of approval shall accompany the application for building permit.

C. UNDERGROUND ELECTRIC SERVICE

Underground electric service to all new construction is required. Notwithstanding the above, a developer or builder shall not be required to bury power lines that existed above ground at the time of first approval of a plat or development plan by the town, whether or not the power lines are subsequently relocated during construction of the subdivision or development plan or the power lines are located outside the boundaries of the parcel of land that contains the subdivision or the property covered by the development plan.

### 3.15 FILL AND GRADE

A. PURPOSE

To prevent the unrestricted placement of fill material and to reduce the potential for increased flooding conditions throughout the planning jurisdiction, the Town of Carolina Beach hereby establishes this set of fill, grade, and excavation requirements.

B. FILL, GRADING, AND EXCAVATION

1. No lot, parcel, or tract of land may be disturbed by grading, filling, and excavation without a town fill and grade permit.

2. Permits for fill and grade shall be accompanied by a scaled grading plan depicting elevation change prepared by a licensed surveyor, landscape architect, or professional engineer.
3. The amount of fill added to a lot shall not be greater than ~~two (2)~~ one (1) foot above the crown of the highest adjoining street or access easement or even with the highest adjacent lot. For lots where the adjacent lot elevation exceeds ~~two (2)~~ one (1) foot above the crown of the adjoining street, then the fill added to the subject property may not exceed that of the highest adjacent lot or four (4) feet above the crown of the highest adjoining lot, whichever is less. Fill shall be added based upon the existing grade of each lot. The CBD and HB zoning districts shall be exempt from these requirements.
4. Fill may be added up to the property line and internal to the lot for the driveway. Retaining walls, where necessary, may be permitted and shall not be subject to setback requirements.
5. Fill that is necessary to meet any town/NCDEQ Stormwater permit requirement may exceed the ~~two~~ one (1)~~(2)~~ foot limit. In which case, fill shall only be allowed to the minimum extent necessary to obtain a permit.
6. Fill or excavation within any VE Special Flood Hazard Area shall be subject to all applicable provisions of the Town’s Flood Damage Prevention Ordinance.
- ~~1-7.~~ Requests for fill placement above the maximum height permitted shall be ~~subject to the variance process~~ accompanied by a letter prepared by a licensed North Carolina engineer documenting tidal influence. In such cases, fill shall only be allowed to the minimum extent necessary to prevent tidal flooding subject to the evidence submitted within the engineers letter. All such requests for fill in tidal locations above the allowance provided herein shall be required to submit an engineered drainage plan to control and treat the difference in the stormwater runoff volume between the predevelopment and post-development conditions for the one-year, 24-hour storm. Any other requests for fill placement above the maximum height permitted shall be subject to the variance process as provided in Article 2. ~~Deference shall be afforded to applicants whereby evidence of tidal flooding would exceed the permitted fill amount on the subject site. Such finding shall conclusively be presumed to support concurrence with the provisions of NCGS 160D-705(d)(1)-(4).~~

### 3.16 IMPERVIOUS COVERAGE

#### A. PURPOSE

1. Development and redevelopment that increases the impervious coverage in the Town of Carolina Beach alters the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge.
2. These changes in impervious coverage contribute to stormwater runoff and increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment.
3. Therefore, the Town of Carolina Beach establishes this set of impervious coverage limitations.



## B. APPLICABILITY

1. With the exception of the CBD and HB zoning district, all development activities within any other zoning district shall be subject to the impervious coverage limitations provided in this section. The impervious coverage limitations are applicable in addition to any specific stormwater management requirements of Article 6.
2. Development may not exceed 65% impervious surface coverage of total lot area and the total amount of impervious surface must remain below the maximum impervious surface coverage allowed by any other regulatory agency.
- ~~1.~~3. Lots with existing impervious coverage exceeding 65% may remove and replace their existing impervious coverage surface, but there shall be no expansion above the current impervious coverage percentage existing on the lot. For example, if a lot has an existing impervious coverage percentage of 85% then such lot owner may be permitted to remove and replace the existing impervious materials on the site up to 85% coverage, regardless of replacement location on the site. In such instances, a building stormwater, or zoning permit must be applied for and issued within a period of 180 days following removal of impervious material.

## C. IMPERVIOUS COVERAGE PLAN

An impervious coverage plan shall be required prior to the issuance of any permits for new construction, redevelopment, or renovation/expansion projects where the impervious surface coverage is increased by greater than 325 square feet. For redevelopment whereby the impervious coverage expansion is less than 500 square feet, such plan may be a scaled plan prepared by the owner or any applicable professional. For all other impervious coverage additions, the plan must be prepared by a licensed surveyor, landscape architect, architect, or professional engineer. Removal and replacement requests for impervious coverage nonconformities shall require plan submittal from a licensed surveyor, landscape architect, architect, or professional engineer.

## 3.17 FLOOD ZONE PROVISION PURPOSE

- A. Generally. It is the purpose of this section to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions by restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion, or in flood heights or velocities, and further regulate such uses along with control of alteration of flood plains, or other resources so as to achieve this end.
- B. Flood damage prevention ordinances. This ordinance (Article 5) shall be utilized as the required standards for all flood-related matters affecting construction, reconstruction, and other development within the established special flood hazard areas as shown on the adopted Flood Insurance Rate Map.

## 3.18 CAMA PROVISIONS PURPOSE

- A. In keeping with the national objectives to preserve our natural resources along the coastal areas, the town subscribes to the provisions of the CAMA adopted by the North Carolina General Assembly. All coastal areas are required to enforce the provisions of the Act and subsequent administrative requirements and, for purposes of this article, the following shall be adhered to:

1. AEC Area of Environmental Concern Overlay District. This district is established for those areas designated as areas of environmental concern or interior areas of environmental concern as described by Chapter 15 of the North Carolina Administrative Code, Subchapter 7H (15A NCAC 07H 0101 et seq.). This district shall co-exist with any and all other use districts and, in the event of conflict with the requirements of this district and any other district requirements, the more restrictive requirements shall take precedence over the requirements of the conflicting district(s) regulations. All requirements of the AEC overlay district shall be complied with prior to authorization and/or issuance of permits for land uses and/or construction.
2. Enforcement. Prior to authorization and/or issuance of a building or other required permit for any new construction and/or repair/alteration, the Building Inspector, in his capacity as the designated official responsible for minor development permits, shall determine the applicability of the provisions of G.S. 113A-100 et seq. and especially the state guidelines for areas of environmental concern (AEC) (15A NCAC 07H 0101 et seq.) in reference to the property that the permit is being applied for, and if the subject property is located within an area of environmental concern, the inspector shall state this determination in writing and advise the applicant and/or owner of the property that the provisions of the CAMA must be complied with satisfactorily prior to the issuance of a building permit.

### 3.19 ESTABLISHMENT OF HARBOR AND PIERHEAD LINE

- A. When applicable permits are obtained as by law required in the design and construction of piers and docks along the Intracoastal Waterway and Myrtle Grove Sound within the jurisdiction of the town, the following description shall be the proposed harbor and pierhead line which shall limit the extension of piers and docks to protect the general health and safety of the citizens who use these waters for commercial and recreational purposes:
1. Legal description of the revised pierhead line in the Myrtle Grove Sound Area for the Town of Carolina Beach.
  2. ~~Located in the Town of Carolina Beach, Federal Point Township, New Hanover County, State of North Carolina and being described as follows:~~
  - 3-2. ~~Beginning at a point where the current pierhead line intersects the U.S. Army Corps of Engineers Setback Line (Setback Line), said point being having N.C. Grid Coordinates: N=107,375.64 and East=2,335,878.75, (coordinates are based on NAD 83-NSRS 2007 datum), said beginning point being located North 62 degrees 08 minutes 56 seconds West 498.76' from a concrete monument located in the centerline of Carolina Beach Avenue North and the northern right of way of Scallop Lane extended and runs thence from said beginning point, with the Setback Line, South 13 degrees 57 minutes 34 seconds West 731.68' to a point; thence continued with the Setback Line, South 02 degrees 16 minutes 11 seconds West 342.04' to a point; thence continued with the Setback Line the following four calls: South 00 degrees 00 minutes 00 seconds East 1.40'; South 08 degrees 07 minutes 48 seconds West 2.83'; South 13 degrees 34 minutes 14 seconds West 2.98' and South 15 degrees 15 minutes 18 seconds West 1.14; to a~~

~~point; thence continued with the Setback Line, South 17 degrees 11 minutes 57 seconds West 178.90' to a point; thence continued with the Setback Line, the following ten calls; South 21 degrees 48 minutes 05 seconds West 3.77'; South 30 degrees 41 minutes 59 seconds West 3.72'; South 39 degrees 36 minutes 38 seconds West 3.76'; South 48 degrees 14 minutes 23 seconds West 3.75'; South 57 degrees 59 minutes 41 seconds West 3.77'; South 66 degrees 48 minutes 05 seconds West 3.81'; South 75 degrees 57 minutes 50 seconds West 3.71'; South 83 degrees 59 minutes 28 seconds West 3.82'; North 85 degrees 21 minutes 52 seconds West 3.71' and North 77 degrees 47 minutes 58 seconds West 3.69' to a point; thence continued with the Setback Line, North 72 degrees 49 minutes 10 seconds West 130.00' to a point; thence continued with the Setback Line the following nine calls: North 67 degrees 41 minutes 38 seconds West 4.22'; North 57 degrees 50 minutes 52 seconds West 4.13'; North 47 degrees 54 minutes 39 seconds West 4.18'; North 38 degrees 14 minutes 02 seconds West 4.20'; North 27 degrees 10 minutes 52 seconds West 4.16'; North 18 degrees 00 minutes 15 seconds West 4.21'; North 08 degrees 07 minutes 48 seconds West 4.24'; North 02 degrees 43 minutes 35 seconds East 4.20' and North 12 degrees 40 minutes 49 seconds East 4.10' to a point; thence continued with the Setback Line, North 17 degrees 10 minutes 41 seconds East 178.77' to a point; thence continued with the Setback Line, North 11 degrees 20 minutes 36 seconds East 337.59' to a point; thence continued with the Setback Line, North 12 degrees 31 minutes 44 seconds East 0.92' to a point; thence continued with the Setback Line, North 13 degrees 35 minutes 07 seconds East 2276.80' to a point; thence continued with the Setback Line, North 00 degrees 46 minutes 29 seconds East 2492.23' to a point; thence continued with the setback, North 06 degrees 00 minutes 32 seconds East 3.82' to a point; thence continued with the Setback Line, North 11 degrees 18 minutes 36 seconds East 2.04' to a point; thence continued with the Setback Line, North 14 degrees 47 minutes 22 seconds East 1282.18' to a point; thence continued with the Setback Line, North 13 degrees 54 minutes 02 seconds West 911.18' to a point; thence continued with the Setback Line, North 58 degrees 51 minutes 43 seconds West 107.14' to a point; thence continued with the Setback Line, North 13 degrees 51 minutes 00 seconds West 107.74' to a point; thence North 68 degrees 56 minutes 04 seconds East 305.03' to a point; thence South 13 degrees 04 minutes 09 seconds East 1373.97' to a point; thence South 67 degrees 59 minutes 09 seconds East 894.79' to a point; thence South 22 degrees 00 minutes 51 seconds West 1455.00' to a point; thence South 19 degrees 35 minutes 51 seconds West 2125.00' to a point; thence South 17 degrees 05 minutes 51 seconds West 1469.44' to the point of beginning, containing 81.42 acres more or less, and being shown on a map entitled "Map of Proposed Revisions to the Carolina Beach Pierhead Line for the Town of Carolina Beach" as recorded in Map Book 57, Page 169 of the New Hanover County Registry.~~

### 3.20 FENCE REGULATIONS

#### A. PURPOSE

All fences shall be considered structures as defined in ~~section 40-548~~ this ordinance. This section provides standards for the erection, construction, location, and maintenance of fences and ensures that hazardous or nuisance situations do not result from said erection, construction, location or maintenance; and, furthermore, the provisions of this article shall be applicable to all fences constructed on property located within the municipal limits of the town.

#### B. PERMITTED LOCATION OF FENCES

Fences are permitted in the required setbacks ~~according to section 40-548, definition of yard~~ subject to the provisions provided herein. All fences shall be located at least 36 inches from fire hydrants. Fences may be erected on the property line at the property owner's risk. No "as-built" surveys are required by the town for fences.

#### C. LOCATION OF FENCES TO PREVENT HAZARDOUS TRAFFIC SITUATIONS

No fence shall be erected in any location that interferes within a sight distance triangle of motorists utilizing public or private roadways. A sight distance triangle shall be the visually unobstructed area of a street/driveway corner as determined by measuring a distance of 30 feet along the intersecting curb lines, or edges of pavement of the intersecting street/driveway if curbs are not present, and connecting the two (2) points by a straight line to form a triangular shaped area over the corner.

#### D. HEIGHT RESTRICTIONS

1. Measurement.
  - a) Height shall be measured at the highest point, not including columns or posts, ~~of the fence section to the existing natural grade~~ after any fill or grading of the site. The point of measurement shall be along the outside of the fence adjacent to the abutting property. If the fence is adjacent to a right-of-way, the height shall be measured from the grade at the right-of-way line. ~~Fill material shall not be used solely for the purpose of reducing the height of the fence.~~
  - b) Columns or posts shall not extend more than 18 inches above the built height of the fence. Columns or posts shall be separated by a horizontal distance of at least four (4) feet, except at gates.
  - c) Any retaining wall or berm below the fence shall be considered as part of the overall height of the fence. Bulkheads that are adjacent to estuarine waters are exempt from this regulation.
2. ~~Residential and commercial districts.~~ With the exception of fences located in the industrial zoning district, ~~N~~no fence shall exceed six (6) feet in height.
3. No fence shall exceed four (4) feet in height when located in the front yard setback.
4. ~~Fences exceeding the height restrictions.~~
  - a) ~~For nonresidential uses only, a special use permit variance shall be required for fences exceeding the height restrictions.~~

~~5.4.~~ Exemptions. Town facilities, utilities, and all uses specifically identified ~~in article IX of this chapter~~ as having an allowance for fencing exceeding six (6) feet shall be exempt from the height requirements provided herein.

E. ZONING PERMIT REQUIRED FOR ALL FENCES

No fence shall be erected by any person until a permit for same has been issued by the Zoning UDO Administrator. A building permit shall also be required for all ~~commercial~~ fences exceeding six (6) feet in height. Properties located in an area of environmental concern (AEC) require a CAMA permit. Sand fences and silt fences are exempt from these permit requirements.

F. MAINTENANCE REQUIRED

All fences shall at all times be kept in good repair. If at any time a fence should become unsafe or poorly maintained, the Building Inspector or Code Enforcement Officer shall notify the owner of such condition, and, upon failure of the owner to correct such situation within a 30-day period, the Building Inspector or Code Enforcement Officer shall take appropriate legal action to have such fence repaired or removed.

G. CONSTRUCTION STANDARDS

All fences permitted in all districts shall meet the structural requirements of the State Building Code and other wind resistant construction requirements that may be specified or suggested by the Building Inspector. Fences shall be constructed so that the finished (sheathed) side is oriented toward adjoining lots or the public right-of-way.

H. NONCONFORMING FENCES

Fences erected before the adoption of the ordinance from which this section is derived, which violate the provisions of this article, shall be considered nonconforming. If more than 50% of a nonconforming fence is destroyed or removed for any reason, then only that portion of the fence shall comply with the provisions of this article.

I. GATED STREETS AND DRIVES

1. Permits shall be obtained and are subject to approval by the town. All gates shall meet the following requirements:
  - a) Shall not be located in an improved public access easement or public right-of-way.
  - b) A vehicle turnaround shall be provided before the gate entrance. The turnaround shall be a minimum of 20 feet from the curb line or end of the abutting street.
  - c) Gate setback: Minimum of 60 feet from curb line or end of abutting street.
  - d) All gates will be required to open away from, not toward, a vehicle entering the development.
  - e) Pedestrian access shall be provided.
  - f) The gate entrance shall be illuminated.
  - g) Emergency access shall be approved by the Town of Carolina Beach Fire Marshal and meet the North Carolina State Fire Prevention Code.
  - h) Opening gate requirements:

- i) Single gate width: Minimum clear width of 22 feet from curb face to curb face for one-way or two-way traffic.
- ii) Dual gate width: Minimum clear width of 14 feet per lane from curb face to curb face on both travel lanes.
- i) The closing of town streets and facilities for safety and maintenance reasons shall be exempt from the requirements above.

### 3.21 PEDESTRIAN FACILITIES AND SIDEWALKS

- A. These regulations are intended to promote walking and other forms of nonmotorized transportation, allow the citizens to reap significant social, environmental, and health benefits that are often not available in auto-oriented places. This will be achieved by ensuring safe, convenient, and accessible sidewalks to provide opportunities for exercise, help people meet and socialize, and give children and others who do not drive, mobility options.
- B. Within the CBD and where abutting an NCDOT roadway, all new development and redevelopment that exceeds 50% or more of the current tax or appraised value shall ~~install~~ ~~clude curb, gutter, and~~ sidewalks in accord with the provisions of this section. Single-family and two-family dwellings are excluded from this requirement. All subdivisions of six (6) or more lots shall be required to install sidewalks along any proposed street or roadway (to include both street sides if applicable).
- C. Curb and gutter and at grade sidewalks. The town may require the property owner(s) to install curb and gutter at the existing road edge, or installation within the width of the existing road. The developer will be required to add any necessary asphalt to maintain the uniform appearance of the existing roadway. If curb and gutter is not utilized, the required horizontal separation distance of five (5) feet shall be provided from the edge of existing roadway to the installed sidewalk.
- D. Any associated landscaping shall be provided in accordance with the requirements of the landscape and buffer section contained in this article.
- E. Sidewalks. Sidewalks may be required to be installed within the right-of-way behind the curb and gutter, as applicable. Sidewalks shall connect to adjacent existing facilities where applicable.
- F. Sidewalk shall have a minimum width of design standards:
  - 1. Sidewalks shall have a minimum width of five (5) feet along and within the CBD, or state roads maintained by the NCDOT. Sidewalks shall have a minimum width of four (4) feet for residential subdivisions of six (6) or more lots adjacent to town maintained roads. If the installed sidewalk cannot fit on the existing right-of-way the property owner(s) will be required to provide the town with an easement to maintain sidewalks.  
~~The determination of required curb, gutter and/or sidewalk shall be made by the Town Council upon review and recommendation by the Planning and Zoning Commission.~~

- 2. All sidewalks must meet ADA requirements, including where necessary to serve required cluster mailbox locations within subdivisions or multi-family development.
- 3. Sidewalks shall be installed continuously through any existing or proposed driveway.
- G. Installed ~~curb, gutter and~~ sidewalks shall be for the entire length of the property.
  - (a) ~~Required sidewalk shall be based upon one or more of the following:~~
    - a. ~~Reasonable evidence that the sidewalk would be essential for pedestrian access to community facilities;~~
    - b. ~~That such is necessary to provide safe pedestrian movement outside the street or street rights-of-way area;~~
    - c. ~~That such an extension could reasonably become an extension of existing sidewalks and/or other pedestrian ways.~~
- H. All specifications for curb, gutter, and sidewalks are available upon request from the ~~town Planning and/or Operations~~ Public Works Department and as provided in Chapter 34, Article 7 of the Town’s General Code.

### 3.22 COMMERCIAL VEHICLE STORAGE

- A. Commercial trailers. A commercial trailer or semi-trailer over 25 feet in length shall not be parked or stored ~~in any residential~~ on any residential dwelling or residentially zoned area except in an enclosed building. This regulation shall not be interpreted to prohibit the loading and unloading of commercial trailers in any such district.
- B. Commercial vehicles. One (1) commercial vehicle with manufacturer’s rating of not more than one (1) ton (2,000 pounds) or a payload capacity of 6,000 pounds may be parked on any lot containing a principal building, provided that such vehicle is parked off the street and is used for business purposes by a resident of the premises. No commercial vehicles with more than two (2) axles are allowed to be parked in any residential district or use except in an enclosed building. This regulation shall not be interpreted to prohibit commercial vehicles from loading or unloading in any residential district.

### 3.23 DRIVEWAYS

- A. Purpose. The purpose of this section is to provide standards for driveway placement and design in order to safely provide access to streets while minimizing interference to traffic flow.
- B. Applicability. The standards detailed in this section apply to any proposed driveway connecting to a town-maintained road. All driveways connecting to a state-maintained road will be required to meet both town and state driveway standards.
- C. Driveway design standards. These standards apply to all driveways connecting private property to public streets. All driveways shall be paved from the street edge to the property line per the design standards listed below. In no case shall a driveway have a width that exceeds 36 feet per lot, regardless of street frontage.

Use	Max width [1]	Flare	Thickness	Material
Residential Single/Two-Family	36 feet	3 feet x 3 feet	6 inches	Asphalt or Portland Cement Concrete, 3000psi
<del>Commercial/Multi-Family</del> All other uses	36 feet [3]	10 feet x 30 feet, or as required to meet truck turning radius	6-8 inches	Asphalt or Portland Cement Concrete, fibrous, 4000psi[2]

[1] The net width of all driveways shall not to exceed the allowable maximum width at any point within the right-of-way. This measurement is determined at the property line/right-of-way line. <u>There is no maximum width requirement beyond the street right-of-way line.</u>
[2] All driveways shall be constructed of asphalt or Portland Cement Concrete with a 3000psi minimum. High intensity, commercial uses may be required to use fibrous concrete with a 4000psi minimum upon review and direction by the Operations Director.
[3] Width must also be in accordance with Appendix D of the current North Carolina Fire Code.

- D. Drainage. All proposed driveways will be reviewed by the town to ensure positive drainage to the right-of-way on roads maintained by the town or to an official town conveyance systems. It is the responsibility of the contractor or property owner to design and cover the cost of any modifications to the drainage system.
  - 1. Piping existing ditches. A minimum 15 inch reinforced concrete pip (RCP) culvert is required to pipe existing drainage under a proposed driveway. Driveway drainage pipes must be consistent with the size and drainage capacity of the surrounding right-of-way.
- E. Inspections. Every proposed driveway must be inspected by the Operations Director or their designee prior to the addition of any concrete or asphalt. Failure to comply may result in a stop work order issued by the Operations Director, as well as the removal or alteration of any driveway not in compliance with the requirements of this section. A final inspection of the driveway is required once all proposed work has been completed.
- F. Maintenance. The town will only be responsible for maintenance on driveways when it relates directly to street or drainage maintenance within the town maintained adjoining right-of-way. ~~Commercial driveways and a~~ All driveways connecting to a state maintained right-of-way shall be subject to NCDOT maintenance specifications.

### 3.24 OFF-STREET PARKING

#### A. PURPOSE

- 1. The purpose of this section is to:
  - a) Provide off-street parking standards which will alleviate traffic congestion in the streets and promote safe and unrestricted traffic flow.
  - b) Provide for the efficient storage of vehicles while minimizing the detrimental effects of off-street parking on adjacent properties.
  - c) Control the impacts of stormwater drainage and soil erosion and promotes visual enhancement through adequate landscaping.
  - d) Ensure the proper and adequate development of off-street parking throughout the town and its environs.

#### B. APPLICABILITY

- 1. The off-street parking standards contained herein shall apply to all new ~~buildings construction~~ and uses, changes of ~~ownership and uses~~, expansions, additions and renovations to existing structures and uses.
- 2. ~~Waiver~~ Exemption of parking requirements in the Central Business District. Where properties are located within the CBD, off-street parking requirements may be waived are not applicable if public parking spaces ~~adequate to meet the requirement~~ are located within 500 feet of the use as measured in a straight line from the closest point of the building to the closest public parking space. Where such use does not have building, then the measurement shall be from the property line of said use.



C. MINIMUM OFF-STREET PARKING REQUIREMENTS

1. The number of exclusive off-street residential parking spaces required by this section shall be provided on the same lot with the principal use, unless otherwise permitted by this ordinance, and the required number of off-street parking spaces specified for each use shall be considered as the absolute minimum.
2. In the case of mixed uses (an establishment comprised of more than one (1) use; e.g. restaurant and hotel), which may include a principal and accessory use, the total requirements for off-street parking shall be the sum of the requirements of the various uses computed separately and the off-street parking space for one (1) use shall not be considered as providing the required off-street parking for any other use.
- ~~1.3.~~ Handicapped parking spaces shall be in accordance with the regulations set forth by the Americans with Disabilities Act and shall be identified by appropriate signage. The minimum number of spaces shall be provided in accordance with the State Building Code.
4. Where fractional spaces are indicated, the total will be counted and rounded up to the next whole number.
- ~~2.5.~~ Residential units stacked on top of each other with common ownership of land must provide for two (2) unobstructed parking spaces per unit.
- ~~3.6.~~ Garages and carports may be considered in meeting the applicable-parking requirements.
- ~~4.7.~~ Electric vehicle car charging stations shall not be counted as part of the minimum off-street parking requirement for any nonresidential use.

D. MINIMUM OFF-STREET PARKING RATIOS

1. The following table establishes the formulas to be used to calculate the number of parking spaces required for a particular use. For uses that do not correspond to the use types listed in Table 3.6, Minimum Off-Street Parking Spaces Required, the UDO Administrator shall determine the minimum parking space requirement. In such instances, the applicant shall provide adequate information for review, which includes, but is not limited to the type of use(s), number of employees, the occupancy of the building, square feet of sales, service and office area, parking spaces proposed, and hours of operation.
2. Unless otherwise noted, off-street parking spaces shall be based upon gross floor area.

Table 3.6 Minimum Off-Street Parking Spaces Required	
Types of Uses	Number of Required Parking Spaces
	Residential uses
Detached dwelling, single-family; <u>manufactured home</u>	2 per dwelling unit + 0.5 per bedroom over 2
Two-family dwelling	2 per dwelling unit + 0.5 per bedroom over 2
Residential dwelling units in conjunction with mixed use commercial-residential	1 per 1,000 square feet of residential space
Life care communities (independent living units)	0.5 per resident
Multi-family (triplex and quadraplex)	1 space per unit 650 square feet of indoor gross floor area or less; 2 per dwelling unit over 650 square feet of indoor gross floor area or less + 0.5 per bedroom over 2. <u>Landscape islands must be provided for each unit to distinguish separate ownership</u>

Multi-family (5 or more units)	1 space per unit 650 square feet of indoor gross floor area or less; 2 per dwelling unit over 650 square feet of indoor gross floor area or less + 0.5 per bedroom over 2
Family care home	<u>1 space for each attendant in addition to the required 2 per dwelling unit + 0.5 per bedroom over 2</u>
<del>Room-renting/boardings</del>	<del>1 per roomer or boarder in addition to requirements for the dwelling units</del>
Public indoor or outdoor swimming pools	1 space per 75 square feet of water area or 1 space per 4 spectator seats, whichever is greater
Pools in conjunction with private clubs or residential communities such as HOA/POA amenity	If all houses or lots fall within a 300-foot radius of the pool, 1 handicapped parking space and 1 service vehicle parking space shall be provided. For those houses or lots in excess of the 300-foot radius of the pool, 1 parking space for each 75 square feet of pool area <del>and 1 space for each 2 employees shall be provided</del>
Townhouses	2 per dwelling unit + 0.5 per bedroom over 2
<b>Institutional and Recreational Uses</b>	
Adult day care	1 per 5 participants <del>+1 per employee</del>
Auditoriums, stadiums, assembly halls, gymnasium, theater, convention, live entertainment complex	1 per 200 square feet + 1 per every 4 persons accommodated by facility at maximum capacity
Clinics	1 per 300 square feet
Clubs and lodges	1 per 3 seats of meeting space at maximum capacity
Day nursery, day care center, preschool, drop-in child care	1 per 300 square feet
Fire station	1 per person on duty + 5 additional
Funeral home	1 per 300 square feet
Golf courses	4 per green <del>+1 per employee</del>
Golf driving range, miniature golf course	<del>2-0.5 per tee, plus 1 per employee</del>
Government facilities/utilities	Suitable for maintenance, service, and/or equivalent to the requirement for the underlying use(s)
Hospital, sanitarium, philanthropic and eleemosynary institutions	1 per 2 licensed beds for patients <del>+1 per staff, incl. medical and support (largest shift)</del>
Meeting rooms/facilities and event venues	See eating and drinking establishments
Museum/art gallery	1 per 500 square feet
Nursing home, rest home, home for the aged	1 per 3 patient beds, <del>+1 per each FT employee</del>
Parks <ul style="list-style-type: none"> <li>• Swimming pool</li> <li>• Tennis or racquet court</li> </ul>	<ul style="list-style-type: none"> <li>• 1 per 75 square feet of water area</li> <li>• 3 per court</li> </ul>
Post office	1 per 300 square feet <del>+1 per 2 employees</del>
Public library	1 per 200 square feet
Private recreation centers <ul style="list-style-type: none"> <li>• Swimming pool</li> <li>• Tennis or racquet court</li> <li>• All other floor area</li> </ul>	<ul style="list-style-type: none"> <li>• 1 per 75 square feet of water area</li> <li>• 3 per court</li> <li>• 1 per 250 square feet</li> </ul>
Religious institution <del>church</del>	1 per square 300 feet of indoor gross floor area
Schools, <del>elementary public and private</del>	1 per <del>employee-classroom</del> + 5 for visitors
Schools, commercial for specialized training	<u>1 per 300 square feet</u>
Shooting range	<u>1 per shooting station range bay</u>
Utilities	<u>No parking required unless office or storage space is allocated</u>
<b>Business Nonresidential uses</b>	
Adult entertainment establishment	<u>1 space per 100 square feet</u>
Amusement establishments <ul style="list-style-type: none"> <li>• Theater</li> <li>• Bowling alley</li> <li>• Pool hall</li> </ul>	<ul style="list-style-type: none"> <li>• 1 per 4 seats</li> <li>• 4 per alley</li> <li>• 2 per billiard table</li> </ul>
Animal care facilities	1 per 300 square feet of gross floor area (outside space not applicable)
Auction sales	<u>1 per 500 square feet</u>

Automotive, major and minor <del>Automobile service station</del>	2 per station + 4 per service bay
Banks <ul style="list-style-type: none"> <li>• Drive-through windows (banks)</li> <li>• ATM</li> </ul>	1 per 300 square feet <ul style="list-style-type: none"> <li>• 3 stacking or queuing spaces for each window</li> <li>• 2 per machine</li> </ul>
<u>Body piercing facility; ear piercing facility; tattoo studio</u>	<u>1 space per 200 square feet</u>
Commercial marina	1 per wet boat storage space, 1 per 2 dry storage, 1 per service bay; <del>1 per 2 employees</del> + required for all other on-site uses
Commercial recreation, indoor	1 per 200 square feet
Commercial recreation, outdoor	<del>Adequate to handle the anticipated normal capacity for patron use, as determined by the Building Inspector</del> 1 per 4 occupants as based upon occupancy levels determined by applicant and subject to final approval for Fire Marshall; <del>+1 space for each employee</del>
Convenience stores	1 per 200 square feet
Car wash <ul style="list-style-type: none"> <li>• Automatic or drive-through</li> <li>• Self service</li> </ul>	<ul style="list-style-type: none"> <li>• 6 per washing or processing area, including stacking or queuing spaces</li> <li>• 2 stacking or queuing spaces per wash bay in addition to the bay itself</li> </ul>
Dry stack storage facilities	1 per 5 dry storage space
Eating and/or drinking establishments <ul style="list-style-type: none"> <li>• Eating and/or drinking establishments</li> <li>• Drive-through windows (eating and drinking establishments)</li> </ul>	<ul style="list-style-type: none"> <li>• 1 per 110 square feet of indoor gross floor area (GFA). No parking shall be required for outdoor GFA if the establishment is located within 500 feet of public parking spaces. A 50% reduction in the parking requirement shall apply to outdoor GFA if the establishment is not within 500 feet of public parking spaces.</li> <li>• <u>Drive-through</u>, 6 stacking or queuing spaces for the first window; 3 stacking spaces for each additional window</li> </ul>
Electronic gaming operations	1 parking space per 100 square feet of gross floor area or 1 parking space per 2 electronic gaming machines, whichever is greater (No additional parking shall be required when the use is accessory <del>as described in section 40-261</del> )
Hotel/motel (not condominiums)	1 per sleeping room + 1 per <del>4 seats</del> 500 square feet in meeting or assembly rooms. A 25% parking reduction shall be given if 50 or greater parking spaces are required. The reduction shall only apply to associated on-site uses limited to restaurants, bars, and meeting rooms
Industrial, manufacturing	1 per employee + 1 per vehicle used directly in conduct of such use
Medical and dental offices	1 per 200 square feet <del>+1 per employee</del>
New and used car sales, house and truck trailer sales, outdoor equipment and machinery sales, commercial nurseries	<u>1 per 5,000 square feet of outdoor gross sales and display area + 1 per 200 square feet of actual retail/sales area and 1 per 500 square feet of indoor repair area</u> <del>4 per salesperson on duty + 1 per employee</del>
Office and professional building	1 per 300 square feet
Personal service establishment	<u>1 per 200 square feet of service area</u>
Rental of golf carts, mopeds, and scooters	1 parking space per every 1 vehicles displayed for rent
Repair services	1 per 200 square feet of actual retail/sales area and 1 per 500 square feet of indoor repair area
Retail stores <del>and service businesses (i.e., barber, tailor, etc.)</del>	1 per 200 square feet of actual retail space <del>or service area</del>
Shopping centers, multi-use facility	5 per 1,000 square feet of gross leasable area
<u>Warehouses and wholesale uses</u>	1 per 5,000 square feet of gross floor area
All others, <u>use otherwise unlisted</u>	1 per 200 square feet

D. GENERAL PROVISIONS AND REQUIREMENTS

1. Minimum parking space size. The minimum size parking space for 90-degree parking or other diagonal parking spaces shall be nine (9) feet in width and 18 feet in length. Parallel parking spaces shall not be less than eight (8) feet in width and 22 feet in length. Golf cart spacing may be six (6) feet in width by 14 feet in

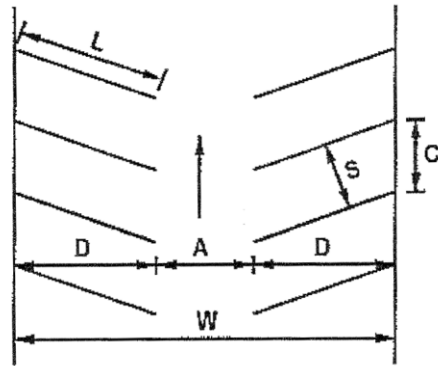
~~length. Notwithstanding the foregoing, the Technical Review Committee may modify the required parking space size based upon the minimum parking space dimensions recommended by the Urban Land Institute or other comparable national standard using factors that include, but are not limited to, whether sufficient area is available between the front wheel stop or barrier and the property line, walkway, parking drive/aisle, or landscaped area; the width of the parking space being sufficient for comfortable door opening clearance; the ease of maneuverability into and out of spaces; and the impact of the vehicle size on the desired angle of the parking space.~~

2. ~~The Technical Review Committee may also allow for up to 20% of the spaces to be designed for use by smaller/compact vehicles to be placed in locations as determined by the Technical Review Committee.~~ For nonresidential uses only, up to 20% of the required parking may be utilized for golf cart/low-speed vehicle parking or compact vehicle parking. Each compact vehicle space shall be designated, "compact vehicle or golf cart/LSV only." In utilizing the 20% exception, all nonresidential uses must provide a bicycle rack with a minimum of four (4) spaces.
3. Minimum parking drive/aisle size. See the table inset for the drive/aisle standards for both one-way and two-way traffic flow. Notwithstanding the forgoing, the Technical Review Committee may modify the required parking drive/aisle and parking module (the combined dimension of two (2) parked vehicles and the aisle between) dimensions based upon the minimum parking drive/aisle and parking module dimensions recommended by the Urban Land Institute or other comparable national standard using factors that include, but are not limited to, the acceptable minimum level of comfort for the turning movement; the ease of maneuverability into and out of spaces; site location; site dimensions; site constraints such as trees, power poles, buildings, or other natural or manmade structures; surrounding streets; and traffic flow.

**Table 3.7 Off-Street Parking Dimensions. See associated diagram.**

Application	Stall Width (S)	Stall Length (C)	Stall Depth (D)	Linear Depth (L)	One-Way Aisle Width (A)	Module Width (W)	Two-Way Aisle Width
Dimensions for 90-degree parking	9 feet	9 feet	18 feet	18 feet	20 feet	56 feet	24 feet
Dimensions for 60-degree parking	9 feet	10.4 feet	15.6 feet	18 feet	16 feet	47.2 feet	24 feet
Dimensions for 45-degree parking	9 feet	12.7 feet	12.7 feet	18 feet	12 feet	37.4 feet	24 feet
<u>No adjacent parking within 20 feet, drive aisle only</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>12 feet</u>	<u>N/A</u>	<u>20 feet</u>
<u>Golf cart/LSV parking</u>	<u>6 feet</u>	<u>14 feet</u>	<u>14 feet</u>	<u>14 feet</u>	<u>12 feet</u>	<u>Subject to largest total stall</u>	<u>24 feet</u>

						and aisle width summation.	
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4. Parking space for dwellings. Driveways for dwellings shall be designed and constructed to accommodate the required amount of parking per dwelling.
5. Assigning of parking spaces. The required parking spaces for any number of separate buildings or uses may be combined in one (1) common parking lot facility; however, the required parking assigned to one (1) use may not be assigned to another active use at the same time.
6. Location of parking space. The initial obligation of the property owner or developer is to provide the required parking within the property of the principal use. However, off-site parking may be allowed when such parking facility is within 500 feet of the applicable principal use property, when such off-site parking facility is in the same ownership as the applicable principal use and when the off-site parking facility can allow safe and unrestricted pedestrian access between both sites by improved access easements, walkways, or sidewalks in conformance with standards of the town. The maximum distance of off-site parking may be exceeded, upon approval of the Planning and Zoning Commission and Town Council for uses of public assembly subject to issuance of a variance for a use which contains seating capacity of 1,000 or more (e.g, auditoriums, stadiums, or amphitheaters). Off-site parking shall be measured in a straight line distance from the closest point of the building to the parking space. Where such use does not have building, then the measurement shall be from the closest property line of said use.
7. Parking reduction or assignment to another use. The parking spaces required by this section shall not be reduced below the minimum required for the use or facility to which it is assigned, nor shall any parking spaces required by this section be used for any other purpose or use unless otherwise specified by this article – with the exception of EV charging stations that may occupy no more than 5% of the required parking spaces and subject to accessory structure setbacks. Any additional charging stations shall be located in parking spaces not subject to the minimum requirement. Required off-street parking spaces and loading spaces are permanent areas and shall not be used for any other aboveground purpose.

8. Myrtle Grove Sound and Ocean terminating parking access. On all streets which terminate with the ocean berm or the waters of Myrtle Grove Sound where dwellings, hotels, or motels are located on corner lots which abut the terminated street and the dominant highway or right-of-way, such dwellings, hotels, or motels shall have the entrance to such projects for ingress and egress on the dominant street only, where parallel to the ocean or sound as to not disrupt public access, unless the Technical Review Committee determines the new ingress/egress will not negatively impact the level of public access. Minimal evaluation criteria that shall be met:
  - a) Enhance access by defining additional public parking.
  - b) Increase public safety by allowing access on the terminating street.
  - c) Include improvements to public access to the ocean and/or soundfront areas.

~~(2) For types of uses not listed, the Planning Director shall have the authority to determine the appropriate number of required parking spaces based upon the maximum anticipated use.~~

#### F. PARKING DESIGN AND CONSTRUCTION

1. Required surfacing. All parking facilities shall provide a paved surface of concrete or asphalt material. Concrete pavers, brick, pervious, or semi-pervious materials (e.g., "turfstone" or gravel) or similar material may be used if determined to exhibit wear resistance and load-bearing characteristics acceptable to the ~~Director of Operations~~ Public Works. In all instances, such surface shall be dustproof. Dustproof shall be presumed to include clean-washed stone and other materials that do not create aerial disturbance or residue.
2. Barriers. Each parking space shall be equipped with a curb, wheel stop, or similar device to prevent vehicle encroachment beyond property lines of parking facilities into pedestrian ways or traffic isles.
3. Vision clearance. In order to maintain an acceptable and safe line of sight for motor vehicle drivers, no parking spaces, fences, walls, posts, signs, lights, shrubs, trees, or other type of obstructions not specifically exempted shall be permitted in the space between 30 inches above ground level and 10 feet above ground level within a sight distance triangle. A sight distance triangle shall be the visually unobstructed area of a street/driveway corner as determined by measuring a distance of 30 feet along the intersecting curb lines, or edges of pavement of the intersecting street/driveway if curbs are not present, and connecting the two (2) points by a straight line to form a triangular shaped area over the corner.
4. Radii at intersection of parking facility, driveway, and street. The minimum corner paved radius at intersections of the parking facility, driveways, and streets shall be 15 feet.
5. Maneuvering. All parking facilities shall be designed and constructed so that maneuvering shall take place entirely within the property lines of the facility and shall be arranged so that ingress and egress is by forward motion of the vehicle. Exceptions may be granted for maneuvering of vehicles that meet the following conditions and the required sidewalk and landscaping regulations shall be waived for those parking spaces.

- a) Single- and multifamily dwellings.
- b) Commercial establishments meeting the following criteria:
  - i) Located on a non-through street.
  - ii) Applicable NCDOT approval has been obtained and provided to town.
  - iii) Located in the Highway Business (HB) Zoning District.
6. Drainage. All stormwater drainage from parking facilities shall either be retained on-site or piped to an appropriate underground stormwater system or to open drainage ditches as approved by the Directors of Public Works and Public Utilities. ~~No properties. (See Ordinance No. 02-521, Stormwater Management and Drainage, of the Code of Ordinances, Town of Carolina Beach, chapter 32.)~~ and as required by the applicable stormwater management ordinances of the town.
7. Landscaping. Parking facilities shall be subject to the provisions of the ~~Landscape Ordinance of the Town~~ landscape requirements of this ordinance.
8. Markings and signs. All required parking spaces contained within a parking facility shall be adequately marked on the paved surface and any directional markings or signs shall be provided by the owner or developer.
9. Voiding of certificate of compliance. The certificate of compliance for the use of any building, structure, or land where off-street parking space is required shall be withheld until the provisions of this article are complied with. Failure to comply with the requirements of this article shall cause any certificate of compliance previously issued to become null and void immediately.

### 3.25 OFF-STREET LOADING REQUIREMENTS

- A. Purpose. The purpose of this section is to provide off-street loading standards which will lessen congestion in the streets and promote safe and unrestricted traffic flow and to provide for the safe and efficient use of property to serve the loading and unloading needs of commercial facilities.
- B. Applicability. The off-street loading standards contained herein shall apply to all new ~~building construction~~ and uses, changes of ownership and uses, and expansions, additions and renovations to existing structures ~~and uses accept as provided in subsection (c)(3) of this section~~ unless subject to exemption provisions as provided herein. Residential uses shall be exempt from off-street loading requirements.
  1. Waiver of loading requirements in the ~~central business district and for all other commercial districts~~ CBD, MB-1, I-1, T-1, MX, HB, and NB zoning district. Where properties are located within the CBD, off-street loading requirements ~~may be waived by the decision-making authority (Town Council or planning department) provided a loading space plan is submitted by the applicant and approved by the Director of Planning and Development or his designee~~ are exempt subject to submission and approval of a loading space plan by the UDO Administrator. ~~For all other commercial~~ Within the MB-1, I-1, T-1, MX, HB, and NB zoning districts where buildings are less than 15,000 square feet, the loading requirements may be waived based on approval of a loading plan by the UDO Administrator. Loading plans submitted by applicants in all districts shall address the following:
    - a) Time loading will take place.
    - b) Approximate size of truck used for loading.

- c) Duration of loading period.
- d) Location of the loading area.
- C. Minimum off-street loading requirements.
  - 1. The minimum number of off-street loading spaces shall be determined by the gross floor area of the establishment as provided by the table herein.
  - ~~1.2.~~ For uses whereby the applicant seeks relief from these requirements, and where no waiver may be sought, a variance may be applied for. As part of the request for a variance the applicant shall provide a detailed estimate of the anticipated quantities of goods and frequency of delivery. ~~Uses handling goods in quantity. 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 of Establishment in Square Feet	Required Number of Loading Spaces
Less than 15,000	Must submit a loading plan
15,000 to <del>49,999</del> <del>24,999</del>	1
<del>25,000 to 36,999</del>	<del>2</del>
<del>40</del> 50,000 to 100,000	<del>3</del> 2
For each additional 100,000 square feet of gross floor area, at least one (1) additional loading space shall be provided.	

- ~~2. — Uses not handling goods in quantity. Commercial establishments which do not handle large quantities of goods, including, but not limited to, office buildings, restaurants, auditoriums, convention halls, coliseums, exhibition halls, funeral homes, hotels and motels, shall provide off-street loading facilities in the following amounts:~~

Gross Floor Area of Establishment in Square Feet	Required Number of Loading Spaces
Less than 15,000	Must submit a loading plan
15,000 to 49,999	1
50,000 to 100,000	2
For each additional 100,000 square feet of gross floor area, at least one additional loading space shall be provided.	

- D. Location of off-street loading space. All required loading spaces shall be located on the same lot and shall have the same zoning as the use it is to serve. No off-street loading space shall be located in a required front yard or within a triangular sight distance. Loading facilities shall be constructed so that all maneuvering will take place entirely within the property lines of the facility. Interior off-street loading spaces may be located inside the structure it serves, provided the other provisions of this section, such as size and access, are met.
- E. Size of off-street loading space. Unless otherwise specified, an off-street loading space shall be 12 feet in width by 45 feet in length, exclusive of aisles and maneuvering space, and shall have a vertical clearance of at least 15 feet.
- F. Surfacing of off-street loading space. All off-street loading spaces shall be paved with asphalt or concrete material, or with alternative paving material (e.g., concrete pavers, brick, "turfstone," or similar material) determined to exhibit equivalent wear resistance and load-bearing characteristics as asphalt or concrete, of a type and thickness capable



of carrying, without damage, the heaviest vehicle loads reasonably anticipated on such surface, as approved by the Public Works Director.

- G. Repair and service. No motor vehicle repair work or service of any kind shall be permitted in conjunction with loading facilities, except emergency repair service necessary to relocate a vehicle to a normal repair facility.
- H. Utilization. Off-street loading space shall not be used to satisfy the space requirements for off-street parking facilities or portions thereof, nor vice versa.
- I. ~~Similar use application. The Zoning Administrator shall apply the off-street loading requirements for the most similar use listed herein to an unspecified use.~~
- J. Access. Each off-street loading space shall be provided with unobstructed ingress and egress to a public or private street.
- K. Voiding of certificate of compliance. The certificate of compliance for the use of any building, structure, or land where off-street loading is required shall be withheld until the provisions of this section are complied with. Failure to comply with the requirements of this section shall cause any certificate of compliance previously issued to become null and void immediately.

### 3.26 RESERVED

### 3.27 LANDSCAPE AND BUFFER REQUIREMENTS

#### A. PURPOSE

This article is established for the purpose of regulating, controlling, preserving, and setting forth methods of continued maintenance assurances of all regulated vegetation located within the municipal limits of the town, and furthermore establishes authority to regulate and control the degree of impervious surfaces constructed on properties and the placement and configuration of fill soil and materials on properties located within said municipality.

#### B. AUTHORITY

North Carolina General Statutes 160A-174(a), 160D-923, 143-214.7, and 143-215.51 (G.S. 160A-174(a), 160D-923, 143-214.7 and 143-215.51).

#### C. BENEFITS OF TREES AND LANDSCAPING

1. The town finds it important to adopt an ordinance to preserve and protect trees since numerous benefits are derived from this practice, including the following:
  - a) Maintains the visual character of the community and contributes to the aesthetic quality of property and enhances its value.
  - b) Screens objectionable views within and between uses.
  - c) Reduces glare, heat, and assists in noise abatement, maintaining the climatic balance and decreasing wind velocity.
  - d) Contributes to the process of air purification and oxygen regeneration.
  - e) Assists in the stabilization and fertilization of soil and in the prevention of soil erosion.
  - f) Contributes to the process of groundwater recharge and stormwater runoff retardation and protecting against flood hazards and erosion.
  - g) Promotes energy conservation by maximizing the shading and cooling effects of trees.

- h) Provides a haven for birds, reptiles, and mammals that in turn help control the insect population.
- i) Provides nuts and fruits for wildlife.
- j) Provides important psychological, sociological, and aesthetic counterpoints to the manmade urban setting.

D. APPLICABILITY

In order to adhere to the above-described functions, these regulations shall be applicable to any and all regulated vegetation and to all areas proposed for the reduction of ground absorption area through the construction of impervious surfaces and to all areas proposed for land elevation and modification of configuration by the deposition of fill soil or materials as specified herein or as may be described by subsequent applicable regulations of the town.

E. BUFFER YARD AND STREET YARD LANDSCAPING

1. For proposed new construction or expansion. A buffer yard, as defined herein, shall be provided for all new construction or expansion that is proposed in any amount equal to 50% or more of the current tax or appraised value. However, no buffer yard improvements shall be required for those portions of existing lot frontage used for driveways constructed in accordance with town regulations.
2. Required landscape types. It is required that buffer and street yards be landscaped by meeting the requirements of Type A—~~E-F~~ set forth in ~~subsection (b)~~ of this section. Any side or rear yard that abuts a residential use or residential district shall provide for a six (6) foot fence with 80% opacity. A landscaping/buffer yard information guide and plant selection list is available from the ~~Zoning Administrator~~ UDO Administrator.

Buffer and Street yard Types	Uses	Buffer/Street Yard Size/width (feet)
Type A	<del>Business/office use/parking areas</del> Nonresidential use 10,000 square feet or less <del>(public or private)</del> impervious surface or area	5
	Multifamily, planned unit development (3-5 units)	5
Type B	Multifamily, planned unit development (6 + units)	10
	<del>Intensive, commercial, multi-use facilities/parking areas greater than 10,000 sq. ft. (public or private)</del> Nonresidential use greater than 10,000 square feet of impervious surface or area	10
	<del>Institutional (government buildings, schools, churches)</del>	10
Type C	Industrial or manufacturing	15
<del>Type D</del>	<del>Subdivisions (see section 36-140)</del>	<del>6</del>
<del>Type E-D</del>	Central business district (CBD), new construction only	0
<del>Type F-E</del>	Single-family and two-family	0

- a) Type A. For every 50 linear feet, or fraction thereof, the buffer yard shall contain one (1) canopy tree or two (2) understory trees, and three (3) shrubs.
- b) Type B. For every 50 linear feet, or fraction thereof, the buffer yard shall contain two (2) canopy trees or four (4) understory trees, and six (6) shrubs.

- c) Type C. For every 50 linear feet, or fraction thereof, the buffer yard shall contain two (2) canopy trees or four (4) understory trees, and six (6) shrubs.

~~Type D. For every 50 linear feet of frontage, or fraction thereof, the street yard shall contain one (1) understory tree with sidewalks or planters built within the sidewalk. Subdivisions requiring approval by the Planning and Zoning Commission and Town Council shall provide for sidewalks along with required street tree requirements. (Section 36-136, subdivision regulations)~~

- d) Type ~~D~~E. For every 50 linear feet of frontage, or fraction thereof, the street yard shall contain one (1) understory tree with sidewalks or planters built within the sidewalk. Street yards located within the CBD shall include sidewalks with planting areas either adjacent to the curb or planters located within the sidewalk. In the Central Business District, sidewalks and tree plantings will be required for all new construction. Any side or rear yard that abuts a residential district shall provide for a Type B landscape buffer yard.

- e) Type ~~F~~E. For every 25 linear feet of frontage, or fraction thereof, the lot shall contain a minimum of one (1) tree. At planting each tree shall be a minimum of:

- i) Six (6) feet tall.
- ii) Two (2) inches in caliper.

- 3. Preservation of vegetation. If vegetation exists in the proposed buffer yard area, the ~~Zoning~~UDO Administrator may grant credit toward meeting buffer yard requirements for preservation of the vegetation provided their caliper or height is equal to or exceeds the specifications herein described.
- 4. Planting and replacement of vegetation. All buffer yards shall be landscaped with a combination of live vegetation, ground cover, grass, trees, and/or shrubs. Vegetation to be planted pursuant to this section shall be indigenous with or compatible to the town area and be approved by the ~~Zoning~~UDO Administrator.
- 5. Minimum size at planting. All shrubs be 12 inches high, understory trees six (6) feet high, and canopy trees 2.5 inches caliper.

#### F. TREE/LANDSCAPE PLAN

- 1. Required. A tree/landscaping plan shall be required for all clearing, grading, or other earth disturbing activity proposals. The plan must contain the information set forth in this section (the required tree/landscape plan can be incorporated into ~~the general site plan~~any applicable development approval application).
- 2. Landscape plan submittal requirements. The landscape plan shall contain the following information:
  - a) General location, type, and quantity of existing plant materials.
  - b) Existing plant materials and areas to be left in natural state.
  - c) Methods and details for protecting existing plant materials during construction and the approved erosion control plan, if required.

- d) Locations, size, and labels for all proposed plants.
  - e) Plant lists with common name, quantity, spacing, and size of all proposed landscape material at the time of planting.
  - f) Location and description of other landscape improvements, such as earth berms, walls, fences, screens, sculptures, fountains, street furniture, lights, and courtyards or paved areas.
  - g) Planting and installation details as necessary to ensure conformance with all required standards.
  - h) Location and type of irrigation system, if applicable.
  - i) Location of any proposed buildings.
  - j) Layout of parking and traffic patterns.
  - k) Location of overhead and underground utilities.
  - l) Location of signage.
  - m) Connections to existing streets.
  - n) Zoning designation of adjacent properties.
  - o) Landscape plan shall be drawn to scale and include a north arrow and necessary interpretive legends.
3. Information guide and plant selection list. A landscaping/buffer yard information guide and plant selection list is available from the Zoning-UDO Administrator.

### 3.28 PLANTING AND VEGETATION DESIGN SPECIFICATION STANDARDS

#### A. PARKING FACILITIES LANDSCAPING

- 1. All parking facilities required by town regulations shall submit the site plan to the Director-UDO Administrator for review and approval of the landscaping requirements of this section.
- 2. Minimum standards. At least 8% of the gross paved area of a parking facility shall be landscaped and located in the interior. For purposes of this section, interior shall mean the area within the parking facility curb or pavement and extensions that create a common geometric shape such as a square, rectangle, or triangle.
  - a) All plantings shall be evenly distributed throughout the parking facility.
  - b) All interior plantings shall be curbed or otherwise physically protected.
  - c) Consecutive parking spaces shall incorporate landscaped peninsulas no more than 15 spaces apart and at the ends of all parking rows.  
Peninsulas shall be a minimum of eight (8) feet wide by 18 feet length measured from back of curb/barrier to back of curb/barrier.

#### B. DUMPSTER ENCLOSURES

Refuse collection agency to be used must be included on final site plans. The refuse collection site must be enclosed on three (3) sides by a minimum six (6) foot opaque fence.

#### C. MAINTENANCE

- 1. All planted and retained living material required to meet the provisions of this article shall be maintained by the owner of the property on which the material is located, excluding Type ~~F~~E buffer yard.

2. Nonliving screening buffers shall be maintained, cleaned, and repaired by the owner of the property on which the buffer is located. Such buffers shall be kept free of litter and advertising.
3. Where ground cover material is placed within the street yard or within a public or private right-of-way, it shall be the responsibility of the property owner to contain this ground cover material and to remove it from public sidewalks and streets immediately after rain and wind events. Ground cover material placed in the town right-of-way may require the approval of the town manager.

## DIVISION 3. SIGNS

### 3.29 GENERAL SIGNAGE

#### A. PURPOSE

1. It is the intent of the Town Council to protect public interest, safety, and welfare and, to that end, the purpose of ~~this article~~ these sign regulations are specifically declared to be as follows:
  - a) To promote economic development while minimizing the negative impacts that signs may have on the visual appearance of the town.
  - b) To provide orientation and guidance to our tourists/visitors and identification of public areas, natural resources, historical and cultural landmarks, and places of interest and in so doing reduce confusion, traffic congestion, and air pollution.
  - c) To inform and educate visitors and residents of opportunities and events both commercial and noncommercial occurring ~~on Pleasure Island~~ in the Town of Carolina Beach.
  - d) To permit and regulate signs in such a way as to support and compliment land use objectives.
2. It is not the purpose or intent of this article to regulate signage displayed for special occasions not associated with a business (i.e., balloons for birthday parties or to celebrate the birth of a baby, etc.).

#### B. ADMINISTRATION

- ~~1. — Permit issuance. The Zoning Administrator or his designated representative shall be the administrator of this article.~~

Permit required. Except as otherwise provided, no sign shall be erected, altered, constructed, moved, converted, or enlarged except in accordance with the provisions of this section and pursuant to issuance of a sign permit in accordance with Article 2.

#### C. SIGN NUMBER AND SIZE

1. Number of signs. Unless otherwise stated, the number of signs is detailed in the sections below ~~for commercial and residential signage~~, except for corner or double frontage lots.
2. Corner/double frontage lots. For permanent freestanding signage, a second sign may be placed on corner or double frontage lots. Where two (2) signs are allowed, one (1) sign shall be adjacent to one (1) public right-of-way and the second sign shall face the other public right-of-way. If signs are used on opposite/separate frontages, each sign may use the maximum size allowable. If the second sign is on a corner lot line, then the total square footage of the two

(2) signs shall not exceed the normal maximum size allowance, except when a corner lot meets the following criteria:

- a) The corner lot is located in the CBD or HB zoning district~~a commercial zone~~.
- b) The lot is larger than 30,000 square feet.
- c) The sign is limited to 10 feet in height.
- d) The sign is set back an additional five (5) feet beyond the required 10 feet setback from all lot lines.
- e) Meeting the four (4) criteria above will permit each sign on a corner lot to use the maximum size allowable for a freestanding sign on each frontage.

3. Size calculations. The term "sign" shall include all structural members. A sign shall be constructed to be a display surface or device containing organized and related elements composed to form a single unit. In cases where matter is displayed in a random or unconnected manner without organized relationship of the components, each such component shall be considered to be a single sign.

- a) Sign area.
  - i) Attached. The area of a sign composed in whole or in part of freestanding letters, devices, or sculptured matter not mounted on a measurable surface shall be constructed to be the area of the least square, rectangle, or circle that will enclose the letters, devices, and/or sculptured matter.
  - ii) Freestanding. All surface areas and any lettering or sculptured matter outside the sign surface area.
- b) Sign height. The height of a sign shall be computed as the distance from the base ground level to the top of the highest vertical attached component of the sign.
- c) Sign face. Where a sign has two (2) or more faces, the area of all faces shall be included in determining the area of the sign, except that where two (2) such faces are placed back-to-back and are at no point more than one and one-half feet from one another.

#### D. SIGN LOCATION AND SETBACK MEASUREMENT

- 1. No signage shall be placed in any location that interferes with the sight distance triangle of motorists utilizing public or private roadways.
  - a) A sight distance triangle is the visually unobstructed area of a street/driveway corner.
  - b) It is determined by measuring a distance of 30 feet along the intersecting curb lines, or edges of pavement of the intersecting street/driveway if curbs are not present, and connecting the two (2) points by a straight line to form a triangular shaped area over the corner.
- 2. No signs shall be located in a public right-of-way with the exception of NCDOT rights-of-way in accordance with Session Law 2011-408.
- 3. Setbacks. Unless specifically stated otherwise, setbacks shall be measured from the nearest point on the sign pole to the nearest point on a lot line, structure, or other relevant boundary. In no case shall such sign encroach into any right-of-way or adjacent lot.

E. SIGNS NOT REQUIRING A PERMIT

1. The following types of signs are exempt from permit requirements whether for residential or nonresidential use and subject to the requirements provided herein:
  - a) Governmental signs.
  - b) Window/door signs.
  - c) Any sign required by a government agency (e.g., address number sign).
  - d) Residential signage.
  - e) Temporary commercial yard signage.
  - f) Any temporary signage unless stated otherwise in this article.
  - g) Any sign that is not designed for view by vehicular traffic may be displayed as long as the signage does not violate any of the prohibited sign regulation.
  
2. Temporary signage in residential districts: Each lot in a residential district shall be permitted to place banners, flags, and yard signs without the issuance of a permit so long as the proposed banner, flag, or yard sign meets the following requirements:
  - a) Flags and banners.
    - i) No more than two (2) shall be displayed per 50 feet of road frontage.
    - ii) Size shall be limited to a maximum of 24 square feet and 20 feet in height.
    - iii) Must meet all relevant ~~requirements of section 40-232~~ size and location requirements.
    - iv) Shall remain within the boundaries of the lot for which they are associated.
  - b) Yard signs. Four (4) temporary signs related to noncommercial activities or events may be placed on a parcel 30 days prior to said activity/event, remain up during said activity/event, and must be removed within 10 days of the conclusion of said activities/event. These yard signs shall follow the regulations below:
    - i) The signs shall be non-illuminated and may not exceed a cumulative of 20 square feet for all such signs. No yard sign shall ~~exceed~~ exceed five (5) feet in height.
    - ii) The sign shall be setback at least five (5) feet from the road and/or lot line whichever is greater and not impose upon the intersection sight triangle.
    - iii) The person, party, or parties responsible for the erection or distribution of any such signs shall be ~~jointly~~ jointly liable for the removal of such signs.
    - iv) The lot occupant or, in the case of unoccupied lot, the lot owner, shall be responsible for violations on a particular lot.
    - v) No temporary signage is permitted in the public right-of-way. With the exception of NCDOT rights-of-way in accordance with Session Law 2011-408.

- vi) Off-site directional signage shall be related to an event, will only be permitted while the activity/event is on-going, and shall be removed within 48 hours of the conclusion of said activity/event.
  - vii) No commercial signs shall be placed off-site on a residential lot which are unrelated to ongoing activities on that residential lot. Signs related to ongoing activities shall be removed within 10 days from the completion of said activity.
3. Temporary yard signs for nonresidential uses not requiring a permit.
- a) Four (4) temporary signs related to noncommercial activities or events may be placed on a parcel 30 days prior to said activity/event, remain up during said activity/event, and must be removed within 10 days of the conclusion of said activity/event.
  - b) The sign must be non-illuminated and may not exceed 20 square feet or five (5) feet in height.
  - c) The [sign] must be setback at least five (5) feet from the road and/or lot line whichever is greater and not impose upon the intersection sight triangle.
  - d) The person, party, or parties responsible for the erection or distribution of any such signs shall be ~~jointly~~ liable for the removal of such signs.
  - e) The lot occupant or, in the case of unoccupied lot, the lot owner, shall be responsible for violations on a particular lot.
  - f) No temporary signage is permitted in the public right-of-way.
  - g) Off-site directional signage must be related to an event, will only be permitted while the activity/event is on-going, and must be removed within 48 hours of the conclusion of said activity/event.
- G. PROHIBITED SIGNS/DISPLAYS
1. The following signs are prohibited within the ~~jurisdictional limits~~ planning jurisdiction of the town:
- a) Billboard signs.
  - b) Signs in disrepair, that are unsafe, which no longer can be easily recognized for their intended purpose due to disrepair or fading, or are no longer applicable to the associated property use.
  - c) Strobe lights or any other type of flashing lighting or beacons.  
Exceptions: Flashing signs may be permitted in the Central Business District as long as they are not located adjacent to Lake Park Boulevard. Flashing signs may be permitted in ~~any commercial zone~~ the CBD as long as they are not visible ~~designed for vehicular traffic~~ from the roadway. These exceptions do not allow for strobe lights.
  - d) Moveable, animated, flashing signs including balloons and/or human signs.
  - e) Pennant or consecutively linked flagging or similar devices.
  - f) Signs which resemble or are visibly similar to official governmental traffic signs or signals or employ lighting, or employ the words of official signs such as "stop," "caution," "danger," "slow," or "warning."



- g) Signs located within or protruding in public areas or rights-of-way, unless specifically permitted herein. Any person erecting a sign in a public area shall indemnify and hold harmless the town and its officers, agents, and employees from any claim arising out of the presence of the sign on town property or rights-of-way.
- h) Signs that make noise.
- i) Signs displaying or containing obscenities. For purposes of this section, obscenity shall be determined in accordance with NCGS 14-190.1(b)—(d).
- j) Roof signs.
- k) Snipe signs.
- l) Handwritten messages on permanent signs.
- m) Vehicle/trailer signs.
- n) Any other sign not mentioned by this article.

#### G. SIGN LIGHTING

- 1. Interior sign lighting shall be shaded with an opaque sign face surface sufficient to reduce the glare on roadways and surrounding properties. Silhouette lighting may be utilized. Such lighting shall be placed so as to provide even illumination to the signage and to avoid hot spots or dark areas on the signage.
- 2. Signs utilizing bare bulbs or neon type lighting shall be such that they minimize the glare on roadways and surrounding properties.
- 3. No floodlights shall be utilized as a part of a sign illumination system which are not hooded or shielded so that the light source is not visible from any public right-of-way or adjacent property, nor shall any sign otherwise reflect or emit a glaring light so as to impair driving vision. ~~Exterior flood or similar type sign lighting shall be directed on the sign only, minimizing reflective glare off the sign, and not reflect or glare onto roadways or adjacent properties.~~

#### H. NONCONFORMING SIGNS, ILLEGAL SIGNS, VIOLATIONS AND PENALTIES

All signs shall be subject to ~~article XIV of this chapter, nonconforming situation and enforcement action requirements as applicable. s, and article XV of this chapter, administration, enforcement, and review.~~

### 3.30 RESIDENTIAL SIGNAGE

- A. Governmental signs. Size, location, and length of time of these signs shall be approved by the town manager or his designee.
- B. Residential development entry signage. Two (2) attached entrance signs or one (1) monument or freestanding sign per principal entrance are allowed. Such signs shall not exceed an area of 20 square feet per sign face and an aggregate area of 40 square feet if signs are multiple-faced, nor shall they exceed a height of six (6) feet if freestanding. They may be illuminated.

### 3.31 COMMERCIAL AND NONRESIDENTIAL SIGNAGE

#### A. APPLICABILITY

The following permanent and temporary signs shall be permitted in all districts **and must be** ~~where~~ associated with a permitted commercial or nonresidential use(s) on the same property.

#### B. ATTACHED SIGNS

1. Attached signs shall be allowed on all sides of a business. The total allowable building face signage shall not exceed 25% of the front building face and may be apportioned among any/all building faces. A building face shall be measured from ground level at the foundation to the roof overhang (or junction of roof and front wall line) and from side-to-side of building.
2. If utilized, projecting signage shall have a clearance of at least 10 feet between the adjacent ground level and the lowest portion of the sign. No attached sign shall project more than four (4) feet from the building facade. In the CBD, where buildings are adjacent to a right-of-way, a projecting sign shall be allowed to encroach up to two (2) feet into the right-of-way subject to required ground level clearance.
3. Canopy/awning signs shall be considered as attached signs. In no instance shall a canopy/awning sign exceed the canopy awning area.

#### C. DIRECTIONAL SIGNS

1. On-premises directional signs.
  - a) On-premises directional signs shall be limited to not more than four (4) square feet and shall not exceed three (3) feet in height.
  - b) For every driveway cut, two (2) directional signs shall be allowed on private lot adjacent to the right-of-way.
- ~~2. Off premises parking signs.
 
  - a) The maximum size shall be two (2) square feet.
  - b) Off premises parking signs shall not be lighted.~~

#### D. PERMANENT FREESTANDING SIGNS

1. Unless stated elsewhere in the article, no business/property or lot shall have more than one (1) freestanding sign.
2. A permanent freestanding sign shall have a minimum setback of 10 feet from all lot lines.
3. Maximum size equals one-half a square foot of sign area per one (1) linear foot of road frontage or 25 square feet per commercial and/or residential unit located on the development site, whichever is greater, but not to exceed the below requirements.

Table 3.10 Nonresidential Sign Area and Height	
Maximum Area (Square Footage) per Face	
Type of Development	Max. Area Per Face (square feet)
Multi-family Residential	50
Nonresidential up to 2,500 square feet of building area	50
Nonresidential 2,500 to 15,000 square feet of building area	64
Nonresidential greater than 15,000 square feet of building area	100

Maximum Height	
Zoning District	Height (feet)
CBD, NB, MB-1, T-1, MF, and MX	20
HB and I-1	25

E. TEMPORARY SIGNS WHICH REQUIRE A SIGN PERMIT

1. Each business shall be allotted one (1) temporary freestanding or attached sign year-round. Permits for temporary signage shall be issued annually with the following limitations:
  - a) A-frame signs not exceeding eight (8) square feet per side in area with a maximum height of four (4) feet.
  - b) Portable signs not exceeding 10 square feet and five (5) feet in height.
  - c) Banner signs not exceeding 24 square feet and ~~15~~eight (8) feet in height.
  - d) Commercial flagging shall be limited to 24 square feet in area and shall have the same height restrictions as permanent freestanding signs.
  - ~~d~~e) Feather flags shall be limited to 20 square feet and 10 feet in height.
2. Temporary signs may be placed on public sidewalks in the CBD. In all other districts, such signs may be placed up to the right-of-way but shall not encroach into the right-of-way. No temporary sign shall be placed where the unobstructed space for the passageway of pedestrians is reduced to less than four and one-half (4.5) feet.

3.32 RESERVED

*DIVISION 4. WIRELESS TELECOMMUNICATION TOWERS AND FACILITIES*

3.33 PURPOSE AND LEGISLATIVE INTENT

- A. The purpose of this article is to provide for the public health, safety, and welfare by ensuring that residents, businesses, and public safety operations in the town have reliable access to telecommunications networks and state of the art mobile broadband communications services while also ensuring that this objective is accomplished according to the town's zoning, planning, and design standards. To accomplish the objectives stated in this section and to ensure that the placement, construction, or modification of wireless telecommunications facilities complies with all applicable federal laws, including, without limitation, Section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, 47 USC 1455(a), which, among other things, creates a national wireless emergency communications network for use by first responders that in large measure will be dependent on facilities placed on existing wireless communications support structures, the town adopts this single, comprehensive wireless telecommunications ordinance.
- B. By enacting ~~this article~~these regulations, it is the town's intent to ensure the community has sufficient wireless infrastructure to support its public safety communications and to ensure access to reliable wireless communications services throughout all areas of the town.

### 3.34 APPROVALS REQUIRED FOR WIRELESS FACILITIES AND WIRELESS SUPPORT STRUCTURES

- A. Administrative review and approval. The following types of applications are subject to the review process as provided in section ~~40-289~~3.34. No other type of zoning or site plan review is necessary.
  - 1. New wireless support structures that are less than 50 feet in height, in any commercial zoning district.
  - 2. New wireless support structures that are less than 150 feet in height, in any industrial district.
  - 3. Concealed wireless facilities that are 50 feet or less in height, in any residential district.
  - 4. Concealed wireless facilities that are 150 feet or less in height, in any zoning district except residential districts.
  - 5. Monopoles or replacement poles located on public property or within utility easements or rights-of-way, in any zoning district.
  - 6. Carrier on wheels or cell on wheels (COWs), in any zoning district, if the use of the COW is either not in response to a declaration of an emergency or disaster by the Governor, or will last in excess of 120 days.
  - 7. Substantial modifications.
  - 8. Collocations.
  - 9. Small cell and micro wireless facilities.
- B. Conditional zoning. Any application for wireless facilities and/or wireless support structures not subject to administrative review and approval pursuant to this article shall be permitted in any district upon the granting of a conditional zoning from the town in accordance with the standards for granting conditional zoning set forth in ~~applicable article XI of this chapter~~Article 2.
- C. Exempt from all approval processes. The following are exempt from all town zoning approval processes and requirements:
  - 1. Removal or replacement of transmission equipment on an existing wireless tower or base station that does not result in a substantial modification as defined in ~~section 40-287~~this ordinance;
  - 2. Ordinary maintenance of existing wireless facilities and wireless support structures, as defined in ~~section 40-287~~this ordinance.
  - 3. Wireless facilities placed on utility poles; ~~and~~
  - 4. COWs placed for a period of not more than 120 days at any location within the town or after a declaration of an emergency or a disaster by the Governor.

### 3.35 ADMINISTRATIVE REVIEW AND APPROVAL PROCESS

- A. Contents of application package.
  - 1. For new sites. All administrative review application packages must contain the following:
    - a) Administrative review application form signed by the applicant.

- b) Copy of lease or letter of authorization from the property owner evidencing the applicant's authority to pursue the application. Such submissions need not disclose financial lease terms.
  - c) Site plans detailing proposed improvements which complies with the town's existing site plan requirements. Drawings must depict improvements related to the applicable requirements, including property boundaries, setbacks, topography, elevation sketch, and dimensions of improvements.
  - d) Documentation from a licensed professional engineer of calculation of the fall zone and certification that the wireless support structure has sufficient structural integrity to accommodate the required number of additional users as provided in this article.
2. For other sites/facilities. All administrative review application packages must contain the following:
- a) Administrative review application form signed by the applicant.
  - b) For collocations and substantial modifications, written verification from a licensed professional engineer certifying that the host support structure is structurally and mechanically capable of supporting the proposed additional antenna or configuration of antennas.
  - c) For substantial modifications, drawings depicting the improvements along with their dimensions.
- B. Fees. The total fees for reviewing an administrative review application shall be in accordance with the annually adopted rates and fees schedule.
- ~~1. In the case of an application for collocation, a monopole or replacement pole, a concealed wireless facility, a nonexempt COW or a substantial modification, the lesser of the town's actual, direct costs (including third-party costs such as consultants fees) incurred for the review, or \$500.00.~~
  - ~~2. In the case of an application for a new wireless support structure subject to administrative review and approval, the lesser of the town's actual, direct costs incurred for the review (including third-party costs such as consultants fees), or \$1,500.00.~~
  - ~~3. Applications for new wireless support structures with proposed wireless facilities shall be considered together as one application requiring only a single application fee. An applicant for administrative review shall submit an initial deposit of \$500.00 toward the fees to be paid under this section.~~
  - ~~4. Applications for small cell and micro wireless shall be \$100 per facility for the first five (5) small wireless facilities addressed in an application, plus \$50 for each additional small wireless facility addressed in the application.~~
- C. Procedure and timing.
- 1. Applications for collocation, monopole or replacement pole, concealed wireless facility, small and micro wireless facility, nonexempt COW or substantial modification. Within 30 days of the receipt of an application for a collocation, a monopole or replacement pole, a concealed wireless facility, a nonexempt COW or a substantial modification, the ~~Zoning~~ UDO Administrator will:

- a) Review the application for conformity with this article. An application under this subsection is deemed to be complete unless the Zoning-UDO Administrator notifies the applicant in writing, within 10 calendar days of submission of the application of the specific deficiencies in the application which, if cured, would make the application complete. Upon receipt of a timely written notice that an application is deficient, an applicant may take 10 calendar days from receiving such notice to cure the specific deficiencies. If the applicant cures the deficiencies within 10 calendar days, the application shall be reviewed and processed within 30 calendar days from the initial date the application was received. If the applicant requires a period of time beyond 10 calendar days to cure the specific deficiencies, the 30 calendar days deadline for review shall be extended by the same period of time.
  - b) Make a final decision to approve the collocation application or approve or disapprove other applications under this subsection.
  - c) Advise the applicant in writing of its final decision. If the zoning authority denies an application, it must provide written justification of the denial, which must be based on substantial evidence of inconsistencies between the application and this article.
  - d) Failure to issue a written decision within 30 calendar days shall constitute an approval of the application.
2. Applications for new wireless support structures that are subject to administrative review and approval. Within 45 calendar days of the receipt of an application for a new wireless support structure that is subject to administrative review and approval under this article, the Zoning-UDO Administrator will:
- a) Review the application for conformity with this article. An application under this subsection is deemed to be complete unless the Zoning-UDO Administrator notifies the applicant in writing, within 15 calendar days of submission of the application of the specific deficiencies in the application which, if cured, would make the application complete. Upon receipt of a timely written notice that an application is deficient, an applicant may take 15 calendar days from receiving such notice to cure the specific deficiencies. If the applicant cures the deficiencies within 15 calendar days, the application shall be reviewed and processed within 45 calendar days from the initial date the application was received. If the applicant requires a period of time beyond 15 calendar days to cure the specific deficiencies, the 45 calendar days deadline for review shall be extended by the same period of time.
  - b) Make a final decision to approve or disapprove the application.
  - c) Advise the applicant in writing of its final decision. If the zoning authority denies an application, it must provide written justification of the denial, which must be based on substantial evidence of inconsistencies between the application and this article.

- d) Failure to issue a written decision within 45 calendar days shall constitute an approval of the application.
- 3. Building permit. A Building Inspector shall issue a building permit following approval of the application under administrative review in accordance with the process and standards in this article.

### 3.36 ~~SPECIAL USE PERMIT~~ CONDITIONAL ZONING PROCESS

- A. Granting of conditional zoning for wireless facilities or support structures in zoning districts. Any wireless facility or wireless support structures not meeting the requirements of this article may be permitted in all zoning districts upon the granting of a conditional zoning, subject to:
  - 1. The submission requirements of subsection (b) of this section.
  - 2. The applicable standards of this article.
  - 3. The requirements of the conditional zoning ~~general conditions per article XVII of this chapter~~ process as provided in Article 2 of this ordinance.
- B. Content of conditional zoning application package. All conditional zoning application packages must contain the following:
  - 1. ~~Special use permit~~ Conditional zoning application form signed by the applicant.
  - 2. Copy of lease or letter of authorization from the property owner evidencing the applicant's authority to pursue zoning application. Such submissions need not disclose financial lease terms.
  - 3. Written description and scaled drawings of the proposed wireless support structure or wireless facility, including structure height, ground and structure design, and proposed materials.
  - 4. Number of proposed antennas and their height above ground level, including the proposed placement of antennas on the wireless support structure.
  - 5. Line-of-sight diagram or photo simulation, showing the proposed wireless support structure set against the skyline and viewed from at least four (4) directions within the surrounding areas.
  - 6. A statement that the proposed wireless support structure will be made available for collocation to other service providers at commercially reasonable rates, provided space is available and consistent with this article.
  - 7. Notification of surrounding property owners and posting as required by ~~article XI of this chapter~~ the conditional zoning process.
- ~~C. Fees. The total fees for reviewing a conditional zoning application shall be the lesser of the town's actual, direct costs (including third-party costs such as consultants fees) incurred for the review, or \$3,000.00. Applications for new wireless support structures with proposed wireless facilities shall be considered together as one application requiring only a single application fee. An applicant for administrative review shall submit an initial deposit of \$1,000.00 toward the fees to be paid under this section.~~
- ~~D.C.~~ Procedure and timing. Within 150 calendar days of the receipt of an application under this section, the UDO zoning administrator will:
  - 1. Complete the process for reviewing the application for conformity with ordinances applicable to conditional zoning, ~~including conducting a hearing in~~

~~accordance with article X of this chapter.~~ An application under this section is deemed to be complete unless the ~~zoning UDO a~~Administrator notifies the applicant in writing, within 30 calendar days of submission of the application of the specific deficiencies in the application which, if cured, would make the application complete. Upon receipt of a timely written notice that an application is deficient, an applicant may take 30 calendar days from receiving such notice to cure the specific deficiencies. If the applicant cures the deficiencies within 30 calendar days, the application shall be reviewed and ~~processed within~~scheduled for action by the Town Council within 150 calendar days from the initial date the application was received, which shall include a vote by the Planning and Zoning Commission during that same time. If the applicant requires a period of time beyond 30 calendar days to cure the specific deficiencies, the 150 calendar days deadline for review shall be extended by the same period of time.

- ~~2. Make a final decision to approve or disapprove the application; and~~
- ~~3. Advise the applicant in writing of its final decision. If the zoning authority denies an application, it must provide written justification of the denial.~~
- ~~4. Failure to issue a written decision within 150 calendar days shall constitute an approval of the application.~~

### 3.37 GENERAL STANDARDS AND DESIGN REQUIREMENTS

- A. Design. Wireless support structures shall be subject to the following:
  - 1. Wireless support structures shall be engineered and constructed to accommodate a minimum number of collocations based upon their height:
    - a) Support structures 60 to 100 feet shall support at least two (2) telecommunications providers.
    - b) Support structures greater than 100 feet but less than 150 feet shall support at least three (3) telecommunications providers.
    - c) Support structures greater than 150 feet in height shall support at least four (4) telecommunications carriers.
  - 2. The equipment compound area surrounding the wireless support structure must be of sufficient size to accommodate accessory equipment for the appropriate number of telecommunications providers in accordance with subsection (A)(1)(a) of this section.
  - 3. Concealed wireless facilities shall be designed to accommodate the collocation of other antennas whenever economically and technically feasible. Antennas must be enclosed, camouflaged, screened, obscured, or otherwise not readily apparent to a casual observer.
  - 4. Upon request of the applicant, the Town Council may waive the requirement that new wireless support structures accommodate the collocation of other service providers if it finds that collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer antennas will promote community compatibility.
  - 5. A monopole or replacement pole shall be permitted within utility easements or rights-of-way, in accordance with the following requirements:



- a) The utility easement or right-of-way shall be a minimum 100 feet in width.
  - b) The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are 80 feet or greater in height.
  - c) The height of the monopole or replacement pole may not exceed by more than 30 feet the height of existing utility support structures.
  - d) Monopoles and the accessory equipment shall be set back a minimum of 15 feet from all boundaries of the easement or right-of-way.
  - e) Single carrier monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by subsection (a)(5)c of this section.
  - f) Poles that use the structure of a utility tower for support are permitted. Such poles may extend up to 20 feet above the height of the utility tower.
- B. Setbacks. Unless otherwise stated herein, each wireless support structure shall be set back from all property lines a distance equal to its engineered fall zone.
- C. Height. In residential districts, wireless support structures shall not exceed a height equal to 50 feet from the base of the structure to the top of the highest point, including appurtenances. Notwithstanding the foregoing, the Town Council shall have the authority to vary the foregoing height restriction upon the request of the applicant as part of the conditional zoning process. With its ~~waiver~~ request, the applicant shall submit such technical information or other justifications as are necessary to document the need for the additional height ~~to the satisfaction of the Town Council~~.
- D. Aesthetics. Lighting and marking. Wireless facilities or wireless support structures shall not be lighted or marked unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).
- E. Signage. Signs located at the wireless facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited. Notwithstanding the foregoing, nothing in this article shall prohibit signage that is approved for other uses on property on which wireless facilities are located (i.e., approved signage at locations on which concealed facilities are located).
- F. Accessory equipment. Accessory equipment, including any buildings, cabinets, or shelters, shall be used only to house equipment and other supplies in support of the operation of the wireless facility or wireless support structure. Any equipment not used in direct support of such operation shall not be stored on the site.
- G. Fencing.
- 1. Ground-mounted accessory equipment and wireless support structures shall be secured and enclosed with a fence not less than six (6) feet in height as deemed appropriate by the Town Council.
  - 2. The Town Council may waive the fence requirement ~~of subsection (f)(1)~~ of this section if it is deemed that a fence is not appropriate or needed at the proposed location.

### 3.38 MISCELLANEOUS PROVISIONS

- A. Abandonment and removal. If a wireless support structure is abandoned, and it remains abandoned for a period in excess of six (6) consecutive months, the town may require that such wireless support structure be removed only after first providing written notice to the owner of the wireless support structure and giving the owner the opportunity to take such action as may be necessary to reclaim the wireless support structure within 60 days of receipt of said written notice. In the event the owner of the wireless support structure fails to reclaim the wireless support structure within the 60-day period, the owner of the wireless support structure shall be required to remove the same within six (6) months thereafter. The town shall ensure and enforce removal by means of its existing regulatory authority, with costs of removal charged to the owner.
- B. Multiple uses on a single parcel or lot. Wireless facilities and wireless support structures may be located on a parcel containing another principal use on the same site or may be the principal use itself.

### 3.39 EXISTING WIRELESS FACILITIES AND WIRELESS SUPPORT STRUCTURES

- A. ~~Grandfathered~~ Nonconforming use. Wireless facilities and wireless support structures that were legally permitted on or before the date of the ordinance from which this article is derived was enacted shall be considered a permitted and lawful use.
- B. Activities at nonconforming wireless support structures. Notwithstanding any provision of this article:
  - 1. Ordinary maintenance may be performed on a nonconforming wireless support structure or wireless facility.
  - 2. Collocation of wireless facilities on an existing nonconforming wireless support structure shall not be construed as an expansion, enlargement or increase in intensity of a nonconforming structure, and/or use and shall be permitted through the administrative approval process defined ~~in section 40-289~~ herein; provided that the collocation does not substantially modify the size of the equipment compound at that location or otherwise substantially modify the existing nonconformity.
  - 3. Substantial modifications may be made to nonconforming wireless support structures utilizing the conditional zoning process defined ~~in section 40-290~~ herein.

### 3.40 - 3.45 RESERVED

## DIVISION 5. NONCONFORMING SITUATIONS

### 3.46 CONTINUATION OF NONCONFORMING SITUATIONS

- A. Nonconforming situations that were otherwise lawful on the effective date of the initial ordinance (April 24, 1979) may be continued, subject to the restrictions and qualifications set forth ~~in sections 40-424 through 40-430~~ herein.
  - 1. Central Business District (CBD) nonconforming situations. It is the intent of this section to recognize the contribution that existing drive-in/drive-thru restaurants and drive-in/drive-thru banks have made for the betterment of a vibrant and

successful central business district core and which have survived both economic down turns and natural disasters over the course of the last 30 years. It is also the intent of this section to help foster the implementation of the master development plan for the CBD which attempts to strike a better balance between automobile dependent uses and the safety of pedestrians on our existing and future sidewalks. Given this, the town continues to support existing drive-in/drive-thru facilities associated with banking and fast food restaurants, but does not wish to approve any new drive-in/drive-thru facilities of any kind in the CBD. These existing drive-in/drive-thru facilities shall be exempted from this article but shall comply with all other provisions of this chapter and any other state or federal regulations.

2. Requirements applicable to certain restaurants and banks with drive-thru's and adjacent to state-maintained roadways. The following requirements shall apply to all restaurant and banks with functioning drive-thru's and located adjacent to a state-maintained roadway that are existing as of May 10, 2011.
  - a) The same use may continue to exist, however, no new drive-in/drive-thru facility shall be permitted to be replaced at an existing drive-in/drive-thru site (e.g., drive-in/drive-thru restaurants may be replaced with another drive-in/drive-thru restaurant but a drive-in/drive-thru restaurant shall not be replaced with a drive-in/drive-thru bank or any other drive-in/drive-thru facility).
  - b) Should any one (1) of the four (4) existing drive-in/drive-thru's be closed, abandoned, or discontinued for any reason for greater than one (1) year then the ~~grandfathering nonconforming~~ status shall be eliminated and only a conforming use shall be permitted at this site.
  - c) Because all four (4) of these drive-in/drive-thru facilities are located in a special flood hazard area (SFHA) any improvements, expansions, additions, or alternations shall comply the National Flood Insurance Program.
  - d) Any site improvements or building expansions, additions, or alternations shall comply with the building code and this chapter.

### 3.47 NONCONFORMING LOTS

- A. Use by right when all setbacks can be met. Where the owner of a lot of record identified as nonconforming by the county tax parcel identification numbers as they exist on December 13, 2005, does not own sufficient land to enable the owner to conform to the dimensional requirements established by this chapter, such lot may be developed as a single-family residence, provided the lot can be used in conformance with all of the regulations (other than the area or width requirements) applicable to the district in which the lot is located, such use may be made as of right. Nonconforming lots created by transfer on or after December 14, 2005, shall not be developed.
- B. Recombination of lots required when possible. Whenever this article creates a nonconforming lot, and the owner of the nonconforming lot also owns land having continuous frontage to it, and a portion of this other land can be combined with the nonconforming lot to create a conforming lot (without thereby creating other nonconformities), the owner of the nonconforming lot, or his successor in interest, shall combine the lots in accordance with the town's subdivision ordinance to create one (1) or more conforming lots prior to developing the property. ~~Exception- Subsection (b) of~~

~~¶~~This section does not apply to those parcels identified as nonconforming lots of record as of July 14, 2004, and any subsequent nonconforming lots of recorded created between July 14, 2004, and December 14, 2005.

- C. Odd lots groupings. Where lots of record having the same street front have been combined in odd-numbered contiguous groups (3, 5, 7, etc.) existing conformities within the group (i.e. a minimum of two (2) adjoining lots) shall be maintained and the remaining single lot may be developed as a nonconforming lot as provided in subsection (a) of this section.
- D. Subdivide platted lots. Where original platted lots in common ownership create an area over the minimum lot size, but will not meet the lot size or frontage requirements when subdivided, then the owner may subdivide the platted lots in accordance with the town's subdivision ordinance to create lots that are no more than 25% less than the minimum lot size for that district.

~~Variance required when exceptions to setbacks are requested. The board of adjustment may issue a variance to the setback requirements in accordance with the procedures and "required findings" set forth under article XVI of this chapter.~~

- E. Reduction of required lot area when lost to shore erosion. Where lots abut the estuarine tidal waters as defined by this ordinance or by the Carolina Beach Erosion Control and Hurricane Wave Protection Projects and where lot depth has been lost due to the encroachment of such waters, making such lot area non-conforming to the zoning district requirements, the existing lot area may be considered conforming to meet the minimum lot area requirements of the zoning district in which located. However, the front and side yards of the zoning district shall apply.
- F. Reduction of required lot area. Where lots abut estuarine and/or ocean tidal waters, as defined ~~in section 40-548~~in this ordinance, and where lot depth has been lost due to the encroachment of such waters, making such lot area nonconforming to the zoning district requirements, the existing lot area may be considered conforming to meet the minimum lot area requirements of the zoning district in which located. However, the front and side ~~yards~~setbacks of the zoning district shall apply. Lots which have lost area due to estuarine and ocean tidal waters or Carolina Beach Erosion Control and Hurricane Wave Protection Projects may be developed in accordance with all applicable permitted uses of the zoning district in which located, provided that the actual lot area extending to the Carolina Beach development/building line or Kure Beach's Beach Re-nourishment Easement Line shall be utilized when computing the density for multifamily dwellings per lot. The Zoning-UDO Administrator shall make the determination of actual lot area.
- G. For sound-front lots, a 50% reduction in the front yard ~~shall apply where appropriate provisions are made for off-street parking~~may be permitted where full compliance with off-street parking requirements can be met.
- H. Where the Carolina Beach development/building line creates a reduction in lot area that results in a non-conforming lot a 50% reduction in the front yard setback may apply where full compliance with off-street parking requirements can be met~~where appropriate provisions are made for off-street parking.~~
- I. Lots which have lost area due to estuarine tidal waters or Carolina Beach Erosion Control and Hurricane Wave Protection Projects may be developed in accordance with all applicable permitted uses of the zoning district in which located, provided that the actual lot area above the mean high water level shall be utilized when computing the density for multifamily dwellings per lot. The Zoning-UDO Administrator shall make the determination of actual lot area subject to appeal.~~Appeals to the decision of the Zoning~~

~~Administrator shall be made to the board of adjustment in accordance with the provisions of article XVI of this chapter.~~

### 3.48 EXTENSION OR ENLARGEMENT OF NONCONFORMING SITUATIONS, INCLUDING LAND USES AND BUILDINGS

- A. No increase in the extent of nonconformity. Except as specifically provided in this section, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation.
- B. Nonconformity may extend throughout a completed building. Subject to subsection (e) of this section, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this article, was manifestly designed or arranged to accommodate such use. A nonconforming use may not be extended to additional buildings or to land outside the original building.
- C. Physical alteration or addition of new structures. Physical alteration of structures or the placement of new structures on open land are unlawful if they result in:
  - 1. An increase in the total amount of space devoted to a nonconforming use.
  - 2. Greater nonconformity with respect to dimensional restrictions such as yard requirements or, height limitations. For example, a structure may not be enlarged whereby there is further encroachment into a required setback.
  - 3. ~~The enclosure of previously unenclosed areas, even though those areas were previously used in connection with the nonconforming activity. An area is unenclosed unless at least 75% of the perimeter of the area is marked by a permanently constructed wall or fence.~~
- D. Nonconformity may not be increased to cover more land. A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming.
- E. Increase in volume, intensity, or frequency of nonconforming use may be allowed. The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and in no violations of other subsections.
- F. Repairs and maintenance are encouraged. Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged.

### 3.49 RECONSTRUCTION, MAINTENANCE, FULL OR PARTIAL DEMOLITION AND RENOVATION OF NONCONFORMING SITUATIONS

- A. Nonconforming uses created by a change in regulations may continue to exist and shall be subject to all other provisions of this article. ~~Except for fences~~ Nonconforming regulations pertaining to fences are found in the fence section within Division 2., which are regulated by article VII of this chapter,
- B. Any building or structure for which normal repair, renovation, ~~partial~~ demolition and reconstruction, or routine maintenance is proposed in an amount less than ~~5~~100% of the current tax or certified appraised value of the building or structure, regardless of the reason for such repair or maintenance, shall be entitled to do so using the same building footprint and density with which the building or structure was originally constructed, provided the number of living units or nonresidential spaces are not increased and no additional nonconformities are created. No increase in height or floor area shall be

permitted. If the repairs exceed 50% of the current tax or certified appraisal value but not greater than 100%, then the structure must comply with setback provisions where abutting a non-street lot line in addition to complying with the minimum off-street parking requirements.

- C. In the event normal repairs, renovations, full or partial demolition will result in new construction to a nonconforming structure exceeding ~~50~~100% of the current tax or certified appraised value of the building or structure in any period of 12 consecutive months (except as otherwise allowed in subsection (e) of this section), regardless of the reason for such repairs, renovations, full or partial demolition, or maintenance, the owner shall be entitled to undertake new construction using the same building density with which the building or structure was originally constructed, provided that the following provisions are met:
1. The number of living units or non-residential spaces are not increased.
  2. No additional nonconformities are created.
  3. All current minimum setbacks are met for the zoning district in which the structure is located.
  4. Maximum building height of the structure shall not exceed those of the zoning district in which it is located.
  5. Landscaping and buffer requirements shall meet the minimum requirements of the zoning district in which it is located.
  6. All parking requirements shall meet the minimum requirements of the district in which it is located.
  7. Lot coverage shall not exceed that of the original construction that is being replaced.
  8. All stormwater requirements of the town shall be met.
- D. In any event, normal repair, renovation, or new construction shall be consistent with regulations as established by the State Building Code, state division of coastal management, the Federal Emergency Management Act, the flood damage prevention ordinance or any other state, or federal regulation that would supersede the provisions of this article.
- E. Any nonconforming structure or structures containing a nonconforming or conforming use which was lawful on the adoption date of this article or was made unlawful by subsequent changes to the Carolina Beach Town Code can be rebuilt in the event it is damaged or destroyed, whether in whole or in part, by fire, wind, flood, or other calamity or catastrophic event. Any such restoration, reconstruction, or repair shall be subject to the following requirements:
1. The construction shall be based upon and be substantially similar to the prior structure with no increase in nonconforming uses or nonconforming situations.
  2. The footprint of the foundation shall not be increased.
  3. Any such work shall comply with the electrical, plumbing, heating/air-conditioning, and building code in effect at the time of the construction work. Said restoration, reconstruction, or repair shall meet all other regulations as specified by the state division of coastal management, the Federal Emergency Management Act, the flood damage prevention ordinance or any other state, or federal regulation that would supersede the provisions of this article.
  4. Reconstruction of a structure in accordance with this subsection (e) may cause new height nonconformities in order to meet all state and federal flood

regulations. In this scenario, the structure may exceed height regulations of the district by no more than what is required to meet flood requirements.

5. The number of living units or nonresidential spaces shall not be increased and no additional nonconformities shall be created.
- F. Reconstruction of a nonconforming building, structure or use under the provisions of subsection (e) of this section shall be subject to the following restrictions:
  1. A letter of intention to reconstruct with certification of the original building or footprint is required to be delivered to the Building Inspector and ~~Town Planning Director~~ UDO Administrator within 180 days from the date the building was damaged or destroyed. Prior to such letter of intent, buildings shall be made safe so as not to endanger the public or jeopardize public safety. Said 180-period may be extended by an action of the Town Council.
  2. A building permit is to be obtained from the Building Inspector within 365 days from the date the building or structure was damaged or destroyed, and if the building permit is not obtained within the 365 days, the reconstruction will have to be conforming. Any extensions to this time may be granted by the Town manager for up to 365 additional days, if the applicant provides a letter giving reason why the building permit has been unobtainable.

### 3.50 CHANGE IN KIND OF NONCONFORMING USE

- A. A nonconforming use shall not be changed to another nonconforming use.
- B. If a nonconforming use and a conforming use, or any combination of nonconforming uses exist on one lot, the use made of the property may be changed only to a conforming use. Conforming uses, except adult oriented businesses, may be established or re-established in nonconforming buildings or structures, provided that off-street parking is provided as required by this article and provided no other provision of this article for the establishment of new uses is violated.

### ~~3.51 REPLACEMENT OF NONCONFORMING MOBILE HOMES~~

- ~~A. A nonconforming mobile home on an individual lot outside of a mobile home park may not be replaced except by a conforming dwelling. A nonconforming mobile home may not be enlarged or altered externally in any way.~~
- ~~B. Existing mobile home parks which provide manufactured home spaces having a width or area less than that herein described may continue to operate with spaces of existing width or area. In no event shall any nonconforming park be allowed to expand unless the entire park is improved to meet the requirements of this article.~~

### ~~3.52~~ 3.51 ABANDONMENT AND DISCONTINUANCE OF NONCONFORMING SITUATIONS

- A. Except as specified elsewhere, when a nonconforming use is discontinued for a consecutive period of 180 days, the property involved may thereafter be used only for conforming purposes.
- B. For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this subsection, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one (1) apartment in a nonconforming apartment building or one (1) space in a nonconforming manufactured home park for 180 days shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building or manufactured home park as a whole is continuously maintained. But if a nonconforming

use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter. Therefore, if a manufactured home is used as a nonconforming use on a residential lot where a conforming residential structure is also located, removal of that manufactured home for 180 days terminates the right to replace it.

~~3.53~~ **3.52** DISCONTINUANCE OF NONCONFORMING ADULT ENTERTAINMENT ESTABLISHMENT OR BARS/TAVERNS

- A. Notwithstanding the provisions of Section 3.45, adult entertainment establishments ~~adult-oriented businesses~~ or bars/taverns shall be governed by the following:
  - 1. Any adult entertainment establishment ~~adult-oriented business~~ or bar/tavern that fails to comply with the use and locational requirements of this article but which was operating before the effective date of the ordinance from which this article is derived, or any such business which subsequently fails to meet use or locational requirements because of amendments to the zoning map, shall not be deemed to be in violation of this article but shall be a nonconformity. Any such business which ceases active operation for a period of 180 days (natural disasters excluded) shall be subject to all the requirements of this article and the property may thereafter be used only for conforming uses.



## Article 4: Subdivision Regulations

### DIVISION 1. GENERALLY

#### 4.1 GENERAL

This article is designed and enacted to provide for the orderly development of the town and its environs through the regulation of the subdivision of land. The regulations contained in this article are intended to coordinate proposed development with existing development and with officially adopted plans for the future development of the town; to ensure the provision of adequate facilities for transportation, water, sewerage, and other public facilities in subdivisions; to ensure the proper legal description, monumentation, and recording of subdivided land; and to create conditions essential to public health, safety, and general welfare.

#### 4.2 PURPOSE

- A. It is the general purpose and intent of this article to regulate the division of land so as to:
1. Obtain the wise use, construction, protection, and proper development of the area's soil, water, wetland, woodland, and wildlife resources and attain a proper adjustment of land use and development to the supporting and sustaining natural resource base.
  2. Lessen congestion in the streets and highways.
  3. Provide adequate light and air.
  4. Prevent the overcrowding of land.
  5. Facilitate adequate provisions for housing, transportation, water, sewerage, and other public facilities or requirements.
  6. Further the orderly layout and appropriate use of land.
  7. Secure safety from fire, flooding, water pollution, disease, and other hazards.
  8. Prevent flood damage to persons and properties and minimize expenditures for flood relief and flood-control projects.
  9. Prevent and control erosion, sedimentation, and other pollution of surface and subsurface waters.
  10. Preserve natural vegetation and cover and promote the natural beauty of the area.
  11. ~~Restrict building sites on floodlands, areas covered by poor soils, or in other areas poorly suited for development.~~
  12. Facilitate the further division of larger tracts into smaller parcels of land.
  13. Ensure adequate legal description and proper survey monumentation of subdivided land.
  14. ~~Provide for the administration and enforcement of this article.~~
  - 15-14. ~~Provide penalties for violation of this article, and implement those Town, regional, or other comprehensive plans and their components adopted by the Town.~~

#### 4.3 APPROVAL

Approval procedures for the division of land and creation of lots are provided in Article 2 of this ordinance.

#### 4.4 LOT STANDARDS

A. The following standards shall apply to the creation of all lots within the town's planning jurisdiction:

1. General design. The size, shape, and orientation of lots shall be appropriate for the location of the subdivision and for the type of development and use contemplated. The minimum standards set forth in ~~chapter 40~~ Article 3 (zoning) shall be considered in all instances. The lots should be designed to provide an aesthetically pleasing building site and a proper architectural setting for the buildings contemplated.
2. Arrangement and layout of lots.
  - a) Side lot lines shall generally be at right angles to straight street lines or radial to curved street lines on which the lots face. Lot lines shall follow municipal boundary lines rather than cross them.
  - b) Double frontage ~~and reverse frontage~~ lots shall be prohibited except ~~where necessary to provide separation of residential development from through traffic or to overcome specific disadvantages of topography and orientation~~ for the recombination of previously platted lots.
  - c) Lands lying between the meander line and the water's edge and any otherwise unplattable lands which lie between a proposed subdivision and the water's edge shall be included as part of lots, outlots, or public dedications in any plat abutting a stream, lake, or other waterway.
  - d) Every lot shall front or abut ~~for a distance of at least 50 feet on~~ a public or private street ~~However, no new private streets shall be permitted unless located in the ETJ. Lots with access only to private drives or streets shall be permitted only with the approval of the Planning and Zoning Commission.~~
  - e) Whenever a tract is subdivided into large parcels, such parcels shall be arranged and dimensioned as to allow resubdivision of any such parcels into normal lots in accordance with provisions of this article.
  - f) Lots shall be laid out so as to provide positive drainage away from all buildings, and individual lot drainage shall be coordinated with the general storm drainage pattern for the area. Drainage shall be designed so as to avoid concentration of storm drainage water from each lot to adjacent lots.
  - ~~f)g)~~ Flag lots shall be prohibited.
3. Area and dimensions.
  - a) Area and dimensions of all lots shall conform to the requirements of ~~chapter 40~~ Article 3 (zoning), ~~when applicable.~~
  - b) ~~Width of lots shall conform to the requirements of chapter 40 (zoning), when applicable, and in no case shall a lot be less than 50 feet in width at the building setback line.~~
  - c) Depth and width of lots or parcels reserved or laid out for business, commercial, or industrial use shall be adequate to provide for off-street

service and parking required by the use contemplated and the area zoning restrictions, when applicable, for such use.

4. Lots with frontal dunes. Notwithstanding the provisions of this article, all lots of a proposed subdivision shall be so designed and/or laid out in a fashion so that adequate space is provided for the placement of structures and/or other improvements on the subject lot or lots without altering or otherwise disturbing the frontal dunes, as defined by ~~section 36-20~~ this ordinance. If this provision is held to be in conflict with any other regulation of this article or other requirement, the more restrictive of the conflicting requirements shall be adhered to. This provision is not to be construed as limiting other requirements of this article, such as building setback lines or other requirements when conflicts arise. ~~All necessary provisions of this article shall be complied with unless approval for a variance from such requirements is given by the appropriate jurisdictional agency or agencies.~~

#### 4.5 ACCESS TO PUBLIC STREETS AND LOT FRONTAGE

Every lot shall have either direct or indirect access to a public street. A lot has direct access to a public street if the lot abuts the public street right-of-way so that a minimum width of 50 feet can be established at the building setback line. Furthermore, all lots must comply with the minimum lot width (as defined by this ordinance) and as established by the zoning district where located. With the exception of lots in the CBD, all lots shall have a minimum lot width of 50 feet. A lot has indirect access if it connects to a public street by means of one (1) or more private roads that were constructed prior to the adoption of this ordinance in which case frontage for said lots shall be no less than 50 feet at the building setback line. In addition, if lots are created that are no larger than the buildings located thereon and access to such lots and buildings must be across land owned by a homeowners' or similar association, then this shall also constitute indirect access. This would be customary for townhome or duplex lots utilizing zero lot line provisions.

#### 4.6 EASEMENTS

- A. Utility easements. ~~The Planning and Zoning Commission may require~~ Where necessary, easements of widths deemed adequate for the intended purpose shall be provided on the property side of front lot lines, on each side of all rear lot lines, on each side of all side lot lines, or across lots where necessary or advisable for electric power and communication poles, wires, conduits; storm and sanitary sewers; street trees; and gas, water, and other utility lines. ~~All utility lines for electric power and telephone service shall be placed on mid-block easements along rear lot lines whenever carried on overhead poles except when such lots border a lake, stream, or other waterway.~~
- B. Drainage easements. Where a subdivision is traversed by a drainageway or stream, an adequate easement shall be provided ~~as may be required by the Planning and Zoning Commission.~~ The location, width, alignment, and improvement of such drainageway or easement shall be subject to ~~the approval of the Planning and Zoning Commission~~ review by the Technical Review Committee and/or appropriate town department; ~~parallel streets or parkways may be required in connection therewith. Where necessary, stormwater drainage shall be maintained by landscaped open channels of adequate size~~

~~and grade to hydraulically accommodate maximum potential volumes of flow, subject to review and approval by the Planning and Zoning Commission.~~

#### 4.7 WATERFRONT SUBDIVISIONS

- A. Where a subdivision which adjoins Myrtle Grove Sound, the Cape Fear River, the Intracoastal Waterway, the Atlantic Ocean, or their impounded waters and tributaries, contains interior lots, parcels, or tracts of land which do not adjoin the water's edge, one (1) or more lots which adjoin the water's edge shall be reserved to provide water access for the owners of interior properties. Such lots shall hereafter be called water access lots.
1. Water access lots shall be provided at a ratio of one (1) water access lot for each 600 feet of waterfront lots contained in the subdivision measured parallel to the shoreline of the subdivision.
  2. All water access lots shall abut both a public street and the water shoreline and shall be no less than 10 feet in width.
  3. The water access lots shall either be dedicated to the town (but only if the Town Council agrees to accept such dedication) or shall be transferred in fee simple title to the common ownership of the interior lot owners of the subdivision.
  4. Before approval of the final plat can be given, the subdivider shall submit to the ~~planning board~~ UDO Administrator a covenant stating either:
    - a) That he/she will dedicate the required amount of water access lots to the town.
    - b) That he/she will convey title to the water access lots to the purchasers of each interior lot.
      - i) Such purchasers shall have common ownership of the water access lots with undivided fee simple interest and shall be equally responsible for the maintenance of water access lots.
  5. If the subdivider chooses to dedicate the water access lots to the town, the Town Council must ~~have agreed~~ agree to accept the responsibility of maintaining the lots and the preliminary plat and the final plat must show the dedication. If the title is transferred to the interior lot owners, the preliminary plat and final plat shall designate the following:
    - a) The lot or lots that are to serve as water access lots.
    - b) The lots the owners of which are to have common title to the water access lots (e.g., Owners of Lots 1, 2, 3, 4, 5, etc., to have undivided fee simple title to this water access lot).

### DIVISION 2. IMPROVEMENTS

#### 4.8 REQUIRED IMPROVEMENTS

##### A. INSTALLATION OF IMPROVEMENTS

1. The cost of all improvements shall be at the subdivider's expense. All required improvements shall be completed by the subdivider or his or her agents. All required improvements, except the final lift of asphalt on roadways; landscaping; and sidewalks shall be installed, inspected, and approved prior to approval of any final plat. A Subdivision Improvement Agreement shall be entered into for the

purpose of guaranteeing the proper installation of the final lift of asphalt, landscaping, and sidewalks as provided in Article 2.

B. ACCEPTANCE OF PUBLIC IMPROVEMENTS

1. At the time of final plat approval, the applicant shall provide the UDO Administrator with a timeline for acceptance of public improvements. Within 12 months of completion of such improvements, and prior to any conveyance to a third party or HOA/POA, an offer of acceptance by the town shall be initiated by the subdivider. An extension may be granted by the UDO Administrator where less than 80% of the lots within the final plat have not been conveyed to individual ownership or issued a certificate of occupancy.
2. All required offers to dedicate or reserve for future dedication shall be made clear of all liens and encumbrances on the property prior to consideration for acceptance by the town.
- 1.3. Such acceptance shall be made through the use of a legally recorded deed or transfer of ownership which has been reviewed and approved by the town attorney.

C. INSPECTION

1. The subdivider, prior to commencing any work within the subdivision, shall make arrangements with the ~~administrator of this article~~ UDO Administrator to provide for adequate inspection. The approving authorities having jurisdiction or their representatives shall inspect and approve all completed work prior to release of ~~the sureties~~ any applicable performance guarantee.
2. Prior to the acceptance of any public infrastructure or approval of a final plat with required improvements, including streets, stormwater systems, or water/sewer systems, the subdivider is required to have a professional engineer perform a required inspection and prepare an accompanying sealed report demonstrating compliance with the required standards of this ordinance and any applicable specifications under authority of the Public Works Department or other applicable agency.

4.9 LIST OF REQUIRED IMPROVEMENTS

- A. Streets within the subdivision. Improvements to existing streets/road network are required for safe and adequate access to the subdivision.
- B. Traffic control devices, street name signs, and cluster mailbox units.
- C. Pedestrian facilities.
- D. Street trees.
- E. Water and sewer systems.
- F. Stormwater drainage and erosion control facilities.
- G. Underground utilities.
- A.H. Any other improvement required as a condition for preliminary plat approval.

#### 4.10 STREETS AND ROADWAY NETWORK

- ~~A. All streets shall be properly integrated with the existing and proposed system of thoroughfares and dedicated rights-of-way as established on officially adopted plans.~~
- ~~B. All thoroughfares shall be properly related to specific traffic generators such as industries, business districts, schools, churches, recreation resources, and shopping centers; to population densities; and to the pattern of existing and proposed land uses.~~
- ~~C.A. Minor~~ Streets shall be laid out to conform as much as possible to the topography, to discourage use by through traffic, to permit efficient drainage and utility systems, and to require the minimum number of streets necessary to provide convenient, safe access to property.
- ~~D.B.~~ The rigid rectangular gridiron street pattern need not necessarily be adhered to, and the use of curvilinear streets, cul-de-sacs, or U-shaped streets shall be encouraged where such use will result in a more desirable layout.
- ~~E.C.~~ Proposed streets shall be extended to the boundary lines of the tract to be subdivided, unless prevented by topography or other physical conditions, ~~or unless in the opinion of the Planning and Zoning Commission such extension is not necessary or desirable for the coordination of the layout of the subdivision with the existing layout or the most advantageous future development of adjacent tracts.~~
- ~~D.~~ In ~~business and industrial~~ nonresidential developments, the streets and other accessways shall be planned in connection with the grouping of buildings, the location of rail facilities, and the provision of alleys, truck loading and maneuvering areas, and walks and parking areas so as to minimize conflict of movement between the various types of traffic, including pedestrian.
- ~~E.~~ With the exception of the ETJ, all new streets shall be planned, constructed, and dedicated for public purposes. No new private streets shall be constructed unless the property is located within the town's ETJ.

#### 4.11 ALLEYS

- A. Alleys ~~shall be provided~~ are permissible in ~~all business, commercial, and industrial areas~~ nonresidential districts, ~~except that the Planning and Zoning Commission may waive this requirement where other definite and suitable provision is made~~ to provide for service areas, such as off-street loading and parking, consistent with and adequate for the uses proposed.
- B. The width of any alley shall be not less than 20 feet.
- C. Dead-end alleys are prohibited except under very unusual circumstances, and crooked and "T" alleys shall be discouraged. Where dead-end alleys are unavoidable, they shall be provided with adequate turnaround facilities at the dead end meeting all NCDOT requirements.
- D. Alleys shall not be provided in residential areas.

#### 4.12 STREET DESIGN SPECIFICATIONS

- A. The design of all streets and roads, including drainage, shall be in accordance with the minimum design and construction criteria for the most recent version of the NCDOT Subdivision Roads Minimum Construction Standards and NCDOT Guidelines for Drainage

Studies and Hydraulic Design, unless this ordinance establishes a stricter standard. Any applicable construction standards of Chapter 34, Article 7 shall also be complied with.

- ~~A.B.~~ Right-of-way widths. Minimum street right-of-way widths shall be in accordance with the minimum design standards for the type of street based on the NCDOT Subdivision Roads Minimum Construction Standards. Most streets will be constructed in accordance with standards provided for “Residential Local Subdivision Roads” as specified in the NCDOT Subdivision Roads Minimum Construction Standards manual. Alternative street designs may be approved by the UDO Administrator with plans and street specifications prepared by a licensed professional engineer in accordance with the NCDOT Complete Streets Planning and Design Guidelines and for an advisory recommendation by the TRC and fire marshal. In no case shall right-of-way widths be less than 40 feet and pavement widths less than 26 feet, unless explicitly approved by the Fire Marshall.
- ~~B.C.~~ Pavement widths. Minimum pavement width face-to-face of curb and gutter shall not be less than the minimum design standards for the type of street based on ~~state department of transportation standards~~ NCDOT standards.
- ~~C.D.~~ Cul-de-sacs. Permanent dead-end streets or cul-de-sacs shall be designed per state department of transportation and fire code minimum standards.
- ~~D.E.~~ Street grades. Unless necessitated by exceptional topography, subject to the approval of the ~~Planning and Zoning Commission~~ TRC, the maximum centerline grade of any street or public way shall not exceed ~~the state department of transportation~~ NCDOT standards. The grade of any street shall ~~in no case~~ not exceed 12% or be less than one-half (0.5) of one (1) percent. Street grades shall be established wherever practicable so as to avoid excessive grading, the promiscuous removal of ground cover and tree growth, and general leveling of the topography. All changes in street grades shall be connected by vertical parabolic curves of a minimum length equivalent in feet to 15 times the algebraic difference in the rates of grade for major streets, and one-half (0.5) this minimum for all other streets.
- F. Street Connectivity Requirements. The Town Council hereby finds and determines that an interconnected street system is necessary in order to protect the public health, safety, and welfare in order to ensure that streets will function in an interdependent manner and to provide continuous and comprehensible transportation for all modes of travel. All proposed streets shall be continuous and connect to existing or platted streets without offset with the exception of cul-de-sacs. Whenever practicable, provisions shall be made for the continuation of planned streets and any associated pedestrian facilities into adjoining areas. Whenever connections to anticipated or proposed surrounding streets are required by this section, the street right-of-way shall be extended and the street developed to the property line of the subdivided property (or to the edge of the remaining undeveloped portion of a single tract) at the point where the connection to the anticipated or proposed street is expected. In addition, the Fire Marshall may require temporary turnarounds to be constructed at the end of such streets pending their extension when such turnarounds appear necessary to facilitate the flow of traffic or to accommodate emergency vehicles. Notwithstanding the other provisions of this subsection, no temporary dead-end street in excess of 1,000 feet may be created.

- ~~E. — Radii of curvature. When a continuous street centerline deflects at any one (1) point by more than 10 degrees, a circular curve shall be introduced having a radius of curvature on such centerline of not less than the following:~~
- ~~1. — Arterial streets and highways: 500 feet.~~
  - ~~2. — Collector streets: 300 feet.~~
  - ~~3. — Minor streets: 100 feet.~~
  - ~~4. — A tangent at least 100 feet in length shall be provided between reverse curves on arterial and collector streets.~~

~~Half-streets. Street systems in new subdivisions shall be laid out so as to eliminate or avoid half-streets. Where a half-street is adjacent to a new subdivision, the other half of the street shall be dedicated by the subdivider. Where a new subdivision abuts an existing street of inadequate right-of-way width, additional right-of-way width may be required to be dedicated by the subdivider to meet the requirements of this section.~~

#### 4.13 STREET NAMES

Street names shall not duplicate or be similar to existing street names; however, existing street names shall be projected where appropriate. The subdivider shall be responsible for coordinating street naming with the ~~administrator of this article~~UDO Administrator.

#### 4.14 INTERSECTIONS

##### A. ANGLE AND NUMBER OF STREETS INTERSECTING

1. Streets shall be laid out so as to intersect as nearly as possible at right angles. A proposed intersection of two (2) new streets at an angle of less than 70 degrees shall not be acceptable.
2. Not more than two (2) streets shall intersect at any one (1) point unless specifically approved by the ~~Planning and Zoning Commission~~TRC.

##### B. SPACING OF INTERSECTIONS

1. Proposed new intersections along one (1) side of an existing street shall wherever practicable coincide with existing intersections on the opposite side of such street. Street jogs with centerline offsets of less than 125 feet shall not be permitted, except where the intersected street has separated dual drives without median breaks at either intersection. Where streets intersect major streets, their alignment shall be continuous.
2. The number of intersections along arterial streets and highways shall be held to a minimum. Wherever practicable, the distance between such intersections shall not be less than 1,200 feet.

##### C. PROPERTY LINES

1. Property lines at street intersections shall be rounded with a minimum radius of 15 feet or of a greater radius ~~when required by the Planning and Zoning Commission~~, or shall be cut off by a straight line through the points of tangency of an arc having a radius of 15 feet.



2. Property lines at alley intersections and at abrupt changes in alignment within a block shall have the corners cut off in accordance with standard engineering practice to permit safe vehicular movement.

#### D. GRADES

1. Where the grade of any street at the approach of an intersection exceeds seven (7) percent, a leveling area shall be provided having not greater than four (4) percent grade for a distance of 25 feet, measured from the nearest right-of-way line of the intersecting street.
2. Intersections shall be designed with a flat grade whenever practical. In no case shall the vertical alignment within the intersection area exceed four (4) percent.
3. Where any street intersection will involve earth banks or existing vegetation inside any lot corner that would create a traffic hazard by limiting visibility, the developer shall cut such ground and/or vegetation (including trees) in connection with grading of the public right-of-way to the extent deemed necessary to provide an adequate sight distance.

### 4.15 BLOCKS

- A. General design. The widths, lengths, and shapes of blocks shall be suited to the planned use of the land, zoning requirements, need for convenient access, control and safety of street traffic, and topography.
- B. Length. Blocks in residential areas shall not, as a general rule, be less than 400 feet nor more than 1,200 feet in length, unless otherwise dictated by exceptional topography or other limiting factors consistent with good design. Wherever practicable, blocks along major streets and highways shall be not less than 1,000 feet in length.
- C. Width. Blocks shall have sufficient width to provide for two (2) tiers of lots of appropriate depth except where otherwise required to separate residential development from through traffic, public parks, cemeteries, railroad rights-of-way, bulkhead lines, shorelines of waterways, or corporate boundaries, or except as may be necessary due to extreme topography.
- D. Pedestrian ~~ways~~paths. Pedestrian ~~ways~~paths of not more than 10 feet in width ~~may be required~~should be planned between rear lot lines where ~~deemed necessary by the Planning and Zoning Commission~~feasible to provide safe and convenient pedestrian circulation between the individual lots, streams, lakeshores or other waterways, parklands or other public areas. ~~Such pedestrian paths shall be;~~or may be required near the center and entirely across any block over 900 feet in length ~~where deemed essential by the Planning and Zoning Commission~~ to provide adequate pedestrian circulation or access to schools, recreation areas, shopping centers, churches, or transportation facilities. Any such path shall have a minimum paved width of five (5) feet.
- E. Non-residential blocks. Blocks ~~designed for business, commercial, or industrial uses shall be of such length and width as may be determined suitable by the Planning and Zoning Commission for the prospective use~~within the CBD, HB, and I-1 zoning district shall not be subject to the block length requirements of this ordinance.

#### 4.16 PEDESTRIAN FACILITIES

All subdivisions of six (6) or more lots shall be required to install sidewalks along any proposed street or roadway. ~~The Planning and Zoning Commission may require the subdivider to construct a concrete sidewalk on one side of all frontage streets and on one or both sides of all other streets within the subdivision.~~ The construction of all sidewalks shall be in accordance with ~~plans and standard~~the specifications ~~approved by the Planning and Zoning Commission~~provided in Article 3 Zoning (pedestrian facilities) and Chapter 34, Article 7.

#### 4.17 STREET LAMPS AND TRAFFIC CONTROL DEVICES

The ~~Planning and Zoning Commission shall require the subdivider to~~shall install street lamps ~~and signs~~in accord with the standards provided in Chapter 34, Article 5 along all streets ~~proposed to be dedicated of a design in accordance with the ordinances of the Town.~~ Traffic-control devices such as stop, yield, and speed limit signs, but not including electric or electronic traffic signals, shall be installed on all streets by the subdivider. The construction of all control devices shall be in accordance traffic control standards as designated in the Manuals on Uniform Traffic Control Devices, North Carolina Supplement to the Manual on Uniform Traffic Control Devices, and the North Carolina Highway Design Branch Roadway Standard Drawings.

#### 4.18 CLUSTER BOX UNITS (MAIL SERVICE)

It is the policy of the U. S. Postal Service that mail delivery to all new subdivision is centralized delivery, most often using cluster box units (CBU). It is the responsibility of the subdivider to provide the necessary mail receptacle equipment in accordance with the Postal Operations Manual. The location of the CBU shall be evaluated by the TRC.

#### 4.19 STREET TREES

The subdivider shall plant at least one (1) understory tree of approved species and of at least six (6) feet in height for each 50 feet of frontage on all proposed streets ~~proposed to be dedicated.~~ Tree plantings shall be completed in accordance with plans and specifications ~~approved by and at such time as directed by the Planning and Zoning Commission. Type D. For every 50 linear feet of frontage, or fraction thereof, the street yard shall contain one (1) understory tree with sidewalks or planters built within the sidewalk~~required by the UDO Administrator.

#### 4.20 WATER AND SEWER SYSTEMS

- A. All applications for subdivisions must be accompanied by satisfactory evidence as to the proposed method and system of water supply and sanitary sewage collection and disposal. All proposed subdivisions must comply with the requirements set forth in the by the town's Public Works Department for connection and/or the appropriate outside agency/utility system, where applicable.
- B. Where public or community water supply and/or sewerage systems are not required to be provided, a written statement from the county health department or licensed soil scientist shall be submitted with all subdivision applications indicating that each lot has adequate land area and soil conditions suitable to accommodate the proposed methods of water supply and sewage disposal.

#### 4.21 STORMWATER DRAINAGE AND EROSION CONTROL FACILITIES

A. The subdivider shall construct stormwater drainage facilities, which may include curbs and gutters, catch basins and inlets, storm sewers, road ditches, open channels, water retention structures, and settling basins as required to adequately serve the subdivision. All such facilities shall be of adequate size and grade to hydraulically accommodate the maximum potential volumes of flow and shall be so designed as to prevent and control soil erosion and sedimentation and to present no hazard to life or property. All applicable subdivision development shall be subject to the town's stormwater requirements as provided in Article 6.

- ~~1. Unpaved ditches. Unpaved road ditches and street gutters shall be shaped and seeded and/or sodded as grassed waterways. Where the velocity of flow is in excess of four feet per second on soils having a severe or very severe erosion hazard and in excess of six (6) feet per second on soils having moderate, slight, or very slight erosion hazard, the subdivider shall install a paved invert or check dams, flumes, or other energy dissipating devices.~~
- ~~2. Shoreland drainage. Shoreland drainage facilities shall include water retention structures and settling basins so as to prevent erosion and sedimentation where such facilities discharge into streams, lakes, or other waterways. The design criteria, the size, type, grades, and installation of all stormwater drains and sewers and other cross-section, invert, and erosion control paving, check dams, flumes, or other energy dissipating structures and seeding and/or sodding of open channels and unpaved road ditches proposed to be constructed shall be in accordance with plans and standard specifications approved by the Planning and Zoning CommissionPublic Works Department.~~
- ~~3.1. Cost. The subdivider shall assume the cost of installing all storm sewers within the proposed subdivision, except for the added cost of installing storm sewers greater than 24 inches in diameter which are necessary to serve tributary drainage areas lying outside of the proposed subdivision. In addition, the subdivider shall pay to the Town a storm sewer trunk line connection fee based on the added cost of installing larger sewers in the total tributary drainage area which shall be prorated in proportion to the total area of the proposed plat to the total drainage area to be served by such larger sewers.~~

#### 4.22 UNDERGROUND UTILITIES

Underground electric service and telephone facilities (where applicable) to all new subdivisions is required. Notwithstanding the above, a subdivider shall not be required to bury power lines that existed above ground at the time of first approval of a plat or development plan by the town, whether or not the power lines are subsequently relocated during construction of the subdivision or development plan or the power lines are located outside the boundaries of the parcel of land that contains the subdivision or the property covered by the development plan.  
~~The subdivider shall cause gas, electrical power, and telephone facilities to be installed in such a manner as to make adequate service available to each lot in the subdivision. All utility lines for local distribution of electric power and telephone service shall be installed underground within all residence districts as shown on the official zoning maps when applicable and in other~~

~~subdivisions consisting of five (5) or more lots. Primary electrical or telephone service lines shall be located on overhead poles along the rear lot lines unless otherwise allowed due to exceptional topography, other physical barriers or on lots bordering navigable streams, lakes, or other waterways.~~

~~A. Plans indicating the proposed location of all gas, electrical power, and telephone distribution and transmission lines required to service the plat shall be approved by the Planning and Zoning Commission.~~

#### 4.23 RESERVED

### *DIVISION 3. CONSTRUCTION*

#### 4.24 COMMENCEMENT

No construction or installation of improvements shall commence in a proposed subdivision until the preliminary plat has been approved by the appropriate authority.

#### 4.25 COMPLIANCE WITH ARTICLE; ISSUANCE OF PERMITS

No building or other permits shall be issued for erection of a structure on any lot not of record at the time of adoption of the ordinance from which this article is derived until all the requirements of this article have been met.

~~The administrator of this article shall have access to premises and structures during reasonable hours to make those inspections as deemed necessary by him to ensure compliance with this article.~~

## Article 5: Flood Damage Prevention

### *DIVISION 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES*

#### 5.1 STATUTORY AUTHORIZATION

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Article 6 of Chapter 153A; Article 8 of Chapter 160A; and Article 7, 9, and 11 of Chapter 160D (effective July 1, 2021) of the North Carolina General Statutes, delegated to local governmental units the authority to adopt regulations designed to promote the public health, safety, and general welfare. Therefore, the Town Council of the Town of Carolina Beach, North Carolina, does ordain as follows.

#### 5.2 FINDINGS OF FACT

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

#### 5.3 STATEMENT OF PURPOSE

- A. It is the purpose of this article to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:
  - 1. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
  - 2. Require that uses vulnerable to floods, including facilities which 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 other development which may increase erosion or flood damage; and
  - 5. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

#### 5.4 OBJECTIVES

- A. The objectives of this article are:
  - 1. To protect human life and health;
  - 2. To minimize expenditure of public money for costly flood control projects;
  - 3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
  - 4. To minimize prolonged business 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 flooding;
7. Make flood insurance available to the community through the National Flood Insurance Program;
8. Maintain the natural and beneficial functions of 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.

## 5.5 - 5.24 RESERVED

### *DIVISION 2. DEFINITIONS*

#### 5.25 DEFINITIONS

Unless specifically defined below, 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 it's most reasonable application in relation to matters concerning flood damage prevention:

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

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

**Alteration of a watercourse** means 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.

**Appeal** means a request for a review of the Floodplain Administrator's interpretation of any provision of this article.

**Area of shallow flooding** means 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 (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

**Area of special flood hazard** see "special flood hazard area (SFHA)".

**Area of future-conditions flood hazard** means the land area that would be inundated by the 1% annual-chance (100-year) flood based on future-conditions hydrology.

**Base flood** means the flood having a 1% chance of being equaled or exceeded in any given year.

**Base flood elevation (BFE)** means 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 "freeboard", establishes the "regulatory flood protection elevation".

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

**Building** see "structure".

**Chemical storage facility** means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

**Coastal Area Management Act (CAMA)** means North Carolina's Coastal Area Management Act, this 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) Division of Coastal Management (DCM).

**Coastal A Zone (CAZ)** means 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 (1) 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** means 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 Section 5-55 of this article, as Zone VE.

**Design flood:** See "regulatory flood protection elevation."

**Development** means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

**Development activity** means 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.

**Digital flood insurance rate map (DFIRM)** means 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.

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

**Elevated building** means 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** means the advance or infringement of uses, fill, excavation, buildings, structures or development into a special flood hazard area, which may impede or alter the flow capacity of a floodplain.

**Existing building and existing structure** means any building and/or structure for which the "start of construction" commenced before May 12, 1987.

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

**Flood or flooding** means 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 or runoff of surface waters from any source.

**Flood boundary and floodway map (FBFM)** means 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)** means 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** means the insurance coverage provided under the National Flood Insurance Program.

**Flood insurance rate map (FIRM)** means 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)** means 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 prone** area see "floodplain"

**Flood zone** means a geographical area shown on a flood hazard boundary map or flood insurance rate map that reflects the severity or type of flooding in the area.

**Floodplain** means any land area susceptible to being inundated by water from any source.

**Floodplain administrator** is the individual appointed to administer and enforce the floodplain management regulations.

**Floodplain development permit** means any type of permit that is required in conformance with the provisions of this article, prior to the commencement of any development activity.

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

**Floodplain management regulations** means this article and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose 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** means 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** means 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 lumbars 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** means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

**Floodway encroachment analysis** means 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 North Carolina licensed engineer using standard engineering methods and models.

**Freeboard** means 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 or culvert openings, and the hydrological effect of urbanization of the watershed. The BFE plus the freeboard establishes the "regulatory flood protection elevation".

**Functionally dependent facility** means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, 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.

**Hazardous waste management facility** means, as defined in G.S. Chapter 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

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

**Historic structure** means any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a local inventory of historic landmarks in communities with a "Certified Local Government (CLG) Program"; or
- D. Certified as contributing to the historical significance of a historic district designated by a community with a "Certified Local Government (CLG) Program."

**Certified Local Government (CLG) Programs** are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

**Letter of map change (LOMC)** means 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:

- A. 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.

- B. 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.
- C. 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.
- D. 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** means 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:

- A. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or
- B. Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- C. Available with special features enabling off-street or off-highway operation and use.

**Limit of moderate wave action (LiMWA)** means the boundary line given by FEMA on coastal map studies marking the extents of Coastal A Zones (CAZ).

**Lowest adjacent grade (LAG)** means 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** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this article.

**Manufactured home** means a structure, transportable in one (1) 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** means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

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

**New construction** means 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.

**Non-conversion agreement** means a document stating that the owner will not convert or alter what has been constructed and approved. Violation of the agreement is considered a violation of this article and, therefore, subject to the same enforcement procedures and penalties. The agreement must be filed with the recorded deed for the property. The agreement must show the clerk's or recorder's stamps and/or notations that the filing has been completed.

**Non-encroachment area (NEA)** means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the flood insurance study report.

**Otherwise protected area (OPA)** see "Coastal Barrier Resources System (CBRS)".

**Post-FIRM** means construction or other development for which the "start of construction" occurred on or after May 2, 1975, the effective date of the initial flood insurance rate map.

**Pre-FIRM** means construction or other development for which the "start of construction" occurred before May 2, 1975, the effective date of the initial flood insurance rate map.

**Primary frontal dune (PFD)** means 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.

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

**Public safety and/or nuisance** means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

**Recreational vehicle (RV)** means a vehicle, which is:

- A. Built on a single chassis;
- B. 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.

**Reference level** is the top of the lowest floor for structures within special flood hazard areas designated as Zones A, AE, AH, AO, A99. The reference level is the bottom of the lowest horizontal structural member of the lowest floor for structures within special flood hazard areas designated as Zone VE.

**Regulatory flood protection elevation** means the "base flood elevation" plus the "freeboard". In "special flood hazard areas" where base flood elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet freeboard. In "special flood hazard areas" where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.

**Remedy a violation** means to bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this article or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

**Riverine** means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

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

**Sand dunes** means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

**Shear wall** means 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.

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

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

**Special flood hazard area (SFHA)** means the land in the floodplain subject to a 1% or greater chance of being flooded in any given year, as determined in Section 5-55 of this article.

**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.

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

**Substantial damage** means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 49% of the market value of the structure before the damage occurred. See definition of "substantial improvement".

**Substantial improvement** means 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 49% of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- A. Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to Section 5-95 of this article.

**Technical bulletin and technical fact sheet** means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 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.

**Temperature controlled** means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

**Variance** is a grant of relief from the requirements of this article.

**Violation** means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in articles IV and V is presumed to be in violation until such time as that documentation is provided.

**Water surface elevation (WSE)** means the height, in relation to NAVD 1988, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

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

## 5.26 - 5.53 RESERVED

### *DIVISION 3. GENERAL PROVISIONS*

#### 5.54 LANDS TO WHICH THIS ARTICLE APPLIES

This article shall apply to all areas of special flood hazard areas within the jurisdiction, including extra-territorial jurisdictions (ETJs), of the Town of Carolina Beach.

#### 5.55 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS.

The special flood hazard areas are those identified under the cooperating technical state (CTS) agreement between the State of North Carolina and FEMA in its FIS dated August 28, 2018 for New Hanover County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this article. Future revisions to the FIS and DFIRM panels that do not change flood hazard data within the jurisdictional authority of the Town of Carolina Beach are also adopted by reference and declared a part of this article. Subsequent letter of map revisions (LOMRs) and/or physical map revisions (PMRs) shall be adopted within three (3) months.

#### 5.56 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 as determined in Section 5-55.

#### 5.57 COMPLIANCE

No structure or land shall hereafter be located, extended, converted, or structurally altered without full compliance with the terms of this article and other applicable regulations.

#### 5.58 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.

#### 5.59 INTERPRETATION

- A. In the interpretation and application of this article, all provisions shall be:
  - 1. Considered as minimum requirements;

2. Liberally construed in favor of the Town Council; and
3. Deemed neither to limit nor repeal any other powers granted under state statutes.

#### 5.60 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 on rare occasions. Flood heights may be increased by manmade or natural causes. This article does not imply that land outside the areas of special flood hazard 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.

#### 5.61 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 NC 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 pursuant to the Town's annually adopted rates and fees schedule or imprisoned for not more than 30 days, or both. Each day such a 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.

#### 5.62 - 5.90 RESERVED

### *DIVISION 4. ADMINISTRATION*

#### 5.91 DESIGNATION OF FLOODPLAIN ADMINISTRATOR.

The Town Official, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this article. 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.

#### 5.92 FLOODPLAIN DEVELOPMENT APPLICATION, PERMIT AND CERTIFICATION REQUIREMENTS

- A. 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:
  1. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
    - a) 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;
- b) The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in Section 5-55, or a statement that the entire lot is within the special flood hazard area;
  - c) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section 5-55;
  - d) The boundary of the floodway(s) or non-encroachment area(s) as determined in Section 5-265;
  - e) The base flood elevation (BFE) where provided as set forth in Section 5-55, 5-93(11) and (12) or 5-96;
  - f) The old and new location of any watercourse that will be altered or relocated as a result of proposed development;
  - g) The boundary and designation date of the coastal barrier resource system (CBRS) area or otherwise protected areas (OPA), if applicable; and
  - h) Certification of the plot plan by a registered land surveyor or professional engineer for construction of a principal use.
2. Proposed elevation, and method thereof, of all development within a special flood hazard area including but not limited to:
- a) Elevation in relation to NAVD 1988 of the proposed reference level (including basement) of all structures;
  - b) Elevation in relation to NAVD 1988 to which any non-residential structure in zone AE, A or AO will be floodproofed;
  - c) Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed.
3. If floodproofing, 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.
4. 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:
- a) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
  - b) Openings to facilitate equalization of hydrostatic flood forces on walls in accordance with Section 5-125(4), when solid foundation perimeter walls are used in all A zones;
  - c) The following, in coastal high hazard areas, in accordance with Sections 5-125(4) and 5-129:

- i) V-zone certification form with accompanying plans and specifications verifying the engineered structure and any breakaway wall designs;
    - ii) Plans for open wood latticework or insect screening, if applicable;
    - iii) 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.
  5. Usage details of any enclosed areas below the regulatory flood protection elevation.
  6. 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.
  7. Certification that all other local, state and federal permits required prior to floodplain development permit issuance have been received.
  8. Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure Section 5-125(6) and (7) are met.
  9. 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.
- B. Permit requirements. The floodplain development permit shall include, but not be limited to:
  1. A complete description of all the development to be permitted under the floodplain development permit (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.).
  2. The special flood hazard area determination for the proposed development per available data specified in Section 5-55.
  3. The regulatory flood protection elevation required for the reference level and all attendant utilities.
  4. The regulatory flood protection elevation required for the protection of all public utilities.
  5. All certification submittal requirements with timelines.
  6. A statement that no fill material shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.
  7. The minimum opening requirements, if in A or AE zones.
  8. Limitations of below BFE enclosure uses (i.e., parking, building access and limited storage only), if applicable.
  9. In a VE zone, there shall be no alteration of sand dunes which would increase potential flood damage.

10. In a VE zone, there shall be no fill used for structural support.
  11. All materials below BFE/RFPE must be flood resistant materials.
- C. Certification requirements.
1. Elevation certificates.
    - a) A reference level is required at foundation or piling inspection. It is at the permit holders risk that the reference level be established accurately.
    - b) 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.
  2. Floodproofing certificate.
    - a) 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.
  3. If a manufactured home is placed within zone A, AO, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required per Section 5-125(3).
  4. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; 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 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.
5. Certification exemptions. The following structures, if located within zone A, AO, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified in subsection (c)(1) and (2) of this section:
    - a) Recreational vehicles meeting requirements of Section 5-125(6)a;
    - b) Temporary structures meeting requirements of Section 5-125(7); and
    - c) Accessory that are 150 square feet or less or \$3,000.00 or less and meeting requirements of Section 5-125(8).
  6. A completed V-zone certification form with backup 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 data 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.
- D. 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 Town Official, shall:
1. 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;
  2. 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;
  3. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
  4. 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 NC Building Code and this article is required.

### 5.93 DUTIES AND RESPONSIBILITIES OF THE ADMINISTRATOR

Duties of the Town official shall include, but not be limited to:

- A. Review all floodplain development applications and issue permits for all proposed development within special flood hazard areas to assure that the requirements of this article have been satisfied.
- B. 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.
- C. Notify adjacent communities and the North Carolina 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).
- D. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
- E. Prevent encroachments within floodways unless the certification and flood hazard reduction provisions of article V of this article are met.
- F. Obtain actual elevation (in relation to NAVD 1988) of the lowest floor (including basement) and all attendant utilities of all new or substantially improved structures, in accordance with Section 5-92.
- G. Obtain the actual elevation (in relation to NAVD 1988) to which the new or substantially improved structures have been floodproofed, in accordance with Section 5-292.
- H. Obtain actual elevation (in relation to NAVD 1988) of all public utilities in accordance with Section 5-92.
- I. When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with Section 5-125(2).
- J. Make the necessary interpretation where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- K. When base flood elevation data or floodway data has not been provided in accordance with Section 5-55, obtain, review, and reasonably utilize any base flood elevation data and floodway data available from a federal, state, or other source, including data developed pursuant to Section 5-127, in order to administer the provisions of this article.
- L. When BFE data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of Section 5-55, 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.
- M. 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.
- N. Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of

- proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- O. 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 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.
  - P. Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications, for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable state or local law may also be revoked.
  - Q. Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The Floodplain Administrator and each member of his inspections department shall have a right, upon presentation of 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.
  - R. Follow through with corrective procedures of Section 5-94.
  - S. Maintain a current map repository, to include, but not be limited to, the FIS report, FIRM and/or other official flood maps/studies adopted under Section 5-55, including any revisions thereto including letters of map change, issued by state and/or FEMA. Notify state and FEMA of mapping needs.
  - T. Coordinate revisions to FIS reports and FIRMs, including letters of map revision based on fill (LOMR-Fs) and letters of map revision (LOMRs).
  - U. Review, provide input, and make recommendations for variance requests.
  - V. 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. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.

#### 5.94 CORRECTIVE PROCEDURES

- A. Violations to be corrected. When the Floodplain Administrator finds violations of applicable state and local laws, it shall be his duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.
- B. Actions in event of failure to take corrective action. If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

1. That the building or property is in violation of the floodplain management 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 an order to alter, vacate, or demolish the building; or to remove fill as applicable.
- C. Order to take corrective action. If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the flood damage prevention ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than 180 calendar 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.
- D. Appeal. Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- E. Failure to comply with order. If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58 and shall be punished at the discretion of the court.

## 5.95 VARIANCE PROCEDURES

- A. The board of adjustments 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.
- B. Any person aggrieved by the decision of the appeal board may appeal such decision to the court, as provided in G.S. Chapter 7A.
- C. Variances may be issued for:
  1. 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 the variance is the minimum necessary to preserve the historic character and design of the structure.
  2. Functionally dependent facilities if determined to meet the definition in Section 5-235 and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
  3. Any other type of development, provided it meets the requirements stated in this section.

- D. In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this article, and:
  - 1. The danger that materials may be swept onto other lands to the injury of others;
  - 2. The danger to life and property due to flooding or erosion damage;
  - 3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - 4. The importance of the services provided by the proposed facility to the community;
  - 5. The necessity to the facility of a waterfront location, as defined under article II of this article as a functionally dependent facility, where applicable;
  - 6. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - 7. The compatibility of the proposed use with existing and anticipated development;
  - 8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - 9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - 10. 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
  - 11. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- E. A written report addressing each of the factors in subsection (d) of this section shall be submitted with the application for a variance.
- F. Upon consideration of the factors listed in subsection (d) of this section 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 of this article.
- G. The administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- H. 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 \$25.00 per \$100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- I. Conditions for variances.
  - 1. Variances may not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.
  - 2. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.



3. Variances shall only be issued prior to development permit approval.
4. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
5. Variances shall only be issued upon:
  - a) A showing of good and sufficient cause;
  - b) A determination that failure to grant the variance would result in exceptional hardship; and
  - c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- J. A variance may be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following conditions are met:
  1. The use serves a critical need in the community.
  2. No feasible location exists for the use outside the special flood hazard area.
  3. The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.
  4. The use complies with all other applicable federal, state and local laws.
  5. The Town has notified the secretary of the state department of crime control and public safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

## 5.96 - 5.123 RESERVED

### *DIVISION 5. PROVISIONS FOR FLOOD HAZARD REDUCTION*

#### 5.124 GENERAL STANDARDS.

In all areas of special flood hazard, the following provisions are required:

- A. All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- B. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the FEMA Technical Bulletin 2, Flood Damage-Resistant Materials Requirements.
- C. All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- D. 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, water heaters, and electric outlets/switches.

1. Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.
  2. 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.
- E. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- F. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- G. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- H. 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.
- I. 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 Section 5-95(e). 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 Section 5-92(c).
- J. All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- K. 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.
- L. All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- M. All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- N. 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.
- O. 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.

### 5.125 SPECIFIC STANDARDS

In all areas of special flood hazard where base flood elevation data has been provided, as set forth in Section 5-55 or 5-93(9), except the following provisions, in addition to the provisions of Section 5-124, are required:

- A. Residential construction. New construction or substantial improvements of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Section 5-25.
- B. Non-residential construction. New construction or substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Section 5-25. Structures located in A zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure below the required flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section 5-92(c), along with the operational and maintenance plans.
- C. Manufactured homes.
  - 1. New or replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in Section 5-25.
  - 2. 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 of North Carolina 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.
  - 3. All enclosures or skirting below the lowest floor shall meet the requirements of Section 5-125(b).
  - 4. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.
- D. Elevated buildings. Fully enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation:
  - 1. 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 partitioned or finished into separate rooms, except to enclose storage areas;

2. Shall be constructed entirely of flood-resistant materials below the regulatory flood protection elevation;
3. Shall include, in zones A, AO, AE, and A1-30, measures 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 the following minimum design criteria:
  - a) Provide a minimum of two (2) openings on different sides of each enclosed area subject to flooding;
  - b) The total net area of all openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
  - c) If a building has more than one (1) enclosed area, each area must have openings to allow floodwaters to automatically enter and exit;
  - d) The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade;
  - e) Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
  - f) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above;
4. Shall allow, in coastal high hazard areas (Zones VE), either be free of obstruction or constructed with breakaway walls, latticework or insect screening below the regulatory flood protection elevation, provided it is not part of the structural support of the building and is designed so as to breakaway, under abnormally high tides or wave action, without causing damage to the structural integrity of the building on which they are to be used, provided the following design specifications are met:
  - a) Material shall consist of open wood latticework (having an opening ratio of at least 40% ), or insect screening; or
  - b) Breakaway walls shall meet the following design specifications:
    - i) Design safe loading resistance of each wall shall be not less than ten nor more than 20 pounds per square foot; or
    - ii) Breakaway walls that exceed a design safe loading resistance of more than 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 certifying that the

designed 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.

- E. Additions/improvements.
  - 1. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
    - a) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
    - b) A substantial improvement, 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.
  - 2. Additions to pre-FIRM or 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.
  - 3. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
    - a) 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.
    - b) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
  - 4. Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a one (1) year period, the cumulative cost of which equals or exceeds 49% 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 (1) 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. 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:

- a) 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.
- b) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

F. Recreational vehicles. Recreational vehicles shall either:

1. Temporary placement.
  - a. Be on site for fewer than 180 consecutive days; or
  - b. 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.)
2. Permanent placement. Recreational vehicles that do not meet the limitations of temporary placement shall meet all the requirements for new construction.

G. Temporary non-residential structures. Prior to the issuance of a floodplain development permit for a temporary structure, applicants 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:

1. A specified time period for which the temporary use will be permitted. Time specified should be minimal with total time on site not to exceed one (1) year;
2. The name, address, and phone number of the individual responsible for the removal of the temporary structure;
3. 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);
4. A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
5. Designation, accompanied by documentation of a location outside the special flood hazard area, to which the temporary structure will be moved.

H. Accessory structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a special flood hazard area, the following criteria shall be met:

1. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
2. Accessory structures shall not be temperature-controlled;
3. Accessory structures shall be designed to have low flood damage potential;
4. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
5. Accessory structures shall be firmly anchored in accordance with Section 5-124(a);

6. All service facilities such as electrical shall be installed in accordance with Section 5-124(d); and
  7. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with subsection (d)(1) of this section.
  8. An accessory structure with a footprint less than 150 square feet or that is a minimal investment of \$3,000.00 or less and satisfies the criteria outlined above is not required to meet the elevation or floodproofing standards. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section 5-92.
- I. Tanks. When gas and liquid storage tanks are to be placed within a special flood hazard area, the following criteria shall be met:
1. 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;
  2. 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;
  3. Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Section 5-125(b) of this article shall be permitted in 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;
  4. Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:
    - a) 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
    - b) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.
- J. Other development.
1. 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 Section 5-129 of this article.
  2. 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 Section 5-129 of this article.

3. 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 (1) side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Section 5-129 of this article.

### 5.126 RESERVED

### 5.127 STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS

Within the special flood hazard areas established in Section 5-125, where no base flood elevation (BFE) data has been provided by FEMA, the following provisions, in addition to Section 5-124, shall apply:

- A. 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 (5) 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.
- B. The BFE used in determining the regulatory flood protection elevation shall be determined based on the following criteria:
  1. If base flood elevation (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 division and shall be elevated or floodproofed in accordance with standards in Section 5-93(k) and (l).
  2. All subdivision, manufactured home park and other development proposals located within special flood hazard areas shall provide base flood elevation (BFE) data if development is greater than five (5) acres or has more than 50 lots/manufactured home sites. Such base flood elevation (BFE) data shall be adopted by reference per Section 5-265 to be utilized in implementing this article.
  3. When base flood elevation (BFE) data is not available from a federal, state, or other source as outlined above, the reference level shall be elevated or flood proofed (non-residential) to or above the regulatory flood protection elevation as defined in article II.

### 5.128 STANDARDS FOR RIVERINE FLOODPLAINS WITH BFE BUT WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS

Along rivers and streams where BFE data is provided 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:

- A. Standards outlined in Sections 5-124 and 5-125; and
- B. 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 (1) foot at any point within the community.

### 5.129 FLOODWAYS AND NON-ENCROACHMENT AREAS

Areas designated as floodways or non-encroachment areas are located within the special flood hazard areas established in Section 5-125. 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 Sections 5-124 and 5-125, shall apply to all development within such areas:

- A. No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
  - 1. It has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood. Such certification and technical data shall be presented to the Floodplain Administrator prior to issuance of floodplain development permit; or
  - 2. A conditional letter of map revision (CLOMR) has been approved by FEMA. A letter of map revision (LOMR) must also be obtained within six (6) months of completion of the proposed encroachment.
- B. If subsection (a) of this section is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this article.
- C. No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
  - 1. The anchoring and the elevation standards of Section 5-125(c); and
  - 2. The no encroachment standards of subsection (a) of this section are met.

### 5.130 COASTAL HIGH HAZARD AREA (ZONE VE)

Coastal high hazard areas are special flood hazard areas established in Section 5-265, and designated as zones VE. These areas have special flood hazards associated with high velocity waters from surges or seismic activity and, therefore, all new construction and substantial improvements shall meet the following provisions in addition to the provisions of Sections 5-124 and 5-125:

- A. All new construction and substantial improvements shall:
  - 1. Be located landward of the reach of mean high tide;
  - 2. Comply with all applicable CAMA setback requirements.
- B. All new and substantial improved structures shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is located 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.

- C. 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 so as not to impede the flow of flood waters, with the following exceptions:
  - 1. Open wood latticework or insect screening may be permitted below the regulatory flood protection elevation for aesthetic purposes only and must be designed to wash away in the event of abnormal wave action and in accordance with Section 5-125(d)(2) Design plans shall be submitted in accordance with Section 5-92(a)(4)c.; or
  - 2. Breakaway walls may be permitted below the regulatory flood protection elevation provided they meet the criteria set forth in Section 5-125(d)(2) Design plans shall be submitted in accordance with Section 5-92(a)(4)c.
- D. All new and substantial improved structures shall be securely anchored on pilings or columns. All pilings and columns and the structures 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.
  - 1. Water loading values used shall be those associated with the base flood.
  - 2. Wind loading values used shall be those required by the current edition of the state building code.
- E. A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions contained in Section 5-92 and subsections (c)(1) and (2), (d) and (f) of this section on the current version of the North Carolina V-Zone Certification form or equivalent local version.
- F. Fill/grading.
  - 1. 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.
  - 2. The fill material must be similar and consistent with the natural soils in the area.
  - 3. The placement of site-compatible, non-structural fill under or around an elevated building is limited to two (2) feet. Fill greater than two (2) feet must include a coastal engineering analysis prepared by a qualified registered design professional licensed professional engineer demonstrating no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent elevated buildings and structures.
  - 4. Non-structural fill with finished slopes that are steeper than five (5) units horizontal to one (1) 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.
- G. There shall be no alteration of sand dunes which would increase potential flood damage. Any proposal for dune alteration must include a coastal engineering analysis demonstrating no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent elevated buildings and structures.
- H. 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 are in compliance with this section.

- I. Recreational vehicles may be permitted in coastal high hazard areas provided that they meet the recreational vehicle criteria of Section 5-125(f)(1).
- J. 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 Section 5-92(c)(6).
- K. 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.
- L. 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:
  - 1. Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;
  - 2. 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.

### 5.131 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. 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.

- A. 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.

- B. All new construction and substantial improvements shall have the space below the lowest horizontal structural member free of obstruction so as not to impede the flow of flood waters, with the following exceptions:
  - 1. Open wood latticework or insect screening may be permitted below the lowest floor for aesthetic purposes only and must be designed to wash away in the event of wave impact and in accordance with the provisions of Section 5-125(d)(4)a. Design plans shall be submitted in accordance with the provisions of Section 5-92(a)(4)c.2; or
  - 2. Breakaway walls may be permitted provided they meet the criteria set forth in Section 5-125(d)(4)b. Design plans shall be submitted in accordance with the provisions of Section 5-92(a)(4)c.1.
- C. All new construction and substantial improvements shall include, in Zones CAZ, 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 Section 5-125(d)(4).
- D. All new construction and substantial improvements shall meet the provisions of Section 5-130(c).
- E. A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions of Sections 5-92 and 5-130(c) and (d), on the current version of the North Carolina V-Zone Certification form or a locally developed V-Zone Certification form.
- F. Recreational vehicles may be permitted in Coastal A Zones provided that they meet the recreational vehicle criteria of Section 5-125(f)(1).
- G. Fill/grading must meet the provisions of Section 5-130(k).
- H. Decks and patios must meet the provisions of Article 5 Sections G(15) and (16).
- I. In coastal high hazard areas, development activities other than buildings and structures must meet the provisions of ~~Article 5, Section G(17)~~ this article.

5.132 - 5.166 RESERVED

*DIVISION 6. LEGAL STATUS PROVISIONS*

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

This article in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted May 12, 1987, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this 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 12, 1987, as amended, which are not reenacted herein are repealed.

The date of the initial flood damage prevention ordinance for the Town of Carolina Beach is May 2, 1987.

### 5.168 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 (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this article.

### 5.169 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.

### 5.170 EFFECTIVE DATE

This article shall become effective June 12, 2018.

DRAFT

## Article 6: Stormwater Management

### DIVISION 1. GENERAL

#### 6.1 TITLE

This article shall be known as "The Phase II Stormwater Management Ordinance of the Town of Carolina Beach, North Carolina."

#### 6.2 FINDINGS AND PURPOSE

- A. It is hereby determined that:
1. Development and redevelopment alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;
  2. These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment; and
  3. These effects can be managed and minimized by applying proper design and well-planned BMPs to manage stormwater runoff from development sites.
  4. Further, the Federal Water Pollution Control Act of 1972 (Clean Water Act) and federal Phase II stormwater rules promulgated under it, as well as rules of the state environmental management commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt minimum stormwater design standards such as those included in this article.
  5. Therefore, the town establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.
  6. The purpose of this article is to protect and promote the public health, safety and general welfare, and to safeguard the natural resources of the town by regulating stormwater runoff and illicit discharges into municipal stormwater systems. This is accomplished by requiring permits for and imposing conditions and requirements upon development activities, and by establishing procedures upon development activities, and by establishing procedures by which these requirements and conditions are to be administered and enforced.
  7. The impacts of stormwater cannot be addressed solely through best management practices on individual properties. The town has a role in management of stormwater through the planning, construction, operation and maintenance of BMPs to reduce the adverse effects of stormwater.

#### 6.3 DESIGN MANUAL

- A. The town manager or his designee shall use the policy, criteria, and information, including technical specifications and standards, in the state division of water quality best management practices manual (design manual) as the basis for decisions about

stormwater permits and about the design, implementation and performance of structural and nonstructural stormwater BMPs.

- B. The design manual includes a list of acceptable stormwater BMPs, including specific design criteria for each stormwater BMP. Stormwater BMPs that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws.
- C. The current version of the design manual at the time of original permit application shall be used to determine design specifications for all submittals and minor revisions to approved plans subsequent to the original application for each development project. All major modifications to approved plans, including redevelopment projects, shall be subject to current design specifications and criteria as of the date of request for modification or redevelopment application unless otherwise agreed to, in writing, by the town manager or his designee.

#### 6.4 APPLICABILITY OF THIS ARTICLE

- A. Except as otherwise provided herein, the provisions of this article shall apply to each of the following:
  - 1. Beginning with and subsequent to the effective date of the ordinance from which this article is derived, the provisions of this article shall be applicable to all development activity including, but not limited to, site plan applications, building permit applications, subdivision applications, and grading applications, unless otherwise specifically listed.
  - 2. Exemptions.
    - a) Thresholds. Development that cumulatively disturbs less than 10,000 square feet of land and is not part of a larger common plan of development or sale is exempt from the provisions of this article.
    - b) Redevelopment that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development is exempt from the provisions of this article.
    - c) Development and redevelopment that disturb less than the stated area threshold are not exempt if such activities are part of a larger common plan of development or sale that exceeds the area threshold, even though multiple, separate or distinct activities take place at different times on different schedules.
    - d) All new major subdivisions as defined in ~~section 22-20~~Article 7.
- B. In applying the provisions of this article, the cumulative area of the proposed development activity and all development activity on a site within a two (2) year period immediately preceding the date of application for a stormwater discharge permit shall be considered together.
- C. Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this article.

- D. The provisions of this article shall apply within the areas designated on the map titled "Phase II Stormwater Map of The Town of Carolina Beach, North Carolina" ("the stormwater map"), which is adopted simultaneously herewith. The stormwater map and all explanatory matter contained thereon accompany and are hereby made a part of this article.
- E. The stormwater map shall be kept on file by the town manager or his designee and shall be updated to take into account changes in the land area covered by this article and the geographic location of all structural BMPs permitted under this article. In the event of a dispute, the applicability of this article to a particular area of land or BMP shall be determined by reference to the state statutes, the state administrative code, and local zoning and jurisdictional boundary ordinances.
- F. Provisions related to fill and grade and limits on impervious coverage are also found in Article 3: Zoning.

## 6.5 DEFINITIONS.

For the purpose of this article, and any rules or regulations established hereunder, the definitions published in 15A NCAC 02H.1002 and G.S. 143-212 and 143-213 shall be used when not in conflict with the definitions set out below. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section in relation to matters concerning stormwater drainage, except where the context clearly indicates a different meaning:

**Applicant** means an owner or developer of a site who executes the forms required for the obtaining of a stormwater discharge permit pursuant to this article.

**Authorized registered professional** means a professional engineer, registered land surveyor, landscape architect or other professional registered, licensed or certified pursuant to the North Carolina General Statutes and authorized by law to prepare the plans and specifications and provide the certifications required by the various provisions of this article.

**Best management practice (BMP)** means a structural or nonstructural stormwater management based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

**Built upon area (BUA)** means the portion of developed land which is covered by impervious, or partially impervious cover including but not limited to buildings, pavement, gravel, and parking areas. (Note: Wooden slatted decks shall not constitute built upon area so long as adequate spacing is provided between the wood slats to allow for rainwater to drain through the slats. A portion of pervious pavement area shall be considered impervious as defined in the design manual.)

**Clearing** means any activity which removes the vegetative ground cover.

**Common plan of development** means any contiguous land area or parcel where multiple land disturbing activities may be taking place simultaneously or in separate phases, under one (1)



proposed plan, master plan, plat, permit application, unit development, development district, or advertisement.

**Developer** means a person undertaking any or all the activities covered by this article, or for whose benefit such activities are commenced or carried on. General contractors or subcontractors, or both, without a proprietary interest in a project are not included within this definition.

**Development** means any project resulting in the construction, replacement or alteration of impervious surface on a given property.

**Equivalent residential unit (ERU)** means 2,000 square feet of impervious surface.

**Erosion** means the process by which the ground surface is worn by the action of wind, water, ice or gravity.

**Expansion** means the replacement of pervious land area with the addition of new buildings, structures, parking lots, or any other new impervious surfaces on a site currently meeting the definition of developed land. Construction of any new impervious surface on an area previously pervious area within a parcel which does not meet the definition of redevelopment, in whole or in part, as defined in this section shall be considered as expansion.

**Facility** means a stormwater management facility, and shall include all land, materials, and appurtenances used in construction and operation of said facility. Facilities include, but are not necessarily limited to, retention ponds, detention ponds, open and closed systems, etc.

**Fill** means any act, or the conditions resulting therefrom, by which soil, earth, sand, gravel, rock or any similar material is deposited, placed, pushed, pulled or transported.

**Floodplain** means any land susceptible to being inundated by water from any source.

**Grading** means any act causing disturbance of the earth. This shall include but is not limited to any excavating, filling, stockpiling of earth materials, grubbing, root mat or topsoil disturbance, or any combination of such.

**Illicit discharge** means any discharge to a town separate storm sewer that is not composed entirely of stormwater except discharge pursuant to a NPDES permit (other than the NPDES permit for discharge from the town separate storm sewer) and discharges resulting from firefighter activities.

**Impervious** means any constructed surfaces (rooftops, sidewalks, roads, and parking lots) covered by impenetrable materials such as asphalt, concrete, brick, and paving stones. These materials seal surfaces, repel water, and prevent precipitation from infiltrating soils. Soils compacted by urban development are also highly impervious. Unwashed crushed stone containing fines is impervious. Impervious surface does not include a slatted deck; the water area of a swimming pool; a surface of number 57 stone, as designated by the American Society for Testing and Materials, laid at least four inches thick over a geotextile fabric; or porous pavement with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches

per hour). Alternative materials, not subject to the definition of impervious surface, may be proposed subject to certification of a licensed and certified North Carolina professional engineer of compliance with the hydraulic conductivity standard of 1.41 inches per hour or greater. Such certification shall be in the form of a letter under seal.~~the condition of being impenetrable by water. Impervious surface area includes, but is not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. The term "impervious area" does not include a wooden slatted deck, or the water area of a swimming pool.~~

**Land disturbing activity** means any earth movement and land use changes which may result in soil erosion.

**National Pollutant Discharge Elimination System (NPDES)** means a permitting system established by Section 402 of the Clean Water Act. NPDES permits are issued by the state for discharges directly to the surface waters of the state.

**Nonerosive velocity** means the velocity of flowing water which will not cause erosion, siltation or scouring within a drainageway. Calculations to determine velocity shall take into account the physical conditions of the drainageway, including but not limited to, shape, slope, surface condition and contributing watershed.

**Non-single-family residential use** means any land use other than single-family residential, except for undeveloped land.

**Off-site facility, with respect to any particular property,** means a stormwater BMP serving said property but not located on said property.

**On-site facility, with respect to any particular property,** means a stormwater BMP serving the subject property and located thereon.

One (1) year, 24-hour storm event means 4.05 inches of rainfall within a 24-hour period.

**Detention** means the storage, and possible treatment, of stormwater runoff with subsequent discharge to surface waters.

**Developed land** means parcels altered from a natural state by construction or installation of impervious surfaces. For new construction, parcels shall be considered developed upon final approval of the site improvements by the town.

**Owner** means the owner or owners of a site on which land disturbing activity is, will, or has been done.

**Permit** means either a stormwater discharge, building, erosion and sedimentation control, or subdivision development construction permit, as may be appropriate within the context of the specific provision of this article.

**Permittee** means any person to whom a stormwater discharge, building, or subdivision development construction permit is issued pursuant to this article.

**Person** means any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, county, state, or federal agency or any combination thereof.

**Permeable pavement** means paving material that absorbs water or allows water to infiltrate through the paving material to natural soil below. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, porous asphalt, and any other material with similar characteristics. Compacted gravel shall not be considered permeable pavement.

**Pervious** means ground that permits penetration of water, opposite of impervious.

**Predevelopment state** means a site in its natural condition prior to any development activity.

**Private facility/BMP** means any stormwater facility or BMP not owned and operated by the town.

**Public facility** means any stormwater BMP owned and operated by the town, the state, a government agency, or a federal agency.

**Redevelopment** means the alteration or replacement of impervious area on a site which meets the definition of "developed land," as described above, not to include interior remodeling or interior modifications which do not include substantial structural modifications to the facility.

**Retention** means the storage, and possible treatment, of stormwater runoff without subsequent discharge to surface waters.

**Sediment** means soil transported or deposited by the action of erosion or artificial means.

**Single-family residential use** means one (1) structure on one (1) parcel containing only one (1) house unit, to include attached garages, and any other structures that may be on the lot to include sheds, car ports, slabs of concretes, etc.

**Site** means that portion of land, lot or parcel of land, or combination of contiguous lots or parcels of land upon which grading or other land disturbing activity is to be performed.

**Soil** means any earth, sand, gravel, rock or other similar material.

**Standards and specifications** means those standards and specifications relating to stormwater management that may now or hereafter be established.

**Stormwater discharge permit** means the permit issued by the town authorizing stormwater discharge activities in accordance with this article and applicable ordinances and regulations.

**Stormwater management** means:

- A. For quantitative control, a system of vegetative and structural measures which control the increased volume and rate of surface runoff caused by manmade changes to the land and have the effect of maintaining the predevelopment patterns of flood magnitude and frequency.

- B. For qualitative control, a system of vegetative, structural, and other measures which control or treat pollutants carried by surface runoff.

**Stormwater management plan** means a plan designed to minimize erosion, prevent off-site sedimentation, treat stormwater runoff, and control stormwater, submitted as a prerequisite to obtaining a stormwater discharge permit. The plan shall be prepared and designed in accordance with this article, town regulations, and applicable state laws and regulations, including applicable standards and specifications.

**Stormwater system** means all manmade structures or natural features within the town that serve to provide for conveyance of runoff water resulting from natural storm events. Components of the stormwater system include but are not limited to swales, ditches, pipes, channels, creeks, ponds, weirs, culverts, manholes, inlet structures, and tidal gates.

**Substantial progress** means a level of accomplishment or work on a project, or development, which produces measurable and verifiable evidence that the owner or permit holder is in the process of completing all work specifically shown on the approved plans for the development activity for which the permit was issued.

**Ten-year frequency storm event** means a 10% annual chance storm of a 24-hour duration or an intensity based on the time of concentration determined based on watershed conditions.

**Town manager** means the town manager of the Town of Carolina Beach or the town manager's authorized representative.

**Undeveloped land** means land that does not meet the definition of developed land.

**Vegetated conveyance** means any drainageway, conveyance, swale, ditch, channel or stream with a surface consisting of, and able to support the growth of grass or other natural vegetative ground cover capable of protecting the conveyance from erosion, siltation and scour. Certain temporary and flexible liners may be used to provide additional protection against erosion, siltation and scour provided that the liner does not restrict the infiltration of water into the natural soil material or create impervious surface within the drainageway.

**Watercourse or drainageway** means any natural or artificial watercourse, including, but not limited to: streams, rivers, creeks, ponds, lakes, ditches, channels, canals, conduits, culverts, drains, waterways, gullies, ravines, or washes in which waters flow in a definite direction or course, either continuously or intermittently; and including any area adjacent thereto which is subject to inundation by reason of overflow or floodwater.

**Wetlands (404 wetlands)** means those areas defined by the U.S. Army Corps of Engineers as jurisdictional 404 wetlands.

## 6.6 INTERPRETATION

- A. In interpreting and applying this article, the requirements contained herein are declared to be minimum requirements which are imposed and are to be conformed to, and are in addition to, and not in lieu of, all other legal requirements, and shall be liberally construed to accomplish the purposes set forth herein.

- B. This article shall not be deemed to interfere with, abrogate, annul, or otherwise affect in any manner whatsoever any ordinance, rules, regulations, permits, easements, covenants, or other agreements between parties; provided, however, that where this article imposes greater restrictions and controls with respect to stormwater management than are imposed or required by other ordinances, rules, regulations, permits, easements, covenants, or agreements between parties, the provisions of this article shall prevail.
- C. Where multiple regulations, ordinances or rules are present for any given project requiring a permit under this article, the more restrictive rule shall apply unless otherwise determined by the town manager or his designee.

## 6.7 ADMINISTRATION

- A. The town manager or his designee is hereby authorized and directed to administer the provisions of this article, and shall have such other powers and perform such other duties as are set forth in other sections of this article and as may be conferred or imposed from time to time.
- B. The town manager or his designee is hereby authorized to establish regulations and guidelines, by whatever title, for the implementation of the provisions of this article, including but not limited to establishing specific requirements and standards which shall govern land disturbing activities and the utilization and implementation of stormwater BMPs, inspections and enforcement. Said regulations shall become effective upon their approval by the Town Council.
- C. The town manager or his designee shall also have the following powers under this article:
  - 1. For those applications to be reviewed by the town, to review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this article.
  - 2. To make determinations and render interpretations of this article.
  - 3. To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to Town Council on applications for development or redevelopment approvals.
  - 4. To enforce the provisions of this article in accordance with its enforcement provisions.
  - 5. To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of this article.
  - 6. To provide expertise and technical assistance to the Town Council, upon request.
  - 7. To designate appropriate other person(s) who shall carry out the powers and duties of the town manager or his designee.
  - 8. To take any other action necessary to administer the provisions of this article.

## 6.8 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS

- A. Effective date. This article shall take effect on May 12, 2009.
- B. Final approvals; complete applications. All development and redevelopment projects for which complete and full applications were submitted to the state or the town prior to the effective date of the ordinance from which this article is derived and which remain

valid, unexpired, unrevoked and not otherwise terminated at the time of development or redevelopment shall be exempt from complying with all provisions of this article dealing with the vegetated buffers and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions. A phased development plan shall be deemed approved prior to the effective date of the ordinance from which this article is derived if a complete application has been received by the state division of water quality or the town, and it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:

1. For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.
  2. For any subsequent phase of development, sufficient detail so that implementation of the requirements of this article to that phase of development would require a material change in that phase of the plan.
- C. Violations continue. Any violation of provisions existing on the effective date of the ordinance from which this article is derived shall continue to be a violation under this article and be subject to penalties and enforcement under this article unless the use, development, construction, or other activity complies with the provisions of this article.

## 6.9 DELEGATION OF REVIEWING AGENCY

All applications for stormwater management permits shall be submitted to the town manager or his designee for review. The town manager or his designee reserves the right to delegate review of submitted stormwater plans to a designated reviewing authority or third party contractor at any time. All application packages shall conform to the design standards listed in this article unless otherwise agreed to in writing by the applicant, town manager or his designee, and other affected departments or agencies.

## 6.10 - 6.34 RESERVED

### *DIVISION 2. STORMWATER DISCHARGE PERMIT*

## 6.35 REQUIRED

No owner or developer of a site shall commence any of the development activities defined in section 6-5 without obtaining a stormwater discharge permit pursuant to the provisions of this article.

## 6.36 APPLICATION

- A. An application for a stormwater discharge permit shall be made by, or on behalf of, the owner or developer of the site for which a permit is sought. A separate application shall be required for each permit, but a permit and application therefore may cover any number of contiguous lots being developed as a single project. The application shall be filed with the town on a form supplied by the town, and signed by the applicant, or by the applicant's agent or representative.
- B. Effect of permit.

1. A stormwater permit shall govern the design, installation, and construction of stormwater infrastructure or BMPs on the site, including structural BMPs and elements of site design for stormwater management other than structural BMPs.
  2. The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the development or redevelopment site consistent with the requirements of this article, whether the approach consists of structural BMPs or other techniques such as low-impact. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this article.
- C. Each application for a stormwater discharge permit shall include the following:
1. The name, address and telephone number of the applicant(s) and of the person signing the application, if different than the applicant;
  2. A complete and detailed stormwater management plan, including detailed design plans and construction specifications (refer to the design manual), for stormwater management facilities; the exact location of any on-site stormwater management facility and the easement(s) for said facility; and the exact location of any access easement(s);
  3. The specifics of any off-site stormwater management facilities to be utilized, including the amount and proof of any contribution thereto;
  4. All necessary easements and stormwater management maintenance agreements; and
  5. The appropriate stormwater discharge permit application fee as set forth in the current fee schedule published by the town.
- D. Submittal of complete application.
1. Applications shall be submitted to the town manager or his designee pursuant to the application submittal schedule in the form established by the town manager or his designee, along with the appropriate fee established pursuant to this section.
  2. An application shall be considered complete only when it contains all required elements of an application pursuant to this article, along with the appropriate fee. If the town manager or his designee finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application.

### 6.37 ISSUANCE—GENERALLY

- A. No stormwater discharge permit shall be issued until the following conditions are met:
1. Approval of a stormwater management plan by the town manager or his designee.
  2. Submission and approval of any required easements and stormwater management inspection and maintenance agreements or other documents as required by this article. All documents required by this section shall be fully executed prior to the recordation of the final subdivision plat or issuance of the certificate of occupancy.

3. Payment of stormwater management contribution where off-site stormwater management is applicable.
4. Payment of all required application fees.
5. Compliance with all applicable laws, ordinances, regulations, standards and specifications.

### 6.38 SAME—NONTRANSFERABILITY

Stormwater discharge permits shall be issued in the name of the applicant. No permit issued to a project subject to this article, and which disturbs, constructs, replaces, or otherwise alters more than 10,000 square feet built upon area shall be transferred or assigned without the written consent of the town.

### 6.39 CONDITIONS OF APPROVAL

- A. The town manager or his designee shall review all submitted permit applications, and shall notify the applicant of any deficiencies or comments, or shall issue the stormwater discharge permit, ~~within 45 days from the date of the most recent submittal.~~
- B. If the town manager or his designee finds that the application complies with the standards of this article, the town manager or his designee shall approve the application.
- C. All stormwater discharge permits are conditioned on compliance with the approved plan and with all relevant laws, ordinances, regulations and standards of any state or local government or agency, including any standards established by the town relating to stormwater management. Permits are also conditioned on the agreement and obligation of the applicant to hold harmless the town, its officers and employees, from any expense incurred through the failure of the applicant, or the applicant's agents to complete any required stormwater management measures, or from any damages growing out of the negligence of the applicant or the applicant's agents in connection with stormwater management measures.

### 6.40 GROUNDS FOR DENIAL

- A. No stormwater discharge permit shall be issued if it is found that the work proposed by the applicant will endanger any property or public way or pollute any water in violation of any federal or state standard or this article. Factors to be considered shall include, but not be limited to, possible saturation by rains, earth movement, surface water runoff, soil erosion, sedimentation, siltation, and subsurface conditions such as the nature and type of soil and rock.
- B. No stormwater discharge permit shall be issued for activities within the 100-year flood plain of any stream or watercourse, until a determination has been made that said activity is in compliance with the town's flood plain regulations.
- C. The town may deny the issuance of any permit to an applicant when it determines that the applicant is not in compliance with the provisions of an approved stormwater management plan for any project within the jurisdiction of the town.
- D. Failure of the town manager or his designee to observe or recognize hazardous conditions or failure to deny the stormwater discharge permit shall not relieve the permittee from responsibility for the conditions or damages resulting therefrom and



shall not result in the town, its officers or employees, being responsible for the damages resulting therefrom.

- E. If the town manager or his designee, or designated reviewing authority, finds that the application fails to comply with the standards of this article, the town manager or his designee shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.
- F. A complete revised application shall be reviewed by the town manager or his designee, or designated reviewing agency, after its re-submittal and shall be approved, approved with conditions or disapproved.
- G. If a revised application is not re-submitted within 30 calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.
- H. One (1) re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by a permit review fee additional fee, as established pursuant to this chapter.

#### 6.41 EXPIRATION AND RENEWAL

- A. The town manager or his designee may void any approved plan or permit if the applicant fails to make substantial progress on the site within one (1) year after the date of approval, or during any uninterrupted three-month period thereafter until all conditions of the approved permit have been met. The town manager or his designee may grant a single, one (1) year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.
- B. In granting an extension, the town manager or his designee may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.
- C. If the stormwater discharge permit expires, the permittee shall make application for a new permit in accordance with this article.

#### 6.42 AUTHORITY TO REVOKE OR SUSPEND

The town manager or his designee shall have the authority to suspend or revoke any stormwater discharge permit and to issue a stop work order for any violation of this article, applicable technical standards, stormwater discharge permit, any state, federal or local law applicable to the work or changes in site characteristics upon which plan approval and permit issuance was based.

#### 6.43 PERMIT REVIEW FEES

The town shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.

#### 6.44 CONCEPT PLAN AND CONSULTATION MEETING

Consultation. Before a stormwater management permit application is deemed complete, the town manager or his designee or developer may request a consultation on a concept plan for the post-construction stormwater management infrastructure and/or BMPs to be utilized in the proposed development project. This consultation meeting should take place at the time of the preliminary subdivision planning or other early step in the development process. The purpose of this meeting is to discuss the post-construction stormwater infrastructure and/or BMPs necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans and other relevant resource protection plans should be consulted in the discussion of the concept plan.

#### 6.45 - 6.66 RESERVED

### *DIVISION 3. STORMWATER MANAGEMENT PLANS*

#### 6.67 PLAN AND SPECIFICATION REQUIREMENTS

- A. An approved stormwater management plan and construction specifications are required for all activities requiring a stormwater discharge permit, and shall be available on-site at all times. The plan and specifications shall be prepared and sealed by an authorized registered professional engineer. The plan and specifications shall meet the regulations and requirements of this article, and the criteria contained in any applicable standards and specifications adopted by the Town Council. If conflicting regulations or requirements apply, the more restrictive shall be used.
- B. An approved stormwater management plan will contain the following:
  - 1. Existing conditions/proposed site plans. Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: Existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (if available); boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.
  - 2. Natural resources inventory. A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development and stormwater management.
  - 3. Stormwater management system plan. A written or graphic plan of the proposed post-development stormwater management system, including preliminary

selection and location of proposed structural stormwater infrastructure and BMPs; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge, driveway or culvert crossings.

#### 6.68 REQUIRED APPROVALS

- A. Plans and specifications for stormwater management require the approval of the town, and appropriate state and federal agencies.
- B. The various approving departments and agencies may request additions, deletions and modifications to the plan as deemed necessary prior to approval. Said modifications shall be reflected on a revised plan prior to approval and issuance of the stormwater discharge permit.

#### 6.69 MODIFICATION OF APPROVED PLAN

- A. No modification of the approved plan shall be made until approved by the town in accordance with its rules and regulations.
- B. Requests for modifications to an approved plan shall be submitted in writing to the town manager or his designee.
- C. All modifications shall be made in accordance with the criteria contained in the design manual and other applicable state law or regulation.

#### 6.70 - 6.96 RESERVED

### *DIVISION 4. ON-SITE STORMWATER MANGEMENT*

#### 6.97 APPLICABILITY OF THIS SECTION

- A. Except as otherwise provided herein, the provisions of this article, pertaining to on-site stormwater management, shall apply to each of the following:
  - 1. Projects that require an Erosion and Sedimentation Control Plan pursuant to G.S. 113A-57;
  - 2. Projects that require a Coastal Area Management Act (CAMA) Major Development Permit pursuant to G.S. 113A-118; and
  - 3. Projects that do not require either an Erosion and Sedimentation Control Plan or a CAMA Major Development Permit, but meet one (1) of the following criteria:
    - a) Non-residential projects that propose to cumulatively add 10,000 square feet or more of built-upon area; or
    - b) Residential projects that are within ½ mile of and draining to SA waters, and propose to cover 12% or more of the undeveloped portion of the property with built-upon area.

## 6.98 DESIGN AND CONSTRUCTION OF STORMWATER MANAGEMENT BMPS

- A. Post-construction model practices for all projects. The following standards apply to all projects to which this article is applicable, as defined in section 6-5. All projects subject to the requirements of section 6-97 must:
1. Control and treat the difference in the stormwater runoff volume between the predevelopment and post-development conditions for the one (1) year, 24-hour storm. The minimum runoff volume to be treated shall be calculated based on the entire treatment area, as outlined in subsection (b) of this section, and the project's location.
  2. Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
  3. Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one (1) year, 24-hour storm.
  4. Remove an 85% average annual amount of total suspended solids.
  5. Meet the general engineering design criteria set out in 15A NCAC 02H.1008(c).
  6. Wet detention ponds designed in accordance with the requirements of subsection (a)(2)d of this section may be used for projects within one-half (0.5) mile of and draining to Class SA waters. If a wet detention pond is used within one-half (0.5) mile of Class SA waters, installation of a stormwater best management practice in series with the wet detention pond shall be required to treat the discharge from the wet detention pond. Secondary stormwater best management practices that are used in series with another stormwater best management practice do not require any minimum separation from the seasonal high water table.
  7. Control and treat runoff from all impervious area and permeable pavement, within the contributing drainage area unless otherwise approved in writing by the town manager or his designee.
  8. All structural stormwater BMPs on projects which disturb, construct, replace, or otherwise alter greater than 10,000 square feet of impervious area shall be located in recorded drainage easements for the purposes of operation and maintenance and shall have recorded access easements to the nearest public right-of-way unless otherwise approved in writing by the town manager or his designee. These easements shall be granted in favor of the party responsible for operating and maintaining the stormwater management facilities.
  9. All structural BMPs shall meet the requirements of division 11 of this article.
- B. The treatment area shall be determined as follows:
1. For new development, the treatment area shall include all land area located within the project boundary.
  2. For redevelopment and expansion projects which disturb, construct, replace, or otherwise alter impervious area and disturb, add, replace, or otherwise alter an impervious area equivalent to or less than 50% of the existing impervious surface area on site, the treatment area shall include only those portions of the site

- which have been disturbed, constructed, replaced or otherwise altered during construction.
3. For redevelopment and expansion projects which disturb, construct, replace, or otherwise alter impervious area or disturb, add, replace, or otherwise alter an impervious area greater than 50% of the existing impervious surface area on site, the treatment area shall include all land area located within the project boundary.
- C. All newly constructed impervious area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233(3)(a) or similar site-specific determination made using division-approved methodology, or when existing impervious surfaces existing on site prior to the effective date of the ordinance from which this article is derived.
- D. The approval of the stormwater permit on projects which disturb, construct, replace, or otherwise alter greater than 10,000 square feet of impervious area shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development or redevelopment maintains the site consistent with the approved project plans.
- E. For areas within one-half (0.5) mile of and draining to Class SA waters, and disturb, construct, replace, or otherwise alter 10,000 square feet or more of impervious area, permittees, delegated programs, and regulated entities must:
1. Use structural stormwater BMPs that result in the highest degree of fecal coliform disinfection and control sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.
  2. Implement a program to control the sources of fecal coliform, or comply with all regulations included in section 6-133.
  3. All development activities shall prohibit new points of stormwater discharge to Class SA waters or an increase in the volume of stormwater flow through conveyances or increase in capacity of conveyances of existing stormwater conveyance systems that drain to Class SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net volume or rate of stormwater discharge through existing outfalls to Class SA waters. The following shall not be considered a direct point of stormwater discharge:
    - a) Infiltration of the stormwater runoff volume from the one (1) year, 24-hour storm.
    - b) Diffuse flow of stormwater at a nonerosive velocity to a vegetated buffer or other natural area, that is capable of providing effective infiltration of

the runoff from the one (1) year, 24-hour storm. Notwithstanding the other requirements of this section, the infiltration area does not require a minimum separation from the seasonal high-water table.

- c) The discharge from a wet detention pond that is treated by a secondary stormwater best management practice, provided that both the wet detention pond and the secondary stormwater best management practice meet the requirements of this section. Notwithstanding the other requirements of this section, the secondary best management practice does not require a minimum separation from the seasonal high-water table.
- F. For structural stormwater BMPs that are required under this section and that require separation from the seasonal high-water table, a minimum separation of two (2) feet is required. Where a separation of two (2) feet from the seasonal high-water table is not practicable, the town manager or his designee or division of water quality may grant relief from the separation requirement pursuant to the alternative design criteria set out in 15A NCAC 02H.1008(h).
- G. In designing on-site stormwater BMPs, those BMPs to be utilized shall be considered in the following order of preference:
  - 1. Flow attenuation by use of open vegetated swales and natural depressions;
  - 2. Infiltration;
  - 3. Retention structures; and
  - 4. Detention structures.
  - 5. The order of preference shall be modified where necessary, to accommodate requirements of the state for controlling stormwater quality.
- H. The town manager or his designee reserves the right to consider, evaluate, and approve alternative design strategies which are consistent with the objectives of the regulations of this section. Alternative designs will be evaluated on a case-by-case basis, but at a minimum shall also include a detailed design narrative explaining how the project's stormwater management plan will adhere to the intent of the water quality protection measures described in this section.

## 6.99 OTHER CONSIDERATIONS IN DESIGN PREPARATION

- A. The developer shall give consideration to incorporating use of natural topography and land cover such as wetlands, ponds, natural swales, and depressions as they exist prior to development to the degree that they can accommodate the additional flow of water.
- B. Where on-site storm drainage systems convey off-site stormwater through the site, computations reflecting the drainage area of land tributary to the site, and estimated runoff of the area served by such systems, shall be provided. In addition, a complete 10 year frequency storm event storm drainage study shall be submitted for the site. All on-site storm drainage systems conveying off-site stormwater through the site shall be public systems or private systems which shall be designed, constructed and maintained to at least the standards of a public storm drainage system as contained in the design manual. All design calculations shall be computed based on full buildout of the upstream drainage basin, and shall include all property, on-site and off-site, draining to the analysis

point. The design and construction shall be certified by an authorized registered professional as meeting or exceeding the requirements of this article and the design manual.

- C. Projects which add, replace, or otherwise alter 10,000 square feet of impervious area or greater shall control the entire treatment volume on site according to the project's location.

### 6.100 STORMWATER MANAGEMENT REQUIREMENTS DURING AND AFTER CONSTRUCTION

- A. The town may require the relocation, reconstruction or encasement by the developer or project applicant of water or sewer facilities located or planned within the limits of proposed stormwater management facilities.
- B. Precautions shall be taken to avoid degradation of infiltration areas during construction. Erosion control plans shall provide detailed construction sequences to ensure adequate protection of all proposed infiltration areas from siltation, construction traffic and general disturbance until the contributing drainage area is stabilized.
- C. Record (as built) drawings (reproducible Mylar) for all structural stormwater BMPs must be certified by an authorized registered professional and provided to the town for permanent record.

### 6.101 STORMWATER BEST MANAGEMENT PRACTICE FEE

- A. For development, redevelopment or expansion projects which increase the amount of impervious surface on the property within residential or non-residential areas, the developer shall pay to the town a fee for the construction and maintenance of stormwater infrastructure or BMPs in accordance with the current fee schedule. Stormwater best management practice fee is not available for on-site structure stormwater BMPs listed under section 6-97.
- B. If a property, which already contains an impervious surface, is redeveloped and the amount of impervious surface is not increased over the prior total amount of impervious surface on the property, than no stormwater best management practice fee is required.
- C. If the property owner chooses to install a structural stormwater BMP that contributes to the management of stormwater quality and quantity, than a credit may be awarded and the stormwater best management practice fee reduced. The amount of the credit will be proportionate to the percent of stormwater retention on the property.

### 6.102 EXEMPTIONS FROM IMPERVIOUS AREA SETBACK REQUIREMENTS

- A. The following activities are exempt from the vegetative buffer requirements of this section:
  - 1. Development in urban waterfronts that meets the requirements of 15A NCAC 07H.0209(g).
  - 2. Development in a new urban waterfront area that meets the requirements of Session Law 2004-117.
  - 3. Those activities listed in 15A NCAC 07H.0209(d)(10)(A) through 15A NCAC 07H.0209(d)(10)(H).

4. Development of upland marinas that have received or are required to secure a coastal area management act major permit.
5. Redevelopment activities on sites meeting the definition of developed land prior to the effective date of the ordinance from which this article is derived and do not replace any pervious land with impervious area or permeable pavement.

### 6.103 COMBINATION OF MEASURES PERMITTED

- A. Nothing in these regulations shall be construed to mean that stormwater management requirements cannot be satisfied by a combination of on-site and off-site facilities, payment of fees, grant of easement, dedication of land and/or stormwater management facility if so required by the town.
- B. Development, redevelopment or expansion projects which add, replace, or otherwise alter less than 10,000 square feet of impervious area may use a combination of on-site and/or off-site structural stormwater management systems (existing or proposed) such that the total cumulative volume of stormwater controlled, on-site and/or off-site, meets or exceeds the treatment volume requirements described in section 6-98(A) according to the project's location. Projects which add, replace, or otherwise alter 10,000 square feet of impervious area or greater shall control the entire treatment volume on site according to the project's location.

### 6.104 ADDITIONAL REQUIREMENTS FOR FEE ALTERNATIVE

Fees approved and accepted by the town for off-site stormwater management may be used by the town for land acquisition (including easements and rights-of-way) and the study, engineering, design, purchase, construction, expansion, repair, maintenance, landscaping and inspection of public stormwater management facilities. Fees collected from the development shall be applied to improvements to the town's stormwater drainage system or affiliated projects at the discretion of the town manager or his designee.

### 6.105 VARIANCES

- A. Any person may petition the Town Council for a variance granting permission to use the person's land in a manner otherwise prohibited by this article. To qualify for a variance, the petitioner must show all of the following:
  1. Unnecessary hardships would result from strict application of this article.
  2. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
  3. The hardships do not result from actions taken by the petitioner.
  4. The requested variance is consistent with the spirit, purpose, and intent of this article and applicable state standards; will secure public safety and welfare; and will preserve substantial justice.
  5. The town may impose reasonable and appropriate conditions and safeguards upon any variance it grants.
- B. Notwithstanding subsection (a) of this section, exceptions from the 30-foot landward location of impervious area requirement as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:



1. When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
2. When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
3. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in a less adverse impact to surface waters.

#### 6.106 PET WASTE

- A. Restrictions on pet waste are as follows:
  1. It shall be unlawful for the owner or custodian of any dog to take it off the owner's own property limits without the means to properly remove and dispose of the dog's feces from any public or private property.
  2. It is the responsibility of a dog's owner or custodian to clean up the dog's feces from any public or private property outside of the dog's owner's own property limits. Such property includes, but is not limited to, parks, rights-of-way, paths, and public access areas.
  3. Means to properly remove and dispose of feces" shall consist of having on or near one's person a device such as a plastic bag, or other suitable plastic or paper container, that can be used to clean up and contain dog waste until it can be disposed of in an appropriate container. Such a device must be produced and shown, upon request, to anyone authorized to enforce this section.
  4. This provision shall not apply to handicapped persons assisted by trained guide or assistance dogs.
  5. The term "public nuisance" is defined to include a dog which deposits feces on public property or on private property without the consent of the owner or person in lawful possession of the private property, and the person owning, possessing, harboring or having the care, charge, control or custody of the dog fails to remove the feces so deposited; provided, however, this definition shall not apply to any dog assisting a handicapped person.

## 6.107 - 6.133 RESERVED

### *DIVISION 5. STORMWATER DRAINAGE PERMIT*

#### 6.134 STORMWATER DRAINAGE PERMIT

- A. The purpose of the stormwater drainage permit is to identify properties that have the potential of changing the natural or existing stormwater drainage patterns and develop a system that allows development without negatively impacting the stormwater drainage of adjacent properties. There are two (2) types of stormwater drainage permits:
1. A stormwater permit without a drainage plan shall be submitted to the town manager or his designee for the following:
    - a) Removal of vegetation down to bare soil including the removal of stumps and underground material, and limited leveling on the site that does not change the topographic conditions of the property;
    - b) An increase of impervious surface on the property; or
    - c) For situations not covered in section 6-134 by determination of the town manager or his designee.
  2. A stormwater permit with a drainage plan shall be submitted to the town manager or his designee for the following:
    - a) Grading/filling or other changes to the topographic conditions of the property;
    - b) Permanent placement of fill soils or other materials on the property;
    - c) When a building permit for increased impervious surface is required;
    - d) If the location has a history of flooding or erosion that may be further aggravated by, or have a harmful effect on adjoining properties; or
    - e) If it is determined by the town manager or his designee that conditions in this section apply, however there will be no substantial change to the topography and/or stormwater flow then a drainage plan may be waived.
  3. Procedures.
    - a) The removal of vegetation, the pouring or placement of impervious materials, fill soil or other materials in or upon lands located within the jurisdictional limits of the town shall be prohibited unless and until a valid permit has been issued by the town manager or his designee.
    - b) The fees for such permits shall be designated in the current fee schedule as published by the town.
    - c) No permits shall be issued by the building inspector unless and until the town manager or his designee determines that the proposed activity complies with all applicable town, state and federal regulations relative to surface and subsurface drainage and runoff and removal of vegetation, the pouring or placement of impervious materials, fill soil, or materials and issues preliminary or final approval certification as applicable.

- d) The engineers, architect, landscape architect or other fields licensed to perform stormwater management practice design certification of the pre and post construction drainage conditions shall ensure that the vegetation removal, the pouring or placement of materials, soil, or other materials shall not increase drainage runoff onto public streets, cause erosion or sedimentation of adjacent properties, drainageways, wetlands, or water and which do not violate town, state, and federal regulations.
  - e) All properties requiring a stormwater drainage permit with a drainage plan must grade the property so that grading results in positive drainage of stormwater to existing surrounding drainage features; such as streams, creeks, swales, pipes or town stormwater conveyance systems within the public right-of-way and will not impact adjacent properties. Where possible it is encouraged that commercial properties tie in directly to existing systems to avoid adverse impacts on adjacent properties and rights-of-way.
  - f) All properties requiring either type of stormwater drainage permit must protect adjacent properties and conveyance systems by installing and maintaining erosion control devices.
4. Stormwater drainage plan contents.
- a) A stormwater and drainage plan shall be prepared by a registered civil engineer, architect, landscape architect or other fields licensed to perform stormwater management practice design and include the following site and drainage information:
    - i) Existing and proposed flow lines of surface and subsurface waters onto and off of the site;
    - ii) Existing and finished contours, at two (2) foot intervals;
    - iii) The location of any existing buildings, structures or improvements on the property where the work is to be performed and on adjacent lots;
    - iv) The location of all existing natural and man-made drainage facilities for the storage or conveyance of runoff, including drainage swales, ditches, culverts and berms, sumps, sediment basins, channels, ponds, storm drains and drop inlets serving the site;
    - v) All surface and subsurface drainage devices, walls, cribbing, dams and other protective devices to be built with or as a part of the proposed construction;
    - vi) Hydraulic calculations that show the flow-carrying capacities of proposed conveyance devices and justify the estimated runoff of the area served by any proposed conveyance device;
    - vii) Discharges and velocities of proposed conveyance devices, and storage volumes of any sumps, ponds or sediment basins; and

- viii) Estimates of existing and increased runoff resulting from proposed improvements and methods for reducing the velocity of any increased runoff.

### 6.135 - 6.159 RESERVED

## *DIVISION 6. MAINTENANCE, INSPECTIONS AND ENFORCEMENT*

### 6.160 MAINTENANCE

- A. Applicability. This section shall apply to all structural stormwater BMPs installed, as required by this article.
- B. Function of BMPs as intended. The owner of each structural BMP installed pursuant to this article shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural BMP was designed.
- C. Annual maintenance inspection and report. The person responsible for maintenance of any structural BMP installed pursuant to this article shall submit to the town manager or his designee an inspection report from one (1) of the following persons performing services only in their area of competence: A qualified registered state professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the state cooperative extension service for stormwater treatment practice inspection and maintenance.
- D. The person responsible for maintenance of any structural BMP may contract with the town to perform the inspections of BMP's or contract with a private company or organization to perform the inspection. All deficiencies identified during the inspection must be corrected by the person responsible for maintenance of the BMP within six months of the inspection. If inspections or corrective actions are not performed by the person responsible, the town will perform said work and charge the person responsible for the expense.
- E. The inspection report shall contain all of the following:
  - 1. The name and address of the landowner;
  - 2. The recorded book and page number of the lot of each structural BMP;
  - 3. A statement that an inspection was made of all structural BMPs;
  - 4. The date the inspection was made;
  - 5. A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this article;
  - 6. The original signature and seal of the engineer, surveyor, or landscape architect; and
  - 7. All inspection reports shall be on forms supplied by the town manager or his designee. An original inspection report shall be provided to the town manager or his designee beginning one (1) year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

## 6.161 OPERATION AND MAINTENANCE AGREEMENT

### A. Generally.

1. Prior to the conveyance or transfer of any lot or building site to be served by a structural BMP pursuant to this article, and prior to issuance of any permit for development or redevelopment requiring a structural BMP pursuant to this article, on projects which disturb, construct, replace, or otherwise alter impervious area, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the structural BMP. Until the transference of all property, sites, or lots served by the structural BMP, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.
2. The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions, and schedule of maintenance for the structural BMP. In addition, it shall grant to the town a right of entry in the event that the town manager or his designee has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, confer an obligation on the town to assume responsibility for the structural BMP.
3. The operation and maintenance agreement must be approved by the town manager or his designee prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county register of deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the town manager or his designee within 14 days following its recordation.
4. Whenever a private stormwater BMP is designed to receive stormwater runoff from public streets or other public property, as a condition of the approval of the stormwater management plan, the owners of the BMP and their successors and assigns shall release, indemnify and hold the town, its officials and employees, harmless from any responsibility or liability for any and all damage or injury of any kind or nature whatsoever (including death resulting therefrom) to all persons, whether employees of the town or otherwise, and to all property, caused by, resulting from, arising out of, or occurring in connection with the drainage, flow or runoff of surface water from public property over and into the stormwater BMPs and from the stormwater facilities on to adjacent properties. As a further condition of the approval, the owner and its successors and assigns shall be deemed to have agreed that the town shall have no responsibility or liability for the maintenance of the stormwater BMPs and the owner and its successors and assigns shall maintain the BMPs so that they do not become a public or private nuisance or cause damage to adjacent property. These agreements shall be appurtenant to and run with the land benefited by the stormwater BMPs and shall be binding on the owner and its successors and assigns and occupants thereof.

- B. Special requirement for homeowners' and other associations. For all structural BMPs required pursuant to this article that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:
  - 1. Acknowledgment that the association shall continuously operate and maintain the stormwater BMPs.
  - 2. Granting to the town a right of entry to inspect, monitor, maintain, repair, and reconstruct structural BMPs.
  - 3. Allowing the town to recover from the association and its members, any and all costs the town expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the town all of its expended costs, after 45 days' written notice, shall constitute a breach of the agreement. In case of a deficiency, the town shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.
  - 4. A statement that this agreement shall not obligate the town to maintain or repair any structural BMPs, and the town shall not be liable to any person for the condition or operation of structural BMPs.
  - 5. A statement that this agreement shall not in any way diminish, limit, or restrict the right of the town to enforce any of its ordinances as authorized by law.
  - 6. A provision indemnifying and holding harmless the town for any costs and injuries arising from or related to the structural BMP.
- C. Deed recordation and indications on plat. The applicable operations and maintenance agreement pertaining to every structural BMP installed on projects which disturb, construct, replace, or otherwise alter greater than 10,000 square feet of impervious area, shall be referenced on the final plat and shall be recorded with the county register of deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement shall be recorded with the county register of deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.
- D. Signage. Where appropriate in the determination of the town manager or his designee to ensure compliance with this article, structural BMPs shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

### 6.162 INSPECTIONS

- A. An approved stormwater management plan and all permits shall be posted and available on site at all times during construction.
- B. Periodic inspection during construction of stormwater BMPs shall be conducted by the town. If the work performed upon the site fails to comply with any ordinance, regulation, or standard of condition of any permit, the owner and permittee shall be informed of the violation and the nature of the corrections required.

- C. The town may require the applicant to provide engineering inspection and testing during construction. Upon completion of construction, certification by an authorized registered professional that all work completed and construction materials used meet or exceed requirements of approved plans and specifications shall be provided.

### 6.163 EMERGENCY AUTHORITY

If the town manager or his designee determines that the condition of any stormwater BMP presents an immediate danger to the public health or safety because of an unsafe condition or improper maintenance, the town manager or his designee shall take such actions as may be necessary to protect the public and make the BMP safe. Any costs incurred by the town as a result of the town manager or his designee action shall be assessed against any or all of the owners of property served by said BMP who shall be jointly and severally liable for all said costs and whose property shall jointly and severally be subject to a lien for said costs which may be collected as provided in G.S. 160A-193.

If the town manager or his designee determines that weather related circumstances dictate the pumping or lowering of pond water levels in order to protect downstream properties from flooding, the town shall take such actions as may be necessary to protect the public. Any costs incurred by the town as a result of these actions will not be charged to the property owner.

### 6.164 - 6-189 RESERVED

## *DIVISION 7. STORMWATER SERVICES FEES*

### 6.190 AUTHORITY

Pursuant to G.S. article 16 of chapter 160A (G.S. 160A-311 et seq.), the town is authorized to create a stormwater utility and establish a schedule of stormwater fees for property in the corporate limits.

### 6.191 STORMWATER UTILITY

A stormwater utility is hereby established to provide stormwater management services, as authorized by state law. Stormwater service charges will be determined and modified from time to time so that the total revenues generated by said charges will be used to pay the principal of and interest on the debt incurred for stormwater purposes and such expenses as are reasonably necessary or convenient in the planning, construction, operation and maintenance of the stormwater system.

### 6.192 SERVICE CHARGES; RATES AND FEE SCHEDULE

- A. Stormwater service charges shall accrue beginning on October 1, 2002. Stormwater service charges shall apply to all property within the town limits without regard to ownership, except as set forth in section 6-194. Such charges shall be based on the amount of impervious surface on each parcel as determined by the equivalent residential unit standard.

- B. The Town Council shall set a base rate for single-family residential uses and charges for non-single-family residential uses shall be calculated utilizing the equivalent residential unit.
- C. The schedule of rates shall be set forth in the town fee schedule.

### 6.193 EXEMPTIONS AND CREDITS

- A. Except as provided in this section, no public or private property shall be exempt from stormwater service charges or receive a credit against such charges.
- B. Only undeveloped land shall be exempt from stormwater service fees.

### 6.194 BILLING METHODS; RESPONSIBLE PARTIES

- A. Bills for stormwater service fees shall be sent at regular, periodic intervals. Stormwater service fees may be billed on a combined utility bill that also contains charges for water, sewer and/or refuse service. Stormwater service fees that are shown on a combined utility bill may be for a different service period than that used for water, sewer and/or refuse service.
- B. Stormwater service bills for a property that receives water, sewer and/or refuse service may be sent to the customer receiving such service. However, where multiple water and sewer accounts exist for a single parcel, the stormwater service bill will be sent to the property owner unless the property qualifies for per account billing as set forth in subsection (c) of this section.
- C. Where multiple water and sewer accounts exist for a single parcel, the property owner may apply for "per account" billing by completing a form provided by the town. The application shall include the proposed division of the stormwater service fee between the water and sewer accounts on the property. The applicant shall provide notice of the application to each affected utility customer. The town shall approve the "per account" billing for the parcel unless the billing plan:
  - 1. Will result in a charge of less than one (1) ERU for one (1) or more accounts; and/or
  - 2. Does not equitably allocate the fees between accounts.
- D. Townhouse and condominium developments and other similar properties containing impervious surface in common ownership shall be charged for the total impervious surface of all commonly-owned and individually-owned property within the development. The stormwater service bill shall be sent to the homeowners' association or, upon official request of the association reflecting a vote in accordance with the association's bylaws, may be billed on a per account basis in compliance with subsection (c) of this section.
- E. The property owner is ultimately responsible for payment of the stormwater service fee for property for which the party billed has not paid the service charge. The approval of per account billing pursuant to subsection (c) of this section does not relieve the owner from liability for stormwater service fees if they are not paid by the party billed.
- F. Stormwater fees shall be due and payable simultaneously with any other fees included on the bill. In the event that any user fails to pay the amount due for water, sewer



and/or refuse and for stormwater service, in accordance with this article, then the town shall have the right to discontinue water, sewer and/or refuse.

- G. Payments received by the town will be applied to a customer's bill in the following order: Delinquent fees for stormwater, refuse, water, and sewer; and current fees for stormwater, refuse, water, and sewer.

### 6.195 BACK BILLING

Failure to receive a bill is not justification for nonpayment. The owner of each parcel of developed land shall be ultimately obligated to pay such fee. If a customer is under-billed or if no bill is sent for developed land, the town may back bill up to two (2) years.

### 6.196 COMPLAINTS REGARDING A BILL

- A. A customer having a grievance or complaint that a bill is excessive must file written or verbal notice with the town's billing and collections office. If it is determined that the bill is in error, an adjustment will be made accordingly.
- B. No adjustment will be made for more than a two (2) year period.

### 6.197 APPEAL

- A. Any customer who believes the provisions of this article have been applied in error may appeal in the following manner:
  - 1. An appeal must be filed in writing with the town manager or his designee. At the discretion of the town manager or his designee the appeal shall include information that shows the total property area, the impervious surface area, and any other features or conditions which influence the hydrologic response of the property to rainfall events.
  - 2. A technical review shall be performed to determine the accuracy of the information in the town's impervious surface database. The manager may adjust the fee or credit as long as the adjustment is in conformance with the intent of this article. At the conclusion of the review, the manager shall issue a written determination stating whether an adjustment to the service rate is appropriate, and, if so, the amount of such adjustment.
  - 3. All decisions of the manager shall be served on the customer personally or by registered or certified mail. Service shall be based upon the billing address of the customer.
  - 4. The manager may make no adjustment to a customer's bill for more than the two(2) year period immediately preceding the date that the customer's appeal is received by the manager.

### 6.198 LIMITATIONS OF TOWN RESPONSIBILITY

- A. The town shall be responsible only for the portions of the drainage system which are in town maintained street rights-of-way and permanent storm drainage easements conveyed to and accepted by the town. Repairs and improvements to the drainage system shall be in accordance with established standards, policies, and schedules.

- B. The town's acquisition of storm drainage easements and/or the construction or repair by the town of drainage facilities does not constitute a warranty against stormwater hazards, including, but not limited to, erosion, or standing water.

### 6.199 PROPERTY OWNER RESPONSIBILITY

It shall be the responsibility of individual property owners of developed or undeveloped land within the town, to maintain stormwater conveyance facilities, such as waterways, streams, creeks, ditches, swales, channels, canals, conduits and culverts, and stormwater control facilities, such as ponds and lakes located on their property. Where conditions of existing stormwater facilities are determined to be deficient and a public nuisance, and the property owner fails to correct the deficiencies after being notified by the town, the town may arrange for the deficiencies to be corrected and recover all costs thereto from the property owner.

### 6.200 - 6. 217 RESERVED

## *DIVISION 8. LANDSCAPING AND VEGETATION*

### 6.218 PURPOSE

This section is established for the purpose of regulating, controlling, preserving and setting forth methods of continued maintenance assurance of all regulated vegetation located within the municipal limits of the town and, furthermore, establishes authority to regulate and control the degree of impervious surfaces constructed on properties and the placement and configuration of fill soil and material on properties located within such municipality.

### 6.219 FUNCTIONS

- A. Landscaping and the regulation of placement and arrangement of impervious and fill material accomplishes the following functions:
  1. Maintains the visual character of the community.
  2. Screens objectionable views within and between uses.
  3. Defines functional exterior spaces.
  4. Reduces glare into and from the site.
  5. Reduces dust and other pollutants suspended in the air.
  6. Controls noise and provides acoustical modification into and from the site.
  7. Influences wind patterns and their effects upon uses.
  8. Contains odors and minimizes their passage into and from a site.
  9. Controls the direction and velocity of surface water runoff.
  10. Minimizes soil erosion.
  11. Moderates interior and exterior temperature by controlling solar radiation on structures and impervious surfaces.
  12. Controls the quantity of impervious surface within a site interior, thus enhancing ground absorption capabilities and controls the placement of fill soil and materials and reduces the use of public monies for control of increased surface runoff.

13. Maintains the aesthetic quality of property and enhances its value.
14. Offers protection of adjacent properties from increased water runoff and erosion sedimentation.
15. Offers protection to adjacent natural resources.

## 6.220 DEBRIS, VEGETATION, AND WASTE

Debris from vegetation may be placed in the right-of-away for pick-up, though sand, dirt or grass clippings may not be blown into the streets, which may impede or eventually restrict and or hamper the flow of stormwater runoff. Grass clippings that are blown into the street are a violation of this article. Homeowners and landscaping contractors that are in violation of placing and or blowing vegetation debris into town streets may be fined. It is the responsibility of that homeowner or contractor to remove the vegetation waste properly.

## 6.221 - 6.240 RESERVED

### *DIVISION 9. ILLICIT DISCHARGE AND CONNECTION STANDARDS*

## 6.241 ILLICIT DISCHARGES AND CONNECTIONS

- A. Illicit discharges.
  1. No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the state, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the state, any liquid, solid, gas, or other substance, other than stormwater; provided that non-stormwater discharges associated with the following activities are allowed and provided that they do not significantly impact water quality:
    - a) Water line flushing;
    - b) Landscape irrigation;
    - c) Diverted stream flows;
    - d) Rising ground waters;
    - e) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
    - f) Uncontaminated pumped ground water;
    - g) Discharges from potable water sources;
    - h) Foundation drains;
    - i) Air conditioning condensation;
    - j) Irrigation water;
    - k) Springs;
    - l) Water from crawl space pumps;
    - m) Footing drains;
    - n) Lawn watering;
    - o) Individual residential car washing;
    - p) Flows from riparian habitats and wetlands;
    - q) Dechlorinated swimming pool discharges;

- r) Yard waste piled for removal, and debris placed for roadside pickup, provided it was placed at least five (5) feet from any defined stormwater conveyance (ditch, curb, pipe, etc.) and all prohibited substances listed in subsection (a)(2) of this section are contained in a manner to prevent them from being transported by stormwater flows;
      - s) Street wash water;
      - t) Pumping down of Carolina Beach Lake as permitted by state agencies;
      - u) Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the state, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the town.
    - 2. Prohibited substances include, but are not limited to, oil, antifreeze, chemicals, animal waste, paints, garbage, and litter.
  - B. Illicit connections.
    - 1. Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in subsection (a)(1) of this section, are unlawful. Prohibited connections include, but are not limited to: floor drains, wastewater from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and wastewater from septic systems.
    - 2. Where such connections exist in violation of this section and said connections were made prior to the adoption of the ordinance from which this article is derived or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one (1) year following the effective date of the ordinance from which this article is derived. However, the one (1) year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.
    - 3. Where it is determined that said connection:
      - a) May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat; or
      - b) Was made in violation of any applicable regulation or ordinance, other than this section; the town manager or his designee shall designate the time within which the connection shall be removed.
      - c) In setting the time limit for compliance, the town manager or his designee shall take into consideration:
        - i) The quantity and complexity of the work;
        - ii) The consequences of delay;

- iii) The potential harm to the environment, to the public health, and to public and private property; and
  - iv) The cost of remedying the damage.
- C. Spills.
  - 1. Spills or leaks of polluting substances released, discharged to, or having the potential to be released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their pre-existing condition.
  - 2. Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Fire Chief of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by state or other law.
- D. Nuisance. Illicit discharges and illicit connections which exist within the town are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances. Such public nuisances shall be abated in accordance with the procedures set forth in division 10 of this article.

6.242 - 6.260 RESERVED

*DIVISION 10. VIOLATIONS*

6.261 VIOLATIONS, PENALTIES AND ENFORCEMENT

- A. Any of the following violations shall subject the offender to a civil penalty for the initial violation and a civil penalty for each subsequent violation, each pursuant to the town's annually adopted rate and fee schedule; or the full amount of penalty to which the town is subject for violations of the Phase II stormwater permit directly caused by the offender. The offender may also be imprisoned for not more than 30 days, or both, at the discretion of the court. Each day that a violation continues after the offender has been notified of the violation shall constitute a separate and distinct offense.
  - 1. The violation of any provision of this article or of any rule or regulation, by whatever name, issued or adopted pursuant to the provisions of this article.
  - 2. The failure to comply with the express or implied condition or term of any permit issued or agreement executed pursuant to the provisions of this article.
  - 3. The failure to comply with any order, notice, or directive of the Town Manager or his designee to stop work or to take corrective action.
  - 4. The failure of the owner of, or any person responsible for the maintenance of, any property served by an existing private on-site stormwater BMP to maintain said BMP in proper working order.

5. If the offender fails to pay this penalty within 10 days after being cited for a violation, the penalty may be recovered in a civil action in the nature of debt.
- B. The town may seek to enforce this article or to prevent, restrain, correct or abate violations of this article through any appropriate equitable action.
- C. The town may seek to enforce this article by using any one (1) or any combination of the foregoing remedies.
- D. No building permit shall be issued for any building without approval of the storm drainage BMPs for the property and buildings by the town manager or his designee.
- E. In case of any violation of this article, the town manager or his designee or other appropriate official shall take action to put an end to such violation.

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## Article 7: Definitions and Measurement

### 7.1 RULES OF MEASUREMENT

- A. **Straight Lines.** Unless otherwise stated in this ordinance, distances specified in this ordinance are to be measured as the length of an imaginary straight line joining two points.
- B. **Irregular Shapes.** In cases where an irregular shape complicates the application of these standards, the UDO Administrator shall determine the applicable dimensional, setback, or bulk standards.
- C. **Fractions.** Unless otherwise stated in this ordinance, when any requirement of this ordinance results in a fraction of a unit, a fraction of one-half (0.5) or more shall be considered a whole unit and a fraction of less than one-half (0.5) shall be disregarded. When the determination of the number of multifamily dwelling units permitted on a lot results in a fraction of a dwelling unit, a fraction of one-half (0.5) or more shall be considered a dwelling unit and a fraction of less than one-half (0.5) shall be disregarded.

### 7.2 WORD INTERPRETATION

- A. For the purposes of this ordinance, certain words shall be interpreted as follows. If a term used in this ordinance is not defined, the UDO Administrator is to interpret the term in accordance with professionally accepted sources~~Except as specifically defined herein, all words used in this chapter shall have their customary dictionary definitions. Certain words or terms used herein are defined as follows:~~
  - 1. Words used in the present tense include the future tense and the future tense includes the present tense. Words used in the singular number include the plural number and the plural number includes the singular number.
  - 2. The terms "shall" and "will" are mandatory and not discretionary.
  - 3. The terms "may" and "should" are permissive.
  - 4. The term "lot" includes the term "plot," "parcel," or "tract."
  - 5. The term "used" or "occupied," as applied to any land or building, shall be constructed to imply that said land or building is in actual use or occupancy and shall be construed to include the term "intended," "arranged," or "designed" to be used or occupied.
  - 6. The term "map" or "zoning map" shall mean the official zoning map of the Town of Carolina Beach, North Carolina.
  - 7. The term "ordinance," "chapter," or "regulations" shall mean the provisions of this ordinance, including any amendment. Whenever the effective date of the ordinance from which this chapter is derived is referred to, the reference includes the effective date of amendment to it. In certain circumstances, reference to a particular chapter may be that which is located within the town's Code of Ordinances.
  - 8. The term "street" includes the term "alley," "road," "avenue," "lane," "cul-de-sac," "collector," "arterial," "highway" or "thoroughfare," whether designated as public or private.

9. The term “includes” shall not limit the term of specific examples, but is intended to extend its meaning to all other instances or circumstances of like kind or character.
10. The term “person” includes a firm, association, organization, partnership, trust, company, or corporation, as well as an individual.

### 7.3 DEFINITIONS

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this ordinance.

**Accessory apartments** means a self-contained dwelling unit incorporated within an existing structure for a single family.

**Accessory entertainment means** cumulatively all areas that include dance floors, stages, live performances, disc-jockey areas, and/or any other entertainment.

**Accessory use, structure or building** means a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure. ~~See article III of this chapter, Table 40-75 referenced in section 40-75 regarding maximum square footage of accessory structures on a lot relative to the principal structure. (Also see Home occupation.)~~

**Administrative decision means** 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 or local government development regulations. These are sometimes referred to as ministerial decisions or administrative determinations.

**Administrative hearing** means a proceeding to gather facts needed to make an administrative decision.

**Adult day care centers** means institutions for the care of instruction of non-preschool aged persons.

**Adult entertainment establishment** means retail or service establishments permitted in Class II as defined in Code of Ordinances, chapter 14, section 14-63(b) and which consist of, but are not limited to, cabarets, bars, taverns, theaters, or other establishments which allow individuals, whether a patron, guest, invitee, employee (permanent or temporary), or entertainer (contracted or otherwise) who is scantily clad and who performs for the purpose of promotions, exhibition, and/or monetary gain through payment or solicitation(s).

**Agricultural use** means the raising of crops and shall not include the raising of livestock.

**Aircraft** means a device that is used or intended to be used for flight in the air. The term does not refer to unmanned devices such as drones, kites, amateur rockets, and RC aircraft.



**Aircraft takeoff and landing zone** means any area which is specifically used or planned to be used for the landing or taking off of aircraft.

**Alley** means a strip of land owned publicly or privately, set aside primarily for vehicular service access to the rear or side of property otherwise fronting on a street of a higher classification ~~a special public way affording only secondary access to abutting properties.~~

**Alterations** means any change, addition or modification in construction or type of occupancy, any change in the structural members of a building, such as walls, or partitions, columns, beams, or girders, the consummated act of which may be referred to herein as "altered" or "reconstructed."

**Animal care facilities** means any commercial facility used for the purpose of the boarding, treatment, grooming, or sale of domesticated animals. Domesticated animals, for the purpose of this ordinance, shall be defined as dogs, cats, and other generally accepted household pets.

**Apartment.** See definition for housing unit.

**Apartment house** means any building or portion thereof used as a multiple dwelling for the purpose of providing three (3) or more separate dwelling units which may share egress and other essential facilities.

**Appurtenances** means items required for the operation and maintenance of a building, including parapet walls, skylights, ventilation equipment, domes, flagpoles, cooling towers, housing for elevator equipment, stairways, tanks, fans, air conditioning and heating equipment, and similar operational devices.

**Arterial street** means a street used or intended to be used primarily for fast or heavy through traffic. The term "arterial street" includes freeways and expressways as well as standard arterial, minor arterial, and major collector for rural-type streets and highways and major thoroughfare streets and highways for urban areas as defined by the state department of transportation functional highway classification guide.

**Art galleries** means a building containing the display of photographs, paintings, sketches, sculptures, or other items of art for show or sell.

**Auction sales** means a building, area, or areas within a building used for the public sale of goods, wares, merchandise, or equipment to the highest bidder. This definition excludes therefrom an auction, the principal purpose of which is the sale of livestock or motor vehicles.

**Automotive, major** means establishments engaged in vehicle sales (including motorcycles, RVs, and other consumer motor vehicles), automotive rental, towing, and major repair such as transmission, engine repair, bodywork, and repainting. Retail items customarily sold at service stations are included. Rental of golf carts, mopeds, e-bikes, and scooters shall not be included.

**Automotive, minor** means establishments that are primarily engaged in washing cars, fuel dispensing, tire sales, minor repair such as diagnostic work, lubricating, wheel alignment, and inspections, but no vehicle sales or rental. Retail items customarily sold at service stations are included.

**Awning** means a roofline projection, which extends from a building to shelter a passerby from the weather. ~~The sides of an awning, canopy, or marquee shall be open except for necessary supports, planting, boxes, and signs.~~

**Bakery, retail** means an establishment primarily engaged in the retail sale of baked products for consumption off-site. The products may be prepared either on or off-site. Such use may include incidental food service. A bakery shall be considered a general retail use.

**Bakery, wholesale** means a bakery in which there is permitted the production and/or wholesaling of baked goods, but where over-the-counter or other retail dispensing of baked goods shall be prohibited.

**Barrier** means curbs, walls, fences, or similar protective devices designed and located to protect public right-of-way and adjoining properties from damaging effects.

**Basement** means a story partly underground but having at least 60% of its height above the average level of the adjoining ground. A basement shall be counted as a story for the purpose of height measurement if the vertical distance between the ceiling and the average level of the adjoining ground is more than five (5) feet, if used for business, commercial, industrial, or dwelling purposes.

**Bed and breakfast inn**, ~~as defined in this section and in article IX of this chapter,~~ is a form of guest lodging in which bedrooms are rented and breakfast is served. Bed and breakfast accommodations may only be provided in buildings principally used as private residences, or in accessory structures meeting the requirements of ~~article IX of this chapter~~ this ordinance. The term is intended to describe the offering of temporary lodging in a private home having architectural and historic interest, rather than the provision of food service or the offering of facilities for long term occupancy, such as provided by boardinghouses, inns, and similar guest lodging.

**Bedroom** means a room intended primarily for sleeping.

**Block** means a tract of land bounded by streets or by a combination of one (1) or more streets and public parks, cemeteries, railroad rights-of-way, bulkhead lines or shorelines of waterways, or corporate boundary lines.

**Boat (vessel)** means watercraft of any type or size specifically designed to be self-propelled, whether by engine, sail, oar, paddle, or other means, used to travel from place to place by water. A boat or vessel shall also include any machine designed or intended to travel over water by self-propulsion.

**Boats and boat trailers** means a vessel or craft for use on the water, which is customarily mounted upon a highway vehicle designed to be hauled by an automobile vehicle.

**Boat repair facility** means a facility where boats are repaired and stored until repairs are completed.

**Boat and personal water craft (PWC) sales and rental** means a maritime retail sales and rental establishment in which boats are rented or sold.

**Body piercing facility** means a building where the piercing of holes in parts of the body other than the ear, in order to insert rings, studs, or other pieces of jewelry.

**Brewery** means an establishment engaged in the production and distribution of beer and other fermented malt beverages. The establishment may include area for demonstration, education, tasting, and other uses permitted in the district, in accordance with state and local laws.

**Buffer** means a dense, evergreen hedge or a combination of planting materials and fencing used to enclose, screen, or separate certain uses as specified in this ordinance. The design, composition, height, and location of such facilities shall be ~~approved by the Town Building Inspector and Zoning Administrator,~~ in accordance with the requirements of ~~article VI of this chapter, landscaping and buffering~~ this ordinance.

**Buildable** means not constrained by environmentally sensitive conditions that would ~~retard~~ limit site development. In most instances, lands which are prohibited from development by state or federal environmental permitting agencies are not regarded as "buildable." An exception to this rule-of-thumb is private oceanfront property subject to CAMA regulations; this property can be utilized for meeting or calculating density, minimum lot area, setbacks, lot coverage, and other such requirements of this ordinance.

**Building** means any structure enclosed and isolated by exterior walls constructed for supporting or sheltering any use or occupancy. ~~means any structure having a roof supported by columns or walls.~~

**Building area** means the aggregate of the maximum horizontal cross section area of the main building on a lot and all accessory buildings, ~~excluding cornices, eaves, gutters, chimneys not projecting more than 18 inches, steps, one-story open porches, bay windows not extending through more than one story and not projecting more than five feet, balconies, and terraces.~~

**Building height** means that distance measured from the highest appurtenance on the structure to:

1. The average front street line.
2. The average nearest front street line where there is not an adjacent right-of-way.
3. An average of each front street line on through lots.

~~(4) — Hotels: Appurtenances ten feet or less in height shall be exempted from the height measurement.~~

**Building Inspector** means the officer or other designated authority charged with the administration of the building code or his duly authorized representative or agent.

**Building or structure, existing**, means any structure erected prior to the adoption of the ordinance ~~from which this chapter is derived~~, or one (1) for which a legal building permit has been issued.

**Building permit** means permission granted by the building inspector for the erection, relocation, reconstruction, or structural alteration of any building.

**Bus** means any motor vehicle designed to carry more than nine (9) passengers and any motor vehicle other than a taxicab; designed for the transportation of persons ~~for~~ **compensation**.

**Camping trailer** means a vehicular portable structure mounted on wheels, constructed with collapsible partial side walls of fabric, plastic, or other material for folding compactly while being drawn by another vehicle and when unfolded at the site or location, providing temporary living quarters, and which is designed for recreation, travel, or camping purposes.

**Car wash** means a structure or portion thereof, the principal use of which is the washing of automobiles or other motor vehicles.

**Carport**. See definition for structures and shed, open.

**Certificate of compliance** means a certification that a premises conforms to provisions of the this ordinance and building code and may be used or occupied; also known as a certificate of occupancy.

**Certiorari means** an appellate proceeding which brings into superior court or other appropriate forum the record of administrative, judicial, or quasi-judicial actions for the purposes of either reexamining the action taken by the inferior body to determine the appropriateness of said action or to obtain further information in the pending case.

**Cluster development** means a form of planned unit development that concentrates buildings on a part of the site (the cluster area) to allow the remaining land (the open space) to be used for recreation, common open space, or preservation of environmentally sensitive areas. The open space may be owned by either a private or public entity.

**Collector street** means a street used or intended to be used to carry traffic from minor streets to the system of arterial streets including the principal entrance streets to residential developments and shall include all rural minor collector streets or highways and urban minor thoroughfare streets and highways as defined by the state department of transportation functional highway classification guide.

**Commercial** means a nonresidential use providing for the sale of general merchandise or convenience goods and services or other uses not utilized for the primary purpose of a dwelling(s).

**Commercial vehicle** means a vehicle designed, maintained, or used primarily for the transportation of merchandise or materials used in a business.

**Common areas and facilities** means those areas of a housing project and of a property upon which it is located that are for the use and enjoyment of the owner of housing units located in the project. The areas may include the land, roofs, main walls, elevators, staircases, lobbies, halls, parking space, and community facilities.

**Common open space** means a parcel or parcels of land or an area of water or a combination of both land and water within the boundaries of the development, which is designated and intended for the leisure and recreational use of the residents of the development, not including streets or off-street parking areas. Common open space shall be substantially free of structures, but may contain such improvements as are in the plan as finally approved and are appropriate for the benefit of residents of the development.

**Common party walls** means a wall, used jointly by two (2) parties under easement agreement, erected upon a line separating two (2) parcels of land, each of which is a separate real estate entity.

**Comprehensive plan** means any extensively developed plan, also called a master plan or land use plan, prepared, and ~~adopted~~ recommended for approval by the Planning and Zoning Commission and certified and adopted by the Town Council, including proposals for future land use, transportation, urban redevelopment, and public facilities. Devices for the implementation of these plans, such as zoning, official map, subdivision control ordinances, and capital improvement programs shall also be considered a part of the comprehensive plan.

**Conditional zoning** means a legislative zoning map amendment with site specific conditions incorporated into the zoning map amendment.

**Condominium** means a system of individual fee simple ownership of units in a multi-unit structure, combined with joint ownership of common areas and facilities of the structures and land.

**Construction, start of** includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation including underground utilities (water, sewer, electrical, storm drain) 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.

~~**Convenient food store** means a structure in which food stuffs, beverages, pharmaceuticals, small household supplies and small personal items are retailed provided that the gross floor area of the structure shall not exceed 1,500 square feet. Personal goods and wares sold typically can be hand-carried from the premises by the buyer.~~

**Conversion** means a conversion is the modification of an existing residential structure to increase its density by one (1) or more housing units.

**Curb** means a structural element at the edge of an existing or proposed street or other way, generally at a higher elevation than the adjacent edge of roadway, installed to deter vehicles and water from leaving the roadway, to otherwise control drainage, to delineate the edge of existing or future roadways or driveways, to present a more finished appearance to the street, to assist in the orderly development of the roadside and to contribute to the stability and structural integrity of the pavement.

**Cul-de-sac street** means a minor street closed at one (1) end with a turnaround provided for vehicular traffic.

**Day care center, adult** means a place receiving a payment, fee or grant for the temporary, part-time care of more than five (5) adults, for more than four (4) hours per day.

**Day care center, child** means a place receiving a payment, fee, or grant for the temporary, part-time care of more than five (5) children, 13 years of age or less, for more than four (4) hours per day, without transfer of custody. The term "day care center, child" includes "kindergartens," "day nurseries," "nursery schools" or other similar establishments.

**Day spa** means a commercial enterprise, private club, or business established for the purpose of providing an indoor facility for personal services provided by professional, licensed estheticians, massage therapist and other licensed therapist.

**Deck** means an unenclosed structure designed for open-air recreation and leisure. A deck may be covered by the floor of another room or deck, but not by a roof. The installation of permanent screening to wall or roof enclosures shall be regarded as the conversion of a deck into a porch.

**Deeded** means conveyed through legal change of title or ownership.

**Deeded lot** means a lot created by metes and bounds description and which is not a legal lot of record.

**Determination** means a written, final, and binding order, requirement, or determination regarding an administrative decision.

**Developer** means 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** means unless the context clearly indicates otherwise, any of the following:

1. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
2. The mining, dredging, paving, excavation, grading, filling, clearing, or alteration of land.
3. The subdivision of land as defined in G.S. 160D-802.
4. The initiation or substantial change in the use of land or the intensity of use of land.
5. Any land disturbing activity on improved or unimproved real estate that changes the amount of impervious or partially impervious surfaces on a parcel, or that otherwise decreases the natural infiltration of precipitation into the soil.
6. This definition does not alter the scope of regulatory authority granted by North Carolina G.S. ch. 160D.

**Development approval** means an administrative or quasi-judicial approval made pursuant to this ordinance 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 ordinance, or a local act or charter that regulates land use or development.

**Development regulation** means a unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention 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 G.S. 160D, or a local act or charter that regulates land use or development.

**Development line and/or Carolina Beach building line** means line established by the town representing the seaward-most allowable location of oceanfront development ~~a line established by 1963 Succession law relating to the title of land built up and constructed in the Town as a result of erosion control work. The land lying east of the building line is to be granted and conveyed to the Town.~~

~~**Director of Planning and Development** means the Town Planning and Development Director.~~

**Distillery** means an establishment where the production of spirituous liquor takes place in accordance with G.S. 18B-1105 and 18B-1114.7.

**Down-zoning** means a zoning ordinance that affects an area of land in one (1) 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.

**Drive-in/through facility** means any facility that communicates and/or conducts transactions with patrons that are in their vehicle.

**Drive-up bank teller facility** means a device designed to permit access to bank teller services by persons in their vehicles.

**Driveway, private** means the area outside a street intended to serve as ingress and/or egress for vehicular traffic between the street property line and an off-street parking area outside the street.

**Driveway, public** means the area between the roadbed of a public street and other property, designed for, or installed, serving as ingress and/or egress for vehicular traffic between such roadbed or traveled portion of the street and off-street parking area or private driveway.

**Drop-in child care** means child care arrangement where care is provided while parents or legal guardian participate in activities that are not employment related, and where the parents are on the premises or otherwise easily accessible. These arrangements can be available in health spas, health clubs, bowling alleys, shopping centers, resort hotels, or other similar locations. Care can be provided while parents or legal guardian occasionally run errands or participate in leisure activities.

**Dry stack storage** means vertical storage of boats in a rack system, providing for storage of at least two (2) layers of boats.

**Dune** means a ridge or mound of loose, wind-blown material, usually sand.

**Dwelling** means a building that contains one (1) or more dwelling units used, intended, or designed to be used, rented, leased, let, or hired out to be occupied for living purposes.

**Dwelling unit.** See housing unit.

**Ear piercing facility** means a building where the practice of making holes in the lobes or edges of the ears to allow the wearing of earrings. See body piercing facility.

**Eating and/or drinking establishment** means an establishment whose principal business is the sale of foods, frozen desserts, and/or both alcoholic and nonalcoholic beverages to a customer in a ready-to-consume state, and whose design and principal method of operation determines its classification as follows:

1. **Bars and taverns** means establishments primarily engaged in the sale and service of alcoholic beverages for on-premises consumption during any period of the day as permitted by law. The incidental sale or provision of food or snacks shall not entitle such a use to be considered a restaurant under other provisions of this Code. Synonyms: Private club as defined by the ABC commission, tavern, saloon, barroom, inn, pub, watering hole, drinking hole, gin mill, tap room.
2. **Drive-in/drive-thru restaurant** means establishments serving from edible



- containers or in paper, plastic, or other disposable containers at a drive-in window. Consumption shall be off-premises, within the principal building, or at other facilities on the premises outside the principal building.
3. **Eatery** means establishments serving by delivery; pick-up; from an inside; outside; and/or a walk up ordering counter. These eateries cater to the sale of baked goods, sandwiches, salads, ice, cream, donuts, beverages and/or other similar foods.
  4. **Event Venue/Bar** means a commercial establishment, either indoors or outdoors, with the primary purpose of providing space for meetings, gatherings, reunions, weddings, conventions, private parties, and other similar gatherings. Includes convention centers, wedding and event venues, and other uses not included as part of meeting facilities.
  5. **Standard restaurant** means establishments substantially engaged in preparing and serving meals. Standard restaurants shall have an inside dining area and may include outside dining. To qualify as a standard restaurant, the establishment shall meet all criteria of the ABC commission for a restaurant designation as defined by G.S. 18B-1000.
  6. **Beer Shop** means an establishment substantially engaged in retail sale of malt beverages on and off premises subject to the ABC Commission regulations.
  7. **Wine Shop** means an establishment substantially engaged in retail sale of unfortified wine and fortified wine for consumption on and off premises subject to the NC ABC Commission regulations.

**Electric vehicle (EV) charging station** means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles and may be located in a public or private parking space that is served by battery charging station equipment. Such stations shall be considered to be accessory uses/structures.

**Enforcement** definitions. For the purposes of this ordinance and applicable administrative appeal and review provisions, the terms set forth below where context permits can be in the singular, or plural, or both and shall have the following meaning, (regardless of whether or not capitalized, italicized, or otherwise made distinct) except where the context clearly indicates otherwise:

1. **Chronic violator.** A chronic violator is the owner of a particular property whereupon the town gave notice at least three (3) times in the previous calendar year pursuant to G.S. 160A-200.1 that a particular situation or condition exists on the particular property in violation of any particular provision of an ordinance and the same constituting a public nuisance.
2. **Final decision** means a final decision by the Board of Adjustment on matters within the scope of this ordinance made in the course of applicable administrative review or appeal provisions and thereafter subject to judicial review. As of February 2, 2009, administrative remedies for appeal of Decisions and review of Motions to revoke, which must be exhausted before judicial review are found in ~~section 40-488(i)(3) and (4)~~ Article 2 of this ordinance. Judicial review provisions upon exhaustion of administrative remedies are set forth in ~~section 40-488(m)~~ G.S. 160D.
3. **Order** means a directive by the ~~official~~ UDO Administrator, which is also

- deemed a decision under this ordinance.
4. **Ownership interest** means an ownership or leasehold interest in property, including an interest created by easement, restriction, or covenant in property and an option or contract to purchase the property.
  5. **Person(s) liable** means The holder of any applicable approvals, owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, person in authority, permittee, licensee, or other person who participates in, assists, directs, creates, maintains, or is otherwise responsible for any violation, and who may thereby be held responsible for the same and be made subject to all enforcement mechanisms, remedies, and sanctions as provided in this ordinance and other land development ordinances, and any additional enforcement mechanisms, remedies, sanctions, and legal processes that may be otherwise permitted by law.
  6. **Public nuisance** means everything in the town's jurisdictional limits, or within one (1) mile thereof which the official determines in a decision to be dangerous or prejudicial to the public health or public safety.

**Estuarine tidal water** for purposes of this ordinance, shall be construed to mean the Myrtle Grove Sound, the Atlantic Intracoastal Waterway (AIWW), marsh, swamp, or other watercourse or other wetland area that may be determined by the UDO Administrator or Building Inspector or other official or agency which has jurisdiction over such matters.

**Evidentiary hearing** means 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 G.S. 160D.

**Exempt plat** means divisions of land and creation of lots which do not meet the statutory definition of subdivision in accordance with NCGS 160D-802 or are as provided in this section. In accordance with NCGS 160D-802(a)(1) and (4), newly created lots must be equal to or exceed the dimensional standards of the zoning district in which they are located. In addition to the divisions of land identified in NCGS 160D-802(a)(1) through (4), the following divisions of land shall not be included within the definition of the term "subdivision" and shall not be subject to the lot dimensional standards in this ordinance: (1) the division of land for the purpose of creating a lot for use as a site for a public utility; (2) the creation of a lot to be conveyed to the town or to a non-profit entity for the purpose of creating public parks, public access, or public open space, provided that the plat and the deed creating such parcel shall specifically state that the parcel created may not be used for any other purpose; and (3) the division of land owned by a governmental entity to facilitate the conveyance of a portion of said land to another governmental entity for governmental or public use.

**Expenditure** means a sum of money paid out in return for some benefit or to fulfill some obligation. Whenever the term is used hereafter, it also includes binding, contractual commitments to make future expenditures, as well as any other substantial changes in position.

**Exterior architectural feature** means the architectural style, general design, and general arrangements of the exterior of a building or other structures including the kind, texture and color of the building materials, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs and other appurtenant features.

**Extraterritorial area or jurisdiction** means that land beyond the corporate limits extending for a distance of up to one (1) mile in all directions as delineated on the official zoning map for the town.

**Family** means one (1) or more individuals occupying a premises and living as a single nonprofit housekeeping unit, including domestic servants, provided that a group of five (5) or more persons who are not related by blood or marriage shall not be deemed to constitute a family.

**Family care home** means a home with support and supervisory personnel that provides room and board, personal care, and habitation services in a family environment for not more than six (6) resident handicapped persons.

**Farmers market** means an establishment primarily engaged in the retail sale of solely fresh fruits and fresh vegetables. Such uses are typically found in public or municipal markets.

**Fill** means any act, or the conditions resulting therefrom, by which soil, earth, sand, gravel, rock, or any similar material is deposited, placed, pushed, pulled or transported~~sand, gravel, earth or other materials of any composition placed or deposited by humans.~~

**Fire escape** means a fireproof stairway down an outside wall, to help people escape from a burning building.

**Fishing pier public and private** means an ocean based facility extending into the water which may permit the general public or private guests the opportunity to fish, crab, or sightsee and which may be subject to payment for use. Boating activities not permitted.

**Flammable liquids** means liquids that ignite easily and burn freely.

**Floating structure** means a barge-like structure, that is not used as a means of transportation on water but which serves purposes or provides services typically associated with a structure on or other improvement to real property used for human habitation or commerce. Incidental movement or the capability of movement upon water does not preclude a structure from classification as a floating structure. Registration of the structure as a vessel in accordance with G.S. Chapter 75A does not preclude a structure from classification as a floating structure.

**Floodlands** means those lands, including the floodplains, floodways, and channels, subject to inundation by the 100-year recurrence interval flood, or, where such data are not available, the maximum flood of record.

**Flood protection elevation** means the elevation to which structures and uses regulated by this ordinance are required to be elevated or floodproofed. This elevation is shown on the official flood hazard boundary map (FHBM).

**Floodplain** means those flood lands, not including the floodway, subject to inundation by the 100-year recurrence interval flood, or where such data is not available, the maximum flood of record.

**Floodproofing** means a combination of structural provisions, changes, or adjustments to properties and/or structures subject to flooding primarily for the reduction or elimination of flood damage to properties, water, and sanitary facilities, structures, and contents of buildings.

**Floodway** means that area subject to inundation by the 10 year recurrence interval flood.

**Foundation survey** means a survey prepared by a registered land surveyor (RLS) for the purpose of determining positional data on a foundation that has been set either on pilings or masonry.

**Frontage street** means a minor street auxiliary to, and located on the side of, an arterial street for control of access and for service to the abutting development.

**Frontal dune** means the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value.

**Fuel pump island** means any device or group of devices used for dispensing motor fuel or similar petroleum products to the general public.

**Funeral homes and crematoriums** means a building or part thereof used for human funeral services. Such building may contain space and facilities for (a) embalming and the performance of other services used in the preparation of the dead for burial; (b) the performance of autopsies and other surgical procedures; (c) the storage of caskets, funeral urns, and other related funeral supplies; (d) the storage of funeral vehicles; (e) facilities for cremation; and (f) a chapel/services connected with rituals before burial or cremation.

**Garage, private** means a building or space used as an accessory to or a part of a principal building permitted in any residential district, and providing for the storage of motor vehicles and in which no business, occupation or service for profit is conducted.

**Garage, repair.** See [Automobile repair garage](#) automotive major.

**Gardens, arboretums, nurseries, and greenhouses** means a retail business whose principal activity is the selling of plants grown on or off site and having outside growing or display.

**Government/public facilities** means indoor or outdoor areas of local, state, or federal control intended to serve public function as, but not limited to transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

**Grade, existing** means the average grade of the lot prior to the addition of fill or any man-made alterations.

**Grade, finished** means the final elevation of the ground surface after man-made alterations, such as grading, grubbing, filling, or excavating, have been made on the ground surface. May

also be referred to as a “graded lot.”

**Gross floor area** means measured from the exterior building walls of the use. The area shall include:

1. Commercial uses: All floors where the business is conducted. Floor area shall include halls, lobbies, arcades, stairways, elevator shafts, enclosed porches, and balconies.
2. Industrial uses: All floors devoted to a particular uses.
3. Residential uses: All floors.

**Gross floor area, outdoor**, means any unheated areas where business is conducted. Any outdoor areas shall meet NC building code.

**Group care/rehabilitation facility** means any facility licensed by the state department of human resources for the provision of non-resident services including guidance, therapy, counseling, or rehabilitation for one (1) or more individuals.

**Handicapped person** 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 or orthopedic impairments, but not including mentally ill persons who are dangerous to others as defined in G.S. 122-58.2(1)b.

**Health spa** means a commercial enterprise, private club, or business established for the purpose of providing an indoor facility for physical exercise with the use of athletic equipment and accessory services. The term "health spa" includes private exercise clubs, figure salons or health clubs and is classified as a personal service establishment.

**Height.** See building height.

**High rise** means a multi-story building over five (5) stories or over 50 feet.

**High-water elevation** means the average annual high-water level of a pond, stream, lake, flowage, or wetland referred to an established datum plane; or where such elevation is not available, the elevation of the line up to which the presence of the water is so frequent as to leave a distinct mark by erosion, change in, or destruction of vegetation or other easily recognized topographic, geologic, or vegetative characteristic.

**Home occupation** means an occupation for gain or support customarily conducted on the premises by a person or family residing thereon.

**Hotel.** See motel.

**Housing unit (dwelling unit)** means one (1) or more rooms together, constituting a separate, independent housekeeping establishment and physically separated from any other housing unit, which may be in the same structure, and containing permanent provisions for living, sleeping, sanitation and kitchen facilities for not more than one (1) family.

**Housing unit, types definitions.**

Single-family attached	Buildings that are permanently attached by roofed structures such as breezeways and carports shall be considered a principal building provided the connecting structure covers at least one (1) exterior door to each building. This allowance shall not apply to connecting accessory structures together.
Single-family detached	A structure, other than a manufactured home, containing one (1) housing unit only.
Manufactured home	See <del>article IX of this chapter for definitions and development standards related to manufactured homes</del> <u>manufactured housing definitions.</u>
Modular home	A dwelling constructed in accordance with the standards set forth in the 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. <u>For the purposes of this ordinance, modular homes shall be permitted in accord with residential dwelling requirements and standards rather than manufactured homes.</u>
Multifamily structure	A structure containing three (3) or more housing units. Has the same meaning as "apartment house."
Two-family dwelling (duplex)	A structure containing two (2) housing units divided by a separation wall.
Triplex	A structure containing three (3) housing units divided by separation walls.
Quadraplex	A structure containing four (4) housing units divided by separation walls.
Townhouse	A single-family dwelling containing at least two (2) dwelling units separated by property lines in which each unit extends from foundation to roof with yard or public way on not less than two (2) sides. <del>A single-family dwelling unit constructed in a series or group of attached units with property lines separating such units</del> <u>Townhouse proposals shall be reviewed through the planned unit development process. A separate subdivision plat must be submitted in conjunction with the planned unit development application.</u>

**Impervious coverage and surfaces** means any constructed surfaces (rooftops, sidewalks, roads, and parking lots) covered by impenetrable materials such as asphalt, concrete, brick, and paving stones. These materials seal surfaces, repel water, and prevent precipitation from infiltrating soils. Soils compacted by urban development are also highly impervious. Unwashed crushed stone containing fines is impervious. Impervious surface does not include a slatted deck; the water area of a swimming pool; a surface of number 57 stone, as

designated by the American Society for Testing and Materials, laid at least four (4) inches thick over a geotextile fabric; or porous pavement with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour). Alternative materials, not subject to the definition of impervious surface, may be proposed subject to certification of a licensed and certified North Carolina professional engineer of compliance with the hydraulic conductivity standard of 1.41 inches per hour or greater. Such certification shall be in the form of a letter under seal.

**Improvement, public** means any sanitary sewer, storm sewer, open channel, water main, roadway park, parkway, public-access sidewalk, pedestrian way, planting strip, or other facility for which the town may ultimately assume the responsibility for maintenance and operation.

**Junk yard.** See salvage operation.

**Junked vehicle** means a motor vehicle that:

1. Does not display a current plate when the motor vehicle is required by laws of the state to have such a license plate to operate on public roads, unless stored within an enclosed structure; and that:
2. Is partially dismantled or wrecked; or
3. Cannot be self-propelled or moved in the manner in which it was originally; or
4. Is more than five (5) years old and appears to be worth less than \$500.00.

**Kitchen** means any interior part of a building that is designed and used for the preparation, storage, or consumption of food. A building shall be considered as having a kitchen if there is a combination of more than one (1) of the following: countertop, cabinet, sink, refrigerator, or stove.

**Landfill, reclamation** means a fill to improve steep, low, or otherwise unusable land (not to include wetlands) consisting of masonry or other non-organic or nontoxic matter.

**Landfill, sanitary,** means a fill consisting of trash, garbage, and other waste and refuse placed in trenches, compressed, and covered with compacted earth.

**Landowner** means any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site-specific vesting plan under this section, in the manner allowed by ordinance.

**Landscape and buffer** definitions. The following words, terms, and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section as it pertains to landscape and buffer requirements, except where the context clearly indicates a different meaning.

1. **Buffer yard** means the width of the area for the required installation of landscaping and screening materials around the entire perimeter of all lot uses.
2. **Caliper** means a standard trunk diameter measurement for nursery grown trees taken six (6) inches above the ground for up to and including four (4) inch Caliper size, and 12 inches above the ground for larger sizes.
3. **Deciduous** means those plants that annually lose their leaves.

4. **Evergreen** means those plants that retain foliage throughout the year.
5. **Ground cover** means a prostrate plant growing less than two (2) inches in height at maturity that is grown for ornamental purposes. Ground covers are used as an alternative to grasses. On slopes, ground covers control erosion while eliminating the maintenance of mowing on hillsides. Many ground covers survive in poor soils, shade, and other adverse conditions.
6. **Ground cover material** means any natural or artificial material such as bark chips, pine needles, stone, rock, wood mulch or similar materials used at the base of plants for the purpose of retaining water, minimizing weed growth, or purely aesthetic purposes.
7. **Intensive commercial** means a business use that has a gross floor area of greater than 10,000 square feet.
8. **Landscaping** means the process or product of site development, including grading, installation of plant materials, and seeding of turf or ground cover.
9. **New construction** means any construction other than renovation to existing structures where the size or intensity is not increased, which requires a building permit issued by the town, or which results in an increase of impervious surfaces or which requires the placement of fill soil or materials, including, but not limited to, multifamily, nonresidential, and parking lot construction.
10. **Planter** means a structure or area consisting of at least one (1) understory tree surrounded by flowers and shrubs.
11. **Planting area** means a ground surface free of impervious material, which is utilized for landscape purposes.
12. **Shrub** means a woody plant or bush with a minimum height of 12 inches and maximum of 10 feet. It is distinguished from a tree by having several stems rather than a single trunk.
13. **Street tree** means a tree planted along the street behind the right-of-way.
14. **Street yard** means a planting area parallel to a public or private street designed to provide continuity of vegetation along the right-of-way and to soften the impact of development by providing a pleasing view from the road.
15. **Tree, canopy** means any tree that is normally more than 40 feet in height with a spread of at least 15 feet at maturity that provides shade from its foliage mass; also individual or tree groups forming an overhead cover. Canopy trees should be located so as to minimize potential interference with utilities and avoid sight obstructions. New canopy trees shall be at least 2.5 inches in diameter measured six (6) inches above the ground and at least eight (8) feet in height.
16. **Tree, understory** means any tree that is normally less than 25 feet in height with a spread of at least five (5) feet at maturity, but that still provides shade and a degree of protection to the earth and vegetation beneath it. Multiple trunk understory trees shall have at least three trunks and be at least six (6) feet in height.

**Laundries and dry cleaning** means any establishment which launders or dry cleans articles dropped off on the premises directly by the customer, or where articles are dropped off, sorted, and cleaned by and for nonresidential establishments, and/or where articles are cleaned on the premises by the customer.

**Least dimensions** means the least dimension of a yard is the least of the horizontal



dimensions of such yards. If two (2) opposite sides of a yard are not parallel, such least dimension shall be deemed to be the mean distance between them.

**Legislative decision** means the adoption, amendment, or repeal of a regulation under this ordinance or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Article 10 of G.S. ch. 160D.

**Legislative hearing** means a hearing to solicit public comment on a proposed legislative decision.

**Live entertainment complex** means a place of assembly, open to the public and operated for profit, where live entertainment, parties, receptions, and other gatherings are held. Live entertainment complexes may serve alcoholic beverages, and may serve catered meals provided the owner or operator holds the appropriate licenses and permits and complies with any applicable standard of a bar or tavern in accordance with this ordinance. All such establishments shall be located within a fully enclosed building.

**Loading space, off-street** means space for bulk pickups and deliveries, scaled to delivery vehicles and accessible to such vehicles at all times even when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking space.

**Lot** means a parcel of land whose boundaries have been established by some legal instrument such as a deed or a recorded map and which is recognized as a separate legal entity for purposes of transfer of title. Such lot may be 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 term "lot" shall mean any number of contiguous lots or portions thereof upon which ~~one principal building and its accessory buildings~~ permitted structures are located or are intended to be located. If a public road crosses a parcel of land otherwise characterized as a lot by this definition, the land on each side of the public road shall constitute a separate lot.

~~Lot means a parcel of land having frontage on a public street or other officially approved means of access, occupied or intended to be occupied by a principal structure or use and sufficient in size to meet the lot width, lot frontage, lot area, yard, parking area, and other open space provisions of chapter 40, zoning, where applicable, or requirements of this ordinance.~~

**Lot, corner** means a lot located at the intersection of and abutting upon two (2) or more streets. 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 meet at an interior angle of less than 135 degrees. ~~For the purposes of this section, a~~ front yard of the required depth shall be provided in accordance with the district requirements for one (1) frontage designated by the owner at the time of the building permit issuance and the second yard setback shall conform to the side ~~yard setback~~ requirements ~~as defined here~~ of the zoning district. In the case of corner lots with more than two (2) frontages, the third or more yards shall conform to the side ~~yard requirements as defined herein~~ setback

requirements.

~~**Lot, corner,** means a lot abutting two or more streets at their intersection provided that the corner of such intersection shall have an angle of 135 degrees or less, measured on the lot side.~~

**Lot coverage** means that portion of a lot occupied by any semi-pervious or impervious structure or structures, either at ground level or the equivalent thereto when a structure is elevated on pilings, excepting parking areas and areas covered by the eaves of roofs. Lot coverage may be used interchangeable with the term "site coverage." The intent of lot coverage requirements is to regulate bulk standards. For the purposes of calculating total lot coverage, any wetlands (404/jurisdictional) defined by CAMA and/or US Corps of Engineers shall be excluded from the gross acreage within the project area.

**Lot depth** means the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.

**Lot, flag** means lots or parcels with less frontage on a public street than is normally required. The panhandle is an access corridor to lots or parcels located behind lots or parcels with normally required street frontage.

**Lot frontage** means that portion of a lot abutting a street. In the case of a corner lot, the ~~narrower side fronting on the~~ owner shall determine which street lot line shall be considered to be the front of the lot. ~~In case the corner lot has equal frontage on two (2) or more streets, the lot shall be considered to front on the street on which the greatest number of lots front, or, if unplatted, on that street on which the greatest number of buildings have been erected.~~ For the purpose of determining yard dimensional requirements on corner lots and through lots, ~~all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under "yards" in this section~~ please see respective definitions for each term. No lot shall front on an alley.

~~**Frontage** means the smallest dimension of a lot abutting a public street measured along the street line.~~

**Lot line** means a line dividing one (1) lot from another, or from a street or other public space or public trust area.

**Lot line wall** means a wall adjoining and parallel to the lot line used primarily by the party upon whose lot the wall is located.

**Lot of record** means a lot which is a part of a subdivision, a plat of which has been recorded in the office of the register of deeds of the county or a lot described by metes and bounds, the description of which has been so recorded at the time of adoption of the ordinance from which this ordinance is derived, and which actually exists as so shown.

**Lot of record, legal** means a lot which is a part of a town-approved subdivision, a plat of which has been recorded in the office of the register of deeds of the county. In addition, this

definition shall include lots for which a plat and/or deed is recorded in the office of the register of deeds and the lot was created prior to June 18, 1973; or a lot which at the time of creation met all subdivision and zoning requirements provided a plat is approved by the administrator and recorded with the register of deeds containing a certification as to having met the then existing regulations in effect.

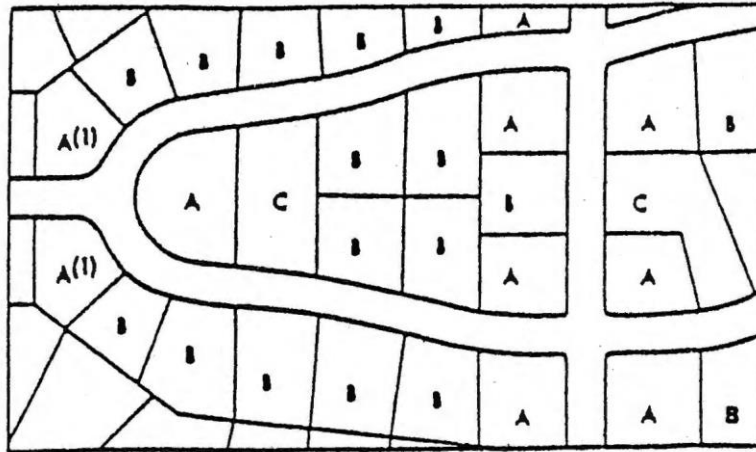
~~Lot, through: Front yards shall be provided on all frontages.~~

**Lot, through** means a lot other than a corner lot with frontage on more than one (1) street. Through lots abutting two (2) streets may be referred to as double frontage lots ~~lot which has a pair of opposite lot lines along two (2) substantially parallel streets and which is not a corner lot.~~ On a through lot, ~~both~~ all street lines shall be deemed front lot lines and front setbacks shall be provided on all frontages; in the case of two (2) or more contiguous through lots, there shall be a common front lot line.

**Lot types.** ~~Figure 1 illustrates~~ See table and figure below for terminology used in this ordinance with reference to corner lots, interior lots, ~~reversed frontage lots~~ and through lots.

A	Corner lot	A lot located at the intersection of and abutting upon two (2) or more streets. 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 meet at an interior angle of less than 135 degrees. See lots marked A (1) in the diagram.
B	Interior Lot	A lot other than a corner lot with only one (1) frontage on a street.
C	Through Lot	A lot other than a corner lot with frontage on more than one (1) street. Through lots abutting two (2) streets may be referred to as double frontage lots.

The figure below illustrates the lot types with labels A through C.



**Lot width** means the mean horizontal distance between the side lot lines of a lot measured at a point midway between the front lot line and the rear lot line; or at the rear lot line; or at the rear line of the required front yard/setback (building line) especially on irregular shaped lots.

**Manufacturing** means the making of goods and articles by hand or, especially, by machinery, often on a large scale and with division of labor.

**Manufacturing, artisan** means the on-site production of goods by hand manufacturing involving the use of hand tools and small-scale light mechanical equipment. Typical uses include woodworking and cabinet shops, ceramic studios, jewelry manufacturing, and similar types of arts and crafts or very small-scale manufacturing uses that have very limited, if any, negative external impacts on surrounding properties, water resources, air quality, and/or public health.

**Manufactured housing**, definitions.

<p>Manufactured home</p>	<p>A dwelling unit that is composed of one (1) or more components, each of which is substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis; exceeds 40 feet in length and eight (8) feet in width; and is not constructed in accordance with the standards set forth in the State Building Code.</p>
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<p>Manufactured home, Class AA</p>	<p>A manufactured home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development (HUD) that were in effect at the time of construction and that satisfies "appearance criteria" as set forth in <del>subsections (s)(1) through (11) of this section</del> <u>this ordinance</u>.</p>
<p>Manufactured home, Class A</p>	<p>A manufactured home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development (HUD) that were in effect at the time of construction and that satisfies "appearance criteria" as set forth in <del>subsections (s)(1) through (9) of this section</del> <u>this ordinance</u>.</p>
<p>Manufactured home, Class B</p>	<p>A manufactured home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development (HUD) that were in effect at the time of construction and that satisfies "appearance criteria" as set forth in <del>subsections (s)(1) through (5) of this section</del> <u>this ordinance</u>.</p>
<p>Manufactured home, Class C</p>	<p>Any manufactured home that does not meet the definitions of manufactured home in Class AA, Class A, or Class B set forth in <del>subsections (s)(1) through d of this section</del> <u>this ordinance</u>.</p>
<p>Mobile home</p>	<p>Mobile home is synonymous with the term "manufactured home," as defined elsewhere in this section. The term "manufactured home" is considered to be more accurate terminology for the variety of factory-built homes now being constructed, which includes the units intended as permanent sites as well as transient use.</p>

**Manufacturing, limited** means the manufacturing of finished parts or products, primarily from previously prepared materials. Typical uses include: printing and related support activities; machinery manufacturing; computer and electronic product manufacturing; electrical equipment, appliance, component manufacturing/assembly; furniture and related product manufacturing/assembly; and other manufacturing and production establishments.

**Marina, docks and/or piers, private** means a boat basin with facilities for berthing, securing or storing various types of watercraft for the exclusive purpose of the owners or renters thereof rather than the public at large.

**Marina, docks and/or piers, commercial** means any marina, pier, or dock which caters to the general public, provides goods or services for sale, and/or, if located in a private residential development, makes available marina facilities to other persons besides occupants of said residential development shall be regarded as a commercial marina. Fishing piers available to the general public are included as part of this use type.

**Mean sea level datum** means sea level datum, as established by ~~chapter 30,~~ the flood damage prevention article, as established by the United States Coast and Geodetic Survey.

**Meeting facilities** means a space for established nonprofit organizations such as community centers, lodges, fraternal, social organizations, or religious assemblies.

**Minor street** means all rural local roads and urban local streets or cul-de-sac streets as defined by the state department of transportation functional highway classification guide and which is used solely to afford access to property along such street and access to the collector and arterial street systems.

**Mixed use ~~commercial~~ nonresidential-residential** means a development that contains both ~~commercial~~ nonresidential and residential uses.

**Mobile home (manufactured home).** See ~~article IX of this chapter for definitions and development standards related to manufactured homes~~ manufactured housing definitions.

**Motel (hotel)** means a building providing sleeping accommodations commonly available on a daily basis for pay to transient and permanent guests or tenants, ~~in six (6) or more rooms.~~ Dining rooms, restaurants or cafes, if existing, shall be conducted in the same building or buildings in connection therewith.

**Motel-iminium/hotel-iminium** means a structure containing individually owned hotel or efficiency units, and operated in the manner of a hotel or motel.

**Motel (Hotel) room** means a room used for transient lodging, which in addition to a sleeping area may provide kitchen accommodations.

**Multi-use facility** means a facility containing less than 25,000 square feet of gross floor area containing more than two (2) stores, service establishments, offices, or other commercial permitted uses planned, organized, and managed to function as a unified whole and featuring all of the following:

1. Common driveways;
2. Common parking;
3. Common signage plan; and
4. Common landscaping plan.

**Multiphase development** means a development containing 25 acres or more that:

1. Is submitted for site plan approval for construction to occur in more than one (1) phase, and
2. Is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.

**Municipality** means the town of Carolina Beach.

**Natural feature** means any outside landscape feature on the site such as trees, shrubs, or rock formations.

**Navigable stream** means any stream capable of floating any boat, skiff, or canoe of the shallowest draft used for recreation purposes.

**Net buildable area** means the total area within the project property boundary less any wetlands (404/jurisdictional) defined by CAMA and/or US Corps of Engineers.

**Nonconforming lot** means a lot existing at the effective date of the ordinance ~~from which this chapter is derived~~ or any amendment to it (and not created for the purpose of evading the restrictions of this ordinance) that cannot meet the minimum area or lot width requirements of the district in which the lot is located.

**Nonconforming project** means any structure, development, or undertaking that is incomplete at the effective date of the ordinance ~~from which this chapter is derived~~ and would be inconsistent with any regulation applicable to the district in which it is located if completed.

**Nonconforming situation** means a situation that occurs when, on the effective date of the ordinance ~~from which this chapter is derived~~ or any amendment to it, an existing lot or structure or use of an existing lot or structure does not conform to one (1) or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum acreage requirements, because structures do not satisfy maximum height or minimum floor-space limitations, because the relationship between existing buildings and the land (in such matters as density and setback requirements) is not in conformity with this ordinance, or because land or buildings are used for purposes made unlawful by the ordinance.

**Nonconforming use** means a nonconforming situation that occurs when a building or land lawfully occupied by a use on the effective date of the ordinance ~~from which this chapter is derived~~ or amendment hereto which does not conform after the passage of the ordinance from which this ordinance is derived or amendment with the use requirements of the district in which it is located. For example, an industrial building in a residential district may be a nonconforming use.

**Nonconformity, dimensional**, means a nonconforming situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or buildings and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.

**Nonresidential use or district** shall be those uses in the “nonresidential” section of the table of uses. When referring to a zoning district or “district,” it shall be the following zoning districts: CBD, NB, HB, T-1, I-1, MB-1, and MX. May also be referred to as “other district.”

**Office, general** means a use type that provide for activities that are conducted in an office setting and generally focus on business, professional, or financial services. Examples include offices for conducting the affairs of a general business or civic establishment, financial services, or sales of real estate or other personal property, stock brokerage, investment services, offices for lawyers, accountants, engineers, and similar professions. Accessory uses may include cafeterias, day care facilities, recreational or fitness facilities, parking, or other amenities primarily for the use of employees in the office.

**Official** means the UDO Administrator or designee or town manager, if specified.

**Open space**, when used in conjunction with planned unit developments and performance residential developments, means all usable land area not occupied by structures and linked together for the use and enjoyment of the community. Required setback areas are considered when linked together with the open space areas.

**Open space, permanent**, ~~shall be defined as~~ means any land to be utilized as landscaped green space, parks, playgrounds, parkway medians, active recreational uses, or for other similar functions; areas required as setbacks or for separation between structures may be utilized in calculating a projects permanent open space requirements. Manmade lakes or other watercourses may be used to fulfill the requirements of this section. Designated wetlands or marsh may not be calculated as part of the permanent open space requirement, nor utilized in calculating density.

**Outdoor entertainment area** means exterior space dedicated to accessory entertainment uses to include dance floors, stages, live performances, disc-jockey areas, and/or any other similar on-site amusement activities.

**Outdoor shower enclosure** means an outdoor area that has been enclosed for the purpose of taking a shower that may be roofed.

**Outlot** means a parcel of land, other than a lot or block, so designated on the plat, but not of standard lot size, which can be either redivided into lots or combined with one (1) or more other adjacent outlots or lots in adjacent subdivisions or minor subdivisions in the future for the purpose of creating buildable lots.

**Outdoor display** means the displaying of goods, merchandise, or products outdoors such that the items are readily available for sale at retail on the same lot and in conjunction within a permanent fully-enclosed building. Under no circumstance shall displayed items be available for purchase at any location other than the designation point of transaction inside the permanent fully-enclosed building.

**Outdoor seasonal sales** mean temporary uses which include Christmas tree, pumpkin sales lots,



fruit, and vegetable stands. This use is designed to recognize outdoor seasonal sales as customarily accepted uses that typically occur during certain times of the year. These regulations are intended to prohibit the uses from negatively impacting the surrounding areas.

**Overhead canopy** means any structure placed over, around or near a fuel pump island or drive-up bank teller facility and intended to provide lighting and/or protection from the elements for fuel pump island or drive-up bank teller facility users.

**Parking facility** means any area, either open or enclosed, structural, or natural, for the storage of a vehicle or vehicles. Each parking facility shall have an approved means of ingress and egress. A parking lot is a subset of a parking facility and is defined in this section.

**Parking lot** means an open area, outside of the public right-of-way, for the storage of a vehicle or vehicles. The term "parking area" shall be included in this definition. Each parking lot shall have an approved means of ingress and egress.

**Parking lot commercial** means a parking lot designed to accommodate two axle transportation vehicles for employees and customers of area businesses.

**Parking space, off-street** means an adequate-sized space for parking a vehicle with room for opening doors on both sides, proper access to streets and adequate maneuvering room.

**Party wall** means a wall containing no opening which extends from the elevation of building footings to the elevation of the outer surface of the roof or above and which separates contiguous buildings but is in joint use of each building.

**Performance guarantee** means any of the following forms of guarantee:

1. Surety bond issued by any company authorized to do business in this State.
2. Letter of credit issued by any financial institution licensed to do business in this State.
3. Other form of guarantee that provides equivalent security to a surety bond or letter of credit. (G.S. 160D-804.1)

**Personal property** means property owned, utilized, and maintained by an individual or members of his residence and acquired in the normal course of living in or maintaining a residence. It does not include merchandise that was purchased for resale or obtained on consignment.

**Personal service establishment** means use types related to the provision of services or product repair for consumers. Personal services use types meet frequent or recurrent service needs of a personal nature, including the repair of small personal items or electronics such as shoes, watches, jewelry, and clothing. Examples include banks, credit unions, print shops, massage therapy and day spas, gymnasiums, fitness centers, photocopy services, photo studio, barber/beauty shops, and tanning and nail salons. Body piercing and tatoo parlors shall not be considered personal service establishments.

**Person aggrieved** means:

1. Persons having an ownership interest in property that is the subject of ~~situations or conditions~~violations;
2. Persons who suffer special damages (distinct from any damage from the remainder of the community):
  - a) Directly and proximately caused by ~~situations and conditions~~violations;
  - b) By virtue of their ownership interest in property adjacent to property that is the subject of ~~situations and conditions~~violations.
  - c) Property is adjacent if it is separated from the subject only by any right-of-way, easement, street, road, alley, or buffer.
3. An incorporated or unincorporated association to which owners or lessees of land and premises or property thereon in a designated area belong by virtue of their owning or leasing said property, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one (1) of the members of the association has an ownership interest in land or premises or a building in the area and is a person aggrieved in the manner of subsections (1) and (2) of this definition, and the association was not created in response to a particular approval, decision, final decision, situations, or conditions.
4. A town officer or official, department, board, or commission.

**Pervious coverage and surfaces** means a slatted deck; the water area of a swimming pool; a surface of number 57 stone, as designated by the American Society for Testing and Materials, laid at least four (4) inches thick over a geotextile fabric; or porous pavement with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour). Alternative materials, not subject to the definition of impervious surface, may be proposed subject to certification of a licensed and certified North Carolina professional engineer of compliance with the hydraulic conductivity standard of 1.41 inches per hour or greater. Such certification shall be in the form of a letter under seal.

**Pet shops and pet supply stores** means a retail sales establishment primarily involved in the sale of domestic animals, such as dogs, cats, fish, birds, and reptiles, excluding exotic animals and farm animals such as horses, goats, sheep, and poultry.

**Planned unit development** means a land development project planned as an entity by means of a unified site plan which permits flexibility in building site, mixtures in building types and land uses, usable open space, and the preservation of significant natural features.

**Planning and development regulation jurisdiction** means the geographic area defined in Part 2 of G.S. 160D within which a city or county may undertake planning and apply the development regulations authorized by G.S. 160D.

**Planning and Zoning Commission** means the board created by the Town Council as authorized by G.S. 160D, (G.S. 160D-200, 160D-202, 160D-903 et seq.).

**Planning Director** means the Town Planning and Zoning Director.

**Post office** means a facility that contains service windows for mailing packages and letters, post office boxes, offices, vehicle storage areas, and sorting and distribution facilities for mail.

**Preliminary plat** means a map showing the salient features of a proposed subdivision submitted to an approving authority for purposes of preliminary consideration.

**Primary dunes** means the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one 1% chance of being equaled or exceeded in any given year) for the area plus six (6) feet. The primary dune extends landward to the lowest elevation in the depression behind the same mound of sand (commonly referred to as the dune trough).

**Principal building or structure** means a building or structure containing the principal use of the lot, including any land area necessitated by the character of the principal use (e.g., outside storage) for its complete operation, excluding off-street parking.

**Principal use** means the primary purpose or function that a lot serves or is intended to serve according to its zoning classification.

**Public notice or public notice of a hearing** means notice of the time and place hereof, generally published once a week for two (2) successive calendar weeks in a newspaper having general circulation in the town.

**Public way** means any public road, street, highway, walkway, drainage, or part thereof.

**Quasi-judicial decision** means 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 (1) or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board.

**Recreation, commercial indoor** means any form of play, amusement or relaxation used for monetary gain conducted within an enclosed structure. Examples include billiards, bowling, theaters, fortune tellers, skating rinks, golf simulation, and coin-operated games. No amusement device shall contain any automatic payoff device for the return of money, trade token, or slug and no provisions whatever shall be made for the return of money to the player. However, this shall not be construed as to prohibit the awarding of free play of the game or device.

**Recreation, commercial outdoor** means any form of play, amusement, or relaxation used for monetary gain not conducted within an enclosed structure. Examples include miniature golf,

golf driving ranges, par-3 golf courses, open air theaters, standard golf courses, miniature racers, go-carts, amusement rides, carnivals, and similar enterprises.

**Recreational vehicle (RV)** means a vehicle for noncommercial, recreational use, including a motor home (including Class A, B and C), travel trailer, camper shell, cab-over-camper, fifth wheel, horse trailer, or trailers mounted with recreational vehicle such as a water craft or off-road vehicle.

**Religious institution** means a church or place of worship or religious assembly with related facilities such as the following in any combination: rectory or convent, meeting hall, offices for administration of the institution, or playground.

**Rental items** means any items for rent that are located on the premises of the principal business that may also sell the same items.

**Repair area** means any area utilized to conduct repairs, or store parts and tools being utilized for repair work.

**Replat** means the process of changing, or the map or plat which changes, the boundaries of a recorded subdivision plat or part thereof. The legal dividing of a large block, lot or outlot within a recorded subdivision plat without changing exterior boundaries of such block, lot, or outlot is not a replat.

**Residential use or district** shall be those uses in the “residential” section of the table of uses. When referring to a zoning district or “district,” it shall be the following zoning districts: R-1, R-1B, R-2, R-3, C, MF, and MH.

**Restaurant.** See eating and/or drinking establishment.

**Retail sales** means use types involved in the sale or lease of new or used products to the general public. Accessory uses may include offices, display of goods, limited assembly, processing, or repackaging of goods for on-site sale. Retail sales does not include the following:

1. Repair and service establishments, including automotive and marine related uses.
2. Bars, taverns, restaurants, wine/beer shop with on-site consumption, and similar eating establishments.
3. Personal service establishments.
4. An establishment that involves the sale, distribution, or presentation of materials, or activities emphasizing sexually explicit content.

**Roominghouse** means a dwelling unit not owner occupied where individual sleeping rooms are rented under separate agreement or lease, either written or oral, regardless [of] whether an agent, or rental manager is in residence.

**Salvage operation** means an establishment for storing, keeping, buying, or selling of junk. "Junk" shall be defined as old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber or discarded, dismantled, or wrecked automobiles, or parts thereof, iron, steel and

other old or scrap ferrous or nonferrous material.

**Sand Dune** means any naturally occurring accumulations of sand in ridges or mounds landward of the beach.

**Schools, commercial for specialized training** means an institution providing instruction and including accessory facilities traditionally associated with professional schools, dance schools, business schools, trade schools, art schools, and similar facilities for the adult population.

**Schools, public and private** means an institution providing full time instruction and including accessory facilities traditionally associated with a program of study for the teaching of children or adults including, preschool, primary and secondary schools, and colleges.

**Self-service storage facility** means any real property designed and used for the purpose of renting or leasing individual storage spaces to tenants who are to have access to such space for the purpose of storing and removing personal property.

**Service station** means buildings and premises where gasoline, oil, grease, batteries, tires, and automobile accessories may be supplied and dispensed at retail. ~~Uses permitted at a service station do not include major mechanical and body work, straightening of body parts, painting, welding, storage of automobiles not in operating condition, or other work involving noise, glare, fumes, smoke, or other characteristics to an extent greater than normally found in service stations. A service station is not a repair garage, body shop, or a trim shop.~~

**Setback**~~Building setback line~~ means a line that establishes the minimum allowable horizontal distance per the dimensional requirements of the zoning district between the lot line and the nearest portion of any structure from 30 inches above the ground level of the graded lot upward ~~on the lot~~. May also be referred to as "building setback line(s)" or "setback line."

1. **Setback, front** means setback measured from the front lot line(s).
2. **Setback, rear** means a setback from an interior lot line lying or rear lot line on the opposite side of the lot from the front setback.
3. **Setback, side** means the side yard setback shall extend from the required front yard setback line(s) to the required rear yard setback line and shall be measured from the side lot line.

**Shopping center/big box** means one (1) or more commercial establishments, containing 25,000 square feet or more of indoor gross floor area on one (1) site. This definition would include malls, a commercial unit or plaza with multiple units, and any community shopping area designed to utilize shared facilities (e.g., parking, signage, landscaping).

**Shorelands** means those lands lying within the following distances: 1,000 feet from the high-water elevation of navigable lakes, ponds, and flowages or 300 feet from the high-water elevation of navigable streams or to the landward side of the floodplain, whichever is greater.

**SIC Manual, Standard Industrial Classification Manual** means a book published by the

federal government that classifies establishments by the type of activity in which they are engaged.

**Sign definitions.** The following words, terms, and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section as it pertains to signage requirements, except where the context clearly indicates a different meaning.

1. **A-frame sign** means a temporary sign typically consisting of two (2) sign faces attached back-to-back by top hinges.
2. **Address number sign.** See Code of Ordinances, chapter 34, article IV property numbering.
3. **Animated sign** means any sign that uses movement or change of lighting to depict action or create a special effect or scene.
4. **Attached sign** means any sign painted on, attached to and erected parallel to the face of, or erected and confined within the limits of, the outside facade of any building and supported by such building facade and which displays an advertising surface. Attached signs may also be located on porch railings and support posts.
5. **Banner sign** means a temporary suspended sign made of a flexible material such as canvas, sailcloth, plastic, or waterproof paper that may or may not be enclosed or partially enclosed on a rigid frame (i.e., feather signs).
6. **Billboard sign** means a sign which advertises a business, product, organization, entertainment, event, person, place, or thing and which is located off-premises from the place of the advertised element(s).
7. **Canopy/awning sign** means any sign consisting of lettering and/or logos applied to an awning, canopy, or other fabric, plastic, or structural protective cover over a door, entrance, window, or outdoor service area.
8. **Commercial sign** means a sign intended to advertise a commercial enterprise.
9. **Directional sign** means a permanent sign displayed strictly for the direction, safety, or convenience of the public, including signs which identify parking areas, entrances, or exits, etc.
10. **Flag, feather** means a vertical portable sign that contains a harpoon-style single pole or staff driven into the ground for support or supported by means of an individual stand.
11. **Flags** means flexible materials such as cloth, paper, plastic, and typically displayed on a flag pole or structure. Windssocks are interpreted to represent permitted flagging.
12. **Flashing sign** means a sign, which contains or uses, for illustration, any lights or lighting devices, which change color, flashes or alternates, shows movement or motion, or changes the appearance of said sign or part thereof automatically on a time interval of less than 20 seconds. Animated fading from one (1) message to another message is permitted within a maximum fading period of two seconds.
13. **Freestanding sign** means a sign supported by structures or supports that are placed on, or anchored in, the ground and that is independent from any building or other structures.
14. **Governmental sign** means a sign provided and erected by a governmental entity which typically promotes:
  - a) The health and safety of the community;
  - b) town-sponsored events;
  - c) A public way finding system; and

- d) Any other town activities as deemed appropriate by the town manager.
15. **Human sign** means costumes or signs worn, held or carried by individuals for the purpose of attracting attention to a commercial site.
  16. **Illegal sign** means any sign that was in violation of the zoning ordinance at the time the sign was originally established.
  17. **Nonconforming sign** means any sign which does not conform to the regulations of this ordinance, but did conform when it was originally permitted.
  18. **Noncommercial sign** means a sign not intended to advertise a commercial enterprise.
  19. **Nonresidential** means any building, structure, or use that is not exclusively a dwelling.
  20. **Obscene** means material which depicts or describes sexual conduct that is objectionable or offensive to accepted standards of decency which the average person, applying contemporary community standards, would find, taken as a whole, appeals to prurient interests or material which depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, which, taken as a whole, lacks serious literary, artistic, political, or scientific value.
  21. **Off-premises parking sign** means a sign used to direct vehicular traffic onto the parking premises where it is displayed for a business or service activities at another location, but cannot impede the line of sight for traffic.
  22. **Permanent sign** means all signs not designated as temporary.
  23. **Portable sign** means a temporary sign attached on support frame without lighting.
  24. **Projecting sign** means a type of attached signage placed at a right angle to the facade of the associated structure.
  25. **Residential development entry sign** means a sign identifying a residential subdivision, multifamily development or traditional neighborhood development, located on site, and at the major entrance points to such a development.
  26. **Roof sign** means any sign erected or constructed upon the roof of any building and supported solely on the roof of the building.
  27. **Sign** means any surface, fabric, device, or display which bears lettered, pictorial, or sculptured matter, including forms shaped to resemble any human, animal, or product, designed to convey information visually and which is exposed to public view.
  28. **Snipe sign** means any sign of any material whatsoever that is attached in any way to a utility pole, tree, street sign, or pole.
  29. **Special event sign** means a sign advertising a special communitywide event such as community fishing tournaments, schools, or civic events, and/or festivals.
  30. **Temporary sign** means any sign that is not permanently affixed, placed, attached, or erected, and may have time limitations.
  31. **Tow truck sign.** See Code of Ordinances, chapter 16, article VII, wrecker/towing services and impoundment.
  32. **Vehicle/trailer sign** means any temporary sign mounted on a vehicle, boat, or trailer and used for advertising or promotional purposes.
  33. **Window/door sign (interior/exterior)** means a sign located within the interior or exterior of the transparent area of any window or door.
  34. **Yard sale sign.** See Code of Ordinances, chapter 14, sections 172 through 174.

**Site Plan** means a plan for proposed development including the criteria as required by this ordinance.

**Site Plan, major** means a plan for proposed development that is comprised of the following:

1. Residential uses of five (5) or more units.
2. New nonresidential (office, commercial, or industrial, etc.) use.;
3. Increase in intensity of the nonresidential development or residential development consisting of five (5) or more existing dwelling units to include any increase in density of units, whether residential, office, commercial, or industrial; an increase in number of off-street parking or loading spaces; or an increase in impervious surface area; or an increase in overall ground coverage by structures; or a reduction in approved open space or screening; or a change in access and internal circulation design.
4. All other development not subject to minor site plan, conditional zoning, subdivision, or special use permit approval.

**Site Plan, minor** means a plan for proposed development that is comprised of the following:

1. Changes of use.
2. Proposals for single-family residential uses and residential structures consisting of four (4) or fewer dwelling units or for renovation/rehabilitation projects that will modify an existing structure's footprint.
3. Accessory structures, construction/installation of fences/walls, piers, docks, decks, stairs, signs, driveways, and/or similar ancillary support items.
4. Increase in intensity or units of residential development consisting of four (4) or fewer existing dwelling units and to include any increase in number of off-street parking or loading spaces; or an increase in impervious surface area; or an increase in overall ground coverage by structures; or a reduction in approved open space or screening; or a change in access and internal circulation design.

**Site-specific vesting plan** means a plan submitted to the town describing with certainty the type and intensity of use for a specific parcel or parcels of property. Such site-specific vesting plan shall be presented to the Town ~~as specified and subject to all provisions of article XVII of this chapter, special use permit approval process~~ Council for approval following a duly held public (legislative) hearing. Such plan may be in the form of, but not be limited to, any of the following plans or approvals: A planned unit development, a subdivision plat, a site plan, ~~a preliminary or general development plan~~, a conditional zoning, ~~a conditional zoning~~ or any other development approval as may be utilized by the town.

**Sleeping unit** means a room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

**Special use** means a use that ~~would not be an appropriate general use in a particular zoning district without restriction or review, but which, if controlled as to number, area, location, or relation to surrounding uses, would promote the public health, safety or general welfare.~~ (See article IX of this chapter for special development standards and article XI of this chapter



~~for special use permit process.)~~ is subject to the quasi-judicial hearing process as required by this ordinance.

**Special use permit** means a permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence ~~establishing compliance with one or more general standards~~ in accordance with the quasi-judicial decision making process.

**Standing** means the following:

1. Any person possessing any of the following criteria:
  - a) An ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.
  - b) An option or contract to purchase the property that is the subject of the decision being appealed.
  - c) An applicant before the decision-making board whose decision is being appealed.
2. Any other person who will suffer special damages as a result of the decision being appealed.
3. An incorporated or unincorporated association to which owners of lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one (1) of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.
4. A local government whose decision-making board has made a decision that the governing board believes improperly grants a variance from or is otherwise inconsistent with the proper interpretation of a development regulation adopted by the governing board.

**Story** means that portion of a building between the surface of any floor and the floor or roof above it. The following are considered stories:

1. Mezzanine: If it exceeds 25% of the total floor area of the story immediately below it;
2. Penthouse: If it exceeds 25% of the total area of the roof;
3. Basement: See definition of basement.

**Story, half,** means a story which is situated in a sloping roof, the floor area of which does not exceed two-thirds of the floor area of the story immediately below it, and which does not contain an independent dwelling unit.

**Street** includes the term "alley," "road," "avenue," "lane," "cul-de-sac," "highway," or "thoroughfare," whether designated as public or private.

**Street classifications.** Determined in accordance with the following definitions and the thoroughfare plan/comprehensive transportation plan for the town on file with the **Zoning UDO** Administrator.

1. **Major thoroughfare:** Their primary function is movement. Access should be permitted to the extent that movement is not compromised and appropriate spacing and design criteria are employed. These streets should move large volumes of traffic a relatively long distance at relatively high speeds. Major thoroughfares are identified in the thoroughfare plan for the town.
2. **Collector streets:** Collector streets are used to carry moderate amounts of traffic volume and provide limited access to adjacent properties. Their function is to collect and distribute traffic to and from local and arterial streets. Collector streets are identified in the thoroughfare plan for the town.
3. **Local streets:** Those streets that are used for low volume, slow speed traffic movements. Their function is to provide direct access (termination) to properties.

**Street line** means a dividing line between the street and the lot, as established by the town; also called the "right-of-way" line.

**Street types.**

1. **Private street** means a right-of-way for vehicular traffic that is constructed to acceptable public street standards for the town and dedicated for use by a select portion of the public. The responsibility for the maintenance of a private street shall be by an established owners association or other private property owner legal agreements.
2. **Public street** means a right-of-way for vehicular traffic dedicated and accepted by the state department of transportation or the town for public use.

**Structure** means anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Structures include buildings, manufactured homes, walls, fences, signs and billboards, swimming pools, and other similar type uses.

**Structure, open shed,** means any structure that has no enclosing walls.

**Structure, shed,** means any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind that has enclosing walls for less than 50% of its perimeter.

**Subdivider** means any person, firm, or corporation, or any agent thereof, dividing or proposing to divide land resulting in a subdivision, minor subdivision, or replat.

**Subdivision, Major** means the division of a tract of land into six (6) or more lots.

**Subdivision, Minor** means the division of a tract of land into five (5) or fewer lots, regardless of right-of-way dedication or utility extension.

**Subdivision, Minor Expedited** means the division of one (1) existing parcel of land under single ownership that is not exempt per G.S. 160D-802(a); one (1) where no part of the tract or parcel to be divided has been divided in the 10 years prior to the proposed division; two (2) the entire area of the tract or parcel to be divided is greater than five (5) acres; three (3) after division, no more than three (3) lots result from the division and all resultant lots comply with all lot dimension size requirements of the applicable zoning district and the use of the lots is in conformity with the applicable zoning district; and (4) a permanent means of ingress and egress is recorded for each.

**Subdivision** means and includes all divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions when any one (1) or more of those divisions is created 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; provided, however, that the following shall not be included within this definition nor be subject to the regulations prescribed by this ordinance:

- A. 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 contained herein;
- B. The divisions of land into parcels greater than 10 acres where no street right-of-way dedication is involved;
- C. The public acquisition by purchase of strips of land for the widening or openings of streets or for public transportation system corridors;
- D. The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of this ordinance.
- E. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.
- F. The town may provide for expedited review of specified classes of subdivisions as specified in ~~section 36-74~~ Article 2.

**Swimming pools, private**, means any swimming pool operated in conjunction with a residential dwelling unit ~~single-family residential unit~~, the use of which is limited to occupants of that residence and their invitees. Aboveground private swimming pools which are portable and temporary in nature and which do not incorporate decking or other similar permanent structure are exempt from this definition and the rules/regulations governing such structures ~~(G.S. 130A-280—130A-282)~~. For the purposes of this ordinance, hot tubs shall be included in the definition of private swimming pools.

**Swimming pools, public**, means any swimming pool operated other than a private swimming pool or as a therapeutic pool used in physical therapy programs operated by medical facilities licensed by the department of human resources or operated by a licensed physical therapist, or to therapeutic chambers drained, cleaned and refilled after each individual use. The term "public swimming pool" means any structure, chamber, or tank containing an artificial body of water used by the public for swimming, diving, wading, recreation, or therapy, together with buildings, appurtenances, and equipment used in connection with the

body of water, regardless of whether a fee is charged for its use. The term includes but is not limited to, municipal, school, hotel, motel, apartment, multifamily, boardinghouse, athletic club, or other membership facility pools and spas (G.S. 130A-280—130A-282).

**Tattooing** means the inserting of permanent markings or coloration, or the producing of scars, upon or under human skin through puncturing by use of a needle or any other method.

**Tattoo studio** means an establishment where tattooing services are provided.

**Technical review committee** means a committee to facilitate communication and coordination between departments responsible for development review which may include, but not necessarily be limited to, the following individuals/departments: UDO Administrator, building inspector, town manager, fire department, police department, public works department, Division of Coastal Management, NC Department of Environmental Quality, NC Department of Public Safety, and/or US Army Corp of Engineers ~~made up of the staff of various local, state and federal agencies involved in the review of development proposals. Representatives of town departments and other government agencies may include but not be limited to: Planning/development department, public works, fire department, building inspections, police department, the state department of transportation, the United States Army Corps of Engineers, and the state division of coastal management.~~

**Telephone communication facility, unattended**, means a windowless structure containing electronic telephone equipment that does not require regular employee attendance for operating.

**Temporary health care structure** means a transportable residential structure, providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person. The following terms shall apply under temporary family health care regulations:

1. Activities of daily living. Bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting, and eating.
2. Caregiver. An individual 18 years of age or older who (i) provides care for a mentally or physically impaired person and (ii) is a first or second degree relative of the mentally or physically impaired person for whom the individual is caring.
3. First or second degree relative. A spouse, lineal ascendant, lineal descendant, sibling, uncle, aunt, nephew, or niece and includes half, step, and in-law relationships.
4. Mentally or physically impaired person. A person who is a resident of this state and who requires assistance with two or more activities of daily living as certified in writing, by a physician licensed to practice in this state.

**Temporary storage containers** means any container intended for storing or keeping household goods, other personal property or business related goods that is intended to be filled, refilled, or emptied while located outdoors and later removed from the property for storage or disposal off-site.

**Tennis courts, commercial** means a commercial facility for the playing of tennis at which

there is a clubhouse including restrooms. A tennis facility may provide additional services customarily furnished by a club, such as swimming, outdoor recreation, and related retail sales.

**Tower** means a structure that is designed to support (i.e., electrical wires), contain (i.e., water), receive or send communications (i.e., television, radio, telephone), normally at a commercial, industrial, institutional, or other significant scale or magnitude.

**Towing service, automotive or truck**, means a ~~commercial enterprise, business or company~~ major automotive use established to tow or remove motor vehicles from one (1) location to another. A towing service includes the temporary storage of motor vehicles at its site, but under no circumstances shall any motor vehicle remain on the premises of a towing service for more than 24 hours unless stored within an enclosed structure or the tow service is located in an industrial district. Such services shall comply with all ordinances of the town.

**Town Council** means the Mayor and members of the governing body of the town.

**Trellis** means a structure usually consisting of parallel rows of piles supporting an open roof of girders and cross rafters.

**UDO Zoning Administrator** means the Town of Carolina Beach ~~officer~~ official or other designated authority charged with the administration of this ~~chapter~~ ordinance, or his duly authorized representative or agent. Such official shall be designated by the town manager. It is the intention of this ordinance that all questions arising in connection with enforcement and interpretation shall be presented first to the UDO Administrator and/or designated agent. Appeal of his/her decision may be made to the Board of Adjustment.

**Utilities** means all utilities including, but not limited to, transmission lines, telephone repeater stations, relay stations, water supply reservoirs, wells, filter beds, sewage treatment plants, pumping stations, electric power and gas substations, service or storage yards. Private utilities shall consist of any transmission lines, infrastructure, stations, or buildings not owned or maintained by the town.

**Variance** means a relaxation of the terms of this ordinance ~~where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of such actions of the applicant, a literal enforcement of this chapter would result in unnecessary and undue hardship. A variance is authorized only for height, area and size of structure or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.~~ in accordance with the statutory requirements of G.S. 160D-705(d).

**Vehicle** means any of the following:

1. **Commercial vehicle** means a vehicle designed, maintained, or used primarily for the transportation of merchandise or materials used in a business.
2. **Motor vehicle** means all machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

~~**Vehicle sales lots** means any structure, operation or use of land for the display, selling or rental of motor vehicles (new or used), mobile (manufactured) homes, campers, travel trailers, boats, jet skis or other like vehicles consisting of three (3) or more vehicles per establishment. (See article IX of this chapter for special conditions for vehicle sales lots, sales offices and other related accessory structures.)~~

**Vested right** means the right to undertake and complete the development and use of property under the terms and conditions of an approved site-specific vesting plan.

**Vision clearance.** In order to maintain an acceptable and safe line of sight for motor vehicle drivers, no parking spaces, fences, walls, posts, signs, lights, shrubs, trees or other type of obstructions not specifically exempted shall be permitted in the space between 30 inches above ground level and 10 feet above ground level within a sight distance triangle. A sight distance triangle shall be the visually unobstructed area of a street/driveway corner as determined by measuring a distance of 30 feet along the intersecting curb lines, or edges of pavement of the intersecting street/driveway if curbs are not present, and connecting the two (2) points by a straight line to form a triangular shaped area over the corner. ~~One (1) support post not to exceed five (5) square feet may be utilized in the sight triangle to support the cantilever floors above.~~

**Warehouse** means a building where wares, or goods, are stored, as before distribution to retailers, or are kept in reserve, in bond, etc.

**Warehouse, mini storage,** means a building or group of building in varying sizes of individual compartmentalized, and controlled access stalls or lockers for dead storage of customer's goods or wares. See also self-service storage.

**Water oriented businesses** means any boat that can be rented for off-site use or offers off-site activities from the property. Examples shall include but not be limited to the following uses or activities: charter boats, boat rentals, dive boats, dinner cruises, boat taxi, etc.

**Wholesale sales** means an establishment or place of business primarily engaged in selling and/or distributing merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

**Wireless definitions.** For purposes of ~~this article~~ wireless regulations, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words [used] in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

1. **Abandonment** means cessation of use of a wireless support structure for wireless telecommunications activity for at least the minimum period of time specified under this ordinance.
2. **Accessory equipment** means any equipment serving or being used in conjunction with a wireless facility or wireless support structure. The term "accessory

equipment" includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets, and storage sheds, shelters, or similar structures.

3. **Antenna** means communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.
4. **Base station** means a station at a specific site authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics.
5. **Carrier on wheels or cell on wheels (COW)** means a portable self-contained wireless facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.
6. **Collocation** means the placement or installation of wireless facilities on existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes.
7. **Concealed wireless facility** means any wireless facility that is integrated as an architectural feature of an existing structure, or any new wireless support structure designed to camouflage or conceal the presence of antennas or towers so that the purpose of the facility or wireless support structure is not readily apparent to a casual observer.
8. **Electrical transmission tower** means an electrical transmission structure used to support high voltage overhead power lines. The term "electrical transmission tower" shall not include any utility pole.
9. **Eligible facilities request** means a request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification. This includes a small wireless facility.
10. **Equipment compound** means an area surrounding or near the base of a wireless support structure within which are located wireless facilities.
11. **Existing structure** means a wireless support structure, erected prior to the application for an eligible facilities request, collocation, or substantial modification under this ordinance, that is capable of supporting the attachment of wireless facilities. The term "existing structure" includes, but is not limited to, electrical transmission towers, buildings, and water towers. The term "existing structure" shall not include any utility pole.
12. **Fall zone** means the area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.
13. **Micro wireless facility** means a small wireless facility that is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.
14. **Monopole** means a single, freestanding pole-type structure supporting one (1) or more antennas. For the purposes of this ordinance, a monopole is not a tower or a utility pole.
15. **Ordinary maintenance** means ensuring that wireless facilities and wireless support structures are kept in good operating condition.
  - a) The term "ordinary maintenance" includes:

- i) Inspections, testing, and modifications that maintain functional capacity and structural integrity (e.g., the strengthening of a wireless support structure's foundation or of the wireless support structure itself).
    - ii) Replacing antennas of a similar size, weight, shape, and color, and accessory equipment within an existing equipment compound and relocating the antennas to different height levels on an existing monopole or tower upon which they are currently located.
  - b) The term "ordinary maintenance" does not include substantial modifications.
- 16. **Replacement pole** means a pole of equal proportions and of equal height or such other height that would not constitute a substantial modification to an existing structure in order to support wireless facilities or to accommodate collocation. Requires removal of the wireless support structure it replaces.
- 17. **Small wireless facility** means a wireless facility that meets both of the following qualifications:
  - a) Each antenna is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than six (6) cubic feet.
  - b) All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For purposes of this sub-subdivision, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, or other support structures.
- 18. **Substantial modification** means the mounting of a proposed wireless facility or wireless facilities on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one (1) or more of the following criteria:
  - a) Increases the existing vertical height of the wireless support structure by more than 10 percent, or the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater;
  - b) Adds an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure more than 20 feet, or more than the width of the wireless support structure at the level of the appurtenance, whichever is greater (except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable);
  - c) Increases the square footage of the existing equipment compound by more than 2,500 square feet.
- 19. **Tower** means a lattice-type structure, guyed or freestanding, that supports one (1) or more antennas.
- 20. **Utility pole** means a structure owned and/or operated by a public utility,



municipality, electric membership corporation or rural electric cooperative that is designed specifically for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

21. **Water tower** means a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.
22. **Wireless facility or wireless facilities** means the set of equipment and network components, exclusive of the underlying wireless support structure, including, but not limited to, antennas, accessory equipment, transmitters, receivers, base stations, power supplies, cabling, and associated equipment necessary to provide wireless telecommunications services.
23. **Wireless support structure** means a freestanding structure, such as a monopole or tower, designed to support wireless facilities. This definition does not include utility poles.

**Violation** means a breach, infringement, or transgression of any law, requirement in this ordinance or other land development provisions, or failure to comply with any approval procedures or permission as specified by this ordinance. The town may invoke enforcement procedures as specified in this ordinance in response to violations. Violations do not include matters that state or federal law expressly prohibit the town from regulating.

~~Situations and conditions means any forms of unlawful situations, conditions, uses and matters that come within the scope of those matters set forth in G.S. 160A-175, 160A-193 and 160A-200.1; everything dangerous or prejudicial to the public health or public safety that can be determined by an official to be a public nuisance; unlawful situations, conditions, or uses of premises, land, buildings or structures of any type; violation(s) of an approval; violation(s) of any or all provisions, conditions and requirements of this chapter or approvals; failure(s) to comply with any or all provisions, conditions and requirements of this appendix or approval; failures to comply with any decision or any order; and omission(s) in any way contrary to any provisions, conditions and requirements of this chapter, or approval, or decision or order.~~

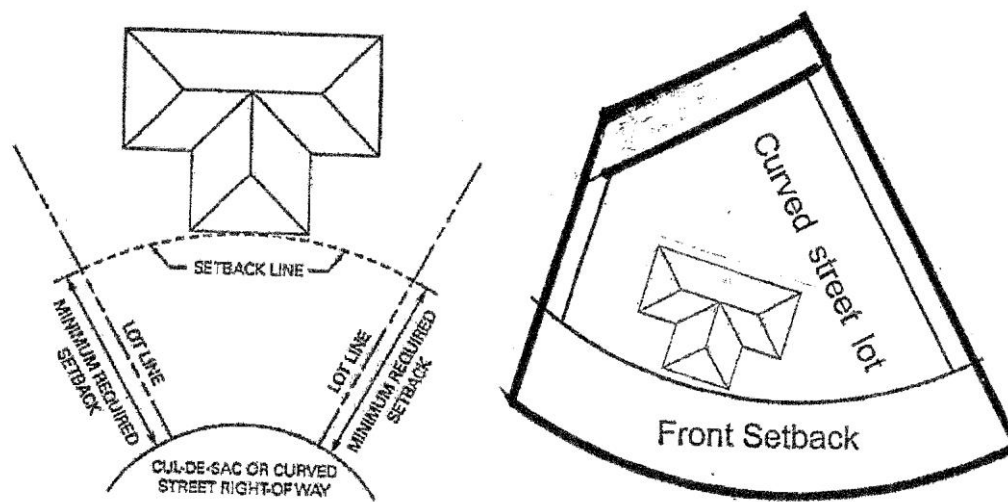
**Yard** means a required open space unoccupied ~~and obstructed~~ by any structure or portion of a structure from 30 inches above the ground level of the graded lot upward; provided, however, that fences, walls, poles, posts, and other customary yard accessories, ornaments and furniture may be permitted in any yard. Yards are established as a result of front, rear, and side setbacks as provided below.

1. **Yard, front** means the area between side lot lines across the front of a lot adjoining a street as required by the minimum front setback. Depth of a required front yard shall be measured at right angles to a straight line joining the foremost points of the side lot lines, but in no case need it be greater than the setback of the zoning district. The foremost point of the side lot line, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without such rounding. Front and rear yard lines shall be parallel.
2. **Yard, rear** means the area between the side lot lines across the rear of the lot as required by the minimum rear setback. Through lots have no rear yard,

only front and side yards.

3. **Yard, side** means the area extending from the rear line of the required front yard line to the foremost lines of the rear yard as required by the minimum rear setback. In absence of a clearly defined rear yard, as in the case of a through lot, any portion of the lot not designated as a front yard shall be a side yard. The side yard requirements for dwellings shall be waived where dwellings are erected above stores or shops not otherwise required to have side yards.

**Figure 2** The figure below illustrates locations and methods of measuring yards on rectangular and nonrectangular lots. In each of the examples shown, the street frontage is to the bottom of the diagram.



**Yard Sale** means the sporadic and infrequent sale of used personal items within residential areas. Such sales shall be temporary and limited to not more than twice per calendar year per property.

**Zero lot line** means a development concept for residential subdivisions that allows the placement of single-family dwelling units on or near the side lot lines. Any wall, constructed on the side or rear lot line shall be a solid doorless and windowless wall. Such wall shall contain no electrical, mechanical, heating, air conditioning, or other fixtures that project beyond such wall. Roof eaves may encroach two (2) feet into the adjoining lot. A three (3) foot maintenance and access easement with a maximum eave encroachment easement of two (2) feet within the maintenance easement shall be established on the adjoining lot and shall assure access to the lot line wall at reasonable periods of the day for normal maintenance. Where zero (0) side or rear setbacks are proposed, the buildable area for each lot shall be indicated on the preliminary and final subdivision plat. Zero lot lines shall not be allowed on any perimeter boundary line or lot line. ~~In zero lot line developments, which are allowed by special use permit only, dwelling units can be placed no closer than three (3) feet~~

~~from the nearest side lot line unless a maintenance easement is provided that will allow a minimum of three (3) feet of space along said lot line for structure maintenance purposes. Regardless, the total side yard setback footage required for the two side yards in a zero lot line building placement must equal the total setback footage for the two (2) side yards required under a conventional building placement.~~

DRAFT

## Appendix A: Submission Requirements

### A.1 CERTIFICATES REQUIRED

Plats submitted to the Town of Carolina Beach shall include the required certificates in accordance with Table A.1 where marked by an “x”.

Table A.1 Required Certificates				
Certificate	Exempt Division Plat	Expedited Minor Final Plat	Major Preliminary Plat	Major/Minor Final
Certificate of Ownership and Dedication (A)				x
Certificate of Survey and Accuracy (B)	x	x	x	x
Certification of Planning and Zoning Commission Approval (C)			x	
Certificate of Approval of the Design and Installation of Streets, Utilities, and Other Required Improvements (D)				x
Certification of Septic and Water Supplies (E)	x	x		x
Certificate of Disclosure; 404 Wetlands (F)	x	x		x
Certificate of Disclosure; Town of Carolina Beach Floodplain Management Regulations (G)	x	x		x
Acknowledgment of Compliance (Private Developments) (H)		x		x
Certificate of Purpose of Plat (I)	x	x	x	x
Certificate of Approval for Recording (J)	x	x		x
Townhome (K)				x

#### A. Certificate of Ownership and Dedication

I hereby certify that I am the owner of the property shown and described hereon and that I adopt this plan of subdivision with my free consent, establish minimum building setback lines, and dedicate all streets, alleys, walks, parks, and other sites and easements to public or private use as noted. Furthermore, I dedicate all public sewer lines and all water lines to the Town of Carolina Beach, if applicable.

\_\_\_\_\_  
 Owner (s)

\_\_\_\_\_  
 Date

B. Certificate of Survey and Accuracy.

In accordance with NCGS 47-30: There shall appear on each plat a certificate by the person under whose supervision such survey or such plat was made, stating the origin of the information shown on the plat, including recorded deed and plat references shown thereon. The ratio of precision as calculated by latitudes and departures before any adjustments must be shown. Any lines on the plat that were not actually surveyed must be clearly indicated and a statement included revealing the source of information. The execution of such certificate shall be acknowledged before any officer authorized to take acknowledgments by the registered land surveyor preparing the plat. All plats to be recorded shall be probated as required by law for the registration of deeds. Where a plat consists of more than one (1) sheet, only the first sheet must contain the certification and all subsequent sheets must be signed and sealed.

The certificate shall include the source of information for the survey and data indicating the accuracy of closure of the plat before adjustments, and shall be in substantially the following form:

I, \_\_\_\_\_, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book\_\_\_\_, Page\_\_\_\_, etc.) (other); that the boundaries not surveyed are clearly indicated as drawn from information found in Book\_\_\_\_, Page\_\_\_\_; that the ratio of precision as calculated is 1:\_\_\_\_\_; that this plat was prepared in accordance with NCGS 47-30 as amended. Witness my original signature, registration number and seal this \_\_\_\_ day of \_\_, A.D. 20\_\_.

\_\_\_\_\_  
Surveyor or Engineer

Seal or Stamp

\_\_\_\_\_  
Registration Number

C. Certification of Approval of the Preliminary Plat by the Planning and Zoning Commission

The Town of Carolina Beach Planning and Zoning Commission hereby approves the preliminary plat of \_\_\_\_\_ Subdivision.

\_\_\_\_\_  
Chairperson, Planning and Zoning Commission

\_\_\_\_\_  
Date

D. Certificate of approval of the design and installation of streets, utilities, and other required improvements, if applicable, to be signed by owner and town:

I hereby certify that all streets, utilities, and other required improvements have been installed in an acceptable manner and according to town specifications and standards in the

\_\_\_\_\_ subdivision or that a guarantee of the installation of the required improvements in an amount and manner satisfactory to the Town of Carolina Beach has been received.

Developer or Authorized Agent Signature(s)	Date
Professional Engineer(s) [seal included]	Date
Director of Operations	Date

- E. Certification of Suitability for Septic Tank Systems and Water Supplies, if applicable, to be signed by appropriate authority/representative:

I hereby certify that this subdivision, entitled \_\_\_\_\_, is generally suitable for individual septic tank systems and individual water supplies. However, this certification does not constitute "blanket issued subject to the approval of each individual lot by the New Hanover County Health Department and the issuance of an improvements permit for each lot as required by the General Statutes of North Carolina." Any artificial drainage measures installed or proposed for installation in this subdivision to control water table must be properly maintained. Lots must be properly landscaped to control surface water in order to decrease the changes in septic tank system malfunctions.

New Hanover County Heath Director or Licensed Soil Scientist	Date
--	------

- F. Certificate of Disclosure, 404 Wetlands, if applicable, to be signed by owner:

This tract is not subject to 404 wetlands.

Owner's Signature	Date
-------------------	------

- Or -

Wetlands Caution: Prospective buyers are cautioned that portions of the lots shown on this plat are restricted in use by wetlands and waters jurisdiction pursuant to the US Army Corps of Engineers Section 404 regulations. Individual lot reviews to ensure compliance with their Federal laws and regulations are encouraged. Verification of location and restrictions should be made prior to individual lot development.

Owner's Signature	Date
-------------------	------

- G. Certificate of Disclosure, Town of Carolina Beach Floodplain Management Regulations, if applicable, to be signed by owner:

I (we) hereby certify that prior to entering any agreement or any conveyance with a prospective

buyer, I (we) shall prepare and sign, and the buyer of the subject real estate shall receive and sign a statement which fully and accurately discloses that the subject real estate, or a portion of the subject real estate, is located within a flood hazard area and that the buyer must satisfy the requirements of Town of Carolina Beach floodplain management regulations prior to the issuance of building permits.

\_\_\_\_\_  
Owner's Signature

\_\_\_\_\_  
Date

H. Acknowledgment of Compliance (Private Developments), if applicable, to be signed by owner:

I, \_\_\_\_\_, (name of developer and/or seller) hereby certify that the streets, parks, open space, or other areas delineated hereon and dedicated to private use, and all maintenance and upkeep of private facilities, including traffic marking and control devices, shall not be the responsibility of the public or the municipality, acting on behalf of the public, to maintain. Furthermore, prior to entering any agreement or any conveyance with any prospective buyer, I shall prepare and sign, and the buyer of the subject real estate shall receive and sign, an acknowledgment of receipt of a disclosure statement. The disclosure statement shall fully and completely disclose the private areas and include an examination of the consequences and responsibility as to the maintenance of the private areas, and shall fully and accurately disclose the party or parties upon whom the responsibility for construction and maintenance of such private areas shall rest.

\_\_\_\_\_  
Signature of Developer and/or Seller

\_\_\_\_\_  
Date

I. Certificate of Purpose of Plat. Notwithstanding any other provision contained in this section, it is the duty of the surveyor, by a certificate on the face of the plat, to certify to one of the following:

- 1) This survey creates a subdivision of land within the area of a county or municipality that has an ordinance that regulates parcels of land;
- 2) This survey is of an existing parcel or parcels of land and does not create a new road or change an existing road;
- 3) This survey is of any existing building, or other structure, or natural feature, such as a water course;
- 4) This survey is a control survey;
- 5) That the survey is of another category, such as the recombination of existing parcels, a court-ordered survey, or other exception to the definition of a subdivision; or
- 6) That the information available to the surveyor is such that the surveyor is unable to make a determination to the best of his or her professional ability as to provisions contained in items (1) through (6) above.

*Note: Certain activities may be eligible for an exemption/waiver from the subdivision standards. If the activity being submitted meets one of the activities eligible for an exemption/waiver, item 5 above*

*should be the selected certification.*

J. Certificate of Approval for Recording.

I hereby certify that the subdivision plat shown hereon has been found to comply with the Subdivision Regulations of the Town of Carolina Beach, North Carolina, and that this plat has been approved by an authorized representative of the Town of Carolina Beach for recording in the Office of the Register of Deeds of New Hanover County.

\_\_\_\_\_  
UDO Administrator

\_\_\_\_\_  
Date

Seal or Stamp

K. Certificate of Approval for Townhome.

I HEREBY CERTIFY THAT THE TOWNHOME PLAT OF A TWO-UNIT TOWNHOUSE SHOWN HEREON HAS BEEN FOUND TO COMPLY WITH THE REGULATIONS FOR THE TOWN OF CAROLINA BEACH, NORTH CAROLINA, AND HAS BEEN APPROVED BY THE DIRECTOR OF PLANNING AND DEVELOPMENT FOR RECORDING IN THE OFFICE OF THE REGISTER OF DEEDS OF NEW HANOVER COUNTY. THE TOWN OF CAROLINA BEACH HAS ACCEPTED THE DEDICATION OF STREETS, EASEMENTS AND PUBLIC PARKS, RIGHT-OF-WAY, OR OTHER LANDS SHOWN HEREON.

\_\_\_\_\_  
UDO Administrator

\_\_\_\_\_  
Date

Seal or Stamp





## AGENDA ITEM COVERSHEET

**PREPARED BY:** Gloria Abbotts, Sr. Planner

**DEPARTMENT:** Planning &  
Development

**MEETING:** Town Council July 9, 2024

**SUBJECT:** Text Amendment to Chapter 40 Art. III. Zoning District Regulations, Art. V. Off-street Parking and Loading Requirements; Parking, and Art. IX. Development Standards for Particular Uses to amend standards for Wine and Beer Shops.

Applicant: Town of Carolina Beach

### **BACKGROUND:**

Town Council adopted a text amendment in April of this year to allow for Wine Shops and Beer Shops with on-premise alcohol sales as a use in the Marina Business (MB) District by right. However, upon recognizing the unintended consequences, there was a need to reevaluate the ordinance change. Previously, Wine and Beer shops were limited to retail and off-premise sales only, until an amendment in April 2023 permitted on-premise sales after an amendment was proposed by a private business.

### **Proposal:**

Wine and Beer Shops (on-premise) are currently allowed by right in the CBD, HB, and NB, MB districts. This text amendment proposes to return the wine and beer shop ordinance to the standards that were in place in April of 2023. Upon further research, the approved allowance expands the way the town has treated alcohol permits with establishments being permitted by right for wine and beer and undermines the bar regulations.

### **Wine Shop:**

The proposed ordinance permits Wine Shops (on-premise) in the CBD, HB, and NB zoning districts, in alignment with ABC regulations. These establishments can sell unfortified wine for on-premise consumption, not exceeding 40% of total sales in any 30-day period, subject to ABC audit.

### **Beer Shop:**

Beer shops need to obtain an On-Premises Malt Beverage Permit to allow for the retail sale of malt beverages for consumption on and off premise without any limitation or percentages to off-premise sales. The existing ordinance allowed for Beer Shops to be permitted by right in the MB

District and undermined the bar and tavern requirements by allowing on-premises beer sales without conditional zoning. Beer shops are only permitted in NB. To reduce the impacts from the use of adjoining properties, restrictions were adopted for any outdoor or indoor areas to be setback from an adjacent property line or residential use.

The text amendment adopted in April 2023 consisted of defining both uses. Beer Shops are defined as an establishment substantially engaged in retail sale of malt beverages on and off premises subject to the ABC Commission regulations. Wine Shops are defined as an establishment substantially engaged in retail sale of unfortified wine and fortified wine for consumption on and off premises subject to the NC ABC Commission regulations.

### **Parking**

When the amendment was adopted in April 2023 Wine and Beer Shops were categorized under eating and drinking establishments. Under the existing ordinance all wine and beer shops were considered retail. This is important because the change of use would trigger a different parking standard. Parking for retail is calculated at 1 parking space per 200 sq. ft. of retail space. Parking for eating and drinking establishments is calculated at 1 space per 110 sq. ft.

### **Land Use Plan:**

While the Land Use Plan doesn't explicitly address wine and beer shops, the proposed amendment aligns with the plan's goals of fostering a healthy year-round economy and maintaining a family-friendly community.

### **ACTION REQUESTED:**

Consider recommending approval or denial of the text amendment.

Planning and Zoning recommended unanimous approval.

### **MOTION:**

Approval – to amend text amendment to Chapter 40 Art. III. Zoning District Regulations, Art. V. Off-street Parking and Loading Requirements; Parking, and Art. IX. Development Standards for Particular Uses to amend standards for Wine and Beer Shops.

Denial – to amend text amendment to Chapter 40 Art. III. Zoning District Regulations, Art. V. Off-street Parking and Loading Requirements; Parking, and Art. IX. Development Standards for Particular Uses to amend standards for Wine and Beer Shops.

# Ordinance 24-1228

Town of Carolina Beach  
Town Council



AN ORDINANCE TO AMEND CHAPTER 40 ARTICLE III Sec. 40-72, Article V Sec 40-150 and Article IX Sec. 40-261

## Sec. 40-150. Off-street parking standards.

(d) *Off-street parking space schedule.*

Types of Uses	Number of Required Parking Spaces
<b>Business uses</b>	
<del>Wine and Beer Shops (Retail/off-on premise)</del>	<del>1 per 200 sq. ft. (indoor and outdoor gross floor area)</del>

## Sec. 40-72. Table of permissible uses.

USES OF LAND	R-1	R-1B	R-2	R-3	C	MH	MF	MX	CBD	NB	HB	MB-1	T-1	1-1
Wine and beer shops (Retail/Off- <del>On</del> premise)									P	<u>P</u>	P	<u>P</u>		
<u>Wine Shop (On-premise)</u>									<u>P</u>	<u>P</u>	<u>P</u>			
<u>Beer Shop (On-premise)</u>										<u>P</u>				

## Sec. 40-261. Development standards for particular uses.

(o) *Eating and/or drinking establishments*

Town of Carolina Beach  
Ordinance No. 24-1228

# Ordinance 24-1228

Town of Carolina Beach  
Town Council

(4) Standards for wine shops (on-premise):

a. All wine shops shall meet all requirements of the ABC Permit.

(5) Standards for beer shops (on-premise):

a. All beer shops shall meet all requirements of the ABC Permit.

b. Any indoor or outdoor areas shall be located three times the minimum setback yard ~~from any residential~~ for the district from any lot line and/or any residential use. The additional setbacks shall not apply to property lines adjacent to the right-of-way.

Be it ordained by the Town Council of the Town of Carolina Beach. Adopted this day of July 9, 2024.

TOWN OF CAROLINA BEACH

\_\_\_\_\_  
Albert L. Barbee, Mayor

ATTEST:

\_\_\_\_\_  
Kimberlee Ward, Town Clerk



# Text Amendment for Wine Shops & Beer Shops

1. Amend Chapter 40 Sec 40-72 – Permitted Use Table
2. Amend Chapter 40 Sec 40-261 – Amend the development standards for the uses.
3. Amend Chapter 40 Art. V. Off-street Parking and Loading Requirements

Applicant: Town of Carolina Beach

# Background

- Council adopted text amendment in April 2024 to allow for Wine Shops and Beer Shops with on-premise alcohol sales as a use by right in MB
- Reevaluate the change due to recognizing unintended consequences

# 1. Amend Chapter 40 Sec 40-72 – Table of uses

USES OF LAND	R-1	R-1B	R-2	R-3	C	MH	MF	MX	CBD	NB	HB	MB-1	T-1	I-1
Wine and beer shops (Retail/Off- <del>On</del> premise)									P	P	P	P		
<u>Wine Shop (On-premise)</u>									<u>P</u>	<u>P</u>	<u>P</u>			
<u>Beer Shop (On-premise)</u>										<u>P</u>				

The current ordinance allows for wine shops and beer shops, on and off premise by right in CBD, HB, NB, and MB

## 2. Amend Chapter 40 Sec 40-261

### Sec. 40-261. Development standards for particular uses.

#### (o) *Eating and/or drinking establishments*

##### (4) Standards for wine shops (on-premise):

- a. All wine shops shall meet all requirements of the ABC Permit.

##### (5) Standards for beer shops (on-premise):

- a. All beer shops shall meet all requirements of the ABC Permit.
- b. Any indoor or outdoor areas shall be located three times the minimum setback yard ~~from~~ **any residential** for the district from any lot line and/or any residential use. The additional setbacks shall not apply to property lines adjacent to the right-of-way.



### 3. Sec. 40-150. Off-street parking standards.

Proposed

Types of Uses	Number of Required Parking Spaces
<b>Business uses</b>	
<del>Wine and Beer Shops (Retail/Off-On premise)</del>	<del>1 per 200 sq. ft.</del>

Existing

Types of Uses	Number of Required Parking Spaces
Eating and/or drinking establishments	1 per 110 square feet of indoor gross floor area (GFA)

**Land Use Plan Consistency**

The Land Use Plan does not specifically address wine and beer shops. General Conformity with the Land Use Plan by promoting a healthy year-round economy.



# Motion

## Approval

- The Council, Whereas in accordance with the provisions of the NCGS, does hereby find and determine that the adoption of the following ordinance amendment to Amend Chapter 40, Art. III. – Zoning District Regulations, Art. IX. – Development Standards for Particular Uses, and Art. V. Off-street parking and loading requirements for Wine Shops and Beer Shops is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans or
- Denial - based on inconsistencies with the goals and objectives of the adopted Land Use Plan and/or other long-range planning documents.
- Further Direction/Discussion

Staff recommends approval of the text amendment as proposed.



# Definitions

Beer Shop means an establishment substantially engaged in retail sale of malt beverages on and off premises subject to the ABC Commission regulations.

Wine Shop means an establishment substantially engaged in retail sale of unfortified wine and fortified wine for consumption on and off premises subject to the NC ABC Commission regulations.



# ABC permit requirements

## Wine shop

- Wine Shop Permit
- Retail sales on and off-premise
- Sale of wine for consumption on premise cannot exceed 40% of the establishment's total sale for 30 days

## Beer shop

- On-premise Malt Beverage Permit
- Retail sales on and off-premise
- No limitation or percentage to off-premise sales

Wine Shops – Limited 40% on premise consumption.

Beer Shops – By permitting by right in other areas vs CZ may be undermining Bar regulations and standards

### Staff Approval – Beer and Wine Shop

- Malt beverage on premise
- Wine Shop on premise limited to 40% sales

### CZ - Bar

- Mixed beverage on premise.
- Wine on premises exceeding 40%.

## Parking

- Wine Shops by ABC regulations are treated as accessory to off-premise retail.
- Beer Shops do not have any ABC regulations for on premise consumptions and the impacts of parking could be similar to that of Bars

# The Planning & Zoning Commission recommended denial of the text amendments as proposed.

## Concerns

- Request should be permitted as a bar going through the CZ process
- Lack of parking meeting the requirements on the site was a concern.
- Could encourage nonconforming situations to continue.
- Unattended consequences and concerns of expanding wine and beer shops with on-premise alcohol.
- Concerns with amount of existing residential uses in MB-1 zoning district with the amendment.





## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Kim Ward

**DEPARTMENT:** Clerk

**MEETING:** Town Council 7/9/2024

**SUBJECT:** Committee Appointment Parks and Rec

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**BACKGROUND:**

There is a vacancy on the Parks and Rec Committee with a term ending 6/30/2027.

A copy of all the applications can be found here:

[https://library.municode.com/nc/carolina\\_beach/munidocs/munidocs?nodeId=applications](https://library.municode.com/nc/carolina_beach/munidocs/munidocs?nodeId=applications)

**ACTION REQUESTED:**

Please review the applications and make your selections on the ballot. Mayor Barbee will receive the final tallies and announce the appointments.

# Parks and Rec Committee Appointment 7/9/2024

## Parks and Rec Committee

Please select **ONE**:

- Alex Torres (recently appointed to PAC)
- David Marshall (serves as alternate on BOA)
- Jim Tollens (recently appointed to Police Advocacy)
- Matthew Shuttleworth (serves on Ops Committee)
- Stacey Kolomer

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Council Member Signature

For a brief description of the Town of Carolina Beach's Boards & Committees click [here](#).

\* Full Name  
Alex Torres

Home Address  
310 Spencer Farow dr  
2  
Carolina Beach NC

\* **Email Address**  
altoro2010@gmail.com

Phone  
(910) 527-7362

\* Check Box List  
Bicycle/Pedestrian Committee  
Beautification Committee  
Planning and Zoning Commission  
Other: Freeman park

**How long have you lived in Carolina Beach?**  
16 years

Availability  
Available for day meetings  
Available for night meetings

**Educational Background**  
High school some college

**Occupational Background**  
Construction sales

**Special Talents and Interests**  
Public speaking, fundraising

**Community Involvement**  
I have raise money for a handful of local fundraisers, such as Life Rolls On and Whomporama.

Resume or other Attachment  
\*\*SKIPPED\*\*

\* **Date of Application**  
04/15/2024

For a brief description of the Town of Carolina Beach's Boards & Committees click [here](#).

\* Full Name  
Matthew Shuttleworth

Home Address  
625 Tarboro Avenue  
Carolina Beach NC

\* **Email Address**  
matthewshutt123@gmail.com

Phone  
(910) 264-7941

\* Check Box List  
Operations Advisory Committee  
Parks and Rec Committee  
Police Advisory Committee

**How long have you lived in Carolina Beach?**  
15 years

Availability  
Available for day meetings  
Available for night meetings

**Educational Background**  
Highschool, currently in college

**Occupational Background**  
Carpentry

**Special Talents and Interests**  
Surfing

**Community Involvement**  
\*\*SKIPPED\*\*

Resume or other Attachment  
\*\*SKIPPED\*\*

\* **Date of Application**  
11/22/2021

For a brief description of the Town of Carolina Beach's Boards & Committees click [here](#).

\* Full Name  
David Marshall

Home Address  
401 Marina St  
Carolina Beach NC

\* **Email Address**  
davidmnc\_1999@yahoo.com

Phone  
(910) 336-1390

\* Check Box List  
Parks and Rec Committee

**How long have you lived in Carolina Beach?**  
5 Years

Availability  
Available for night meetings

**Educational Background**  
I am a graduate of E.A. Laney High, and attended CFCC's electronics program

**Occupational Background**  
Operations Manager for US Laws of Wilmington General Manager Morgan Ridge Vineyards 20+ years in Automotive dealership Management

**Special Talents and Interests**  
I am a long-time boater; I have been involved in multiple types of advertising.

**Community Involvement**  
I am active a member of the Island Men.

Resume or other Attachment  
\*\*SKIPPED\*\*

\* **Date of Application**  
05/20/2022

For a brief description of the Town of Carolina Beach's Boards & Committees click [here](#).

\* Full Name  
Stacey Kolomer

Home Address  
605 Birmingham Avenue  
Carolina Beach NC

\* **Email Address**  
kolomers@uncw.edu

Phone  
(706) 424-2844

\* Check Box List  
Parks and Rec Committee

**How long have you lived in Carolina Beach?**  
Since July 2012

Availability  
Available for night meetings

**Educational Background**  
BA StonyBrook University, MSW Columbia University, PhD University at Albany

**Occupational Background**  
Director and Professor of the School of Social Work at UNCW

**Special Talents and Interests**  
I have recently worked with colleagues in Recreation, Sports Leadership and Tourism and this collaboration has sparked my interest in Parks and Recreation. Most of my work has focused on older adults and caregiving. Creating parks that are accessible for everyone regardless of age or disability is something I have a strong interest in.

**Community Involvement**  
I have served on several boards in North Carolina and when I lived for 11 years in Georgia. These boards have included the NC Marriage and Family Therapy Licensing Board, ElderHaus of Wilmington, The Georgia Firefighters Burn Foundation, Athens Community Council on Aging, The Georgia Gerontology Society, Northeast Georgia CARE-NET and the Columbia University School of Social Work Alumni Board.

Resume or other Attachment  
[KolomerCV.docx](#)

\* **Date of Application**  
09/26/2022

For a brief description of the Town of Carolina Beach's Boards & Committees click [here](#).

\* Full Name  
James Tollens

Home Address  
1622 Swordfish Lane  
#1  
Carolina Beach NC

\* **Email Address**  
jimtollens@gmail.com

Phone  
(775) 450-2398

\* Check Box List  
Bicycle/Pedestrian Committee  
Beautification Committee  
Board of Adjustment  
Marketing Advisory Committee  
Operations Advisory Committee  
Police Advisory Committee  
Parks and Rec Committee  
Planning and Zoning Commission

**How long have you lived in Carolina Beach?**  
2020

Availability  
Available for day meetings  
Available for night meetings

**Educational Background**  
Bachelor's Degree, Western Carolina University

**Occupational Background**  
Investments and sales

**Special Talents and Interests**  
Mediation, aerial photography, graphic design & editing, all things tech, improving our island, saving lives, and peace.

**Community Involvement**  
Full-time resident. Active in Carolina Beach Locals FB group: "Visual storyteller" title. Highlight opportunities for improvement and produce ideas/solutions.

Resume or other Attachment  
[Alabamacrosswalk2023.jpg](#)

\* **Date of Application**  
05/04/2023



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Bruce Oakley, Town Manager

**DEPARTMENT:** Executive

**MEETING:** Town Council Meeting 7/9/2024

**SUBJECT:** Request to Consider a Proposed Traffic Signal Modification at Harper Avenue and North Lake Park Boulevard

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**BACKGROUND:**

As part of the future paving project on Lake Park Boulevard, the Town requested that NCDOT look at making improvements to the Lake Park and Harper Avenue intersection (see attached). The proposal requires a change to the traffic signal which would add \$30,000 to the project. The costs would be the responsibility of the Town. I am requesting your consideration of approval of the project.

**ACTION:**

Motion to approve the request to modify the traffic signal at Harper Avenue and North Lake Park Boulevard for a project cost of \$30,000.





May 13, 2024

Mr. Bryce Cox  
Assistant Division Traffic Engineer  
North Carolina Department of Transportation  
Division 3 Office  
5504 Barbados Blvd.  
Castle Hayne, NC 28429

*Subject: Request for Municipal Traffic Signal Agreement for Proposed Traffic Signal Modifications at the intersection of US 421 (North Lake Park Boulevard) and Harper Avenue in Carolina Beach, North Carolina. 03-0056*

Submitted herewith is a request for a Developer Signal Agreement between NCDOT and the Town of Carolina Beach for a traffic signal modification at the above referenced intersection (03-0056). The work consists of the modification to the westbound laneage from a share left/through and dedicated right to a dedicated left-turn lane and share through right. The modification of the laneage requires the removal of the existing 5 section signal head and installation of a flashing yellow four section head. Leading pedestrian interval (LPI) will also be installed on applicable crossings. The modification to Harper Avenue laneage is to address the significant lane misalignment for the westbound approach.

The signer, entity, and address at the Town of Carolina Beach are the following:

Bruce Oakley  
Town Manager  
Town of Carolina Beach  
1121 North Lake Park Boulevard  
Carolina Beach, North Carolina 28428  
910-458-2994  
[Bruce.oakley@carolinabeach.org](mailto:Bruce.oakley@carolinabeach.org)

Please prepare a Municipal Signal Agreement for the referenced signal. The contact to whom the TSA Docusign should be directed to at Town of Carolina Beach is:

Bruce Oakley  
[Bruce.oakley@carolinabeach.org](mailto:Bruce.oakley@carolinabeach.org)  
910-458-2994



Please also copy me in the Docusign so that I can stay updated on its progress and let the client know to check for the Docusign email. Please call if I can provide any additional information or answer any questions. We appreciate your attention to this matter.

Regards,

KIMLEY-HORN AND ASSOCIATES, INC.

A handwritten signature in black ink that reads "Jonathan R. Guy".

Jonathan R. Guy, PE, AICP, PTOE  
Vice President

Copy to:

Bruce Oakley – Town of Carolina Beach  
Ed Parvin – Town of Carolina Beach

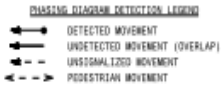
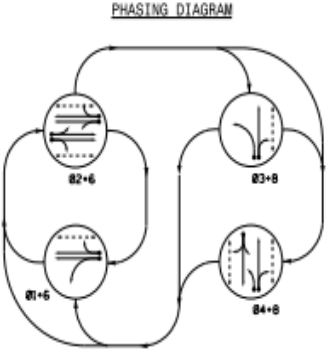
**Carolina Beach Extra Resurfacing Construciton Cost Estimate  
03-0056 Harper Ave Lane Configuration & Parking Changes**

Item 12.

QUANTITY	DOT Number	ITEM DESCRIPTION	UNIT	UNIT COST	ESTIMATED COST
40	4	Flagger	HR	\$ 20.00	\$ 800.00
2	5	Full Lane Closure	EA	\$ 2,000.00	\$ 4,000.00
300	14	Signal Conductor Cable 16-7	LF	\$ 5.00	\$ 1,500.00
3	15	Vehicle Signal Head 12" 3 Section	EA	\$ 500.00	\$ 1,500.00
1	35	2" Riser With Weatherhead	EA	\$ 550.00	\$ 550.00
1	38	Site Survey	EA	\$ 3,500.00	\$ 3,500.00
1	53	Sign for Signals	EA	\$ 1.50	\$ 1.50
1	63	Traffic Signal Removal	EA	\$ 2,000.00	\$ 2,000.00
8	71	Adjust Span & Guy Wire Attachments	EA	\$ 85.00	\$ 680.00
2	75	Vehicle Signal head Removal	EA	\$ 1.50	\$ 3.00
<b>Signal Head Parts</b>					
2	624045230	LED BALL, 12", GREEN, EXPANDED VIEWING	EA	\$ 20.00	\$ 40.00
2	624045330	LED BALL, YELLOW, 12", EXPANDED VIEWING	EA	\$ 20.00	\$ 40.00
3	624045130	LED BALL, 12", RED, EXPANDED VIEWING ANGLE	EA	\$ 20.00	\$ 60.00
2	624045310	LED ARROW, YELLOW, 12"	EA	\$ 25.00	\$ 50.00
3	620018520	SIG HEAD, 3-SEC, 12" LED COMPATIBLE-ALUM.	EA	\$ 160.00	\$ 480.00
3	620011100	BALANCE ADJUSTER, UNIVERSAL	EA	\$ 20.00	\$ 60.00
3	620013020	HANGER, 1 WAY SPANWIRE W/ BOTTOM CAP	EA	\$ 55.00	\$ 165.00
<b>Signal Cabinet Parts</b>					
1	619033300	LOADSWITCH, SOLID STATE	EA	\$ 20.00	\$ 20.00
<b>Micellaneous</b>					
1	N/A	Extra Pavement Markings	LS	\$ 5,000.00	\$ 5,000.00
1	N/A	Design Review	LS	\$ 5,000.00	\$ 5,000.00

Subtotal	\$ 25,449.50
Contingency (15%)	\$ 3,817.43
<b>Grand Total</b>	<b>\$ 30,000.00</b>

PROJECT REFERENCE NO.	SHEET NO.
	51g 1.0



**TABLE OF OPERATION**

SIGNAL FACE	PHASE					
	1	2	3	4	5	6
21, 22	R	G	R	R	R	R
31	-	-	-	-	-	-
41, 42	R	R	G	R	G	R
61	-	-	-	-	-	-
62	G	G	R	R	R	R
81, 82	R	R	G	G	R	R
P21, P22	DN	W	DN	DN	DN	DN
P41, P42	DN	DN	DN	DN	DN	DN
P81, P82	W	W	DN	DN	DN	DN
P81, P82	DN	DN	W	W	DN	DN

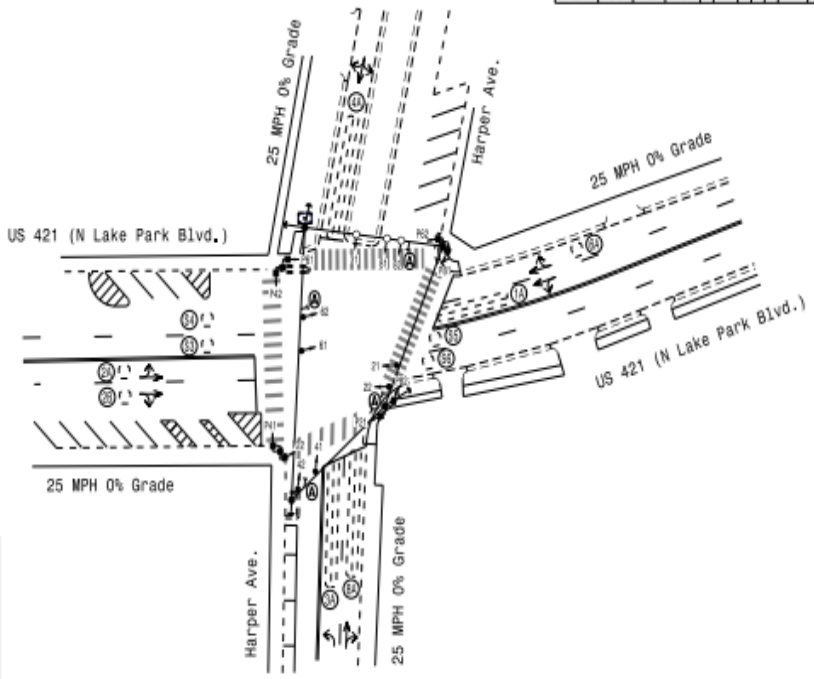
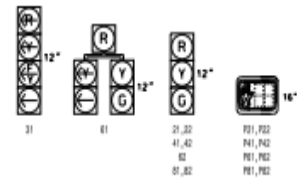
**OASIS 2070 LOOP & DETECTOR INSTALLATION CHART**

LOOP	MIL FT.	OASIS 2070 MSA STORE #	TURNS	MFT LOOP	DETECTOR PROGRAMMING					
					CHAINED	UNIDIRECTIONAL	STRETCH	DELA	DELA	DELA
1A	600	0	2-4-2	1	1	Y	Y	-	15	-
2A	600	70	3	2	Y	Y	-	-	-	-
3B	600	70	3	2	Y	Y	-	-	-	-
3A	600	0	2-4-2	3	Y	Y	-	15	-	Y
4A	600	0	2-4-2	4	Y	Y	-	5	-	-
5A	600	70	3	2	Y	Y	-	-	-	-
6A	600	0	2-4-2	5	Y	Y	-	3	-	Y
8B	600	+100	3	-	-	-	-	-	-	-
8A	600	+100	3	-	-	-	-	-	-	-
8C	600	+100	3	-	-	-	-	-	-	-
8D	600	+100	3	-	-	-	-	-	-	-
8E	600	+100	3	-	-	-	-	-	-	-
8F	600	+50	3	-	-	-	-	-	-	-

4 Phase Fully Actuated (Signal Sytem: 003-06\_CarolinaBeach)

- NOTES**
- Refer to "Standard Specifications NCOT" dated January 2024 and "Standard Specifications for Roads and Structures" dated January 2024. The PSP can be accessed at the following website: <https://www.ncdot.gov/resources/soley/Pages/SPS-2024-01-01.aspx>
  - Do not program a detector in a link in a backup position unless otherwise directed by the Engineer.
  - Each backup protect for phase 2+4 is on the controller to clear from phase 2+4 to phase 1+6 by progressing through an all-red display.
  - Phase 3 may be bogged.
  - Set detector units to presence mode.
  - Program controller to operate in a 90% compact mode.
  - Only "VAL" and "Link" "COM" VAL" and "Link" "COM" VAL" are in the controller.
  - Program pedestrian heads to count down the "Link" "COM" VAL" time only.
  - Maximum time shown in the chart are for free-run operation only. Good Road Adjust system.
  - Link units supersede these values.
  - Signal system code: **COM** Assn #009

**SIGNAL FACE I.D.**  
811 HOODS L.E.D.



**OASIS 2070 TIMING CHART**

FEATURE	PHASE					
	1	2	3	4	5	6
Min Green 1"	7	10	7	7	10	7
Minimum 1"	2.0	3.0	3.0	2.0	3.0	2.0
Min Green 1"	15	35	15	20	35	20
Min Clearance	3.0	3.2	3.0	3.2	3.2	3.2
Red Clearance	3.1	2.8	2.5	2.6	2.8	2.6
Red Reset	2.0	2.0	2.0	2.0	2.0	2.0
Min 1"	-	7	-	7	7	7
Start 1/2"	-	15	-	20	18	17
Min Advance Time "	-	-	-	7	-	7
Seconds Per Actuator 1"	-	-	-	-	-	-
Max Variable 1/2"	-	-	-	-	-	-
Time Before Redstart 1"	-	-	-	-	-	-
Time To Redout 1"	-	-	-	-	-	-
Minimum Gap	-	-	-	-	-	-
Recall Mode	-	NON RECALL	-	NON RECALL	-	-
Variable Callout	-	YELLOW	-	YELLOW	-	-
Start Entry	-	-	-	ON	-	ON
Max Green Gap	ON	ON	ON	ON	ON	ON

\* These values may be field adjusted. Do not adjust Min Green and Extension times for phases 2 and 4 lower than what is shown. Min Green for all other phases should not be lower than 4 seconds.



NC Dept of Transportation  
Division of Highways  
Final Drawing Date: \_\_\_\_\_  
TIS & Signals Unit

Signal Upgrade



US 421 (N Lake Park Blvd.) at Harper Ave.

Division 3 New Hanover County, Carolina Beach

PLAN DATE: May 2024 REVISION BY: MC/S/STP

PREPARED BY: ST/S/STP REVISION BY: ST/S/STP

SCALE: 1" = 40'

DATE: \_\_\_\_\_

SHEET NUMBER: 03-011