

CAROLINA BEACH

Planning and Zoning Meeting

Thursday, May 13, 2021 – 6:30 PM

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



AGENDA

CALL TO ORDER

APPROVAL OF MINUTES

1. Approval of the Minutes from April 8th, 2021

STAFF REPORT ON RECENT COUNCIL MEETINGS

STAFF REPORT ON RECENT DEVELOPMENTS

PUBLIC DISCUSSION

DISCUSSION ITEMS

2. Consider a Text Amendment to Chapter 36 Subdivisions and Chapter 40 Zoning to comply with State Statute 160D updates
3. A discussion regarding potential changes to Chapter 40, Article VII, Fence Regulations to review restrictions and how to measure height.

NON-AGENDA ITEMS

ADJOURNMENT



AGENDA ITEM COVERSHEET

PREPARED BY: Miles Murphy, Senior Planner

DEPARTMENT: Planning

MEETING: Planning & Zoning – 13 MAY 2021

SUBJECT: Approval of the Minutes from April 8th, 2021

BACKGROUND:

The minutes from the April 8th P&Z meeting

ACTION REQUESTED:

Review and approve the minutes, with or without corrections

RECOMMENDED MOTION:

CAROLINA BEACH

Planning and Zoning Meeting

Thursday, April 08, 2021 - 6:30 PM

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



MINUTES

CALL TO ORDER

Chairman LeCompte called the meeting to order at 6:30 PM.

PRESENT

Chairman Deb LeCompte

Vice Chairman Wayne Rouse

Commissioner Melanie Boswell

Commissioner John Ittu

Commissioner Ethan Crouch

ABSENT

Commissioner Jeff Hogan

Commissioner Todd Piper

ALSO PRESENT

Planning Director Jeremy Hardison

Senior Planner Miles Murphy

APPROVAL OF MINUTES

1. Approval of the Minutes from March 11th, 2021

ACTION: Motion to approve the minutes as written

Motion made by Vice Chairman Rouse, Seconded by Commissioner Ittu

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Boswell, Commissioner Ittu, Commissioner Crouch

Motion passed 5-0

STAFF REPORT ON RECENT DEVELOPMENTS

Town Council and Other Updates

- 160D Final Draft – P&Z May
- Beach services and vending permits have been issued
- Sidewalk café permit applications are being distributed

Mr. Murphy reported the following statistics for the past month:

Permitting

- 48 permits (renovation, repair, grading, additions, fence)
- 13 residential new construction
- 7 certificates of occupancy
- 282 building permits received in 2021
- Over 300 total permits in 2021

Code Enforcement

- 7 complaints received
- 2 resolved

Demos in Progress

- 210 Cape Fear Boulevard
- 3 Boardwalk
- 1310 Snapper Lane
- 301 Charlotte Avenue
- 1213 Canal Drive
- 206 Carolina Beach Avenue South
- 1616 Mackerel Lane
- 206 Texas Avenue

New Businesses

- Far Out on the Boardwalk – 8 Pavilion Avenue South #7
- Carolina Surf Brand (Relocation) – 11 Pavilion Avenue South #1
- Crabby Cliff's – 1010 South Lake Park Boulevard
- Mermaid Crest – 209 Raleigh Avenue (former Cole's Motel; under new ownership)

Coming Up

- Text amendment: Chapter 160D – May/June
- Text amendment: table of permissible uses
- Text amendment: road improvements
- Text amendment: parking lots

Vice Chairman Rouse asked about the status of 208 Cape Fear Boulevard. Mr. Murphy said it's been a long, complicated process. He said the owner had a unique idea that didn't quite meet zoning, and then there was a saga with a gigantic fortification fence, potentially merging the structures into one, and adding a pool. Mr. Murphy said as of now, the plan is to tear down all of the structures on the lots and come back with individual structures or combine them and come back with one structure.

PUBLIC DISCUSSION

None

DISCUSSION ITEMS

2. Text Amendment: Consider amending Chapter 40, Article VII, Fence Regulations to review restrictions and how to measure height.

The Commission requested that staff review fence regulations, particularly related to how height is measured. Staff took Commission feedback to the Technical Review Committee (TRC) and discussed various fencing ordinance changes. These changes were compiled into several updates related to how fences are controlled and inspected. Proposed changes include measuring the height of the fence from the adjacent grade along the interior of the fence and extending the allowance of the permitted area of 6-foot fences. The proposed ordinance incorporates both Commission and TRC recommendations.

Planner Gloria Abbotts presented the details. She said the proposed changes regarding height and the front yard setback include a proposed regulation that states no fence shall exceed 4 feet in height when located within 10 feet of the front property line. The existing regulation states that no fence shall exceed 4 feet in height when located in the front yard setback.

Proposed changes also call for the fence to be measured from the inside instead of the outside of the adjacent abutting property. In addition, under the proposed new regulations the retaining wall would no longer be part of the overall fence height. Ms. Abbotts said staff also mentioned the Commission's desire to change the maximum fence height from 6 feet to 7 feet, but TRC was not ready to move forward on that because fences over 6 feet in height must be engineered and require a building permit.

Commissioner Boswell asked who requires a fence over 6 feet to be engineered. Ms. Abbotts said as of now fences only include a zoning permit, but exceeding that would require a building permit. Mr. Hardison said this is required by the State.

Commissioner Boswell said she had more of an issue with the retaining wall not being a part of the overall fence height and thought this could turn into a huge problem with up to 11-foot structures going up. She said this is the opposite of what the Commission wanted to accomplish and that she wouldn't support that portion of the proposed changes.

Commissioner Crouch said the proposed change to how height is measured addresses a lot of his initial concerns, and he is in favor of that. He said it might be worth keeping the following verbiage that under the proposed changes would be omitted: "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."

Commissioner Ittu said he agreed that the verbiage above should remain in the ordinance. He mentioned an example of what he called a "monstrosity" on Lake Park Boulevard that includes a 4-foot retaining wall with a 6-foot fence on top.

Chairman LeCompte said she also agreed with keeping the verbiage because she doesn't think we need fortresses on the island.

Mr. Murphy said the Commission can move forward with parts of the ordinance now or give feedback to consider it as a whole again at a later date.

Commissioner Boswell said she feels rushed and would like to wait until they can come up with a solution to get the overall fence height to 7 feet. She reiterated that her main concern is the retaining wall. She said she's not comfortable with things as they stand now and would like the Commission to have more understanding of the matter.

Commissioner Crouch asked the Commission if they had any concerns about the front yard setback issue. Vice Chairman Rouse said the proposed changes would bring a lot of fences into compliance, and he sees nothing wrong with it. Commissioner Crouch said the main issues with the proposed ordinance changes seem to be the overall height and retaining wall issues.

Mr. Murphy said Commissioners could move forward with the proposed changes they favor and wait until later for staff to further address cumulative height and retaining walls, or they could scratch the whole proposed ordinance and ask staff to come back later with one full piece.

Chairman LeCompte said her vote would be to wait and make all ordinance changes at once.

Commissioner Crouch said he was sensitive to the staff burden that could result from changing the overall fence height maximum from 6 feet to 7 feet. He asked if there was a way to factor in additional fees to help offset this.

Mr. Murphy said staff's concern is that a lot of fences are constructed without permits, and if this trend continues and the height maximum is raised then those fences will not only be non-compliant to zoning code but also non-complaint to State building code, which is a whole different animal.

Commissioner Crouch said he recognizes staff's concerns and could be fine with leaving the maximum height at 6 feet.

ACTION: Motion to table this agenda item until staff gets a chance to circle back to the Commission
Motion made by Vice Chairman Rouse

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Boswell, Commissioner Ittu,
Commissioner Crouch

Motion passed 5-0

3. Text Amendment: Consider amending Chapter 40, Article III, Article VII, & Article XVIII to review setbacks for through lots for fences, swimming pools and accessory structures.

The Town has approximately 70 through lots. Currently, the ordinance requires that accessory structures, swimming pools, and fences meet front setback requirements on both frontages on through lots. Per last month's Commission discussion, staff took Commission feedback to TRC and discussed various ordinance allowances related to through lots. These changes were compiled into several updates related to dimensional standards and setbacks for fences, swimming pools, and accessory structures on through lots. Proposed changes include allowances for the designated rear yards on through lots. In the designated rear yard, fences may not exceed 6 feet, accessory structures must be setback 10 feet, in-ground pools must be setback 5 feet, and above-ground pools must be setback 10 feet. The proposed ordinance incorporates both Commission and TRC recommendations.

Ms. Abbotts presented the details. She said the proposed ordinance defines rear yard as the area between the side lot lines across the rear of the lot. Through lots have no rear yard, only front and side yards.

Regarding fences, staff gave three options:

- Option 1 would eliminate the front setback requirement; no fence shall exceed 4 feet when located within 10 feet of a front property line.
- Option 2 would adjust the front setback requirement; no fence shall exceed 4 feet when located within 5 feet of the front property line in the designated rear yard.
- Option 3 would state that on through lots, in the designated rear yard, no fence may exceed 6 feet as long as there is no driveway access and no sight-distance interference.

Vice Chairman Rouse said the proposed changes would affect more properties than he thought, including himself. He said there would be pushback because it would create non-conforming fences. He suggested he might have to recuse himself but said there is no way he would support this.

Commissioner Crouch said the proposed changes don't have anything to do with defining what a double-frontage lot is and therefore should not be cause for concern in that regard.

Vice Chairman Rouse said his understanding is that the proposed changes clarify what a double-frontage lot is even more than before.

Mr. Murphy further explained the three options presented regarding double-frontage lots. He said one requires a property owner to give up 10 feet, one requires a property owner to give up 5 feet, and one states a property owner can have a 6-foot fence if there is no driveway access and no sight-distance interference.

Vice Chairman Rouse said he would be in favor of option 3.

Mr. Murphy said currently every fence that is 6 feet in the rear yard of a double-frontage lot is non-compliant, is not to code and would not be allowed to be rebuilt today if it was torn down. He said that would be remedied under option 3 and that this only affects properties that have what is considered two front yards because the property goes through an entire block.

Commissioner Ittu said he is in favor of option 3.

Mr. Murphy clarified that the Commission would be voting on the definition of a rear yard, that on double-frontage lots accessory structures must be setback 10 feet instead of 20 feet, and approving that in-ground pools have a 5-foot setback instead of 20 feet and above-ground pools 10 feet instead of 20 feet.

Commissioner Crouch asked how staff is measuring the edge of a pool. Mr. Murphy said this is measured from the edge of the water and that is the way staff has always enforced that regulation.

ACTION: Motion that the Commission, whereas in accordance with the provisions of the North Carolina General Statutes, does hereby find and determine that the adoption of the following ordinance amendment to Chapter 40 Article III Section 40-75: Dimensional Standards for Accessory Structures, Article VII Section 40-204: Height Restrictions Option 3, Article XVIII Definitions is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans

Motion made by Vice Chairman Rouse, Seconded by Commissioner Boswell

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Boswell, Commissioner Ittu, Commissioner Crouch

Motion passed 5-0

4. Text Amendment: Consider amending Chapter 40, Article III & Article IX, to address Private Parking Lots that Charge for Parking
Applicant: Town of Carolina Beach

Council requested that staff review the allowances for permanent and temporary commercial parking lots. In 2007, an allowance was created to allow for private lots to charge for parking in the Central Business District (CBD). The allowance was created with the downturn in the economy to allow vacant lot property owners to make use of properties that were in transition.

The Town currently has 5 parking lots in the CBD that are Town-owned; 3 privately owned lots have agreements with the Town to manage parking in the district; there are 5 private temporary parking lots that are potentially looking to charge for parking this coming summer in the CBD. Permits for private parking lots are issued annually. If a permit is issued prior to the ordinance change, then they would still be able to operate this summer. Temporary private parking lots can charge for parking from Memorial Day weekend to Labor Day. Private lots can charge all year long if they are approved as permanent parking lots, but they are required to do more upgrades to handle stormwater and provide landscaping. The Town has not issued any permits for a permanent parking lots since the allowance was created in 2007.

Concerns about commercial parking lots' operating practices have caused the review of this ordinance. Private parking lots are known to be more aggressive with their enforcement practices (towing, booting, fines, etc.), require handicapped people to pay for any space, not honor Town decals, and not provide golf cart parking. In addition, fees are not controlled by the Town, and private lots occasionally improperly manage trash. There is also confusion with the public about which lots are Town or private entities.

Staff has provided three options for the Commission to review:

1. Eliminate the allowance for private parking lots to charge for parking. The property owners could still benefit from utilizing their property for parking. An option would be to have an agreement with the Town. This would create unified parking standards and regulations for all parking lots managed by one entity.
2. Allow existing commercial businesses in the CBD to charge for parking when the business is closed.
3. No change and continue to allow private parking lots to charge in the CBD.

Mr. Hardison presented the details. He went over the differences between what is required of both temporary and permanent parking lots. The main difference is that permanent lots require additional landscaping standards as well as environmental and stormwater upgrades.

Mr. Hardison said the Town considered whether it would be creating a monopoly by prohibiting private parking lots. He said Town Attorney Noel Fox had legal concerns about this, so the option before the Commission now is to eliminate temporary lots and require the private lots to do the necessary upgrades to become permanent, which could be handled through a one-time permit instead of annual.

Vice Chairman Rouse asked what stormwater engineering would cost. Commissioner Crouch said it could be \$200 to \$10,000 depending on the size of the lot.

Mr. Hardison said there will not be any changes this year, and the idea was to give the private lot owners time to plan ahead if there were going to be any changes.

Chairman LeCompte said private lots, whether temporary or permanent, should be able to charge for parking during the same time frame that Town lots can charge, even though temporary lots are now limited to charging only from Memorial Day weekend to Labor Day.

Commissioner Boswell asked if the Town has discussed this with the lot owners. Mr. Hardison said he hasn't. Mr. Murphy said there have been informal discussions about alternative uses for some of the parcels, but time frames have not been established. He said there is desire to develop, but nothing official has happened at this point.

Vice Chairman Rouse asked why the Town wants to change anything regarding parking on private lots. Mr. Hardison said one reason is to eliminate confusion over whether something is a Town or private lot. Mr. Murphy said right now the Town doesn't have a lot of control or enforcement as to the quality of design, how the lots are maintained, and how they are organized.

Commissioner LeCompte said she thinks there should be a set of standards regarding ingress and egress, trash cans, and signage, whether a private lot is temporary or permanent. She said private property owners should be able to charge year-round if they choose.

Vice Chairman Rouse said eliminating the temporary designation and requiring private lots to be permanent would change all the standards that Chairman LeCompte would like to see addressed.

Chairman LeCompte said she also thought removing the temporary designation would be the best solution.

Commissioner Ittu said he would also be in favor of eliminating the temporary status for private parking lots. He said although there would be more requirements for the property owners to have permanent parking lots, they would gain the ability to expand their revenue season to recoup those costs. He said this would also make it more standardized.

Commissioner Boswell said the benefit would be that in return for the changes, a permanent parking

lot could make a bigger profit by charging year-round.

Commissioner Crouch said he agreed with everyone but thought requiring the lots to become permanent could have the unintended consequence of encouraging those property owners to develop their lots instead of putting money into them to continue as parking lots.

Vice Chairman Rouse said he thinks most of them would rather develop anyway but are just waiting for the right opportunity.

Commissioner Boswell said she struggles with the matter because there is a parking issue in the Town and she doesn't want to see big parking garages go up, so while the Commission might have good intentions about making the change for private lots, the potential of losing those lots must be considered. She said the area that the new requirements will take away from actual parking spaces might not make it worth it for the owners to continue to use their land as parking lots.

Vice Chairman Rouse said he agrees that one type of permit is a good idea, but he's not sure about making property owners pay for stormwater engineering if the parking lot is not paved. He said he is all for the idea unless the stormwater fee is so burdensome that it forces property owners out of the parking business.

Mr. Hardison said the stormwater requirements are not necessarily a fee from the Town, but property owners have to come up with an engineered stormwater design for how they are going to treat drainage on the property.

ACTION: Motion to open the public hearing

Motion made by Chairman LeCompte, Seconded by Vice Chairman Rouse

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Boswell, Commissioner Ittu, Commissioner Crouch

Motion passed 5-0

No one requested to speak.

ACTION: Motion to close the public hearing

Motion made by Chairman LeCompte

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Boswell, Commissioner Ittu, Commissioner Crouch

Motion passed 5-0

ACTION: Motion that the Commission, whereas in accordance with the provisions of the North Carolina General Statutes, does hereby find and determine that the adoption to eliminate temporary parking lots to Chapter 40 Section 40-72 and Section 40-261 is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans

Motion made by Commissioner Boswell, Seconded by Commissioner Ittu

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Boswell, Commissioner Ittu,

Commissioner Crouch
Motion passed 5-0

Mr. Murphy asked if the Commission wanted to emphasize stormwater ordinance requirements for lots with pervious surfaces. The consensus among the Commission was yes.

5. Text Amendment: Consider amending Chapter 40, Article III & Article XVIII, to address rooming houses.
Applicant: Town of Carolina Beach

The Town's zoning ordinance currently does not address rooming houses, also referred to as boarding houses. There have been recent discussions regarding the point at which a property is operating as a single-family home versus a rooming house. The definition of a single-family home by the zoning ordinance means one or more individuals occupying premises and living as a single non-profit housekeeping unit, provided that a group of five or more persons who are not related by blood or marriage shall not be deemed to constitute a family.

Town staff is proposing to prohibit rooming houses in the table of permissible uses and create a definition for rooming houses. This is the result of complaints that have generated from a house that was offering individual rooms for rent to unrelated individuals. The issues that have resulted in this type of arrangement have been parking, noise, and an increase in police calls with the transient nature of the tenants. The proposed definition would regulate when offering rooms for rent on individual basis when not owner-occupied but does not cast a wide net to have a negative impact on vacation rentals or offering roommate living for residences that are owner-occupied.

Mr. Hardison presented the details. He said the proposed definition of a rooming house is "a dwelling unit not owner occupied where individual sleeping rooms are rented under separate agreements or lease, either written or oral, regardless of whether an owner, agent, or rental manager is in residence." He said the Town does not want to interfere with short-term rental regulations.

Commissioner Ittu asked if the home in question was owner-occupied. Mr. Hardison said no and that a lot of times when the owner is present many of the problems go away.

Commissioner Crouch said the proposed change does a good job of defining and prohibiting rooming houses.

Commissioner Boswell said the proposed change addresses the concerns of the Commission.

Commissioner Crouch asked how grandfathering would be addressed. Mr. Hardison said once a property currently operating as a rooming house discontinues that use, it cannot operate as a rooming house again.

Commissioner Boswell asked if the property in question would be grandfathered. Mr. Hardison said it is for sale and residents have moved out, so it is currently no longer operating as a rooming house.

Vice Chairman Rouse mentioned the idea of incorporating into the ordinance how the lease is written or how payment is made. He said that would likely resolve the issue because people living in what is considered a rooming house wouldn't all pay with one check. He said he's in favor of the proposed change.

Commissioner Ittu said he thinks the proposed change alleviates the situation and doesn't overreach to have unintended consequences in a beach rental market.

ACTION: Motion that whereas in accordance with the provisions of the North Carolina General Statutes, the Commission does hereby find and determine that the adoption of the following ordinance amendment to amending Chapter 40 Article III and Article XVIII is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans

Motion made by Commissioner Ittu, Seconded by Vice Chairman Rouse

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Boswell, Commissioner Ittu, Commissioner Crouch

Motion passed 5-0

NON-AGENDA ITEMS

Chairman LeCompte said her end of Charlotte Avenue is now surrounded by short-term rentals. She said she and her neighbors have to call police once every few weeks because of one particular property. She inquired about what the Town can do to address a nuisance property of that nature because she and her neighbors are frustrated.

Mr. Murphy said there are currently no regulations in place for short-term rentals and no plans to enact any for zoning officials to enforce due to limited time and resources. He said the Town could put into place a strong noise ordinance or nuisance-related regulations for Police and Code Enforcement to monitor, but it's not something that would be addressed in the zoning code. He said he welcomed suggestions and could relay input to Town Council.

Mr. Hardison asked Chairman LeCompte if there are existing regulations being violated, such as noise, trash, or parking. Chairman LeCompte said all of the above were problems. Mr. Hardison said those violations could take care of the problem right now.

Chairman LeCompte said although the police have come to her area frequently in recent times, the problems are not constant and largely depend on the types of renters who are there. She said families don't typically cause issues, but some young people do.

ADJOURNMENT

ACTION: Motion to adjourn

Motion made by Chairman LeCompte

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Boswell, Commissioner Ittu, Commissioner Crouch

Motion passed 5-0

The meeting adjourned at 8:30 PM.



AGENDA ITEM COVERSHEET

PREPARED BY: Miles Murphy, Senior Planner

DEPARTMENT: Planning

MEETING: Planning and Zoning – 13 MAY 2021

SUBJECT: Consider a Text Amendment to Chapter 36 Subdivisions and Chapter 40 Zoning to comply with State Statute 160D updates

BACKGROUND:

Due to recent updates at the State level, all counties and municipalities are required to overhaul various elements of their ordinances to comply with new State standards. The transition to the new standards in 160D did not make too many changes which will be noticed daily, but many of them are important required elements for Building and Zoning procedures. Staff also took the opportunity to streamline some elements of the ordinance which were previously confusing, out of order, or had other flaws.

The Town Attorney completed her initial review and staff has made her requested changes in preparation for Planning and Zoning review.

ACTION REQUESTED:

Listen to staff presentation and vote on the required 160D ordinance update

Staff recommends approval of the Text Amendment

RECOMMENDED MOTION:

Approval - whereas in accordance with the provisions of the NCGS, the Commission does hereby find and determine that the adoption of the following ordinance amendment to Chapter 36 Subdivisions and Chapter 40 Zoning is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans

Or - A statement approving the proposed amendment and declaring that this also amends the plan, along with an explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment.

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

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Chapter 40 - ZONING⁴¹

Footnotes:

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Editor's note— Ord. No. 00-463, adopted October 10, 2000, repealed §§ 101—1201, and enacted new §§ 1.1—23.3.

Federal law references—Preservation of local zoning authority concerning wireless telecommunications facilities, 47 USC 322(c)(7); limited Federal preemption of state and local zoning laws affecting amateur radio facilities, Memorandum Opinion and Order, PRB-1, 101 FCC 2d 952 (1985) and 47 CFR 97.15(b); Religious Land Use and Institutionalized Persons Act, 42 USC 2000cc et seq.

State Law reference— Zoning, G.S. ~~160A-384~~ [160D-107](#); [109](#); [406](#); [702](#); [704](#); [705](#); [903](#); [908](#) et seq.; building setback lines, G.S. 160A-306; zoning of temporary health care structures, G.S. ~~160A-383.5~~ [160D-915](#).

ARTICLE I. - GENERAL PROVISIONS

Sec. 40-1. - Title.

This chapter shall be known as the "Zoning Ordinance of the Town of Carolina Beach, North Carolina," and may be cited as the 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.

(Code 1986, app. A, § 1.1; Ord. No. 00-463, 10-10-2000)

Sec. 40-2. - Purpose and vision policy.

- (a) *Purpose.* The zoning regulations and 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 regulations and districts as set forth herein are also intended to effectuate the general vision policy of the town, as set forth in the Carolina Beach Land Use Plan, adopted May 13, 1997, by the town council:

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 yearround 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.

(Code 1986, app. A, § 1.2; Ord. No. 00-463, 10-10-2000)

Sec. 40-3. - Authority.

- (a) The town enacts this chapter in pursuance of the authority granted by G.S. ~~ch. 160A, art. 19 (G.S. 160A-360 et seq.)~~ ch. 160D.
- (b) Whenever any provision of this chapter refers to or cites a section of state law and that section is later amended or superseded, this chapter shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

(Code 1986, app. A, § 1.3; Ord. No. 00-463, 10-10-2000)

Sec. 40-4. - Jurisdiction.

- (a) This chapter 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.

(Code 1986, app. A, § 1.4; Ord. No. 00-463, 10-10-2000)

Sec. 40-5. - Effect on pending and future prosecutions.

All suits at law or in equity and/or all prosecutions resulting from violations of any zoning ordinance 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 chapter is derived, but shall be prosecuted to their finality the same as if this chapter 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 chapter; and nothing in this chapter shall be construed to abandon, abate or dismiss any litigation or prosecution now pending, and/or which heretofore have been instituted or prosecuted.

(Code 1986, app. A, § 1.7; Ord. No. 00-463, 10-10-2000)

Sec. 40-6. - Relationship among town ordinances.

- (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) *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.

(Code 1986, app. A, § 1.8; Ord. No. 00-463, 10-10-2000; Ord. No. 09-777, 3-10-2009; Ord. No. 09-810, 9-8-2009)

Sec. 40-7. - No use or sale of land or buildings except in conformity with chapter provisions and subdivision regulations.

- (a) Subject to article XIV of this chapter (nonconforming situations), 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, and the town subdivision regulations, and subsequent amendments thereto, and other applicable town regulations.

- (b) 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.

(Code 1986, app. A, § 1.10; Ord. No. 00-463, 10-10-2000)

Sec. 40-8. - 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~~ special use permits, temporary use permits, driveway permits, ordinance amendments, rezone requests, variances and other administrative relief. 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.

(Code 1986, app. A, § 1.11; Ord. No. 00-463, 10-10-2000)

Sec. 40-9. - Severability.

Should any article, section, subsection, paragraph, sentence, clause, phrase, or district boundary of this chapter and/or the zoning map which is a part of this chapter 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 chapter 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.

(Code 1986, app. A, § 1.12; Ord. No. 00-463, 10-10-2000)

Secs. 40-10—40-42. - Reserved.

ARTICLE II. - ZONING DISTRICTS AND MAP

Sec. 40-43. - 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:

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, Multi-Family 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
HOD	Height Overlay District

(Code 1986, app. A, § 2.1; Ord. No. 00-463, 10-10-2000; Ord. No. 07-664, 1-9-2007)

Sec. 40-44. - 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 chapter.
- (b) The official zoning map and ordinance shall be properly attested and shall be on file in the office of the Town Zoning 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 chapter, 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.

(Code 1986, app. A, § 2.2; Ord. No. 00-463, 10-10-2000; Ord. No. 08-751, 7-7-2008)

Sec. 40-45. - Rules for interpretation of district boundaries.

The Zoning 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 chapter. 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 chapter is derived, each part of the lot so divided shall be used in conformity with the district in which such part is located.

(Code 1986, app. A, § 2.3; Ord. No. 00-463, 10-10-2000)

Secs. 40-46—40-63. - Reserved.

ARTICLE III. - ZONING DISTRICT REGULATIONS

Sec. 40-64. - Introduction.

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:

- (1) *General requirements for all districts.* Several general statements regarding standards of development that apply within any of the town's zoning districts. (Sections 40-65 to 40-69.)
- (2) *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 unique to that district. (Section 40-70.)
- (3) *Table of permitted uses.* The listing of land uses permitted by right or by ~~conditional~~ special use in each district. (Section 40-71.)
- (4) *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. (Section 40-74.)
- (5) *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. (Section 40-75.)

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.

(Code 1986, app. A, § 3.1; Ord. No. 00-463, 10-10-2000)

Sec. 40-65. - Zoning affects use of land and structures.

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.

- (1) 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.
- (2) Every building hereafter erected or structurally altered shall be located on a lot meeting the requirements of the district in which it is located.
- (3) A use or building not expressly permitted by right or granted by a ~~conditional~~ special use permit shall not be allowed in a zoning district unless such use is permitted in accordance with section 40-490(a)(2) (Zoning Administrator's determination) or sections 40-424 and 40-425 (nonconforming situations).
- (4) The minimum yards, and other open spaces, including the intensity of use provisions contained in this chapter, 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.
- (5) 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.
- (6) 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.
- (7) In no case shall there be more than one principal building and one customary accessory building on the lot except for the exemptions listed in section 40-75(d).

(Code 1986, app. A, § 3.2; Ord. No. 00-463, 10-10-2000; Ord. No. 01-484, 8-14-2001; Ord. No. 03-543, 7-8-2003; Ord. No. 11-879, 10-11-2011; Ord. No. 14-932, 5-13-2014)

Sec. 40-66. - Every lot shall have access to a street.

- (a) 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 chapter is derived. The following are exempt from the requirements of this section:
 - (1) 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;
 - (2) Single- and/or two-family dwellings on a lot having access over an existing private access easement.
- (b) 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.

(Code 1986, app. A, § 3.3; Ord. No. 00-463, 10-10-2000; Ord. No. 06-630, 4-11-2006)

Sec. 40-67. - Rules for determining locations of lot lines.

- (a) *Location of building line when the street line is unknown.* Where there is uncertainty as to the location of a street line, the Zoning Administrator shall determine such line for the purposes of this chapter and all measurements of yards, areas, etc., which depend upon the location of a street line shall thenceforth be based on such determination, provided that any street width determined hereunder be uniform for the entire length of the portion of the street about which uncertainty exists.
- (b) *Location of building lines on irregularly shaped lots.* The Zoning Administrator of the town shall determine the location of front, side and rear building lines on irregularly shaped lots. 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.

(Code 1986, app. A, § 3.4; Ord. No. 00-463, 10-10-2000)

Sec. 40-68. - Nonconformities may continue.

- (a) Except as restricted in section 40-67(b), single-family dwellings may be built on any lot in a district where residences are permitted, which was recorded prior to the enactment of the initial zoning ordinance (April 24, 1979) or this chapter even though it may not meet the lot width and area requirements established by this chapter.
- (b) Any lot or structure being used lawfully before this chapter was enacted may continue to be used in the same manner after the adoption of the ordinance from which this chapter is derived even though such use is not now permitted under the terms of this chapter. More specific regulations concerning nonconformities are given in article XIV of this chapter.

(Code 1986, app. A, § 3.5; Ord. No. 00-463, 10-10-2000; Ord. No. 04-558, 7-13-2004)

Sec. 40-69. - Subdivision regulation development standards apply.

Except as modified and/or waived under the specific zoning district classifications or through ~~conditional~~ [special](#) use permit approval, the development standards established in the Town of Carolina Beach Subdivision Regulations, sections 4.0 and 5.0, shall apply, as applicable, to all new permitted and/or ~~conditional~~ [special](#) use developments within the incorporated limits and extraterritorial jurisdiction of the town.

(Code 1986, app. A, § 3.6; Ord. No. 00-463, 10-10-2000)

Sec. 40-70. - 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.
 - (2) *Density.*
 - a. For one single-family home: 80,000 square feet minimum lot size.
 - b. For cluster developments: 320,000 square feet minimum lot size for four single-family homes.
 - (3) *Standards for conservation cluster development in the C district.*
 - a. Residential clusters shall be on single parcels of which at least 50 percent of the parcel is net buildable land.
 - b. No unit in a residential cluster shall be located within 20 feet of the property line.
 - c. Residential clusters shall be limited to a maximum of four dwelling units per lot.
 - d. Minimum separation between detached units in the cluster shall be 20 feet.
 - e. Subject to applicable state and federal regulations.
- (f) *MF, Multi-Family 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.* This district is established to accommodate businesses oriented toward the motoring public and which require a high volume of traffic. In many cases, businesses in the HB district 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 and 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, 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 through compliance with chapter 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.

(Code 1986, app. A, § 3.7; Ord. No. 00-463, 10-10-2000; Ord. No. 01-484, 8-14-2001; Ord. No. 06-634, 5-9-2006; Ord. No. 06-643, 6-13-2006; Ord. No. 07-664, 1-9-2007; Ord. No. 07-702, 8-14-2007)

Sec. 40-71. - Table of permissible uses.

- (a) *Generally.* The table in section 40-72 sets forth the permitted and ~~conditional~~ 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) ~~conditional~~ Special uses (~~C S~~). The letter "~~CS~~" in the zoning district column opposite the listed use means that a ~~conditional~~ special use permit, as set forth in article XI of this chapter, must be obtained before the use may locate in the district in which it appears.
 - (3) *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.
 - (4) *Exemptions.* The following may be exempted from the one customary accessory building: fence, flagpole or dog house not to exceed 16 square feet; pump house not to exceed 16 square feet; and a playhouse not to exceed 36 square feet nor eight feet in height, or as may be provided for under article XI of this chapter (~~conditional~~ special use). The exemptions are not to have sewer, electrical, and plumbing except for a pump house. These exemptions are not considered part of the lot coverage.
- (b) *Use designation.*
- (1) If a "P" or "~~CS~~" 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 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.
- (3) Interpretation of unlisted uses. Where a proposed use is not specifically listed in the table of permissible uses, the zoning 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 use listed in the table of permissible uses. The zoning 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.
- (4) Standards for approving unlisted uses. 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:
- a. The volume and type of sales, retail, wholesale, etc.;
 - b. The size and type of items sold and nature of inventory on the premises;
 - c. Any processing done on the premises, including assembly, manufacturing, warehousing, shipping, distribution;
 - d. Any dangerous, hazardous, toxic, or explosive materials used in the processing;
 - e. 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);
 - f. The type, size, and nature of buildings and structures;
 - g. The amount and nature of any nuisances generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation, and fumes;
 - h. 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; and
 - i. The impact on adjacent lands created by the proposed use.
- (5) Decision by zoning administrator.
- a. 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.
 - b. 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.

(Code 1986, app. A, § 3.8; Ord. No. 00-436, 10-10-2000; Ord. No. 02-523, 11-12-2002; Ord. No. 04-574, 11-9-2004; Ord. No. 05-599, 7-12-2005; Ord. No. 06-643, 6-13-2006; Ord. No. 06-

647, 7-11-2006; Ord. No. 06-656, 9-12-2006; Ord. No. 07-664, 1-9-2007; Ord. No. 07-694, 7-10-2007; Ord. No. 09-808, 9-8-2009; Ord. No. 10-855, 12-14-2010; Ord. No. 11-856, 2-8-2011; Ord. No. 11-879, 10-11-2011; Ord. No. 12-897, 7-10-2012; Ord. No. 13-918, 8-13-2013; Ord. No. 14-961, 3-10-2015; Ord. No. 15-977, 6-9-2015; Ord. No. [16-1033](#), 1-10-2017)

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

P = Permitted.

C = May be permitted with Conditions.

USES OF LAND	R-1	R-1B	R-2	R-3	C	MH	MF	MX	CBD	NB	HB	MB-1	T-1	I-1
Residential Uses														
Two-family dwellings	P					P	P	P				P	P	
Manufactured home, on standard, single-family lot (See section 40-261)						P								
Multifamily dwellings (See section 40-260) Units ≤ 4							P	P				P	P	
Multifamily dwellings (See section 40-260) Units > 4							C	C				C	C	
Planned unit development, residential (See article XII of this chapter) Units ≤ 4	P		P			P	P	P				P	P	P
Planned unit development, residential (See article XII of this chapter) Units > 4	C		C			C	C	C				C	C	C
Single-family detached	P	P	P	P	P	P	P	P		P		P	P	P
Attached single-family residential							P	P		P		P	P	
Accessory Uses														
Accessory uses and structures, including garages, carports, etc. (See sections 40-261, 40-548)	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Home occupations, customary (See sections 40-261, 40-548)	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Swimming pools, private (See sections 40-261, 40-548)	P	P	P	P	P	P	P	P		P				P

Swimming pools, public (See sections 40-261, 40-548)	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Nonresidential Uses														
Adult entertainment establishment (See sections 40-261, 40-548)														C
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)													C	
Arcades, rides, games in enclosed buildings									P				C	
Art galleries (See section 40-548)								P	P	P	P	P		
Auctions sales									P			P		
Automobile repair garages, including engine overhauls, body and paint shops and similar operations in enclosed buildings (See sections 40-261, 40-548)											C	P		P
Automobile service stations and convenience stores									P	P	P			
Bakeries, retail, off-premises sales												P		P
Bakeries, retail, on-premises sales only									P	P	P			
Banks/financial institutions									P			P		
Barber shops									P	P	P			
Bars and taverns (See section 40-261)									C		C	C	C	C
Boat and personal water craft (PWC) sales and rental									P		P	P	P	P
Body Piercing Facility												C		
Bus terminal									P		P			
Cafeteria or dining room for employees of permitted uses														C

Floating Structure	Prohibited																
Funeral homes											P		P				
Furniture stores													P				
Gardens, arboretums and greenhouses, items for sale											P	P	P			P	
General retail sales										P	P	P	P	P		P	
Government/Public facilities and utilities (See section 40-261)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Ice-cream stores										P	P	P	P				
Laundries and dry cleaning, delivered by customers											P	P	P				
Laundromats, self-service											P	P	P				
Libraries	C			C	C						P	P	P	P			
Live entertainment complexes in enclosed buildings												C		C			
Manufacturing incidental to retail business, sold on premises only, maximum of five manufacturing operators												P		P		P	
Marinas, docks and/or piers, private	P														P		
Marinas, docks and/or piers, public or commercial	C											P			C		
Medical and dental clinics											P	P		P		P	
Meeting facilities	C	C	C	C		C	C	C	C	P			P			P	
Mixed use commercial-residential (See section 40-261)											P	P	P	P	P	P	
Motels and hotels											C	C		C		C	C
Motels and hotels, operated with a marina															C		
Multi-use facility											P	P	P	P	P	P	P
Municipal parking decks												P					

Museums						P					P		P		P	P
Nursery, garden and landscaping, display and sales													P			P
Offices, public, private or civic									P	P	P	P	P	P	P	P
Outdoor amusements, carnival and rides										C		C				
Parking lot, commercial—temporary (See section 40-261)										P						
Parking lot, commercial—permanent (See section 40-261)										P						
Parking lot, town operated (See section 40-261)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Private parking decks										C						
Parking and loading areas serving uses in the same zoning district, on same or contiguous lot (See article V of this chapter)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Parking and loading areas serving uses in the same zoning district, on non-contiguous lot (See article V of this chapter)	C	C	C	C	C	C	C	C	C	P	C	C	C	C	C	C
Pet shops and pet supply stores										P		P				
Photographic studio									P	P	P	P				
Planned unit development, business (See article XII of this chapter)											C	C	C	C	C	
Post offices											P		P			P
Postal mailing services, commercial											P		P			P
Printing/reprographics											P		P			P
Radio, computer, television and appliance repairs and rental service											P		P			
Rental of any item, the sale of which is permitted in the district											P		P	P		
Rental of golf carts, mopeds, and scooters (See section 40-261)*										P	P	P	P	P		P

Repair of any item, the sale of which is permitted in the district										P		P	P		
Schools, commercial for specialized training										P		P			P
Schools, public	C	C	C	C	C	C	C	C	C		C				C
Schools, private, general instruction	C	C	C	C	C	C	C	C	C		C				C
Seafood production and/or processing and/or dockage, wholesale and retail													C		C
Shopping centers/big box									C	C	C	C	C	C	C
Spa health club										P		P			
Studios, artist, designers, gymnasts, musicians, sculptures									C	P		P			
Tailor shops									P	P		P			
Tattoo studios (See sections 40-261, 40-548)												C			
Telephone exchange										P		P			P
Tennis courts, commercial (See section 40-261)										C		C			
Tennis courts, private (See section 40-261)	C	C	C	C	C	C	C	C	C		C	C	C	C	C
Theaters, in enclosed structure										P		P			
Theaters, open air drama										C		C			C
Trailer, business										C					
Trailer park, travel (See section 40-548)															
Trailer, temporary construction (See section 40-261)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Utilities, private (See section 40-261)	C	C	C	C	C	C	C	C	C	P	P	P	P	P	P
Vehicle sales lot and rental lot (See section 40-261)												P			P
Water oriented businesses										P		P			

Wholesale sales											P			P	P			P
Wine and beer shops											P			P				
Wireless telecommunications facilities	See article X of this chapter																	
Manufacturing, Assembly and Processing (See section 40-261)																		
Beverages, bottling works																		P
Breweries (See section 40-261)											P			P				P
Flammable liquid storage, >1,000 gallons aboveground only (See section 40-261)																		C
General assembly and repair														C				P
Ice manufacture, sales and storage														P				P
Manufacturing and assembly, processing, and packaging, except those uses identified in section 40-261																		P
Planned development, industrial																		C
Sign painting and sign fabrication														P				P
Storage yard, outdoor (See section 40-261)																		
Recreational vehicle/boat storage, yard (See section 40-261)														P	P			P
Towing service impound yard														C				P
Warehouses, storage. Large and mini																		P
Woodworking shops																		P

* **Note:** 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.

(Code 1986, app. A, § 3.8-1; Ord. No. 00-463, 10-10-2000; Ord. No. 01-482, 8-14-2001; Ord. No. 01-484, 8-14-2001; Ord. No. 01-491, 11-13-2001; Ord. No. 02-496, 3-12-2002; Ord. No. 02-

520, 9-17-2002; Ord. No. 03-543, 7-8-2003; Ord. No. 04-555, 6-7-2004; Ord. No. 04-558, 7-13-2004; Ord. No. 04-563, 8-10-2004; Ord. No. 05-615, 11-15-2005; Ord. No. 06-634, 5-9-2006; Ord. No. 06-643, 6-13-2006; Ord. No. 06-645, 9-12-2006; Ord. No. 06-661, 12-12-2006; Ord. No. 07-674, 3-13-2007; Ord. No. 07-679, 3-13-2007; Ord. No. 07-689, 6-12-2007; Ord. No. 07-709, 10-9-2007; Ord. No. 08-748, 7-7-2008; Ord. No. 08-756, 9-9-2008; Ord. No. 09-778, 3-10-2009; Ord. No. 09-790, 6-9-2009; Ord. No. 09-813A, 10-13-2009; Ord. No. 09-813B, 2-9-2010; Ord. No. 10-843, 8-10-2010; Ord. No. 10-844, 8-10-2010; Ord. No. 10-847, 9-14-2010; Ord. No. 10-851, 10-12-2010; Ord. No. 10-852, 10-12-2010; Ord. No. 10-853, 11-9-2010; Ord. No. 11-858, 2-8-2011; Ord. No. 11-865, 5-10-2011; Ord. No. 11-866, 5-10-2011; Ord. No. 11-876, 9-13-2011; Ord. No. 11-870, 7-12-2011; Ord. No. 12-887, 4-10-2012; Ord. No. 12-897, 7-10-2012; Ord. No. 12-901, 10-9-2012; Ord. No. 12-902, 12-11-2012; Ord. No. 13-906, 1-8-2013; Ord. No. 14-392, 5-13-2014; Ord. No. 14-926, 2-11-2014; Ord. No. 14-961, 3-10-2015; Ord. No. 15-971, 3-10-2015; Ord. No. 15-977, 6-9-2015; Ord. No. [16-1021](#), 9-13-2016; Ord. No. [16-1033](#), 1-10-2017; Ord. No. [17-1044](#), 4-11-2017; Ord. No. [17-1062](#), 8-8-2017; Ord. No. [18-1071](#), 1-9-2018; Ord. No. [18-1098](#), 12-11-2018; Ord. No. [19-1108](#), 2-12-2019; Ord. No. [19-1123](#), 10-8-2019; Ord. No. [19-1124](#), 10-8-2019)

Sec. 40-73. - Dimensional standards for the various zoning districts.

- (a) *Dimensional standards tables.* Immediately following the text below, are three tables which set forth the required area and dimensional standards associated with each district. The three tables are referenced in the following sections:
- (1) Section 40-74, dimensional standards for lots and principal structures.
 - (2) Section 40-75, dimensional standards for accessory structures.
- (b) *Other special dimensional standards.* In addition to the dimensional standards set forth in sections 40-74 and 40-75, the following special dimensional standards are established:
- (1) *Corner lots.* Except within the CBD districts, all corner lots shall not be less than 12½ feet on side street. Accessory structures shall also be subject to this requirement.
 - (2) *Front yards on through lots.* On through lots, the minimum front yards for the respective zoning districts shall apply wherever such lots have frontage on a street.
 - (3) *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 ten 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 points by a straight line to form a triangular shaped area over the corner. One support post not to exceed five 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.
 - (4) *Reduction of required lot area.* Where lots abut the estuarine and/or ocean tidal waters, as defined in section 40-548, 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 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 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 Administrator shall make the determination of actual lot area.

- (5) *Reduction of front yard setback.* 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 percent of the required setback.

- (6) *Allowable intrusions into required yard setbacks.* 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 not inconsistent with the state building code.

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 percent 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'

*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, no front cantilevers shall be allowed.

- a. Fences, walls, poles, posts, and other customary yard accessories, ornaments and furniture may be permitted in any yard setback.
- b. One trellis may be permitted per lot that encroaches into a setback area as long as it meets the following regulations:
 - 1. Maximum trellis height nine feet;
 - 2. 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.;

3. Vertical supports shall not occupy more than ten percent per side of the structure. The purpose of this condition is to maintain openness of the trellis structure;
 4. A trellis shall be freestanding with no connections to other structures;
 5. A trellis may encroach four feet into either the side or rear yard but not both;
 6. 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.
- (7) *Height regulations.*
- a. Structures shall not exceed 50 feet in height in conjunction with subsections (b)(5)a—d of this section.
 - b. 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~~ *special* use permit in compliance with the applicable process and with subsection (b)(8) of this section.
 - c. Structures in the height overlay district as defined by the official town zoning map shall not exceed 45 feet in height.
- (8) *Exceptions to height requirements.* Exceptions to the building heights are as follows: 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.
- (9) *Yard requirements for structures exceeding maximum height regulations.* Yards 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 shall be increased by one foot for each foot in height exceeding the maximum height requirements.
 - b. The minimum required side yard shall be increased by one foot cumulatively for each foot in height exceeding the maximum height requirements.
- (10) 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.
- (11) *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 the natural ecological conditions of the barrier dune and beach systems. Structural beach crossover shall be permitted across primary dunes so long as they are designed and constructed in a manner that entails negligible alteration on the primary dune subject to the following regulations:
- a. The crossover shall be no greater than six 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:
 1. Maximum 200 square feet west of the CAMA static vegetation line.
 2. Maximum 40 square feet east of the CAMA static vegetation line.

- 3. 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 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.

(Code 1986, app. A, § 3.9; Ord. No. 00-436, 10-10-2000; Ord. No. 02-523, 11-12-2002; Ord. No. 04-574, 11-9-2004; Ord. No. 05-599, 7-12-2005; Ord. No. 06-643, 6-13-2006; Ord. No. 06-647, 7-11-2006; Ord. No. 06-656, 9-12-2006; Ord. No. 07-664, 1-9-2007; Ord. No. 07-694, 7-10-2007; Ord. No. 09-808, 9-8-2009; Ord. No. 10-855, 12-14-2010; Ord. No. 11-856, 2-8-2011; Ord. No. 11-879, 10-11-2011; Ord. No. 12-897, 7-10-2012; Ord. No. 13-918, 8-13-2013; Ord. No. 14-961, 3-10-2015; Ord. No. 15-977, 6-9-2015; Ord. No. [16-1018](#), 7-12-2016; Ord. No. [19-1102](#), 1-8-2018)

Sec. 40-74. - Dimensional standards for lots and principal structures.

Dimensional Standards for Lots and Principal Structures, Residential Districts

Zoning District	Primary Permitted Uses	Min. Lot Size	Min. Lot Width ⁶	Min. Front Yard	Min. Rear Yard	Min. Side Yards * (Corner Lot—Min. 12.5 ft.) ⁴	Residential Max. Density	Max. Height	Max. Lot Coverage
R-1	Single-Family Two-Family	5,000 sq. ft.	50 ft.	20 ft.	10 ft.	7.5 ft.	15 units/acre	50 ft. ¹	40%
R-1B	Single-Family	5,000 sq. ft.	50 ft.	20 ft.	10 ft.	7.5 ft.	8.7 units/acre	50 ft. ¹	40%
R-2	Single-Family	7,000 sq. ft.	70 ft.	25 ft.	10 ft.	7.5 ft.	6.2 units/acre	45 ft.	40%
R-3	Single-Family	12,000 sq. ft.	80 ft.	25 ft.	10 ft.	7.5 ft.	3.6 units/acre	40 ft.	40%
C	Conservation District Single-Family	80,000 sq. ft.	200 ft.	30 ft.	20 ft.	20 ft.	0.5 units/acre	50 ft. ¹	15%
MH	Manufactured Homes Single-Family/Two-Family	5,000 sq. ft.	50 ft.	20 ft.	10 ft.	7.5 ft.	15 units/acre	50 ft. ¹	40%

MF	Multi-Family Single-Family/Two-Family	5,000 sq. ft.	50 ft.	10 ft.	10 ft.	7.5 ft.	17 units/acre	50 ft.	40%
MX	Mixed Use	5,000 sq. ft.	50 ft.	20 ft.	10 ft. ³	7.5 ft. ³	17 units/acre	50 ft.	40%

Table footnotes:

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.
2. See section 40-73(9), yard requirements, for structures exceeding maximum height regulations.
3. Front yard setback is 50 feet if abutting a major thoroughfare.
4. Landscaping buffer requirements in article VI of this chapter may be greater than the required side yard setbacks.

Dimensional Standards for Lots and Principal Structures, Other Districts

Zoning District	Primary Permitted Uses	Min. Lot Size	Min. Lot Width ⁵	Min. Front Yard	Min. Rear Yard	Min. Side Yards (Corner Lot-Min 12.5 ft.) ⁵	Max. Density	Max. Height	Max. Lot Coverage
CBD	Commercial Uses and Services, Entertainment	None	None	None	None, or same as abutting residential use or district	None, or same as abutting residential use or district	NA	50 ft. ⁴	None
NB	Neighborhood Goods and Services	5,000 sq. ft.	50 ft.	20 ft.	10 ft.	7.5 ft.	8.7 units/acre	50 ft. ²	40%
HB	Highway Commercial	10,000 sq. ft.	100 ft.	30 ft.	15 ft., or 20 ft. if abutting a residential district	10 ft.	NA	50 ft. ²	60%
MB	Water-Oriented Businesses, Single-Family/Two-Family	10,000 sq. ft.	100 ft.	30 ft.	10 ft.	10 ft.	17 units/acre ⁶	50 ft. ²	40%
T-1	Hotels and Motels 15 units or less	20,000 sq. ft.	100 ft.	20 ft.	10 ft. ³	7.5 ft.	32 units/acre	50 ft. ²	40%

	Hotels and Motels Greater than 15 units	25,000 sq. ft.	50 ft.				60 units/acre		
	Restaurants/Businesses	6,000 sq. ft.	50 ft.				29 units/acre		
	Single/Multi-Family	6,000 sq. ft.	50 ft.						
I-1	Industrial	None. (Min. district size: 5 acres)	None	30 ft. ³	None. *20 ft. if lot line abuts a residential lot or use ³	None *20 ft. if lot line abuts a residential lot or use ³	None	50 ft. ²	None
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

Table footnotes:

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.
2. See section 40-73(9), yard requirements, for structures exceeding maximum height regulations.
3. Front yard setback is 50 feet if abutting a major thoroughfare.
4. In this district, the standard 50 foot building limitation may be exceeded for sprinklered structure and maximum building height shall be solely based on ~~conditional~~ special use permit review.
5. Landscaping buffer requirements in article VI of this chapter may be greater than the required side yard setbacks.

(Code 1986, app. A, § 3.9-1; Ord. No. 00-436, 10-10-2000; Ord. No. 02-523, 11-12-2002; Ord. No. 04-558, 7-13-2004; Ord. No. 04-573, 11-9-2004; Ord. No. 06-634, 5-9-2006; Ord. No. 06-643, 6-13-2006; Ord. No. 07-664, 1-9-2007; Ord. No. 07-673, 1-9-2007; Ord. No. 08-725, 2-12-2008; Ord. No. 12-894, 6-12-2012; Ord. No. 15-977, 6-9-2015)

Sec. 40-75. - Dimensional standards for accessory structures.

(a) Accessory structures associated with residential uses shall:

- (1) Be included when calculating the total allowable lot coverage, and shall not constitute a proportionate size greater than 25 percent of the principal building's lot coverage, regardless of the lot size;
- (2) Be limited to 15 feet in height;
- (3) Not be permitted within any required front or side yard, or within five feet of the rear lot line;
- (4) Not be occupied, leased, rented or otherwise used for profit, income or for gain;

- (5) Not be used as a dwelling unit;
 - (6) Contain no more than three internal plumbing fixtures (water heater is exempt);
 - (7) 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;
 - (8) Meet state building code requirements if any dimension is greater than 12 feet;
- (b) Accessory structures associated with nonresidential uses shall:
- (1) Be included when calculating the total allowable lot coverage;
 - (2) Not be permitted within any required front or side yard, or within five feet of the rear lot line;
 - (3) Not exceed the size of the primary structure;
 - (4) Not be used as a dwelling unit;
 - (5) Require a building permit and meet state building code requirements.
- (c) Swimming pools setbacks.
- (1) Setbacks for swimming pools less than 30 inches above the ground level of the graded lot:
 - a. Front yard: As required for the zoning district.
 - b. Side yard: Five feet.
 - c. Corner yard: Five feet.
 - d. Rear yard: Five feet.
 - (2) Setbacks for swimming pools more than 30 inches above the ground level of the graded lot:
 - a. Front yard: As required for the zoning district.
 - b. Side yard: Five feet.
 - c. Corner yard: 7.5 feet.
 - d. Rear yard: Five feet.
- (d) Exemptions.
- (1) The following shall be exempted from the one customary accessory building:
 - a. Fence;
 - b. Flagpole;
 - c. Dog house not to exceed 16 square feet;
 - d. Pump house not to exceed 16 square feet;
 - e. Playhouse not to exceed 36 square feet nor eight feet in height;
 - f. Private swimming pools and their associated decks, fencing and equipment;
 - g. As may be allowed for under article XI of this chapter (~~conditional~~ [special](#) use permit approval process).
 - (2) The exemptions shall not have sewer, electrical and plumbing, except for pools and pump houses.
 - (3) These exemptions are not considered as part of the lot coverage.

(Code 1986, app. A, § 3.9-2; Ord. No. 00-463, 10-10-2000; Ord. No. 02-523, 11-12-2002; Ord. No. 03-543, 7-8-2003; Ord. No. 05-588, 5-17-2005; Ord. No. 09-775, 2-10-2009; Ord. No. 11-976, 9-13-2011; Ord. No. 14-932, 5-13-2014; Ord. No. 15-969, 1-13-2015)

Sec. 40-76. – Extraterritorial Jurisdiction (ETJ).

The Town of Carolina Beach will maintain and regulate any ETJ, and populations living in said ETJ, in the manner laid forth in Article 2 Planning and Development Regulation Jurisdiction (160D 201-204) and Article 3 Boards and Organizational Arrangements (160D-307) of the NC General Statutes

Secs. 40-~~77~~6—40-116. - Reserved.

ARTICLE IV. - FLOOD ZONE AND CAMA PROVISIONS

Sec. 40-117. - 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 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

(Code 1986, app. A, § 6.1; Ord. No. 00-463, 10-10-2000)

Sec. 40-118. - CAMA provisions purpose.

In keeping with the national objectives to preserve our natural resources along the coastal areas, the town subscribes to the provisions of the Coastal Area Management Act 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.

(Code 1986, app. A, § 6.2; Ord. No. 00-463, 10-10-2000)

Secs. 40-119—40-149. - Reserved.

ARTICLE V. - OFF-STREET PARKING AND LOADING REQUIREMENTS; PARKING^[2]

Footnotes:

--- (2) ---

Editor's note— Ord. No. [17-1042](#), adopted Jan. 10, 2017, changed the title of Art. V from "Off-street parking and loading requirements" to "Off-street parking and loading requirements; parking."

Sec. 40-150. - Off-street parking standards.

- (a) *Purpose.* The purpose of this section is to:
 - (1) Provide off-street parking standards which will alleviate traffic congestion in the streets and promote safe and unrestricted traffic flow;
 - (2) Provide for the efficient storage of vehicles while minimizing the detrimental effects of off-street parking on adjacent properties;
 - (3) Control the impacts of stormwater drainage and soil erosion and promote visual enhancement through adequate landscaping; and
 - (4) Ensure the proper and adequate development of off-street parking throughout the town and its environs.
- (b) *Applicability.* The off-street parking standards contained herein shall apply to all new buildings and uses, change of ownership and uses, and expansions, additions and renovations to existing structures and uses.
- (c) *Waiver of parking requirements in the central business district.* Where properties are located within the CBD, parking requirements may be waived if public parking spaces adequate to meet the requirement are located within 500 feet of the use.
- (d) *Off-street parking space schedule.*

Types of Uses	Number of Required Parking Spaces
Residential uses	
Detached dwelling, single-family	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 sq. ft. of residential space
Life care communities (independent living units)	*0.5 per resident

Multi-family (triplex and quadraplex)**	1 space per unit 650 sq. ft. of indoor gross floor area or less 2 per dwelling unit over 650 sq. ft. of indoor gross floor area or less + *0.5 per bedroom over 2
Multi-family (5 or more units)***	1 space per unit 650 sq. ft. of indoor gross floor area or less 2 per dwelling unit over 650 sq. ft. of indoor gross floor area or less + *0.5 per bedroom over 2
Room renting/boardingshouses	1 per roomer or boarder in addition to requirements for the dwelling units
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	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 and 1 space for each 2 employees shall be provided
Townhouses	2 per dwelling unit + *0.5 per bedroom over 2
Institutional uses	
Adult day care	1 per 5 participants + 1 per employee
Auditoriums, stadiums, assembly halls, gymnasium, theater, church, convention	1 per 200 sq. ft. + 1 per every 4 persons accommodated by facility at maximum capacity
Clinics	1 per 300 sq. ft.
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 sq. ft.
Fire station	1 per person on duty + 5 additional
Funeral home	1 per 300 sq. ft.
Golf courses	4 per green + 1 per employee
Golf driving range, miniature golf course	2 per tee, plus 1 per employee

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 + 1 per staff, incl. medical and support (largest shift)
Meeting rooms/facilities	See eating and drinking establishments
Museum/art gallery	1 per 500 sq. ft.
Nursing home, rest home, home for the aged	1 per 3 patient beds, + 1 per each FT employee
Parks	
Swimming pool	1 per 75 sq. ft. of water area
Tennis or racquet court	3 per court
Post office	1 per 300 sq. ft. + 1 per 2 employees
Public library	1 per 200 sq. ft.
Private recreation centers	
Swimming pool	1 per 75 sq. ft. of water area
Tennis or racquet court	3 per court
All other floor area	1 per 250 sq. ft.
School, elementary	1 per employee + 5 for visitors
Business uses	
Amusement establishments	
Theater	1 per 4 seats
Bowling alley	4 per alley
Dry stack storage facilities	1 per 5 dry storage space
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 as described in section 40-261
Indoor commercial recreation	1 per 200 sq. ft.
Outdoor commercial recreation	Adequate to handle the anticipated normal capacity for patron use, as determined by the Building Inspector, + 1 space for each employee
Pool hall	2 per billiard table
All others	1 per 200 sq. ft.
Animal care facilities	1 per 300 sq. ft. of gross floor area
Automobile service station	2 per station + 4 per service bay
Banks and similar financial	
Banks	1 per 300 sq. ft.
Drive-through windows (banks)	3 stacking or queuing spaces for each window
ATM	2 per machine
Commercial marina	1 per wet boat storage space, 1 per 2 dry storage, 1 per service bay, 1 per 2 employees + required for all other on-site uses
Convenience stores	1 per 200 sq. ft.
Car wash	
Automatic or drive-through	6 per washing or processing area, including stacking or queuing spaces
Self service	2 stacking or queuing spaces per wash bay in addition to the bay itself
Hotel/motel (not condominiums)	1 per sleeping room + 1 per 4 seats 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
Medical and dental offices	1 per 200 sq. ft. + 1 per employee
Office and professional building	1 per 300 sq. ft.

Eating and/or drinking establishments	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 a public parking lot. A 50% reduction in the parking requirement shall apply to outdoor GFA if the establishment is not within 500 feet of a public parking lot
Drive-through windows (eating and drinking establishments)	6 stacking or queuing spaces for the first window; 3 stacking spaces for each additional window
Rental of golf carts, mopeds, and scooters	1 parking space per every three vehicles displayed for rent
Repair services	1 per 200 sq. ft. of actual retail/sales area and 1 per 500 sq. ft. of indoor repair area
Retail stores and service businesses (i.e., barber, tailor, etc.)	1 per 200 sq. ft. of actual retail space or service area
Shopping centers, multi-use facility	5 per 1,000 sq. ft. of gross leasable area
New and used car sales, house and truck trailer sales, outdoor equipment and machinery sales, commercial nurseries	4 per salesperson on duty + 1 per employee
Industrial, manufacturing	1 per employee + 1 per vehicle used directly in conduct of such use
Warehouses	1 per 5,000 sq. ft. of gross floor area

Where fractional spaces are indicated, the total will be counted and rounded up to the next whole number.

Landscape islands must be provided for each unit to distinguish separate ownership.

Units stacked on top of each other with common ownership of land must provide for two unobstructed parking spaces per unit.

Notes:

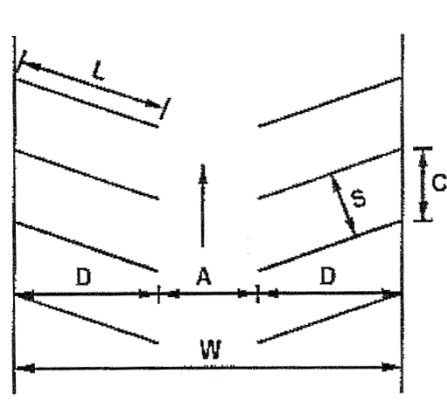
- (1) On all streets which terminate with the ocean berm or the waters of Myrtle Grove Sound where dwellings, hotels or motels are located on corner lots which abut the terminated street and the dominant highway or right-of-way, such dwellings, hotels or motels shall have the entrance to such projects for ingress and egress on the dominant street only 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.

(e) *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 feet in width and 18 feet in length. Parallel parking spaces shall not be less than eight feet in width and 22 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. The technical review committee may also allow for up to 20 percent of the spaces to be designed for use by smaller/compact vehicles to be placed in locations as determined by the technical review committee. Each compact vehicle space shall be designated, "compact vehicle only."
- (2) *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 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.

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	9	18	18	20	56	24
Dimensions for 60-degree parking	9	10.4	15.6	18	16	47.2	24
Dimensions for 45-degree parking	9	12.7	12.7	18	12	37.4	24



HYPERLINK "../images/Parking.png"

- (3) *Parking space for dwellings.* Driveways for dwellings shall be designed and constructed to accommodate the required amount of parking per dwelling. Garages and carports may be considered in meeting the applicable-parking requirements.
- (4) *Assigning of parking spaces.* The required parking spaces for any number of separate buildings or uses may be combined in one common parking lot facility; however, the required parking assigned to one use may not be assigned to another active use at the same time.
- (5) *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 which contains seating capacity of 1,000 or more (i.e., auditoriums, stadiums or amphitheaters).
- (6) *Parking reduction or assignment to another use.* The parking spaces required by this article 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 article be used for any other purpose or use unless otherwise specified by this article. Required off-street parking spaces and loading spaces are permanent areas and shall not be used for any other aboveground purpose.
- (7) *Parking design and construction.*
 - a. *Required surfacing.* All parking facilities shall provide a paved surface of concrete or asphalt material. Concrete pavers, brick, pervious or semi-pervious materials (i.e., "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.
 - b. *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.
 - c. *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 ten 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 points by a straight line to form a triangular shaped area over the corner.

- d. *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.
- e. *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.
 - 1. Single- and multi-family dwellings.
 - 2. 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.
- f. *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.)
- g. *Landscaping.* Parking facilities shall be subject to the provisions of the Landscape Ordinance of the town. (See article VI of this chapter, landscaping and buffering.)
- h. *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.
- i. *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.

(Code 1986, app. A, § 7.1; Ord. No. 02-503, 6-18-2002; Ord. No. 03-529, 2-11-2003; Ord. No. 04-558, 7-13-2004; Ord. No. 04-563, 8-10-2004; Ord. No. 04-574, 11-9-2004; Ord. No. 05-593, 6-14-2005; Ord. No. 05-613, 11-15-2005; Ord. No. 06-627, 4-11-2006; Ord. No. 06-632, 4-11-2006; Ord. No. 06-634, 5-9-2006; Ord. No. 06-635, 5-9-2006; Ord. No. 06-651, 8-8-2006; Ord. No. 07-674, 3-13-2007; Ord. No. 08-715, 1-23-2008; Ord. No. 08-750, 7-7-2008; Ord. No. 08-758, 9-9-2008; Ord. No. 09-782, 4-14-2009; Ord. No. 09-801, 7-14-2009; Ord. No. 09-813A, 10-13-2009; Ord. No. 10-816, 1-12-2010; Ord. No. 10-843, 8-10-2010; Ord. No. 10-847, 9-14-2010; Ord. No. 11-866, 5-10-2011; Ord. No. 12-901, 10-9-2012; Ord. No. 12-902, 12-11-2012; Ord. No. 13-906, 1-8-2013; Ord. No. 14-949, 7-8-2014; Ord. No. 14-961, 3-10-2015; Ord. No. 15-971, 3-10-2015; Ord. No. 15-981, 6-9-2015; Ord. No. [16-1021](#), 9-13-2016; Ord. No. [17-1044](#), 4-11-2017)

Sec. 40-151. - 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 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.

(c) *Minimum off-street loading requirements.*

- (1) *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 24,999	1
25,000 to 36,999	2
40,000 to 100,000	3

For each additional 100,000 square feet of gross floor area, at least one 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.

- (3) *Waiver of loading requirements in the central business district and for all other commercial districts.* 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. For all other commercial zoning districts where buildings are less

than 15,000 square feet, the loading requirements may be waived based on approval of a loading plan. Loading plans submitted by applicants in all districts shall address the following:

- Time loading will take place;
 - Approximate size of truck used for loading;
 - Duration of loading period; and
 - Location of the loading area.
- (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 (i.e., 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 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.

(Code 1986, app. A, § 7.2; Ord. No. 02-503, 6-18-2002; Ord. No. 08-716, 1-23-2008; Ord. No. 08-723, 2-12-2008)

Sec. 40-152. - 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) *Permit requirements.*
- (1) 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.

- (2) 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.
- (3) 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:
 - a. The location of proposed or existing driveways with dimensions and the distances from other streets and driveways.
 - b. Labeled public rights-of-way and widths.
 - c. Existing infrastructure such as sidewalks, drainage pipes, utility poles, hydrants, or any other features.
 - d. Erosion control and sedimentation plan.
- (4) The fee for the permit will be specified in the town's annual fee schedule.
- (5) 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.
- (d) *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.
 - (1) *Design.*

Use	Max width*	Flare	Thickness	Material
Residential Single/Two Family	36'	3'x3'	6"	Asphalt or Portland Cement Concrete, 3000psi
Commercial/Multi-Family	36'***	10'x30', or as required to meet truck turning radius	6-8"	Asphalt or Portland Cement Concrete, fibrous, 4000psi**

*The net width of all driveways not to exceed the allowable maximum width. This measurement is determined at the property line/ROW line.

**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.

*** Width must also be in accordance with Appendix D of the current North Carolina Fire Code.

- (2) *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. It is the responsibility of the contractor or property owner to design and cover the cost of any modifications to the drainage system.
 - a. Piping existing ditches. A minimum 15" 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 all driveways connecting to a state maintained right-of-way shall be subject to NCDOT maintenance specifications.

(Ord. No. [17-1042](#), 1-10-2017)

Secs. 40-153—40-170. - Reserved.

ARTICLE VI. - LANDSCAPING AND DEVELOPMENT SPECIFICATION STANDARDS

Sec. 40-171. - 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.

(Code 1986, app. A, § 8.1; Ord. No. 05-598, 7-12-2005)

Sec. 40-172. - Benefits of trees and landscaping.

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:

- (1) Maintains the visual character of the community and contributes to the aesthetic quality of property and enhances its value.
- (2) Screens objectionable views within and between uses.
- (3) Reduces glare, heat, and assists in noise abatement, maintaining the climatic balance and decreasing wind velocity.
- (4) Contributes to the process of air purification and oxygen regeneration.
- (5) Assists in the stabilization and fertilization of soil and in the prevention of soil erosion.
- (6) Contributes to the process of groundwater recharge and stormwater runoff retardation and protecting against flood hazards and erosion.
- (7) Promotes energy conservation by maximizing the shading and cooling effects of trees.
- (8) Provides a haven for birds, reptiles, and mammals that in turn help control the insect population.
- (9) Provides nuts and fruits for wildlife.
- (10) Provides important psychological, sociological, and aesthetic counterpoints to the manmade urban setting.

(Code 1986, app. A, § 8.2; Ord. No. 05-598, 7-12-2005)

Sec. 40-173. - 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.

(Code 1986, app. A, § 8.3; Ord. No. 05-598, 7-12-2005)

Sec. 40-174. - Authority.

North Carolina General Statutes No. 160A-174(a), ~~160A-458.4~~ [160D-923](#), 143-214.7, and 143-215.51 (G.S. 160A-174(a), ~~160A-458.4~~ [160D-923](#), 143-214.7 and 143-215.51).

(Code 1986, app. A, § 8.4; Ord. No. 05-598, 7-12-2005)

Sec. 40-175. - 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:

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 excluding single-family residences and two-family dwellings.

Caliper means a standard trunk diameter measurement for nursery grown trees taken six inches above the ground for up to and including four-inch Caliper size, and 12 inches above the ground for larger sizes.

Deciduous means those plants that annually lose their leaves.

~~*Development* means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, clearing, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.~~

Evergreen means those plants that retain foliage throughout the year.

Ground cover means a prostrate plant growing less than two 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.

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.

Intensive commercial means a business use that has a gross floor area of greater than 10,000 square feet.

Landscaping means the process or product of site development, including grading, installation of plant materials, and seeding of turf or ground cover.

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, non-residential and parking lot construction.

Planter means a structure or area consisting of at least one understory tree surrounded by flowers and shrubs.

Planting area means a ground surface free of impervious material, which is utilized for landscape purposes.

Shrub means a woody plant or bush with a minimum height of 12 inches and maximum of ten feet. It is distinguished from a tree by having several stems rather than a single trunk.

Street tree means a tree planted along the street behind the right-of-way.

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.

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 2½ inches in diameter measured six inches above the ground and at least eight feet in height.

Tree, understory, means any tree that is normally less than 25 feet in height with a spread of at least five 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 feet in height.

Vision clearance. In order to maintain an acceptable and safe line of sight for motor vehicle drivers, no fences, walls, posts, signs, lights, shrubs, trees or other type of obstructions not specifically exempted shall be permitted in the space between 30 inches in height from the grade of the street. 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 points by a straight line to form a triangular shaped area over the corner.

(Code 1986, app. A, § 8.5; Ord. No. 05-598, 7-12-2005; Ord. No. 06-634, 5-9-2006; Ord. No. 07-670, 1-9-2007; Ord. No. 09-785, 5-12-2009)

Sec. 40-176. - Buffer yard landscaping.

- (a) *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 percent or more of the current tax or appraised value excluding single/two-family homes. However, no buffer yard improvements shall be required for those portions of existing lot frontage used for driveways constructed in accordance with town regulations.
- (b) *Required landscape; types.* It is required that buffer yards be landscaped by meeting the requirements of Type A, B, C or D set forth in subsection (b)(1), (2), (3) or (4) of this section. Any side or rear yard that abuts a residential use or residential district shall provide for a six-foot fence with 80 percent opacity. A landscaping/buffer yard information guide and plant selection list is available from the Zoning Administrator.
- (1) *Type A.* For every 50 linear feet, or fraction thereof, the buffer yard shall contain one canopy tree or two understory trees, and three shrubs.
 - (2) *Type B.* For every 50 linear feet, or fraction thereof, the buffer yard shall contain two canopy trees or four understory trees, and six shrubs.
 - (3) *Type C.* For every 50 linear feet, or fraction thereof, the buffer yard shall contain two canopy trees or four understory trees, and six shrubs.
 - (4) *Type D.* For every 50 linear feet of frontage, or fraction thereof, the street yard shall contain one 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)

- (5) *Type E.* For every 50 linear feet of frontage, or fraction thereof, the street yard shall contain one 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.
- (c) *Preservation of vegetation.* If vegetation exists in the proposed buffer yard area, the Zoning Administrator may grant credit toward meeting buffer yard requirements for preservation of the vegetation provided their caliper is equal to or exceeds the specifications herein described.
- (d) *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 Administrator.
- (e) *Minimum buffer yard/street yard widths.*

Buffer Types	Uses	Buffer/Street Yard Size (feet)
Type A	Business/office use/parking areas 10,000 sq. ft. or less (public or private)	5
	Multifamily, planned unit development (3—5 units)	5
Type B	Multifamily, planned unit development (6 + units)	10
	Intensive, commercial, multi-use facilities/parking areas greater than 10,000 sq. ft. (public or private)	10
	Institutional (government buildings, schools, churches)	10
Type C	Industrial	15
Type D	Subdivisions (see section 36-140)	6
Type E	Central business district (CBD), new construction only	0

- (f) *Minimum size at planting.*

Minimum Size at Planting	Shrubs	Understory	Canopy
12 inches	6 feet	2½ inches in caliper	

(Code 1986, app. A, § 8.6; Ord. No. 05-598, 7-12-2005; Ord. No. 06-634, 5-9-2006; Ord. No. 07-664, 1-9-2007; Ord. No. 07-670, 1-9-2007)

Sec. 40-177. - Tree/landscape plan.

- (a) *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 subsection (b) of this section (the required tree/landscape plan can be incorporated into the general site plan).
- (b) *Landscape plan submittal requirements.* The landscape plan shall contain the following information:
- (1) General location, type, and quantity of existing plant materials.
 - (2) Existing plant materials and areas to be left in natural state.
 - (3) Methods and details for protecting existing plant materials during construction and the approved erosion control plan, if required.
 - (4) Locations, size and labels for all proposed plants.
 - (5) Plant lists with common name, quantity, and spacing and size of all proposed landscape material at the time of planting.
 - (6) Location and description of other landscape improvements, such as earth berms, walls, fences, screens, sculptures, fountains, street furniture, lights, and courtyards or paved areas.
 - (7) Planting and installation details as necessary to ensure conformance with all required standards.
 - (8) Location and type of irrigation system, if applicable.
 - (9) Location of any proposed buildings.
 - (10) Layout of parking and traffic patterns.
 - (11) Location of overhead and underground utilities.
 - (12) Location of signage.
 - (13) Connections to existing streets.
 - (14) Zoning designation of adjacent properties.
 - (15) Landscape plan shall be drawn to scale and include a north arrow and necessary interpretive legends.
- (c) *Information guide and plant selection list.* A landscaping/buffer yard information guide and plant selection list is available from the Zoning Administrator.

(Code 1986, app. A, § 8.8; Ord. No. 05-598, 7-12-2005)

Sec. 40-178. - Design specification standards.

- (a) *Parking facilities landscaping.*
- (1) All parking facilities required by town regulations shall submit the site plan to the Director for review and approval of the landscaping requirements of this section.
 - (2) Minimum standards. At least eight percent 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 feet wide by 18 feet length measured from back of curb/barrier to back of curb/barrier.
- (b) *Sidewalk and curb and gutter.*
- (1) All new development and redevelopment that exceeds 50 percent or more of the current tax or appraised value shall include curb, gutter, and sidewalks. Single-family and two-family dwellings are excluded from this requirement.
 - a. Curb and gutter. The town may require the property owner or owners 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 road way.
 - b. Sidewalks. Sidewalks may be required to be installed within the right-of-way behind the curb and gutter. Sidewalks shall have a minimum width of:
 - 1. Four feet for residential areas including new subdivisions;
 - 2. Five feet along and within the central business district, or state roads maintained by the NCDOT. If the installed sidewalk cannot fit on the existing right-of-way the property owner/owners will be required to provide the town with an easement to maintain sidewalks.
 - (2) 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.
 - (3) Installed curb, gutter and sidewalks shall be for the entire length of the property.
 - (4) 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.
 - (5) All specifications for curb, gutter, and sidewalks are available upon request from the town Planning and/or Operations Department.
- (c) *Dumpster enclosures.* Refuse collection agency to be used must be included on final site plans. The refuse collection site must be enclosed on three sides.

(Code 1986, app. A, § 8.9; Ord. No. 05-598, 7-12-2005; Ord. No. 06-628, 4-11-2006; Ord. No. 06-633, 4-11-2006; Ord. No. 06-634, 5-9-2006; Ord. No. 07-672, 1-9-2007)

Sec. 40-179. - Maintenance.

- (a) 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. The owner shall replace any planted material, which becomes damaged or diseased or dies, within 60 days of the occurrence of such condition. If, in the opinion of the Director, there are seasonal conditions, which will not permit the timely replanting, this requirement may be administratively waived until a time certain.
- (b) 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.

- (c) 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.
- (d) All provisions of this article shall be subject to enforcement proceedings as cited in this Code.

(Code 1986, app. A, § 8.10; Ord. No. 05-598, 7-12-2005; Ord. No. 09-785, 5-12-2009)

Sec. 40-180. - Variance procedures.

Landscaping requirements may be waived at the discretion of the planning and zoning commission and/or town council on projects requiring a ~~conditional~~ special use permit. The applicant must provide along with the ~~conditional~~ special use permit application written explanation for deviation from the requirements of this article. In projects requiring staff approval, landscape requirements may be appealed to the board of adjustment (see section 40-488).

(Code 1986, app. A, § 8.11; Ord. No. 05-598, 7-12-2005)

Secs. 40-181—40-200. - Reserved.

ARTICLE VII. - FENCE REGULATIONS

Sec. 40-201. - Purpose.

All fences shall be considered structures as defined in section 40-548. This article 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.

(Code 1986, app. A, § 10.1; Ord. No. 00-463, 10-10-2000; Ord. No. 04-574, 11-9-2004)

Sec. 40-202. - Permitted location of fences.

Fences are permitted in the required setbacks according to section 40-548, definition of yard. 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.

(Code 1986, app. A, § 10.2; Ord. No. 00-463, 10-10-2000; Ord. No. 09-784, 5-12-2009)

Sec. 40-203. - 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 points by a straight line to form a triangular shaped area over the corner.

(Code 1986, app. A, § 10.3; Ord. No. 00-463, 10-10-2000; Ord. No. 09-784, 5-12-2009)

Sec. 40-204. - Height restrictions.

- (a) *Measurement.*

- (1) Height shall be measured at the highest point, not including columns or posts, of the fence section to the existing natural grade. 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.
 - (2) 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 feet, except at gates.
 - (3) 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.
- (b) *Residential and commercial districts.*
- (1) No fence shall exceed six feet in height.
 - (2) No fence shall exceed four feet in height when located in the front yard setback.
- (c) *Fences exceeding the height restrictions.*
- (1) For nonresidential uses only, a ~~conditional~~ special use permit shall be required for fences exceeding the height restrictions.
 - (2) Exemptions. Town facilities, utilities, and all uses specifically identified in article IX of this chapter as having an allowance for fencing exceeding six feet.

(Code 1986, app. A, § 10.4; Ord. No. 04-574, 11-9-2004; Ord. No. 09-784, 5-12-2009; Ord. No. 10-853, 11-9-2010)

Sec. 40-205. - 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 Administrator. A building permit shall be required for all commercial fences exceeding six 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.

(Code 1986, app. A, § 10.5; Ord. No. 00-463, 10-10-2000; Ord. No. 09-784, 5-12-2009)

Sec. 40-206. - 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.

(Code 1986, app. A, § 10.6; Ord. No. 00-463, 10-10-2000)

Sec. 40-207. - 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.

(Code 1986, app. A, § 10.7; Ord. No. 00-463, 10-10-2000; Ord. No. 09-784, 5-12-2009)

Sec. 40-208. - Fencing for outdoor swimming pools is required.

- (a) *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 feet of unobstructed clear distance.
- (b) *Public swimming pools.* 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).

(Code 1986, app. A, § 10.8; Ord. No. 00-463, 10-10-2000)

Sec. 40-209. - 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 percent 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.

(Code 1986, app. A, § 10.9; Ord. No. 09-784, 5-12-2009)

Secs. 40-210—40-226. - Reserved.

ARTICLE VIII. - SIGN REGULATIONS**Sec. 40-227. - Purpose and intent.**

- (a) It is the intent of the town council to protect public interest, safety and welfare and, to that end, the purposes of this article are specifically declared to be as follows:
- (1) To promote economic development while minimizing the negative impacts that signs may have on the visual appearance of the town;
 - (2) To provide orientation and guidance to our tourists and 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;
 - (3) To inform and educate visitors and residents of opportunities and events both commercial and noncommercial occurring on Pleasure Island; and
 - (4) To permit and regulate signs in such a way as to support and compliment land use objectives.
- (b) 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 birth of a baby, etc.).

(Code 1986, app. A, § 11.1; Ord. No. 10-825, 4-13-2010; Ord. No. 12-888, 6-12-2012)

Sec. 40-228. - Administration.

- (a) *Permit issuance.* The Zoning Administrator or his designated representative shall be the administrator of this article.

(b) *Number of signs.* Unless otherwise stated, only one of each type of sign may be permitted per development site except for corner or double frontage lots. A second sign may be placed on corner or double frontage lots. Where two signs are allowed, one sign shall be adjacent to one public right-of-way and the second sign shall face the other public right-of-way. If signs are used on separate frontages, each sign may use the maximum size allowable. If the second sign is on a corner, then the total square footage of the two signs shall not exceed the maximum size allowance, except when a corner lot meets the following criteria:

- (1) The corner lot is located in a commercial zone;
- (2) The lot is larger than 30,000 square feet;
- (3) The sign is limited to ten feet in height;
- (4) The sign is set back an additional five feet beyond the required ten feet setback from all property lines.

Meeting the four criteria above will permit each sign on a corner lot to use the maximum size allowable for a freestanding sign on each frontage.

(c) *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 article and pursuant to issuance of a sign permit.

(d) *Process for issuance of a sign permit.* The process for issuing a sign permit is as follows:

- (1) Completed application.
- (2) A scaled drawing displaying the location of the sign on the associated property, the sign dimensions, construction, height, setbacks from all property lines, lighting, electrical and all other elements associated thereto.
- (3) Payment of the permit fee.
- (4) 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.
- (5) Total number of signs existing on site, including the dimensions of each.

(e) *Signs not requiring a permit.* The following types of signs are exempt from permit requirements:

- (1) Governmental signs.
- (2) Window/door signs.
- (3) Real estate/ off-site real estate signs.
- (4) Political signs.
- (5) Open signs.
- (6) Patriotic and/or decorative flags.
- (7) Any sign required by a government agency (i.e., address number sign).

(f) *Exceptions.* Any sign that is not designed for view by vehicular traffic may be displayed for decorative, patriotic, or commercial purposes as long as the signage does not violate any of the prohibited sign regulations.

(g) *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.

- (1) *Sign area.*

- a. *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.
 - b. *Freestanding.* All surface areas and any lettering or sculptured matter outside the sign surface area.
- (2) *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.
 - (3) *Sign face.* Where a sign has two or more faces, the area of all faces shall be included in determining the area of the sign, except that where two such faces are placed back-to-back and are at no point more than 1½ feet from one another.

(Code 1986, app. A, § 11.2; Ord. No. 10-825, 4-13-2010; Ord. No. 11-857, 1-11-2011; Ord. No. 12-888, 6-12-2012; Ord. No. [19-1106](#), 2-12-2019)

Sec. 40-229. - 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:

A-frame sign means a temporary sign typically consisting of two sign faces attached back-to-back by top hinges.

Address number sign. See chapter 34, article IV.

Animated sign means any sign that uses movement or change of lighting to depict action or create a special effect or scene.

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.

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).

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).

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.

Commercial banners means banners intended for commercial promotion and/or advertisement.

Commercial flags means flags intended for commercial promotion and/or advertisement.

Construction sign means a temporary sign that identifies on-site construction and future development to occur on the property and typically containing the names of contractors, architects, and lending institutions.

Decorative banners means colored banners only that contain no wording or pictures. These include banners that resemble patriotic flags (i.e., a blue and red banner with white stars).

Decorative flags means colored flags only that contain no wording or pictures.

Directional sign means a permanent sign for public direction or information containing no advertisement or commercial identification of any product or service. Typically, these signs consist of directional arrows, business names or logos, the words "entrance," "exit," "parking," etc.

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.

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 message to another message is permitted within a maximum fading period of two seconds.

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.

Future development sign means a sign placed on vacant or developed property that advertises a future use that is currently allowed in the zoning district where the sign is located.

Governmental sign means a sign provided and erected by a governmental entity which typically promotes:

- (1) The health and safety of the community;
- (2) Town-sponsored events;
- (3) A public way finding system; and
- (4) Any other town activities as deemed appropriate by the Town Manager.

Human sign means costumes or signs worn, held or carried by individuals for the purpose of attracting attention to a commercial site.

Illegal sign means any sign that was in violation of the zoning ordinance at the time the sign was originally established.

Integral sign means memorial signs or tablets, names of buildings, and date of erection when cut into any masonry surface or when constructed of bronze or other incombustible materials mounted on the face of a building.

Nonconforming sign means any sign which does not conform to the regulations of this article, but did conform when it was originally permitted.

Nonprofit sign means any sign promoting churches, schools and and/or other noncommercial institutions.

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.

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.

Off-site real estate sign means generic signs with display content limited to a directional arrow and/or one descriptive phrase of "open house" and allowed off the premises from where the real estate product is being offered.

Open sign means a sign or flag with a specific designated purpose of stating that a business is open or closed.

Patriotic flags means flags with only the insignia of governmental subdivisions, agencies, or bodies when displayed for patriotic purposes.

Permanent sign means all signs not designated as temporary.

Political sign means signs displaying political candidacy and/or messages as related to an election date and allowed only within a limited timeframe.

Portable sign means a temporary sign attached on support frame without lighting.

Projecting sign means a type of attached signage placed at a right angle to the facade of the associated structure.

Public information sign means a sign provided and erected by a governmental entity or nonprofit organization, which typically gives direction to governmental or community institutions, amenities, or displays regulations or notices.

Real estate sign means a sign that is used to offer for sale, lease, or rent the property upon which it is placed.

Roof sign means any sign erected or constructed upon the roof of any building and supported solely on the roof of the building.

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.

Snipe sign means any sign of any material whatsoever that is attached in any way to a utility pole, tree, street sign or pole.

Special event sign means a sign advertising a special communitywide event such as community fishing tournaments, schools or civic events, and/or festivals.

Subdivision entrance sign means a sign identifying a development, located on site, and at the major entrance points to such development.

Temporary sign means any sign that advertises or directs attention to a product, event, election, activity, meeting, exhibition or performance of any kind where such sign is not permanently affixed, placed, attached or erected, and may have time limitations.

Tow truck sign. See chapter 16, article VII, wrecker/towing services and impoundment.

Vehicle/trailer sign means any temporary sign mounted on a vehicle, boat, or trailer and used for advertising or promotional purposes.

Window/door sign (interior/exterior) means a sign located within the interior or exterior of the transparent area of any window or door.

Yard sale sign. See sections 14-172 through 14-174.

(Code 1986, app. A, § 11.3; Ord. No. 10-825, 4-13-2010; Ord. No. 11-857, 1-11-2011; Ord. No. 12-888, 6-12-2012; Ord. No. 12-899, 8-14-2012)

Sec. 40-230. - Prohibited signs/displays.

The following signs are prohibited within the jurisdictional limits of the town:

- (1) Billboard signs.
- (2) 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.
- (3) Strobe lights or any other type of flashing lighting or beacons. Exception: 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 also be present in any commercial zone as long as they are not designed for vehicular traffic. This exception does not allow for strobe lights.
- (4) Moveable, animated, flashing signs including balloons and human signs.

- (5) Pennant or consecutively linked flagging or similar devices.
- (6) 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."
- (7) 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.
- (8) Signs that make noise.
- (9) Signs displaying or containing obscenities.
- (10) Roof signs.
- (11) Snipe signs.
- (12) Handwritten messages on permanent signs.
- (13) No sign shall block any vision clearance (i.e., a 30 by 30 site triangle at intersections and driveways).
- (14) Any other sign not mentioned by this article.
- (15) Vehicle/trailer signs.

(Code 1986, app. A, § 11.4; Ord. No. 10-825, 4-13-2010; Ord. No. 12-888, 6-12-2012)

Sec. 40-231. - Sign lighting.

- (a) Interior sign lighting shall be shaded with an opaque sign face surface sufficient to reduce the glare on roadways and surrounding properties.
- (b) Signs utilizing bare bulbs or neon type lighting shall be such that minimizes the glare on roadways and surrounding properties.
- (c) 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.

(Code 1986, app. A, § 11.5; Ord. No. 10-825, 4-13-2010)

Sec. 40-232. - Allowable signs.

- (a) *Permitted signage in all zoning districts.* The following signs shall be permitted in all zoning districts:
 - (1) *Construction sign/future development signs.*
 - a. Both types of signs may be allowed as temporary, non-illuminated signs not to exceed 20 square feet in area and five feet in height.
 - b. A construction sign and future development sign shall be removed within 30 days after the issuance of a certificate of compliance.
 - c. A construction sign shall only be allowed with a valid building permit. Where no building permit was required (i.e., painting a house) the construction sign shall be removed within 30 days after the work was completed. A future development sign may be allowed at any time after receiving a sign permit.
 - (2) *Governmental signs.* Size, location, and length of time of these signs shall be approved by the Town Manager or his designee.
 - (3) *Political candidacy signs.*

- a. One sign shall be permitted per individual lot or parcel for each candidate for office or side of a ballot measure or issue; for a lot or parcel with frontage on a second street, one additional sign for each candidate for office or side of a ballot measure or issue shall be permitted.
 - b. Such signs shall not be located on town property or buildings, except within specified proximity of polling places on election day, under rules established by a county board of elections.
 - c. Such a sign shall be removed within ten days following the date of any election or other event to which it refers, except that signs for successful primary election candidates, eligible for the general election, may remain after the primary election; this time limit shall not apply to a sign which does not refer to an election or other event.
 - d. Such a sign shall not exceed six square feet in area per sign face or five feet in height, except where such sign is erected in place of another type of sign permitted at that location, in which case it may be the same size and subject to the same conditions as such sign. Depending on the size and location of the sign a building permit may be required.
 - e. The person, party, or parties responsible for the erection or distribution of any such signs shall be jointly and liable for the removal of such signs.
 - f. The property occupant or, in the case of unoccupied property, the property owner, shall be responsible for violations on a particular property.
 - g. No political sign shall be located in a public right-of-way with the exception of NCDOT rights-of-way in accordance with Session Law 2011-408.
- (4) *Decorative flags or banners.* Decorative flags or banners may be displayed as freestanding or attached subject to the following specifications:
- a. No more than one per 50 feet of road frontage shall be displayed.
 - b. Size shall be limited to a maximum of 24 square feet and 20 feet in height.
 - c. All decorative flags and/or banners shall remain within the boundaries of the property for which they are permitted.
- (5) *Patriotic flags.*
- a. Patriotic flags displayed shall not be limited in size or number.
 - b. All patriotic flags shall remain within the boundaries of the property for which they are permitted.
- (6) *Real estate and off-site real estate signs.*
- a. These signs shall be located on private property only with written permission of the applicable property owner.
 - b. The maximum size shall be calculated as six square feet for every 50 feet of road frontage, or six square feet per commercial and/or residential unit, whichever is greater. There shall be a maximum size of 36 square feet per development site.
 - c. Maximum sign height is five feet in height measured from the adjacent ground elevation to the uppermost portion of the sign.
 - d. All signs shall be freestanding on their own independent support posts/pole or attached to the building for sale or rent.
 - e. One off-site real estate sign shall only be allowed during open house hours while a real estate representative is on-site.
- (7) *Subdivision entrance signs.* Two attached subdivision entrance signs or one monument or freestanding sign per principal entrance are allowed. Such signs shall designate the subdivision

by name or symbol only and under all circumstances they shall be rigidly and securely anchored against movement. 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 feet if freestanding. They may be illuminated.

In addition to the allowances under this subsection (a), nonresidential uses that are existing or allowed in residential areas, but do not fall under the category of nonprofit, may also utilize the freestanding sign allowances as defined under subsection (b) of this section.

(b) *Special allowances for nonprofit signs in all zoning districts.*

- (1) *Freestanding sign.* One sign shall be allowed that is no more than 20 square feet in area; ten feet in height; and is setback at least ten feet from all property lines.
- (2) *Public information signs.* Permanent locations shall include public or private sites for standing meetings of clubs or property owned by a recognized church or denominational body. All directional or informational signs shall be subject to the following restrictions:
 - a. Signs shall not exceed six square feet in size nor eight feet in height (top of panel).
 - b. Signs shall not be illuminated.
 - c. Sign lettering shall not exceed four inches in height.
 - d. Sign content may include name and address of organization, logo, directional arrow, and meeting times. No commercial business or product shall be advertised.
 - e. These signs may be located off-site under the following provisions:
 1. Signs shall only be allowed at major highway intersections and shall not be located in a public right-of-way or block visibility at any intersection.
 2. Two public information sign panels (each for a different organization) may be placed on a single location.
- (3) *Special event signs.*
 - a. The Town Manager and/or town council shall approve the location, number, and length of time the sign may be displayed.
 - b. Off-premises special event signs shall be allowed with the written consent of the property owner.
 - c. On-site or off-site special event signs shall be limited to 20 square feet.
 - d. An off-premises special event sign may be issued that has advertisements for local businesses as long as the sign is displayed in exchange for charitable contributions for the purposes of funding nonprofit initiatives (i.e., boardwalk makeover sign with advertisements for sponsors).

(c) *Permitted signage in all commercial zones.* The following signs shall be permitted in all commercial zones (CBD, NB HB, MB-1, I-1, T-1, MF, and MX zoning districts):

- (1) *Attached signs.*
 - a. Attached signs shall be allowed on all sides of a business. The total allowable building face signage shall not exceed 25 percent 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.
 - b. If utilized, projecting signage shall have a clearance of at least ten feet between the adjacent ground level and the lowest portion of the sign. No attached sign shall project more than four 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 feet.

- c. Canopy/awning sign shall be considered as attached signs. In no instance shall a canopy/awning sign exceed the canopy awning area.
- (2) *Construction signs.* Construction signs shall be permitted as described in subsection (a)(1) of this section with size limitations of 40 square feet in area and 15 feet in height.
- (3) *Directional signs.*
 - a. *On-premises directional signs.*
 - 1. On-premises directional signs shall be limited to four square feet and three feet in height.
 - 2. Directional signs at shopping centers may contain the name of the shopping center but not the names of the individual businesses within the shopping center.
 - 3. For every driveway cut, two directional signs shall be allowed on private property adjacent to the right-of-way.
 - b. *Off-premises parking signs.*
 - 1. The maximum size shall be one foot by two feet.
 - 2. Off-premises parking signs may only delineate the name of the business, logo, and distance the business is from the site of the sign, no other advertisement of products or services is permitted.
 - 3. Off-premises parking signs shall not be lighted.
- (4) *Permanent freestanding signs.*
 - a. Maximum size equals one-half a square foot of sign area per one 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.

Type of Development	Max. Area Per Face
Multi-Family Residential	50
Nonresidential up to 2,500 sq. ft. of building area	50
Nonresidential 2,500 sq. ft. up to 15,000 sq. ft. of building area	64
Nonresidential greater than 15,000 sq. ft. of building area	100

- b. Maximum height of 20 feet in the CBD, NB, MB-1, T-1, MF, and MX zoning districts.
- c. Maximum height of 25 feet in the HB and I-1 zoning districts.
- d. A permanent freestanding sign shall have a minimum setback of ten feet from all property lines.
- (5) *Temporary attached and freestanding sign regulations.*

- a. Each business shall be allotted one temporary freestanding or attached sign yearround. Permits for temporary signage shall be issued annually with the following limitations:
 - 1. A-frame signs not exceeding eight square feet per side in area with a maximum height of four feet.
 - 2. Portable signs not exceeding ten square feet and five feet in height.
 - 3. Banner signs not exceeding 24 square feet and 15 feet in height.
 - 4. Commercial flagging shall be limited to 24 square feet and shall have the same height restrictions as permanent freestanding signs.
 - 5. Future development signs shall be limited to 30 square feet and 15 feet in height.
 - b. Temporary signs may be placed on public sidewalks in the CBD. No temporary sign shall be placed where the unobstructed space for the passageway of pedestrians is reduced to less than 4½ feet.
- (6) *Open signs.* Each business shall be allowed one attached open sign and one open flag. An attached open sign shall not exceed four square feet. Open flags shall not exceed 15 square feet.

(Code 1986, app. A, § 11.6; Ord. No. 10-825, 4-13-2010; Ord. No. 11-857, 1-11-2011; Ord. No. 11-866, 5-10-2011; Ord. No. 11-871, 7-12-2011; Ord. No. 12-888, 6-12-2012; Ord. No. 12-899, 8-14-2012)

Sec. 40-233. - Nonconforming signs, illegal signs, violations and penalties.

All signs shall be subject to article XIV of this chapter, nonconforming situations, and article XV of this chapter, administration, enforcement, and review.

(Code 1986, app. A, § 11.7; Ord. No. 10-825, 4-13-2010; Ord. No. 12-888, 6-12-2012)

Secs. 40-234—40-259. - Reserved.

ARTICLE IX. - DEVELOPMENT STANDARDS FOR PARTICULAR USES

Sec. 40-260. - Introduction.

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.

(Code 1986, app. A, § 12.1; Ord. No. 00-463, 10-10-2000)

Sec. 40-261. - Development standards for particular uses.

- (a) *Adult entertainment establishment.* Adult entertainment establishments designated as Class II, as defined in section 14-63(b), are prohibited within the jurisdictional limits of the town except by issuance of a ~~conditional~~ special I use permit approved by the planning and zoning commission for an adult entertainment establishment. Adult entertainment establishments may be located within the I-1 zoning district by issuance of a ~~conditional~~ special use permit, subject to requirements of the zoning district and provided that:
 - (1) Each adult entertainment establishment shall be located a minimum of 1,500 feet from any existing adult entertainment establishments. Such measurement shall be the horizontal distance

between the nearest property lines of the proposed and existing adult entertainment establishments.

- (2) Each adult entertainment establishment shall be located a minimum of 1,500 feet from any residential or tourist zoned areas, church, school, public or private park or recreational facility. Such measurements shall be the horizontal distance between the nearest property line of the proposed adult entertainment establishment and the nearest residential or property line of any place of worship, school, public or private park or recreational facility.
- (b) *[Animal care facilities.]* Animal care facilities with outdoor areas shall meet the following standards:
- (1) Shall maintain compliance with all federal and state regulations.
 - (2) Located 200 feet from a residential use in a residential district.
 - (3) Shall not be located in the front yard and must meet a minimum setback of five feet from the side and rear property lines.
 - (4) Shall provide a minimum six-foot barrier that [has] 80 percent opacity. Barriers larger than six feet in height may be approved as a condition of the [S.U.P.CUP](#).
- (c) *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 feet high and offering 100 percent opacity.
- (d) *Bed and breakfast inns.*
- (1) Only one 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 additional parking space will be required for each room available for rent.
 - (6) Allowed in R1 north of Scallop Lane by a ~~conditional~~ [special](#) use permit.
- (e) *Boat repair.* Limitations shall be placed on outdoor repair areas to protect surrounding properties and uses from any objectionable characteristics resulting from repair activities.
- (1) The size of outdoor repair area shall not exceed 30 percent lot coverage.
 - (2) Minimum setbacks for outdoor repair areas shall be 15 feet from all property lines.
 - (3) Any outdoor repair areas shall be completely shielded from streets and adjacent properties by buildings and/or fencing that is at least six feet high and offers 100 percent opacity.
 - (4) No outside storage of junk boats, trailers, or parts shall be permitted.
- (e.1) *Body piercing facility.*
- (1) 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.
 - (2) Hours of operation shall be limited from 8:00 a.m. to 9:00 p.m.

- (3) Separation requirements: Body piercing 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 property line of any of the following:
- Residential districts 200 feet.
 - Church or school 200 feet.
 - Public parks, playgrounds, or libraries 200 feet.
 - Other body piercing facility 400 feet.
- (f) *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.
- (2) *Standards for breweries:*
- 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) *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.
- (h) *Commercial outdoor recreation.* 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.
- (i) *Commercial vehicles in residential areas; off-street parking and/or storage of certain vehicles.*
- (1) *Commercial trailers.* A commercial trailer or semi-trailer over 25 feet in length shall not be parked or stored in any residential 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.
 - (2) *Commercial vehicles.* One commercial vehicle with manufacturer's rating of not more than one 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 axles are allowed to be parked in any residential district except in an enclosed building. This regulation shall not be interpreted to prohibit commercial vehicles from loading or unloading in any residential district.
- (j) *Day nurseries, day care centers, adult day care centers, day care home, or preschool and drop-in child care.* 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:

- (1) 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.
 - (2) 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.
 - (3) For institutions which care for ten 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 ten children shall provide an additional 1,000 square feet of lot area for each ten children.
- (j.1) *Distillery.* 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.
- a. 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.
- (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 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.* 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.
- (1) Boats located in a dry stack storage facility shall not be used for living purposes, sleeping, housekeeping, or business purposes.
 - (2) Any outdoor storage of boats shall meet article IX of this chapter, storage yards, outdoor provisions.
 - (3) Junk boats or parts associated with the dry stack storage facility shall be located in a building.
- (m) *Eating and/or drinking establishments.* 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 yearround 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.
- (1) Standards for all eating and/or drinking establishments:
 - a. Shall not provide any material misrepresentation, misstatement or omission, concerning information required to be provided for approval;

- b. Shall comply with all provisions of the ABC Commission and/or 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.
 - c. 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, violations. If applicable, all violations shall be submitted to the North Carolina Alcohol Beverage Control (ABC) Commission by the town to ensure all operators stay in compliance with all provisions of the ABC Commission.
 - d. Shall meet fire codes and limit occupancy to the maximum number allowed for the establishment.
 - e. 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.
 - f. Outdoor areas.
 - 1. Proposed temporary outdoor entertainment areas that are not identified on the approved site plan shall be reviewed in accordance with chapter 14, article IX, outdoor performances and events [special events].
 - 2. 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.
- (2) A ~~conditional~~ special use permit shall be required if an eating and/or drinking establishment meets any of the following:
- a. Meets the criteria for a bar/tavern; or
 - b. Any establishment other than a standard restaurant that proposes to serve alcohol for on-premises consumption.
- (3) Standards for bars/taverns:
- a. 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 (l)(3)b of this section.
 - b. No new bars/taverns shall be permitted within:
 - 1. 200 feet of an established church or school;
 - 2. 200 feet of any residential district.
- (4) Provisions construed as consistent with state law. The provisions of this section are:
- a. Not to be construed as regulating any activity which the town is forbidden by state law to regulate;
 - b. 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;
 - c. Not to be interpreted or construed as imposing requirements different from those that are imposed by the state;
 - d. To be interpreted so that they are consistent with any requirements and regulations imposed by the state.

State Law reference— Authority, G.S.160A-174, 160A-181, 18B-100.

- (n) *Flammable liquid storage of up to 1,000 gallons.* Aboveground storage of flammable and combustible liquids shall not exceed 1,000 gallons of fuel and shall be used only for heating in any district other than industrial districts.
- (o) *Flammable liquid storage of more than 1,000 gallons.* Aboveground storage of flammable and combustible liquids in quantities greater than 1,000 gallons may be permitted in industrial districts, subject to the following requirements:
- (1) The requirements of the fire prevention code of the National Board of Fire Underwriters American Insurance Association shall be met.
 - (2) All storage tanks and loading facilities shall be located at least 25 feet from any exterior property line.
 - (3) All storage tanks and loading facilities shall be located at least 100 feet from any exterior property line bordering a residential district.
 - (4) As a prerequisite to the approval of a ~~conditional~~ special use permit, 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.
 - (5) Off-street parking and loading shall be provided in accordance with article V of this chapter.
- (p) *Government facilities and/or 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.
- (q) *Home occupations, customary.* Home occupations shall adhere to the following regulations:
- (1) 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 percent of the floor area of a single level of the dwelling unit shall be used in the conduct of the home occupation.
 - (2) No home occupation shall be conducted in any accessory building.
 - (3) 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.
 - (4) 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 commercial vehicle with manufacturer's rating of not more than one ton (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.
 - (5) 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.
 - (6) Only one person other than members of the family residing on the premises shall be engaged in such occupation.
 - (7) 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 the 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.

- (8) 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.
- (9) Instruction in music, dancing or tutoring of academic subjects shall be limited to four students at a time.
- (10) Home occupations are restricted to residential dwellings and limited to office, off-site services, on-site sales/manufacturing as described in subsection ~~(q)~~(q)(8) of this section.
- (r) *Manufactured housing.*
- (1) *Manufactured housing, definitions.*
- a. *Manufactured home* means a dwelling unit that:
1. Is composed of one 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;
 2. Exceeds 40 feet in length and eight feet in width; and
 3. Is not constructed in accordance with the standards set forth in the state building code.
- b. *Manufactured home, Class AA*, means 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 subsections (s)(1) through (11) of this section.
- c. *Manufactured home, Class A*, means 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 subsections (s)(1) through (9) of this section.
- d. *Manufactured home, Class B*, means 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 subsections (s)(1) through (5) of this section.
- e. *Manufactured home, Class C*, means any manufactured home that does not meet the definitions of manufactured home in Class AA, Class A, or Class B set forth in subsections (s)(1)b through d of this section.
- f. *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.
- g. *Modular home* means 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.
- (2) *Manufactured homes, where permitted.*
- a. 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.
 - b. 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.

- c. All new or replacement manufactured homes must be designed to withstand winds of 110 miles per hour in accordance with [footnote 1 in Table 301.2b, Basic Design Wind Velocities, Residential Building Code, Vol. VII: Wind Zone II.](#)
- (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, 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, unpierced 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:
 1. Vinyl or aluminum lap siding reflectivity not to exceed that of a flat white paint;
 2. Cedar or other wood siding;
 3. Wood grain, weather resistant press board siding;
 4. Stucco siding;
 5. 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 inches, which may include a gutter.
 - j. The manufactured home shall have a minimum width of 16 feet.
 - k. The manufactured home shall have a length not exceeding four times its width, with the length measured along the longest axis and width measured perpendicular to the longest axis at the narrowest part.
- (s) *Mixed use commercial-residential.* The purpose of the mixed use commercial-residential development is to accommodate mixed use buildings that preserve and limit the ground floor or first habitable floor to commercial uses with either commercial and/or residential uses allowed above. Development is encouraged that exhibits physical design characteristics that include storefronts oriented to pedestrian movement with a decreased reliance on vehicles.
- (1) The first habitable floor shall be limited to:

- a. A commercial building and use.
 - b. In a VE flood zone the commercial use shall occupy at least 25 percent of the building footprint.
 - c. In AE or X zones the commercial use shall occupy at least 50 percent of the building footprint.
- (2) Mixed use commercial-residential developments located in the CBD shall have the building's front facade and at least one ingress/egress located adjacent to a public right-of-way.
- (3) A **conditional special** use permit shall be required if the mixed use commercial-residential development meets any of the following:
- a. Mixed use buildings that are cumulatively more than 25,000 square feet of gross floor area.
 - b. Building height that exceeds 50 feet.
- (t) *Parking facility design requirements.*
- (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) Parking lots are permitted to accommodate two axle vehicle parking. Parking lot design shall meet all minimum requirements of article V of this chapter, off-street parking and loading requirements, and building code requirements including ADA requirements for handicap spaces.
- a. Permanent commercial parking lot requirements:
 - 1. Landscaping shall be installed in accordance with article VI of this chapter, landscaping and development specification standards.
 - 2. Trash receptacles shall be located on-site equivalent to the number of handicap spaces. Trash shall be emptied daily.
 - 3. Concrete or asphalt aprons shall be installed from the property line to the connecting street.
 - 4. Signage required.
 - (i) Towing signage shall be posted in accordance with chapter 16, article VII.
 - (ii) A two foot by two foot sign posted at all entrances and pay stations stating that town decals are not accepted.
 - 5. Additional allowed signage A-frame signage and off-premises directional signage in accordance with article VIII of this chapter.
 - b. Temporary commercial parking lot requirements. Temporary commercial parking lots shall meet minimum standard of permanent commercial parking lots with the exception of:
 - 1. Landscaping is not required.
 - 2. Time frame allowed: 5:00 p.m. Friday week prior to Memorial Day - Sunday week after Labor Day.
 - c. Town parking lot requirements. Town parking lot areas shall be exempt from commercial parking lot requirements.
- (u) *Rental of golf carts, mopeds and scooters.* Any operation, whether as principal or accessory, that plans to rent golf carts, mopeds, and/or scooters shall meet the following requirements:
- (1) No rental item shall be permitted to encroach into any public right-of-way or site triangle in accordance with section 40-150(e)(7)c, vision clearance.

- (2) All exterior display areas shall be paved or stoned with proper drainage provided.
 - (3) All lighting shall be directed to the interior of the property and shall not impact adjacent properties or public rights-of-way.
 - (4) Rental, maintenance and all related functions shall be conducted within a permanent building having restrooms facilities for patrons and employees.
 - (5) 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.
 - (6) A minimum of \$1,000,000.00 liability insurance policy shall be secured by the operator and the town shall be named as an additional insured party.
 - (7) It shall be the responsibility of the operator to ensure that all federal, state and local safety and motor vehicles laws are adhered to.
- (v) *Single-family dwelling, subordinate to another permitted use.* May be permitted; has a subordinate and incidental use in conjunction with a single permitted business use and an integral part of the principal structure of such permitted business use. It is the intent of this provision to permit a single dwelling as part of a business use, but not to allow multiple dwellings in conjunction with multiple business (hotel, motel, or attached or grouped businesses).
- (w) *Storage yards, outdoor.*
- (1) In the HB zoning district, outdoor storage yards shall only be allowed on conforming lots 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 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 feet in height and 80 percent 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 subsection 40-150(e). No parking spaces are required to accommodate employees or patrons.
 - (7) Storage yards shall be consistent with all provisions of this chapter and town Code, to include, but not be limited to, chapter 16, article VII, wrecker/towing services and impoundment.
- (x) *Swimming pools, public.* 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). 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. 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~~ special use permit.

(y) *Tattoo studios.*

- (1) A ~~conditional~~ special use permit shall be required if alcohol is proposed for on-premises consumption.
- (2) All approval letters from New Hanover County Health Department and state 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 a.m. to 9:00 p.m.
- (4) Separation requirements: Tattoo studios shall be located a minimum distance measured in a straight line from the closest point of the building of the proposed business to the property line of any of the following:

Residential districts	200 feet
Church or school	200 feet
Public parks, playgrounds, or libraries	200 feet
Other tattoo studio establishments	400 feet

(z) *Temporary health care structures.* 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:

- (1) Allowed as an accessory use to a single-family unit only.
- (2) Only one temporary family health care structure shall be allowed on a lot in addition to the one customary accessory structure.
- (3) Shall comply with all setbacks and lot coverage requirements that apply to the district it is located.
- (4) Maximum size is 300 square feet of indoor gross floor area.
- (5) Required to connect to water, sewer, and electric utilities serving the property.
- (6) 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.
- (7) Limited to one occupant who shall be the mentally or physically impaired person with a doctor's certification.
- (8) An annual permit is required with the renewal of a doctor's certification.
- (9) 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.
- (10) Complies with applicable provisions of the State Building Code and G.S. 143-139.1.
- (11) Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.

- (12) The town may revoke the permit granted pursuant to subsection (e) 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.
- (aa) *Temporary storage containers.* Temporary storage containers, ss defined in section 40-548, shall conform to the following requirements and other requirements as applicable:
- (1) A storage container may not exceed 160 square feet in size, nor be more than eight feet in height.
 - (2) Container must not be located within the right-of-way.
 - (3) A temporary storage container must be removed within 30 days of its initial placing on a lot and shall not be replaced for six months from the date of removal. Temporary storage containers for residential use may be placed on property twice during a calendar year.
 - (4) Dumpsters placed for the purpose of collecting waste from construction shall be exempt from these rules.
 - (5) Temporary storage containers in commercial areas shall not encroach into any required parking or landscaping area.
 - (6) Temporary storage containers shall not be used as living space.

Container shall be removed within 48 hours of an event of a hurricane or immediately upon flood warning notification.

- (bb) *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.
- (cc) *Trailer, temporary construction.* Trailers for office, security, or storage purposes are permitted on construction sites provided they are located at least five feet off the property lines and ten feet off public rights-of-way. Temporary construction trailers are subject to a permit authorized by the Building Inspector.
- (dd) *Utilities, private.*
- (ee) *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 and 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:
- (1) 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.
 - (2) Suitable off-street parking space for maintenance, service, or other vehicles shall be provided.
 - (3) Minor structures, such as hydrants, telephone or light poles, pole transmitters or transformers, or similar equipment, shall not be subject to these regulations.
 - (4) 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 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.
 - (5) In residential districts, all buildings shall be in character with surrounding residences.

- (ff) *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:
- (1) 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.
 - (2) 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.
 - (3) 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. 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.
 - (4) Gas booster stations or storage tanks shall not be permitted in residential districts.
 - (5) Any sub-station along such transmission lines shall be subject to the requirements for utility stations set forth in this article.
- (gg) *Vehicle sales lots.* Vehicle sales lots, as defined in section 40-548 and including sales offices and other accessory structures, shall conform to the following requirements and other requirements as applicable:
- (1) 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.
 - (2) Provide egress and ingress to and from the property in a forward movement.
 - (3) All display surface areas to be paved or stoned and proper drainage provided.
 - (4) Provide buffering of vegetation or fencing, or combination thereof, along all side and rear property lines in conformance with this chapter.
 - (5) 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.
 - (6) No establishment shall contain outdoor storage of junk vehicles, vehicles in disrepair or other items associated thereto.
 - (7) Signage shall be in conformance with the requirements as specified by this chapter.
 - (8) Areas utilized for wash areas shall provide for the proper drainage and retention of water runoff.
 - (9) All structures shall be subject to the requirements of the zoning districts, building codes and other applicable regulations of the town.

(Code 1986, app. A, § 12.2; Ord. No. 92-306, 12-3-1992; Ord. No. 93-311, 3-16-1993; Ord. No. 00-463, 10-10-2000; Ord. No. 01-479, 7-10-2001; Ord. No. 02-496, 3-12-2002; Ord. No. 03-536, 5-13-2003; Ord. No. 03-538, 5-13-2003; Ord. No. 03-543, 7-8-2003; Ord. No. 04-555, 6-7-2004; Ord. No. 04-563, 8-10-2004; Ord. No. 04-570, 10-28-2004; Ord. No. 06-622, 2-14-2006; Ord. No. 07-674, 3-13-2007; Ord. No. 07-689, 6-12-2007; Ord. No. 08-730, 3-11-2008; Ord. No. 08-741, 5-13-2008; Ord. No. 08-748, 7-7-2008; Ord. No. 08-756, 9-9-2008; Ord. No. 08-769, 12-9-2008; Ord. No. 09-778, 3-10-2009; Ord. No. 09-813A, 10-13-2009; Ord. No. 09-813, 2-9-2010; Ord. No. 10-844, 8-10-2010; Ord. No. 10-847, 9-14-2010; Ord. No. 10-843, 8-10-2010; Ord. No. 11-858, 2-8-2011; Ord. No. 11-866, 5-10-2011; Ord. No. 12-887, 4-10-2012; Ord. No. 12-897,

7-10-2012; Ord. No. 12-901, 10-9-2012; Ord. No. 12-902, 12-11-2012; Ord. No. 13-906, 1-8-2013; Ord. No. 13-908, 3-12-2013; Ord. No. 14-926, 2-11-2014; Ord. No. 14-930, 4-8-2014; Ord. No. 14-937, 6-10-2014; Ord. No. 14-961, 3-10-2015; Ord. No. 15-971, 3-10-2015; Ord. No. 15-575, 5-12-2015; Ord. No. [16-1021](#), 9-13-2016; Ord. No. [17-1044](#), 4-11-2017; Ord. No. [18-1071](#), 1-9-2018; Ord. No. [18-1098](#), 12-11-2018; Ord. No. [19-1108](#), 2-12-2019; Ord. No. [19-1122](#), 9-10-2019)

Secs. 40-262—40-285. - Reserved.

ARTICLE X. - WIRELESS TELECOMMUNICATIONS TOWERS AND FACILITIES^[3]

Footnotes:

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State Law reference— Wireless telecommunications facilities, G.S. ~~160A-400.50~~ [160D-930](#) et seq.; local authority, G.S. ~~160A-400.51A~~ [160D-932](#); construction of new wireless support structures or substantial modifications of structures, G.S. ~~160A-400.52~~ [160D-933](#).

Sec. 40-286. - 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, 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.

Sec. 40-287. - Definitions.

For purposes of this article, 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.

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 article.

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.

~~Administrative approval means approval that the Zoning Administrator or designee is authorized to grant after administrative review.~~

~~Administrative review means nondiscretionary evaluation of an application by the Zoning Administrator or designee. This process is not subject to a public hearing. The procedures for administrative review are established in section 40-289.~~

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.

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.

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.

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.

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.

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.

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.

Equipment compound means an area surrounding or near the base of a wireless support structure within which are located wireless facilities.

Existing structure means a wireless support structure, erected prior to the application for an eligible facilities request, collocation or substantial modification under this article, 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.

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.

Monopole means a single, freestanding pole-type structure supporting one or more antennas. For the purposes of this article, a monopole is not a tower or a utility pole.

Ordinary maintenance means ensuring that wireless facilities and wireless support structures are kept in good operating condition.

- (1) The term "ordinary maintenance" includes:
 - a. 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).
 - b. 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.
- (2) The term "ordinary maintenance" does not include substantial modifications.

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.

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 or more of the following criteria:

- (1) Increases the existing vertical height of the wireless support structure by more than ten percent, or the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater;
- (2) 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);
- (3) Increases the square footage of the existing equipment compound by more than 2,500 square feet.

Tower means a lattice-type structure, guyed or freestanding, that supports one or more antennas.

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.

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.

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.

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.

Sec. 40-288. - 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. 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) 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.

- (b) ~~conditional~~ *Special* use permit. 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~~ *special* use permit from the town in accordance with the standards for granting ~~conditional~~ *special* use permits set forth in applicable article XI of this chapter.
- (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;
 - (2) Ordinary maintenance of existing wireless facilities and wireless support structures, as defined in section 40-287;
 - (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.

Sec. 40-289. - 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; and
 - 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; and
 - (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.

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.

(c) *Procedure and timing.*

- (1) *Applications for collocation, monopole or replacement pole, concealed wireless facility, non-exempt 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 Administrator will:
- a. Review the application for conformity with this article. An application under this subsection (c)(1) is deemed to be complete unless the Zoning Administrator notifies the applicant in writing, within ten 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 ten calendar days from receiving such notice to cure the specific deficiencies. If the applicant cures the deficiencies within ten 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 ten 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)(1); and
 - 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.

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 Administrator will:
- a. Review the application for conformity with this article. An application under this subsection (c)(2) is deemed to be complete unless the Zoning 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; and
 - 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.

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.

Sec. 40-290. - ~~conditional~~ Special use permit process.

- (a) *Granting of permit 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~~ special use permit, subject to:
- (1) The submission requirements of subsection (b) of this section;
 - (2) The applicable standards of this article; and
 - (3) The requirements of the ~~conditional~~ special use permit general conditions per article XI of this chapter.
- (b) *Content of ~~conditional~~ special use permit application package.* All ~~conditional~~ special use permit application packages must contain the following:
- (1) ~~-conditional~~ Special use permit 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 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; and
 - (7) Notification of surrounding property owners and posting as required by article XI of this chapter.
- (c) *Fees.* The total fees for reviewing a ~~conditional~~ special use permit 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) *Procedure and timing.* Within 150 calendar days of the receipt of an application under this section, the Zoning Administrator will:
- (1) Complete the process for reviewing the application for conformity with ordinances applicable to ~~conditional~~ special use permits, 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 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 150 calendar days from the initial date the application was received. 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.

Failure to issue a written decision within 150 calendar days shall constitute an approval of the application.

Sec. 40-291. - General standards and design requirements.

(a) *Design.*

- (1) Wireless support structures shall be subject to the following:
 - a. Wireless support structures shall be engineered and constructed to accommodate a minimum number of collocations based upon their height:
 1. Support structures 60 to 100 feet shall support at least two telecommunications providers;
 2. Support structures greater than 100 feet but less than 150 feet shall support at least three telecommunications providers;
 3. Support structures greater than 150 feet in height shall support at least four telecommunications carriers.
 - b. 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.
- (2) 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.
- (3) 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.
- (4) 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)(4)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. 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.*

- (1) *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).
- (2) *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 (e.g., approved signage at locations on which concealed facilities are located).
- (e) *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.
- (f) *Fencing.*
 - (1) Ground-mounted accessory equipment and wireless support structures shall be secured and enclosed with a fence not less than six feet in height as deemed appropriate by the town council.
 - (2) The town council may waive the requirement of subsection (f)(1) of this section if it is deemed that a fence is not appropriate or needed at the proposed location.

Sec. 40-292. - Miscellaneous provisions.

- (a) *Abandonment and removal.* If a wireless support structure is abandoned, and it remains abandoned for a period in excess of six 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 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.

Sec. 40-293. - Wireless facilities and wireless support structures existing on date of adoption of article.

- (a) *Grandfathered 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; 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~~ special use permit process defined in section 40-290.

Secs. 40-294—40-319. - Reserved.

ARTICLE XI. - conditional SPECIAL USE PERMIT APPROVAL PROCESS

Sec. 40-320. - Purpose.

conditional Special use permits (CS.U.P.) add flexibility to this chapter. 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 conditional 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.

(Code 1986, app. A, § 14.1; Ord. No. 00-463, 10-10-2000)

Sec. 40-321. - Issuance of permit by town council.

conditional Special use permits may be granted by the town council for all uses of land and buildings requiring a CS.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.

(Code 1986, app. A, § 14.2; Ord. No. 00-463, 10-10-2000)

Sec. 40-322. - Application.

- (a) *Major and minor projects; application fees.* The owner or owners, or their duly authorized agent, of the property included in the application for a conditional special use permit shall submit a complete application and supplemental information to the Zoning 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 conditional 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."
- (b) *Site plan required.* A site plan shall be prepared in accordance with the plan submittal requirements of section 40-394 and shall be included in the application for a CS.U.P.; however, the review procedures for conditional special use permits shall be governed by this article, as set forth in the paragraphs following.

Order of Review	Number of Copies	Deadline for Submittals
(1) Technical Review Committee	9 <u>1</u> paper and one electronic	14 days prior to the regularly scheduled meeting date
(2) Planning and Zoning Commission		
(3) Town Council		

(Code 1986, app. A, § 14.3; Ord. No. 00-463, 10-10-2000)

Sec. 40-323. - Review for completeness by the Zoning Administrator.

- (a) The Zoning Administrator, upon determining that the application is complete, and the appropriate application fee received, shall then place it on the agenda of the planning and zoning commission, in accordance with the required cutoff date for submission of applications. Such application shall include all of the requirements pertaining to it in this chapter.
- (b) Additional information, depending on the proposed use, may be required by the Zoning Administrator, the planning and zoning commission, and/or town council, as they deem necessary.
- (c) The Zoning Administrator may also waive certain required information when such information is not applicable to the use being proposed. For example, when one use is being changed to another within the same existing structure, there may be no need for information related to vegetation removal, grading and fill.

(Code 1986, app. A, § 14.4; Ord. No. 00-463, 10-10-2000)

Sec. 40-324. - Planning and zoning commission review.

- (a) *Planning and zoning commission makes recommendation to town council.* The planning and zoning commission shall consider and make recommendations to the town council concerning such ~~conditional~~ special use permit application. The planning and zoning commission shall review all applications at a scheduled public meeting held, advertised and noticed in accordance with section 40-487.
- (b) *Pre-application review and joint meeting with town council encouraged for certain projects.* At the discretion of the planning and zoning commission, and with the concurrence of the applicant, the planning and zoning commission may request that a joint pre-application meeting with the town council be held to discuss preliminary plans for the proposed use. This is especially encouraged where the ~~conditional~~ special use being proposed is large or may involve issues of significant impact in the community or neighborhood.

(Code 1986, app. A, § 14.5; Ord. No. 00-463, 10-10-2000; Ord. No. 06-652, 8-8-2006; Ord. No. 08-766, 11-10-2008)

Sec. 40-325. - Additional conditions.

- (a) The planning and zoning commission 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 ~~conditional~~ 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 ~~conditional~~ special use permit, their heirs, successors and assigns.
- (b) In addition to the specific conditions imposed by the regulations of this chapter and whatever additional conditions the town council deems reasonable and appropriate, all ~~conditional~~ special uses shall comply with the height, yard area and parking regulations for the district in which they are to be located.

(Code 1986, app. A, § 14.6; Ord. No. 00-463, 10-10-2000)

Sec. 40-326. - Action by planning and zoning commission.

The planning and zoning commission shall forward its recommendations to the town council within 60 days after the meeting of the planning and zoning commission's final action. Failure to submit a recommendation within this period shall be deemed a favorable recommendation.

(Code 1986, app. A, § 14.7; Ord. No. 00-463, 10-10-2000)

Sec. 40-327. - Action by town council.

- (a) *Notice and public hearing.* No ~~CS~~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. ~~460A-364~~ [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.
- (b) *Public hearing.* The applicant shall present the request in the following manner:
- (1) All persons shall be sworn before presenting evidence to the town council, unless waived by the petitioner;
 - (2) 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;
 - (3) All persons participating in the hearing or their representatives shall have an opportunity to cross examine adverse witnesses and to inspect any evidence presented;
 - (4) The applicant shall be allowed the opportunity to offer competent evidence in explanation or rebuttal to objecting participants;
 - (5) Following the presentation of all evidence both for and against the application for ~~conditional~~ [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.
- (c) *Specific standards.* No ~~conditional~~ [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:
- (1) 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;
 - (2) Off-street parking and loading areas where required, with particular attention to the items in subsection (c)(1) of this section and the economic, noise, glare, or odor effects of the ~~conditional~~ [special](#) use on adjoining properties and properties generally in the district;
 - (3) Refuse and service area, with particular reference to the subsections (c)(1) and (2) of this section;
 - (4) Utilities, with reference to locations, availability, and compatibility;

- (5) Screening and buffering with reference to type, dimensions, and character;
 - (6) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;
 - (7) Required yards and other open space and preservation of existing trees and other attractive natural features of the land.
- (d) *General conditions.* The town council, in granting the permit, must also find that all four of the following conditions exist:
- (1) 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 ~~CS~~.U.P.;
 - (2) That the use meets all required conditions and specifications;
 - (3) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
 - (4) That 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 land use plan and policies.

A finding of the town council that the four required conditions exist, or a finding that one or more of the four required conditions do not exist, shall be based on sufficient and competent evidence presented to the town council at the hearing at which the ~~conditional~~ special use permit is requested.

- (e) *Issuance, denial of permit.* When issuing or denying ~~conditional~~ 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.
- (f) *Issuance, non-exemption from normal site plan review.* Issuance of a ~~conditional~~ 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.

(Code 1986, app. A, § 14.8; Ord. No. 00-463, 10-10-2000; Ord. No. 06-652, 8-8-2006)

Sec. 40-328. - Denial.

If the planning and zoning commission recommends denial of the ~~CS~~.U.P. request, and/or if the town council denies the permit, each body shall enter the reasons for its action in the minutes of the meeting at which the action is taken.

(Code 1986, app. A, § 14.9; Ord. No. 00-463, 10-10-2000)

Sec. 40-329. -~~conditional~~ Special use permit administration, enforcement and review.

- (a) The official with responsibility under article XV of this chapter shall ensure compliance with plans approved by the town council and with any other conditions imposed upon the ~~conditional~~ special use permit. Enforcement of the plans approved by the town council and with any other conditions imposed upon the ~~conditional~~ 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 ~~conditional~~ 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 ordinances.

- (b) A ~~conditional~~ special use permit, issued by the town council, shall become null and void if start of construction or occupancy of the proposed use as specified on the ~~conditional~~ 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.
- (c) Any ~~conditional~~ special use permit revoked under applicable terms of this chapter or otherwise terminated, expired, rescinded, revoked or rendered null or void under any applicable law may only be reinstated by a new ~~conditional~~ 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.

(Code 1986, app. A, § 14.10; Ord. No. 00-463, 10-10-2000; Ord. No. 07-695, 7-10-2007; Ord. No. 07-698, 8-14-2007; Ord. No. 10-815A, 2-9-2010)

Sec. 40-330. - Modifications to approved plan.

- (a) Major changes to approved plans and conditions of development may be authorized only by the town council after review and recommendation by the planning and zoning commission in the same manner as outlined in this article for original submission. Major changes include, but are not limited to:
 - (1) Change in use;
 - (2) 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; or an increase in impervious surface area;
 - (3) An increase in overall ground coverage by structures;
 - (4) A change in any site dimension by more than ten percent;
 - (5) A reduction in approved open space or screening;
 - (6) A change in access and internal circulation design.
- (b) Minor changes, which are not deemed as major changes by the Zoning Administrator in consultation with the Director of Planning and Development, may be authorized by the Zoning Administrator if required by engineering or other physical circumstances not foreseen at the time of approval. Denials of minor change requests may be appealed to the town council.
- (c) Any changes to approved plans and conditions of development in consequence of enforcement actions under article XV of this chapter are not changes subject to this section.

(Code 1986, app. A, § 14.11; Ord. No. 00-463, 10-10-2000; Ord. No. 10-815A, 2-9-2010)

State Law reference— G.S. ~~160A-4~~, 160A-174(a), 160A-175, 160A-176, 160A-176.1, 160A-176.2, 160A-177, 160A-193, 160A-200.1, ~~160A-360, 160A-365, 160A-381, 160A-385, 160A-385.1, 160A-388, 160A-389, and 160A-399~~ 160D-102, 160D-106, 160D-107, 160D-108, 160D-108(d), 160D-108.1, 160D-109, 160D-109(d), 160D-110, 160D-200, 160D-202, 160D-302, 160D-403(b), 160D-404(c), 160D-405, 160D-406, 160D-603, 160D-702, 160D-705, 160D-903, 160D-908, 160D-1405; G.S. 14-1.

Sec. 40-331. - Appeal from action by town council on ~~conditional~~ special uses.

- (a) Any appeal from a final decision of town council on an application for a ~~conditional~~ special use permit or an application for major changes to a ~~conditional~~ special use permit is subject to judicial review by proceedings in the nature of certiorari filed in the superior court of the county and consistent with G.S.

ch. ~~160A, art. 19 (G.S. 160A-360 et seq.)~~ [160D](#). Judicial review in the nature of certiorari may be brought by:

- (1) Any person aggrieved by a final decision of the town council;
 - (2) Persons having an ownership interest in the property that is the subject of the decision being appealed, persons having a leasehold interest in the property that is the subject of the decision being appealed, persons having an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed, and persons having an option or contract to purchase the property that is the subject of the decision being appealed;
 - (3) Any other person who will suffer special damages as the result of the decision being appealed;
 - (4) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing 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 of the members of the association would have standing under subsections (a)(1)—(3) of this section 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.
- (b) The petition for the writ of certiorari must be filed with the county clerk of court within 30 days after the later of the following occurrences:
- (1) A written copy of town council's final decision has been filed with the Town Clerk;
 - (2) A written copy of the town's council's final decision has been delivered by personal service or certified mail, return receipt requested to the person liable;
 - (3) A written copy of town council's final decision has been delivered by personal service or certified mail, return receipt requested, to every aggrieved party who before the hearing on the final decision has filed with the Town Clerk a written request for a copy of the final decision.
- (c) A copy of the writ of certiorari shall be served upon the town.
- (d) The petitioner shall follow procedures as required by G.S. ch. ~~160A, art. 19 (G.S. 160A-360 et seq.)~~ [160D](#).

(Code 1986, app. A, § 14.12; Ord. No. 10-815A, 2-9-2010)

State Law reference— G.S. 1-296; ~~160A-377; 160A-381; 160A-388; 160A-393; 160A-399~~ [160D-102; 160D-107; 160D-109; 160D-109\(d\); 160D-302; 160D-403\(b\); 160D-405; 160D-406; 160D-702; 160D-704; 160D-705; 160D-808; 160D-903; 160D-908; 160D-1402; 160D-1403; 160D-1405](#).

Secs. 40-332—40-352. - Reserved.

ARTICLE XII. - PLANNED UNIT DEVELOPMENT

Sec. 40-353. - Purpose.

Residential, business, and industrial planned unit developments are ~~conditional~~ [special](#) 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~~ [special](#) uses is to promote:

- (1) Improved compatibility of new development with existing residential neighborhoods, commercial enterprises, and industrial uses;

- (2) Flexibility of design to take greatest advantage of a site's natural and developmental qualities;
- (3) Accumulation of large areas of usable permanent open space to preserve important natural resources; and
- (4) Efficient use of land that may result in lower development and public service costs.

(Code 1986, app. A, § 16.1; Ord. No. 07-709, 10-9-2007)

Sec. 40-354. - Review criteria.

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:

- (1) 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.
- (2) Compatibility within the planned unit development and relationship with the surrounding neighborhoods.
- (3) Prevention of the erosion of property values and degrading of surrounding area.
- (4) 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.
- (5) The nature, intent, and compatibility of permanent open space, including the proposed method for the maintenance and conservation of said permanent open space.
- (6) The feasibility and compatibility of the specified stages contained in the preliminary development plan to exist as an independent development.
- (7) The availability and adequacy of water and sewer service to support the proposed planned unit development.
- (8) The availability and adequacy of primary streets and thoroughfares to support traffic to be generated within the proposed planned unit development, and including the promotion of bicycling, walking and other alternatives to the automobile.
- (9) The benefits within the proposed development and to the general public to justify the requested departure from the standard zoning district requirements.
- (10) The conformity and compatibility of the planned unit development with any adopted development plan of the town.
- (11) The conformity and compatibility of the proposed open space, primary and secondary uses within the proposed planned unit development.
- (12) Provision for emergency vehicle access and service to the proposed development.
- (13) Preservation of important natural amenities on the site of the proposed development.

(Code 1986, app. A, § 16.2; Ord. No. 07-709, 10-9-2007)

Sec. 40-355. - Residential planned unit development regulations.

The following regulations shall apply to residential planned unit developments.

- (1) *Minimum setback requirements.* The minimum setback requirements for this **conditional special** use shall be as follows:
 - a. *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 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~~ special use permit 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.

- b. *Minimum setback from property lines.* Setbacks from property lines must meet the district regulations as written in section 40-74. Five 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~~ special use permit 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.
- 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.
- d. *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.

(Note: Building codes and other state and federal regulations may mandate setbacks greater than those specified or recommended.)

- (2) *Density.* For those zoning districts in which residential planned unit development is a ~~conditional~~ special 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 1¼ 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.* Twenty-five percent of the gross acreage of a residential planned unit development shall be permanent open space, as defined below. For the purposes of this article, 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.
- (4) *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.
- (5) *Maximum site coverage.* The maximum coverage of the site by structures shall be 40 percent of the gross site acreage after excluding wetlands, marsh or other non-buildable land.
- (6) *Commercial uses.* Except in residential zones residential planned unit developments may contain commercial development (planned business development) not exceeding ten percent 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.

(Code 1986, app. A, § 16.5; Ord. No. 07-709, 10-9-2007; Ord. No. 08-732, 3-11-2008)

Sec. 40-356. - Business planned unit development regulations.

The following regulations shall apply to business planned unit developments:

- (1) *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.
- (2) *Minimum setback requirements:*
 - a. *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 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~~ **special** use permit 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.
 - b. *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~~ **special** use permit 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.
 - c. *Minimum separation between on-site structures.* Fifteen feet.

(Note: Building codes and other applicable state and/or federal regulations may mandate setbacks greater than those specified or recommended.)

- (3) *Maximum site coverage.* As established in section 40-74.
- (4) *Permanent open space.* At least ten percent 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 ten percent.

(Code 1986, app. A, § 16.6; Ord. No. 07-709, 10-9-2007; Ord. No. 08-732, 3-11-2008)

Sec. 40-357. - Industrial planned unit development regulations.

The following regulations shall apply to industrial planned unit developments:

- (1) *Acreage requirements.* The minimum size for an industrial planned unit development is three 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.
- (2) *Minimum setback requirements.*

- a. *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.
- b. *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.

(Note: Building codes and other state and federal regulations may mandate setbacks greater than those specified or recommended.)

- (3) *Permanent open space.* At least ten percent 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 ten percent.
- (4) *Maximum site coverage.* The maximum coverage of the site by structures shall be 50 percent of the buildable site coverage.

(Code 1986, app. A, § 16.7; Ord. No. 07-709, 10-9-2007)

Sec. 40-358. - 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~~ special use permit. The amount of the performance bond and timeframe for completion of the infrastructure shall be determined after the S.U.P.~~CUP~~ is reviewed and issued by the planning and zoning commission and town council, respectively.

(Code 1986, app. A, § 16.8; Ord. No. 07-709, 10-9-2007)

Secs. 40-359—40-389. - Reserved.

ARTICLE XIII. - ZONING AND SITE PLAN APPROVALS

Sec. 40-390. - Purpose and intent.

- (a) It is the purpose of this article to ensure:
 - (1) All applicable town regulations associated with a property and of adjacent land have been recognized and evaluated.
 - (2) A clear and understandable decision can be made concerning proposed development.
- (b) It is further the purpose of this article to ensure regulations are enforced that will:
 - (1) Ensure the health, safety, and welfare of the community and its natural environment.
 - (2) Conserve and enhance property values.
 - (3) Preserve adequate space for vehicular and transportation facilities associated with new development.
 - (4) Provide for effective traffic movement without congestion and hazards.
 - (5) Provide for effective stormwater management and control.

- (6) Assure that public utilities and services are provided in a safe and healthful manner, consistent with applicable regulations and standards.
- (c) It is the intent of this article to ensure:
 - (1) Staff will be involved in providing supporting information on the process for approval of a site plan.
 - (2) The burden of laying out a site plan and providing proof of compliance lies with the applicant.

(Code 1986, app. A, § 17.1; Ord. No. 10-842, 8-10-2010)

Sec. 40-391. - Compliance with site plan requirements.

- (a) It shall be unlawful for any person to construct, erect, or alter a building or structure or develop, change, or improve land for which a site plan is required except in accordance with the approved site plan.
- (b) No zoning or building permit shall be issued to construct, erect, or alter any building or structure or develop or improve any land that is subject to the provisions of this section until a site plan has been approved.

(Code 1986, app. A, § 17.2; Ord. No. 10-842, 8-10-2010)

Sec. 40-392. - Types of projects to which zoning and site plan requirements apply.

A site plan shall be required any time the following occur:

- (1) New use or change in use;
- (2) 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; or an increase in impervious surface area;
- (3) An increase in overall ground coverage by structures;
- (4) A reduction in approved open space or screening;
- (5) A change in access and internal circulation design.

(Code 1986, app. A, § 17.3; Ord. No. 10-842, 8-10-2010)

Sec. 40-393. - Written application.

All zoning permits and/or site plans submitted for review and approval shall be accompanied by a written application containing the following information:

- (1) The applicant's name, mailing address, phone number, and email address.
- (2) The property owner's name, address, and phone number, if different than the applicant.
- (3) The developer's name, address, and phone number, if different than the applicant.
- (4) If the applicant is different than the property owner of record, a signed statement that the applicant is officially acting on the owner's behalf.
- (5) The address and parcel identification number of the property.
- (6) Proof of lot recordation (i.e., map book and pg number; lot and block number; and/or deed book and page number).

(Code 1986, app. A, § 17.4; Ord. No. 10-842, 8-10-2010)

Sec. 40-394. - Site plan.

- (a) *Preparation of plans by a licensed professional.* It is recommended that all site plans be prepared and certified by a licensed professional duly registered by the state (i.e., engineer, architect, or land surveyor), however, the following site plans shall always be prepared and certified by a licensed professional:
- (1) ~~conditional~~ Special use permits.
 - (2) New commercial or industrial development.
 - (3) Change to a more intense use (i.e., increase in occupancy) for multifamily/commercial uses.
 - (4) New residential development with three or more units.
- (b) *Site plan criteria.* All site plans shall include the following:
- (1) The name, address, and phone number of the professional(s) responsible for preparing the plan if different than the applicant.
 - (2) Engineer's scale one inch equals 40 feet or larger.
 - (3) Title block or brief description of project including all proposed uses.
 - (4) Date.
 - (5) North arrow.
 - (6) Property and zoning boundaries.
 - (7) The square footage of the site.
 - (8) Lot coverage (buildings, decks, steps).
 - (9) Location of all existing and proposed structures and the setbacks from property lines of all affected structures to remain on-site.
 - (10) Design of driveways and parking/loading areas with parking spaces individually numbered in sequential order.
 - (11) Adjacent rights-of-way labeled with the street name and R/W width.
 - (12) Location of all existing and/or proposed easements.
- (c) *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:
- (1) Location and design of refuse facilities.
 - (2) Approximate locations and sizes of all existing and proposed utilities.
 - (3) Existing and/or proposed fire hydrants (showing distances).
 - (4) Adjacent properties with owners information and approximate location of structures.
 - (5) Distances between all buildings.
 - (6) Number of stories and height of all structures.
 - (7) Locations of all entrances and exits to all structures.
 - (8) Calculate the gross floor area with each room labeled (i.e., kitchen, bedroom, bathroom).
 - (9) Exterior lighting locations with area of illumination illustrated as well as the type of fixtures and shielding to be used.
 - (10) Location of flood zones and finished floor elevations.

- (11) CAMA areas of environmental concern (AEC) and CAMA setbacks.
- (12) Delineation of natural features and wetlands with existing and proposed topography with a maximum of two foot contour intervals.
- (13) Proposed landscaping including percentages of open space.
- (14) Stormwater management systems.
- (15) Cross-sectional details of all streets, roads, ditches, and parking lot improvements.
- (16) Building construction and occupancy type(s) per the building code.
- (17) Location of fire department connection(s) for standpipes.
- (18) Turning radii, turnarounds, access grades, height of overhead obstructions.
- (19) Dimensions and locations of all signs.
- (20) A vicinity map drawn with north indicated.

(Code 1986, app. A, § 17.5; Ord. No. 10-842, 8-10-2010)

Sec. 40-395. - Zoning and site plan approval procedures.

- (a) For permitted uses, a zoning permit and/or site plan shall be deemed approved if no decision has been made (approval, denial) within 14 days of submittal. If a zoning permit and/or site plan is denied the reasons for the denial shall be stated in writing on the application form. The site plan may be revised and resubmitted.
- (b) Expiration of approvals. If start of construction does not begin within **24** 12 months following the zoning permit and/or site plan approval, such approval shall expire and a new application shall be submitted in accordance with the procedures in this section.
 - (1) If after commencement the work or activity is discontinued for a period of 12 months after commencement, the zoning permit and/or site plan approval shall immediately expire.
 - (2) The time periods set forth in this section shall be tolled during the pendency of any appeal.
- (c) If a **conditional** special use permit is required, then the approval procedures under article XI of this chapter shall apply.
- (d) A zoning or site plan approval shall run with the land as stated in 160D-104.

(Code 1986, app. A, § 17.6; Ord. No. 10-842, 8-10-2010)

Sec. 40-396. - Number of site plans to be submitted.

- (a) All uses permitted by right: Three copies.
- (b) For **conditional** special uses, see article XI of this chapter.

(Code 1986, app. A, § 17.7; Ord. No. 10-842, 8-10-2010)

Sec. 40-397. - ~~Site-specific development plan.~~ 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 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 will strike an appropriate balance between private expectations and the public interest, ~~while scrupulously protecting the public health, safety, and welfare;~~
- ~~(6) There will be ample opportunities for public participation and the public interest will be served; and~~
- ~~(7) To preserve the prerogatives and authority of local elected officials with respect to land-use matters.~~
- (b) *Establishment of vested right for a site-specific development vesting plan.*
- (1) A vested right shall be deemed established with respect to any property upon approval, of a site-specific development vesting plan ~~or a phased development plan~~, subject to all conditions, specifications, procedures and required findings as listed under article XI of this chapter, ~~conditional~~ special use permit 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 development vesting plan ~~or the phased development plan~~ including any amendments thereto.
- (3) A site-specific development vesting plan ~~or a phased development plan~~ shall be deemed approved upon the effective date of the town council's action.
- (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 development vesting plan.
- (5) A vested right may be established only for uses that are currently permitted by right or by ~~conditional~~ special use permits in the appropriate zoning district.
- (c) *Requirements for site-specific development vesting plans ~~and phased development plans~~.* A site-specific development vesting plan ~~and phased development plan~~ shall meet the site plan requirements as listed in article XIII of this chapter. In addition, the submittal shall include all of the following:
- (1) The site-specific development vesting plan ~~or phased development 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.
- (2) 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.
- (3) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property.
- (4) 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.
- (5) 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.
- ~~(6) No phase of a phased development plan shall be dependent upon the completion of a subsequent phase. Each development project shall stand on its own (i.e., the parking for phase 1 of a development shall not be contingent on a parking deck yet to be built in phase 2).~~
- (7) Each part or phase of a site-specific development vesting plan shall clearly describe what is being proposed in accordance with article XIII of this chapter (i.e., the labeling of "future development" shall not constitute a vested right without specific details).

- (8) Each site-specific ~~development~~ vesting plan which obtains a vested right under this chapter shall contain the following notation: "Approval of this site-specific ~~development~~ vesting plan establishes a vested right under G.S. ~~160A-385.4~~ 160D-108. Unless terminated at an earlier date, the vested right shall be valid until (date)."
- (d) *Duration and termination of vested right.*
- (1) Six months – Building permits. – Pursuant to G.S. 160D-1109, a building permit expires six 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 year – Other local development approvals. – Pursuant to G.S. 160D-403(c), unless otherwise specified by statute or local ordinance, all other local development approvals expire one 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 to five years – Site-specific vesting plans.
- ~~(4)~~ (a) Town council may provide that rights shall be vested for two but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the town council.
- ~~(2)~~ (b) Following approval of a site-specific ~~development~~ vesting plan ~~or a phased development 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.
- ~~(3)~~ (c) Upon issuance of a building permit, the provisions of G.S. ~~160A-418 and 160A-422~~ 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.
- ~~(4)~~ (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.
- ~~(5)~~ (e) If a site-specific ~~development~~ vesting plan receives approval by town council for less than five 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 ~~development~~ vesting plan exceed five years without going back through the ~~conditional~~ special use permit approval process under the current code requirements.
- (4) Seven years – Multiphase 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 years from the time a site plan approval is granted for the initial phase of the multiphase development.
- (5) Indefinite – Development agreements. – A vested right of reasonable duration may be specified in a development agreement approved under Article 10 G.S. 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](#), ~~site-specific development plan or an approved phased development plan~~, except:
 - a. With the written consent of the affected landowner;
 - b. Upon findings, ~~by ordinance~~ after notice and ~~a public~~ [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](#) ~~site-specific development plan or the phased development plan~~;
 - c. To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the town, together with interest [as is provided in G.S. 160D-106](#) ~~thereon at the legal rate until paid~~. Compensation shall not include any diminution in the value of the property ~~which that~~ is caused by such action;
 - d. Upon findings, ~~by ordinance~~ after notice and ~~a~~ [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](#) ~~site-specific development plan or the phased development plan~~; or
 - e. Upon the enactment or promulgation of a state or federal law or regulation ~~which that~~ precludes development as contemplated in the [approved vested right](#) ~~site-specific development plan or the phased development plan~~, 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, ~~by ordinance~~ after notice and ~~a~~ [an evidentiary](#) hearing. For example, in no case does an approval of a site-specific ~~development~~ [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 ~~development~~ [vesting](#) plan ~~or a phased development 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](#) ~~site-specific development plan or a phased development plan~~, all successors to the original landowner shall be entitled to exercise such rights.
- (5) Nothing in this chapter shall prevent the town from amending this chapter 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) Permit choice.

- (1) If an application made in accordance with town regulation is submitted for a development approval required pursuant to this Chapter 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 G.S. 160D-108(d).

(Code 1986, app. A, § 17.9; Ord. No. 09-773, 1-13-2009)

Secs. 40-398—40-422. - Reserved.

ARTICLE XIV. - NONCONFORMING SITUATIONS

Sec. 40-423. - Continuation of nonconforming situations.

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.

- (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 dependant uses and the safety of pedestrians on our existing and future sidewalks. Given this, the town continues to support all four 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 of the four existing drive-in/drive-thru's be closed, abandoned or discontinued for any reason for greater than one year then the grandfathering status shall be eliminated and only a conforming use shall be permitted at this site.
 - c. Because all four 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.

(Code 1986, app. A, § 18.1; Ord. No. 02-514, 9-17-2002; Ord. No. 11-865, 5-10-2011)

Sec. 40-424. - 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 or more conforming lots prior to developing the property.
- (c) *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.
- (d) *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 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.
- (e) *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 percent less than the minimum lot size for that district.
- (f) *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.
- (g) *Reduction of required lot area when lost to shore erosion.* Where lots abut the estuarine tidal waters, as defined in article XVII, 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.
 - (1) For sound-front lots, a 50 percent reduction in the front yard shall apply where appropriate provisions are made for off-street parking.
 - (2) Where the Carolina Beach building line creates a reduction in lot area that results in a non-conforming lot a 50 percent reduction in the front yard setback may apply where appropriate provisions are made for off-street parking.

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 Administrator shall make the determination of actual lot area. 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.

(Code 1986, app. A, § 18.2; Ord. No. 02-514, 9-17-2002; Ord. No. 04-558, 7-13-2004; Ord. No. 05-603, 10-11-2005; Ord. No. 05-617, 12-13-2005; Ord. No. 08-717, 1-8-2008; Ord. No. 10-855, 12-14-2010; Ord. No. [16-1023](#), 9-13-2016)

Sec. 40-425. - 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, height limitations; or
 - (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 percent 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.

(Code 1986, app. A, § 18.3; Ord. No. 02-514, 9-17-2002; Ord. No. 10-851, 10-12-2010; Ord. No. 11-865, 5-10-2011)

Sec. 40-426. - Reconstruction, maintenance, full or partial demolition and renovation of nonconforming situations.

- (a) Except for fences, which are regulated by article VII of this chapter, nonconforming uses created by a change in regulations may continue to exist and shall be subject to all other provisions of this article.
- (b) Any building or structure for which normal repair, renovation, partial demolition and reconstruction or routine maintenance is proposed in an amount less than 50 percent 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.
- (c) In the event normal repairs, renovations, full or partial demolition will result in new construction to a nonconforming structure exceeding 50 percent 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 town 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 town 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 non-residential 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 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.

(Code 1986, app. A, § 18.4; Ord. No. 02-514, 9-17-2002; Ord. No. 06-625, 3-2-2006; Ord. No. 07-700, 8-14-2007; Ord. No. 09-784, 5-12-2009; Ord. No. 12-896, 7-10-2012)

Sec. 40-427. - 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.

(Code 1986, app. A, § 18.5; Ord. No. 02-514, 9-17-2002; Ord. No. 06-625, 3-2-2006)

Sec. 40-428. - 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.

(Code 1986, app. A, § 18.6; Ord. No. 02-514, 9-17-2002)

Sec. 40-429. - 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 apartment in a nonconforming apartment building or one 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.

(Code 1986, app. A, § 18.7; Ord. No. 02-514, 9-17-2002; Ord. No. 06-625, 3-2-2006)

Sec. 40-430. - Discontinuance of nonconforming adult oriented business or bars/taverns.

Notwithstanding the provisions of section 40-429, adult oriented businesses or bars/taverns shall be governed by the following:

Any 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.

(Code 1986, app. A, § 18.8; Ord. No. 03-535, 5-13-2003; Ord. No. 04-569, 10-28-2004; Ord. No. 07-677, 4-10-2007)

Secs. 40-431—40-458. - Reserved.

ARTICLE XV. - ADMINISTRATION, ENFORCEMENT AND REVIEW

Sec. 40-459. - Applicable definitions, purposes of article, and rule of construction.

- (a) Definitions. For the purposes of this article 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:

~~Approval means any and all forms of town permits, variances, licenses, approvals and any and all other forms of permission and approval in connection with any and all uses and activities, whether the same are in writing or not, issued under the authority of or subject to this chapter.~~

Article means this article of this chapter.

Chronic violator. A chronic violator is the owner of a particular property whereupon the town gave notice at least three 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.

Code means the entire Code of Ordinances of the Town, including its Charter and applicable local acts, other than the zoning ordinances of the town codified as this chapter.

~~Decision means a determination or determinations made by the official regarding matters within the scope of this article, including an order defined herein. A decision by the official is not subject to judicial review prior to the board of adjustment issuing a final decision under applicable administrative appeal or review procedures.~~

Final decision means a final decision by the board of adjustment on matters within the scope of this article 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). Judicial review provisions upon exhaustion of administrative remedies are set forth in section 40-488(m).

Official means the Town Manager or its designee with the primary responsibility for those matters set forth in section 40-460 and enforcing the same through any applicable provision of law. "Official" also

includes any other person as may otherwise be designated by law as having authority in a particular matter within the scope of this article.

Order means a directive by the official, which is also deemed a decision under this article.

Ordinance means the zoning ordinances of the town codified as this chapter, and portions of the Code that expressly adopt, refer to, or are made subject to any of the zoning ordinances.

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.

Person aggrieved means:

- (1) Persons having an ownership interest in property that is the subject of situations or conditions;
- (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;
 - b. By virtue of their ownership interest in property adjacent to property that is the subject of situations and conditions.

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 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.

Person(s) liable. See section 40-462.

Public nuisance means everything in the town's jurisdictional limits, or within one mile thereof which the official determines in a decision to be dangerous or prejudicial to the public health or public safety.

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.

Town means the Town of Carolina Beach.

- (b) The purposes of this article are to provide:
 - (1) Clearer and fairer ways to deal with situations and conditions;
 - (2) Reasonable opportunities for certain persons concerned with situations and conditions to be heard under the circumstances; and
 - (3) Remedies and enforcement procedures concerning situations and conditions to the fullest extent available and not prohibited or limited by law.

- (c) This article 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 article does not affect:
- (1) Powers of the town under the Code or state statute;
 - (2) 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
 - (3) Separate procedures regarding statutory or ordinal vested rights.

Nor do any provisions of the Code limit the provisions of this article or applicable administrative review and appeal ordinance provisions.

(Code 1986, app. A, § 19.1; Ord. No. 10-815A, 2-9-2010)

State Law reference— G.S. ~~160A-4~~, 160A-174(a), 160A-175, 160A-176, 160A-176.1, 160A-176.2, 160A-177, 160A-193, 160A-200.1, ~~160A-360, 160A-365, 160A-385, 160A-385.1, 160A-388, and 160A-389~~ [160D-102](#), [160D-106](#), [160D-108](#), [160D-108\(d\)](#), [160D-108.1](#), [160D-109\(d\)](#), [160D-110](#), [160D-200](#), [160D-202](#), [160D-302](#), [160D-403\(b\)](#), [160D-404\(c\)](#), [160D-405](#), [160D-406](#), [160D-603](#), [160D-702](#), [160D-705](#), [160D-903](#), [160D-1405](#); G.S. 14-4.

Sec. 40-460. - Zoning administration, review and enforcement.

- (a) The official 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.
- (b) The town through its duly authorized officials shall have the power to summarily remove, abate, or remedy all situations and conditions.
- (c) The official shall have the power and duty to implement policies and procedures appropriate to accomplishing the purposes and provisions of this article, to enforce this chapter and approvals, to issue decisions and orders in its considered and informed discretion, and to take all such and further actions in accord with this article, including, but not limited to, the following:
 - (1) Investigating, compiling information, responding to reports and complaints concerning whether this chapter or approval violations have occurred, identifying persons liable in connection with situations and conditions, 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 situations and conditions exist, issuing decisions finding a public nuisance exists, and making other decision(s) in connection with the said situations and conditions and public nuisances;
 - (2) Working with applicable law enforcement agencies as appropriate;
 - (3) Issuing orders to resolve situations and conditions and matters in connection with the same;
 - (4) Imposing civil charges on person(s) liable for situations and conditions;
 - (5) Issuing notices identifying situations and conditions, applicable chapter and approval provisions violated by the same, remedies and enforcement mechanisms available to the town in consequence of the same;
 - (6) Issuing orders directing person(s) liable to correct, remediate, remove, and abate situations and conditions, to post a bond to secure performance of the same;
 - (7) Authorizing the incurring of expenses and executing agreements (in accord with applicable town procedures) for correction, remediation, removal, and abatement of situations and conditions;

- (8) 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;
 - (9) 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, enforcing the same, and imposing liens to the extent allowed and not prohibited by law;
 - (10) 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;
 - (11) Pursuing chronic violator procedures;
 - (12) Pursuing all forms of legal processes and remedies available in connection with situations and conditions through the courts of competent jurisdiction;
 - (13) Making a decision in the form of filing a motion for the board of adjustment to revoke an approval; and
 - (14) Employing any, all, or any combination of enforcement mechanisms and remedies available under this article and otherwise provided by law.
- (d) 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 G.S. 160A-175, 160A-193, 160A-200.1, and ~~160A-389~~ [160D-404\(c\)](#).

(Code 1986, app. A, § 19.2; Ord. No. 10-815A, 2-9-2010)

State Law reference— G.S. ~~160A-4~~, 160A-174(a), 160A-175, 160A-176, 160A-176.1, 160A-176.1, 160A-176.2, 160A-177, 160A-193, 160A-200.1, ~~160A-360, 160A-365, 160A-385, 160A-385.1, 160A-388, and 160A-389~~ [160D-102, 160D-106, 160D-108, 160D-108\(d\), 160D-108.1, 160D-109\(d\), 160D-110, 160D-200, 160D-202, 160D-302, 160D-403\(b\), 160D-404\(c\), 160D-405, 160D-406, 160D-603, 160D-702, 160D-705, 160D-903, 160D-1405](#); G.S. 14-4.

Sec. 40-461. - Building permit matters.

- (a) 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 G.S. Ch. ~~160A, Art. 19, Pt. 5~~ [160D, Art. 11](#) and chapter 6 (Buildings and Building Regulations) of this Code, a building permit for the same shall be obtained from the applicable Building Inspector.
- (b) 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.
- (c) 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 G.S. ~~ch. 160A, art. 19, Pts. 1, 3, 3A, 5, 6~~ [Ch. 160D](#); G.S. ch. 143, art. 9, and the town's Code of Ordinances, chapter 6 (Buildings and Building Regulations).

(Code 1986, app. A, § 19.3; Ord. No. 10-815A, 2-9-2010)

State Law reference— G.S. ch. 143, art. 9; G.S. ch. ~~160A, art. 19, pts. 1, 3, 3A, 5, 6~~ [160D](#).

Sec. 40-462. - 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

situation or condition, may be held responsible for the same and be made subject to all enforcement mechanisms, remedies, and sanctions as provided in this article and any additional enforcement mechanisms, remedies, sanctions, and legal processes that may be otherwise permitted by law.

(Code 1986, app. A, § 19.4; Ord. No. 10-815A, 2-9-2010)

State Law reference— G.S. ~~160A-4~~, 160A-174(a), 160A-175, 160A-176, 160A-176.1, 160A-176.2, 160A-177, 160A-193, 160A-200.1, ~~160A-360, 160A-365, 160A-385, 160A-385.1, 160A-388, and 160A-389~~ 160D-102, 160D-106, 160D-108, 160D-108(d), 160D-108.1, 160D-109(d), 160D-110, 160D-200, 160D-202, 160D-302, 160D-403(b), 160D-404(c), 160D-405, 160D-406, 160D-603, 160D-702, 160D-705, 160D-903, 160D-1405; G.S. 14-4.

Sec. 40-463. - Enforcement mechanisms, remedies and sanctions.

- (a) The official may investigate situations and conditions, arrange informally for persons liable to correct, remedy, abate, or remove situations or conditions without invoking formal procedures set forth in this article, issue decisions, orders and notices of violation in connection with situations and conditions, order a person(s) liable to correct, remedy, abate, or remove situations or conditions and to post a bond in amount determined in the official's considered and informed discretion, in order to secure performance of the same.
- (b) Should the town incur expenses to correct, remedy, abate, or remove situations or conditions, then the official may issue a written order to the person(s) liable for the situations or conditions to pay within 30 days a specified sum reimbursing the town for the expenses and for any administrative overhead fee determined by the Town Manager. In the event the person(s) liable fails to pay the sums as ordered, then the person(s) liable shall be further liable for interest on all or any portion of same.
- (c) A person liable and failing to comply with a written order regarding any situations or conditions and not fined through the judicial process with a criminal fine for committing acts causing the situations and conditions, is subject to civil monetary charges being imposed by the official in an amount defined in the town's adopted rates and fees schedule. Said civil charges are not penal sanctions imposed for violation of criminal laws.
- (d) In the event the person(s) liable fails to pay any sums as ordered in subsection (b) of this section, the town may secure the obligation to pay the said sums by obtaining a lien on (i) the land or premises where the situations or conditions exist and (ii) on any other real property that the person(s) liable owns within the town's city limits or within one mile of the city limits (except for the person(s) liable primary residence, unless it is the subject of the applicable situations and conditions) and by enforcing such liens through available legal process, and collecting the same as unpaid taxes.
- (e) The town may seek recovery from person(s) liable any sums as ordered in subsections (b) and (c) of this section through a civil action in the nature of debt.
- (f) To the extent a particular situation or condition is defined in this Code to be a misdemeanor, nothing herein precludes prosecution by appropriate law enforcement agencies of the same under G.S. 160A-175 and 14-4. No monies determined to be owed or collected by the town as reimbursement for expenses and administrative overhead (and interest thereon) in connection with situations or conditions, and no civil charges imposed for situations and conditions are deemed to be penal or punitive measures for violations of criminal law or other sums which payment is to be made to any other government.
- (g) Without limitation of any other remedies afforded the town by any applicable law, the town may at any time seek all injunctive, equitable, and monetary remedies of all types available in a court of competent jurisdiction, in order to enforce provisions, conditions, safeguards, requirements and monetary obligations under the ordinance, any approval or decision; correct, remove, abate or remedy any situations or conditions; and recover any sums owed under this article.

- (h) Approvals that are the subject of situations and conditions may be revoked solely by the board of adjustment. Revocation proceedings may be initiated by the official or a person aggrieved filing a motion to revoke before the board of adjustment pursuant to applicable administrative review and appeal procedures. Not until the board of adjustment issues a final decision on revocation is the matter subject to judicial review. No person shall continue to use the land or premises in the manner authorized by any approval that has been revoked.
- (i) The official may at any time exercise any one, all, or any combination of the foregoing enforcement mechanisms, remedies and sanctions and any other mechanisms, remedies and sanctions afforded by this article and by any other law.
- (j) The absence of any approval does not limit the enforcement and review provisions of this article with respect to situations or conditions or otherwise enforce this article.

(Code 1986, app. A, § 19.5; Ord. No. 10-815A, 2-9-2010; Ord. No. 13-915, 6-11-2013)

State Law reference— G.S. ~~160A-4~~, 160A-174(a), 160A-175, 160A-176, 160A-176.1, 160A-176.2, 160A-177, 160A-193, 160A-200.1, ~~160A-360, 160A-365, 160A-385, 160A-385.1, 160A-388, and 160A-389~~ 160D-102, 160D-106, 160D-108, 160D-108(d), 160D-108.1, 160D-109(d), 160D-110, 160D-200, 160D-202, 160D-302, 160D-403(b), 160D-404(c), 160D-405, 160D-406, 160D-603, 160D-702, 160D-705, 160D-903, 160D-1405; G.S. 14-4.

Sec. 40-464. - Procedures regarding enforcement mechanisms, remedies and sanctions.

- (a) Should alleged or potential situations and conditions come to the attention of the town, the official may investigate and informally arrange correction of the same or invoke the remaining procedures in this section. Should (i) the official determine that written notice, decision or order concerning situations and conditions is appropriate to enforce the ordinance or any approval; or (ii) the official receive a signed complaint form (supplied and made available by the town) in which the complainant provides its identity, contact information, a description of the situations or conditions, the identity of the subject property and persons known by the complainant to be responsible, then the official shall send a written notice, or decision, or order to the person(s) liable as determined by the Official containing the following information:
 - (1) The nature of the situations or conditions and premises involved, any applicable ordinance and approval violated by the situations and conditions, whether the situations or conditions are a public nuisance, any request for information, communications or meetings concerning the situations or conditions, any warning or request to remedy the situations or conditions, any other finding and notice of violation by the official, and any decision by the official in connection with the same.
 - (2) Actions the official may take at any time in consequence of the situations and conditions, including:
 - a. Issuing an order, including ordering the persons liable to correct, remedy, abate, or remove situations or conditions and to post a bond in amount determined in the official's considered and informed discretion, in order to secure performance of the same;
 - b. Directing reimbursement of the town for expenses incurred in dealing with the situations and conditions and payment of an administrative overhead fee in an amount determined by the Town Manager, with the persons liable paying to the town the specified sums for the same within a time certain, together with interest computed on all or any portion of the sums not timely paid;
 - c. Obtaining, imposing and enforcing a lien on the land or premises where the situations or conditions exist and on any other real property that the person(s) liable owns within the town

limits or within one mile of the town limits (except for the person(s) liable primary residence, unless it is the subject of the applicable situations and conditions) in order to secure payment of expenses and administrative overhead fees as determined by the Town Manager;

- d. Imposing a civil charge in accordance with the town rates and fees schedule for each day of noncompliance with the order;
 - e. Seeking all injunctive, equitable, and monetary remedies of all types available in a court of competent jurisdiction;
 - f. Seeking prosecution for violations of any criminal laws; and
 - g. The official or persons aggrieved moving the board of adjustment to revoke all or any part of any applicable approval.
- (3) Any order to the person(s) liable. Such order shall:
- a. Specify or be accompanied by a document separately providing the information set forth in subsection (a)(1) and (2) of this section;
 - b. Actions required of the person(s) liable to correct, remedy, abate, or remove the situations or conditions at the premises;
 - c. The time certain required to complete the ordered actions as set forth in subsection (b)(1) of this section;
 - d. Any bond required of the person(s) liable to secure performance of the ordered actions and the terms for posting of the same.
- (b) Upon a decision that a situation or condition exists, the official may take the following actions:
- (1) Issue an order under subsection (a)(3) of this section to the person(s) liable to correct, remedy, abate or remove the violation, situation or condition. The period of compliance shall be as follows:
 - a. Should it be the first time a person liable is determined to be responsible for the violation, situation or condition, the period of compliance shall not be less than 15 days after the issuance of the notice.
 - b. Should it be determined a second time within the next 12 months that the person liable is responsible for a violation, situation or conditions, then the persons liable shall have only seven days after written notice to comply.
 - c. For all subsequent times within the same 12 months, the time for compliance shall be within 48 hours after the date of the written notice.
 - d. Due to detrimental impact illegal signs can have on existing businesses, the community, and the town's ability to maintain compliance with sign regulations, the time for compliance shall be within 48 hours after the date of the first written notice of violation.
 - (2) Prior to the expiration of the period of compliance of any order, the official may confer with the person(s) liable, written complainant, and other persons, and upon hearing from the same, may:
 - a. Withdraw any notice of violation or order;
 - b. Modify the notice of violation or order; or
 - c. Resolve the subject of the notice or order by reaching an agreement in the form of an order between the town and person(s) liable;

provided, however, that should the notice or order be issued in consequence of a written complaint under subsection (a) above, then the official shall seek input from the complainant and afford the complainant opportunity to confer with the official regarding an agreement. Actions of the official under this subsection (b)(2) of this section are a decision.
 - (3) Any person(s) liable may within the period of compliance request the town in writing to perform the matters ordered, the cost of which shall be paid by the person(s) liable, who shall also be

subject to all other enforcement mechanisms, remedies and sanctions provided in this article as may be applicable.

- (4) Should the matter not be resolved per subsections (a)(1) or (2) of this section, and the person(s) liable fail to comply with the official's order by the time specified, then the town may at any time seek all injunctive, equitable, and monetary remedies of all types available in a court of competent jurisdiction, enforce any performance bond, go upon the specified premises, correct, remedy, abate, or remove the situations or conditions, incur expenses in connection with the same, and exercise any mechanisms, remedies, and sanctions set forth in section 40-463. In event the town incurs such expenses, the official may issue a written order to the person(s) liable to reimburse the town for its expenses and any added administrative overhead fee determined by the Town Manager, the order directing the persons liable to pay the specified sum constituting the expenses and any administrative overhead fee within 30 days after the notice. Should the sum not be timely paid, then the person(s) liable shall further owe interest computed on all or any part to the extent allowed by law, the interest to be specified in the order.
- (5) Exercise at any time any one, all, or any combination of mechanisms, remedies and sanctions afforded by this article and by any other law.
- (c) Should the person(s) liable fail to comply with an official's order, then the official may impose a civil charge in accordance with the town's rates and fees schedule for each day of noncompliance with the order.
- (d) In the event the person(s) liable fails to comply with any order to pay any expenses and administrative overhead fees as determined by the Town Manager and any specified interest on the same, the town may take all actions available under law to secure payment of same, including the obtaining, imposing to the extent allowed by law, and enforcing a lien on the land or premises where the situations or conditions exist and on any other real property that the person(s) liable owns within the town limits or within one mile of the town limits (except for the person(s) liable primary residence, unless it is the subject of the applicable situations and conditions), and the town may seek to recover the same by enforcing any means available through legal process securing the sums owed.
- (e) The official may in an order impose on the person(s) liable for a specified period of time any other requirements or conditions related to the purpose of remedying the situations or conditions.
- (f) In extreme exigent cases when, in the considered and informed discretion of the official, delay would seriously threaten the effective enforcement of this chapter or pose a danger to the public health or safety, the official may take actions whereby the town corrects, remedies, abates, or removes situations or conditions without a prior request or order for the person(s) liable to perform said corrective actions. In the event the town seeks reimbursement from the person(s) liable for the expenses associated with the corrective actions and any administrative overhead fee determined by the Town Manager, the town shall issue a written order directing the person(s) liable to reimburse the town within 30 days by paying the sum certain specified in the order as constituting the town's expenses in taking the said corrective actions and any administrative overhead fee. The persons liable shall be liable for interest specified in the order upon failure to pay within the 30 days. Such person(s) liable are further subject to other enforcement mechanisms, remedies and sanctions of this article as may be applicable.
- (g) When a particular property has been found at least three times in the previous calendar year to be the subject of a violation due to the same particular situation or condition violating the same ordinance, or same approval, or constituting the same public nuisance as identified in the three prior notices, the official may notify the owner of particular property of the same by certified mail (the provisions of section 40-465 notwithstanding) and the owner shall thereupon be deemed a chronic violator within the meaning of G.S. 160A-200.1. If in the calendar year following the said three previous noticed violations, the particular property is found after the certified mail notice to be in violation due to the same particular situation or condition identified in the said three prior notices, the official shall, without further notice in the calendar year in which notice is given, take action to remedy the violation. In such event, the expenses of the actions of the town in connection with the same and any administrative

overhead fee, all in the amount determined by the Town Manager, and any interest owed as specified in prior notices, shall become secured by a lien upon the property and collectable as unpaid taxes.

- (h) The official may send additional written notices under this article. The final written notice to the person(s) liable (and the initial written notice may be the final notice) shall state or include any order, state what actions the official intends to take if situations or conditions are not corrected or if the order is not followed, and advise that the person(s) liable may appeal the same to the board of adjustment under applicable administrative review and appeal procedures.
- (i) Decisions and notices of the official are to be sent to the person(s) liable as determined by the official and any person aggrieved who issued a written complaint under subsection (a) of this section in accordance with section 40-465.
- (j) A person(s) liable and person aggrieved may appeal a decision to the board of adjustment in accordance with applicable administrative review and appeal of procedures.
- (k) The enumeration of procedures in this section does not limit the town from exercising at any time any one, all, or any combination of mechanisms, remedies and sanctions afforded by this article and by any other law.

(Code 1986, app. A, § 19.6; Ord. No. 10-815A, 2-9-2010; Ord. No. 12-888, 6-12-2012; Ord. No. 13-915, 6-11-2013)

State Law reference— G.S. ~~160A-4~~, 160A-174(a), 160A-175, 160A-176, 160A-176.1, 160A-176.2, 160A-177, 160A-193, 160A-200.1, ~~160A-360, 160A-365, 160A-385, 160A-385.1, 160A-388, and 160A-389~~ 160D-102, 160D-106, 160D-108, 160D-108(d), 160D-108.1, 160D-109(d), 160D-110, 160D-200, 160D-202, 160D-302, 160D-403(b), 160D-404(c), 160D-405, 160D-406, 160D-603, 160D-702, 160D-705, 160D-903, 160D-1405; G.S. 14-4.

Sec. 40-465. - Mode of notice of decision and computation of time periods.

The official shall issue written notice described in this article by regular United States Mail to the last known address, or hand delivery at the last known location of the residence or any place of occupation. The official in its discretion may exercise both forms of notice, and any other additional means of notice. Should the persons address or whereabouts be unknown or notice by mail or hand delivery is not reasonably attainable, the official may in its discretion arrange for notice to be posted at the premises that is the subject of the notice. Section 40-2 notwithstanding, the period of time set forth in this article for the person liable or person aggrieved to take any action under this article or applicable administrative review and appeal provisions in consequence of the written notice does not include the date of notice but begins to run on and includes the day after the date of the envelope of the mailed notice is postmarked, the date of hand delivery, or posting on the applicable premises, whichever is earlier. Should the last day of the applicable period fall upon a Saturday, Sunday, or a legal holiday in which the town offices are closed for business, then the date of compliance shall fall on the next day the town offices are open for business. Should any period of time prescribed or allowed for any act, event, default, or publication under this article be less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

(Code 1986, app. A, § 19.7; Ord. No. 10-815A, 2-9-2010)

State Law reference— G.S. ~~160A-4~~, 160A-174(a), 160A-175, 160A-176, 160A-176.1, 160A-193, 160A-200.1, ~~160A-360, 160A-365, 160A-385, 160A-388, and 160A-389~~ 160D-102, 160D-106, 160D-108(d), 160D-109(d), 160D-110, 160D-200, 160D-202, 160D-302, 160D-403(b), 160D-404(c), 160D-405, 160D-406, 160D-603, 160D-702, 160D-705, 160D-903, 160D-1405; N.C.R. Civ. P. 5, Chapter 1A of the N.C. General Statutes.

Sec. 40-466. - Board of adjustment administrative review of motions to revoke approvals and appeal of official decisions.

Town council refers to the board of adjustment the duty to hear all administrative appeals and reviews of decisions and to decide all motions to revoke approvals. Approval revocation procedures and decisions are not subject to judicial review prior to a final decision by the board of adjustment under applicable administrative review and appeal procedures.* A decision (other than a decision to file a motion to revoke an approval) may be appealed by persons liable and persons aggrieved to the board of adjustment under applicable administrative review and appeal procedures. Such appeal is subject to stay provisions in applicable administrative review and appeal procedures. Motions to revoke an approval are to be heard by the board of adjustment under applicable administrative procedures.

(Code 1986, app. A, § 19.8; Ord. No. 10-815A, 2-9-2010)

State Law reference— G.S. 1-296; G.S. ~~160A-4~~, 160A-174(a), 160A-175, 160A-176, 160A-176.1, 160A-176.2, 160A-177, 160A-193, 160A-200.1, ~~160A-360, 160A-361(a)(6), (7), 160A-365, 160A-385, 160A-385.1, 160A-388, 160A-389, and 160A-399~~ 160D-102, 160D-106, 160D-108, 160D-108(d), 160D-108.1, 160D-109(d), 160D-110, 160D-200, 160D-202, 160D-301(a)(5),(7), 160D-302, 160D-403(b), 160D-404(c), 160D-405, 160D-406, 160D-603, 160D-702, 160D-705, 160D-903, 160D-1405.

Town note—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). Judicial review provisions upon exhaustion of administrative remedies are set forth in section 40-488(m).

Secs. 40-467—40-485. - Reserved.

ARTICLE XVI. - BOARD RESPONSIBILITIES AND ADMINISTRATIVE MECHANISMS

Sec. 40-486. - 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 chapter or to the zoning map and shall observe the procedural requirements set forth in article XVII of this chapter.
 - (2) ~~conditional~~ *Special use permits.*
 - a. ~~conditional~~ *Special use permits for particular uses.* In reviewing applications for a ~~conditional 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 ~~conditional special~~ use applications as set forth in article XI of this chapter, ~~conditional special~~ uses.
 - b. ~~conditional~~ *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 ~~conditional special~~ use applications as set forth in article XI of this chapter, ~~conditional special~~ uses.

- (b) *Voting matters.* When considering amendments to this chapter or the zoning map, or in considering the issuance of a ~~conditional~~ 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.
- (c) *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 NC 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) *Minutes.* The board shall keep minutes of its proceedings
- (e) *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)

(Code 1986, app. A, § 21.1; Ord. No. 00-463, 10-10-2000; Ord. No. 06-652, 8-8-2006)

Sec. 40-487. - Planning and zoning commission.

- (a) *Establishment.* A planning and zoning commission, consisting of seven 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.
- (1) *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 NC 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.
- (b) *Tenure.* Members of the planning and zoning commission shall be appointed by the Town Council to serve terms of three 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.
- (c) *Officers.* The planning and zoning commission shall elect one 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 year.
- (d) *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 chapter:
- (1) Review petitions for proposed amendments to the chapter text and/or map and make recommendations to the town council.
 - ~~(2) Review applications for the issuance of conditional special use permits and make recommendations to the town council.~~
 - (3) Initiate proposed amendments to the chapter text and/or map and make recommendations to the town council.
 - (4) Prepare studies and plans related to controlling and creating orderly growth and development of the town.
 - (5) 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.
 - (6) Perform any other duties assigned by the town council as authorized in G.S. ~~453A-324~~ 160D-301.

(e) *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 6:30 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) ~~conditional~~ 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 ~~conditional~~ 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. ~~conditional~~ Special use permits, zoning text and/or zoning map amendments: Two advertisements posted in a newspaper of general circulation within the town.
 - b. ~~conditional~~ 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:
 1. Mailed notice provided for in subsection (e)(4)b of this section; or
 2. 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. ~~conditional~~ 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.
- (5) 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.
- (6) Any member of the planning and zoning commission who misses more than three 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.

(7) The board shall keep minutes of its proceedings(f) *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.

(g) 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. (160D-109)

(Code 1986, app. A, § 21.2; Ord. No. 00-463, 10-10-2000; Ord. No. 01-468, 1-9-2001; Ord. No. 02-501, 3-12-2002; Ord. No. 02-504, 5-14-2002; Ord. No. 06-652, 8-8-2006; Ord. No. 08-766, 11-10-2008; Ord. No. 09-776, 2-10-2009; Ord. No. 13-905, 1-8-2013)

Sec. 40-488. - 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 regular members and two 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 is not filling in for an absent member.
- (1) Oath of office. Every person elected by the people or appointed to any city 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. Oaths of office shall be administered by some person authorized by law to administer oaths, and shall be filed with the town clerk.
- (c) *Length of terms.* The term of office of members of the board shall be for three years.
- (d) *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.
- (e) *Compensation.* The members of the board shall receive no compensation for their services.
- (f) *Officers, rules of procedure and conduct of meetings.*
- (1) The board of adjustment shall annually elect one member to serve as chairperson and preside over its meetings and elect one 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 chapter. 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 G.S. 143-318.10 et seq., or as may be amended. The board shall follow quasi-judicial procedures as outlined in 160D-406 and in Sec. 40-490 ~~keep minutes of its proceedings suitable for review in court, showing:~~
 - a. ~~The factual evidence presented to the board by all parties concerned;~~
 - b. ~~The findings of fact and the reasons for the determinations by the board;~~

~~e.—The vote of each member, or if absent or failing to vote indicating such fact, all of which shall be public record and be filed in the planning department office.~~

~~(4)—All meetings of the board of adjustment shall be open to the public. Regular monthly meetings shall be held on the third Monday of each month at 6:00 p.m. in the council room of the town hall. Under unique or special circumstances determined by the chairperson a special meeting may be called and given written notice of the time and place of the hearing to the applicant and all adjacent property owners and property owners across the street in front of and across the alley behind the lot on which the variance is to be considered. In addition, notice of the hearing shall be posted on the property for which a variance is sought, and at the municipal building at least ten (10) but not more than 25 days, prior to the date of the hearing. The hearing will be conducted in the quasi-judicial manner mandated by state appellate court decisions and G.S. 160A-388(e2) 160D-406(k). Any party may appear and present evidence, either in person or by an agent or attorney. The applicant shall submit evidence at the hearing on each of the above facts, and in the event of conflicting evidence, he shall have the burden of proof.~~

~~(5) Mailed notice shall be handled as dictated in 160D-405(b)~~

~~(g)—Appeals to the board of adjustment. The board of adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:~~

~~(1)— Any person who has standing under G.S. 160A-393(d) 160D-1401(c) or the town may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the town clerk. The notice of appeal shall state the grounds for the appeal.~~

~~(2)— The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.~~

~~(3)— The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. Notice pursuant to G.S. 160D-403(b) given by first class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.~~

~~(4)— It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.~~

~~(5)— The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.~~

~~(6)— An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment 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 ordinance. In that case, enforcement proceedings shall not be 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 of adjustment shall meet to hear the appeal within 15 days after such a request is filed.~~

~~Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.~~

- ~~(7) Subject to the provisions of subdivision (6) of this subsection, the board of adjustment shall hear and decide the appeal within a reasonable time.~~
- ~~(8) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.~~
- ~~(9) When hearing an appeal pursuant to G.S. 160A-400.9(e) 160D-9-47(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k) 160D-1402(j).~~
- ~~(10) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.~~
- ~~(h) Reserved.~~
- ~~(i) *Powers and duties of the board of adjustment.* The powers and duties of the board are as follows:~~
- ~~(1) *To hear appeals (administrative review).* To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Administrator. An appeal from an order, requirement, decision or determination of the Zoning Administrator shall be decided by the board, based upon its findings of fact and to achieve the intent of this chapter. In exercising this power, the board shall act in a prudent manner so that the purposes of this chapter shall be served. The effect of the decision shall neither vary the terms of this chapter nor add to the list of permitted uses in the districts. To that end, the board shall have powers of the administrative official from whom the appeal is taken.~~
- ~~(2) *To authorize variances.* To authorize upon appeal in specific cases such variance from the terms of this chapter as will preserve the spirit and intent of this chapter, secure public safety and welfare, and provide substantial justice, when, owing to special conditions, literal enforcement of the strict letter of this chapter would result in unnecessary hardships. The board may issue a variance only when all the terms and conditions set forth in this subsection have been met.~~
- ~~a. *Application procedure.* An application for a variance shall be filed with the planning department on a form prescribed by the Zoning Administrator. A survey shall be included in said application showing existing improvements and drawn to a scale not less than one inch equals 50 feet. An application fee shall also be submitted in accordance with the town's adopted fee schedule.~~
- ~~b. *Required findings.* When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:~~
- ~~1. Unnecessary hardship would result from the 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.~~
 - ~~2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as~~

~~hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.~~

- ~~3.—The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.~~
- ~~4.—The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.~~

~~No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this chapter.~~

~~c.—Voting.~~

- ~~1.—The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.~~

~~(3)—To render quasi-judicial final decisions on article XV motions to revoke approvals. The board of adjustment may revoke an approval in accord with the following procedures:~~

- ~~a.—Motion for revocation. A motion to revoke an approval under article XV of this chapter shall be filed with the board of adjustment (or its designee that may be specified in any rules of procedure adopted by the board of adjustment). The motion shall attach a copy of the subject approval, describe the article XV situations and conditions in particularity, specify how the same violate the terms of the approval, and identify the persons liable. The article XV official may exercise any, all, or none of other article XV enforcement mechanisms, remedies and procedures without regard to a motion to revoke. Revocation proceedings are not subject to judicial review prior to a dispositive ruling by the board of adjustment on the motion to revoke. The dispositive ruling is a final decision subject to judicial review as provided in subsection (m) of this section.~~
- ~~b.—Notice of motion for revocation and conduct of hearing. The movant shall forward the motion for revocation and written notice of hearing to the persons liable and the holder of the subject approval. The written notice shall be issued at least ten days prior to the hearing on the motion for revocation. The mode of delivery of the motion for revocation and notice and the computation of time applicable shall be pursuant to section 40-465. The hearing before the board of adjustment is a quasi-judicial proceeding.~~
- ~~c.—Burden of proof and persuasion. At the hearing before the board of adjustment, the burden of proof and persuasion shall be on the movant that the approval should be revoked. A movant other than the official has the burden of proof establishing it is a person aggrieved as defined in article XV of this chapter.~~
- ~~d.—Vote on motion for revocation by board of adjustment. In issuing a final decision on the motion to revoke, the board of adjustment may employ any of the enforcement mechanisms in article XV of this chapter or any combination of them in addition to or in lieu of revoking the approval. The vote on the final decision by the board of adjustment on a motion to revoke shall be according to the procedures set forth in subsection (j) of this section.~~
- ~~e.—Withdrawal of motion for revocation before hearing. A motion to revoke an approval may be withdrawn at any time before the hearing on revocation begins. The motion may not be withdrawn once the hearing begins except upon leave granted by the presiding officer of the board of adjustment.~~

- ~~f.—*Statement of final decision of revocation.* The final decision of the board of adjustment shall provide a written statement of the decision and the reasons therefor. A final decision revoking an approval shall identify the approval involved, specify the situations and conditions involved, and describe how the same violated the approval. The board of adjustment shall provide a copy of the final decision to the persons liable under article XV of this chapter, the holder of the subject approval(s), the movant, and every article XV person aggrieved who filed with the board of adjustment prior to the closing of the hearing a written request for a copy, together with the address to which the copy may be delivered by personal service and certified United States Mail.~~
- ~~g.—*Other procedures.* Except as otherwise provided herein, revocation procedures before the board of adjustment are subject to subsections (f)(2) and (3), (j) and (k) of this section. Should G.S. ch. 160A, art. 19 (G.S. 160A-360 et seq.) 160D mandate any procedures inconsistent with, or contrary to any the revocation procedures set forth in this subsection (i)(3), then the state statutory procedures shall apply.~~
- ~~(4)—*To hear appeals from an article XV decision by a section 40-459(a) official other than to file a motion for revocation, and make final decisions on same.* An article XV decision is not subject to judicial review prior to exercising administrative review and appeal remedies as specified herein. Administrative review procedures of article XV decisions other than a motion for revocation of an approval, which is reviewed under subsection (i)(3) of this section, are provided in this subsection. The board of adjustment hears administrative appeals from article XV decisions. Upon payment of a filing fee as provided in section 40-11, any article XV person aggrieved may appeal an article XV decision as follows:~~
- ~~a.—The appellant must file with the Town Clerk, the official issuing the appealed decision, and the board of adjustment (or its designee that may be specified in any rules of procedure adopted by it) a written appeal within ten consecutive calendar days after the decision and at least 30 days before the board of adjustment's next regularly scheduled meeting.~~
- ~~b.—The appeal shall (1) state in full the grounds stating why that the decision is erroneous or contrary to law; (2) provide the names and addresses of all parties in interest, and the owners of land and premises that are the subject of the article XV decision and adjacent land and premises (land and premises separated from the subject land and premises only by any right-of-way, street, road, alley, easement, or buffer are deemed to be adjacent for the purposes of this subsection); and (3) the addresses of the subject and adjacent land and premises. The article XV official that issued the decision appealed shall transmit to the board of adjustment all papers constituting the record upon which the decision appealed from was taken.~~
- ~~c.—The hearing shall be conducted in accordance with those procedures set forth in subsections (f)(2) and (3), (i)(1), (j) and (k) of this section to the extent applicable. In the event an ordinance that served as the basis of the appealed decision has been amended before the hearing on the appeal, the board of adjustment shall apply the terms of those ordinances applicable at the time of the official's decision. The burden is on the appellant to establish the decision is erroneous or contrary to law.~~
- ~~d.—The board of adjustment shall issue its final decision and state its reasons in writing. The board of adjustment may affirm, uphold, adopt, alter, modify, reverse, reject, or change all or any part of the appealed decision and may exercise any, all, or any combination of the enforcement mechanisms and remedies allowed by article XV of this chapter or any other provision of law.~~
- ~~e.—The board of adjustment shall provide a copy of the final decision to the person(s) liable under article XV of this chapter, the holder of the subject approvals, and every article XV person aggrieved who filed with the board of adjustment at the hearing a written request for a copy, together with the address to which the copy may be delivered by personal service and certified United States Mail. The final decision shall provide a written statement of the decision and the reasons therefor.~~

- ~~f.—An appeal to the board of adjustment stays all proceedings in furtherance of the decision appealed from unless within ten days after the appeal is filed with the Town Clerk, the official submits a written certification to the board of adjustment stating that because of the facts outlined in the certification, in the official's opinion, the stay would cause imminent peril to life or property, or that because any violation that is the subject of the decision is transitory in nature, the stay would seriously interfere with the enforcement of the town's zoning ordinance. The official shall have one copy of the certification delivered by registered mail or by personal service upon the appellant and to each member of the board of adjustment. Upon filing of the certification, the proceedings under the decision that is the subject of the appeal shall not be stayed unless the board of adjustment thereafter by written order implements the stay notwithstanding the certification.~~
- ~~g.—Should G.S. ch. 160A, art. 19 (G.S. 160A-360 et seq.) 160D mandate any procedures inconsistent with, or contrary to any procedures set forth in this subsection (i)(4), then the state statutory procedures shall apply.~~
- ~~(j)—Concurring vote necessary. The concurring vote of four members of the board shall be necessary to preserve any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance or to grant a variance from the provision of any such ordinance.~~
- ~~(k)—Rehearing. The board shall refuse to hear an appeal or application previously denied, if it finds there have been no substantial changes in conditions or circumstances bearing on the appeal or application.~~
- ~~(l)—Appeals from the board of adjustment. Any person aggrieved by any decision of the board of adjustment shall have standing for purposes of seeking further review by the county superior court; provided such review shall be subject to proceedings in the nature of certiorari. For purposes of this section, the term "person aggrieved" shall mean any person, firm, corporation or group of persons of common interest, including the town, its officials, agents and employees, and any town departments, boards or agencies, that are directly or indirectly affected substantially by a decision as set out herein. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed in the planning department, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the planning department at the time of the hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.~~
- ~~(m)—Judicial review of board of adjustment final decisions regarding article XV matters. The provisions of subsection (l) of this section notwithstanding, judicial review of article XV matters are conducted solely pursuant to the following procedures:~~
- ~~(1)—An article XV final decision of the board of adjustment under subsections (i)(3) and (4) of this section is subject to judicial review only by proceedings in the nature of certiorari filed in the superior court of the county. Judicial review in the nature of certiorari may be brought by:~~
- ~~a.—The article XV persons liable;~~
- ~~b.—An article XV person aggrieved that is aggrieved by the final decision;~~
- ~~c.—The appellant who sought review by the board of adjustment;~~
- ~~d.—The town, any town officer, department, board or commission;~~
- ~~e.—Any person who will suffer special damages in connection with the final decision.~~
- ~~(2)—The petition for the writ of certiorari must be filed with the county clerk of court within 30 days after the later of the following occurrences:~~
- ~~a.—A written copy of the board of adjustment's final decision has been filed with the Town Clerk;~~
- ~~b.—A written copy of the board of adjustment's final decision has been delivered by personal service or certified mail, return receipt requested to the person(s) liable;~~

~~e. A written copy of the board of adjustment's final decision has been delivered by personal service or certified mail, return receipt requested, to every person aggrieved who filed at the board of adjustment hearing a written request for a copy of the final decision.~~

~~(3) A copy of the writ of certiorari shall be served upon the town.~~

~~(4) The petitioner shall follow procedures required by G.S. ch. 160A, art. 19 (G.S. 160A-360 et seq.) 160D.~~

(n) Conflict of Interest. Members of Board of Adjustment 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)

(Code 1986, app. A, § 21.3; Ord. No. 00-463, 10-10-2000; Ord. No. 02-515, 8-13-2002; Ord. No. 10-815B, §§ I—III, 2-9-2010; Ord. No. 12-889, 5-8-2012)

Sec. 40-489. - Zoning Administrator.

(a) The provisions of this chapter shall be administered by the Town Manager through his designee, typically the Zoning Administrator. All references in this chapter to the Zoning Administrator shall also include, therefore, any other official designee of the Town Manager. The Zoning Administrator shall have the following powers and duties in the administration of the provisions of this chapter:

- (1) To make inspections of buildings or premises as necessary in the performance of his duties in the enforcement of this chapter;
- (2) To make all necessary determinations and interpretations as required by this chapter; and
- (3) To propose and promulgate administrative regulations necessary to implement the provisions of this chapter.

(b) Under no circumstance is the Zoning Administrator permitted to make changes in this chapter or to grant exceptions to the actual meaning of any clause, standard, or regulation contained in this chapter.

(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.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under NC G.S. 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. (160D -109c)

Sec. 40-490 – Quasi-Judicial Procedure

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

(b) Notice of Hearing. - Notice of evidentiary hearings conducted pursuant to this Chapter shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the

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

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

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

Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

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

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

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

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

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

(j) Decisions. - The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

(k) Judicial Review. - Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d). (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

(Code 1986, app. A, § 21.5; Ord. No. 00-463, 10-10-2000)

Secs. 40-490~~1~~—40-518. - Reserved.

ARTICLE XVII. - ZONING ORDINANCE TEXT AND MAP AMENDMENTS

Sec. 40-519. - Authorization to amend; who may initiate.

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 person who resides or owns property within the zoning jurisdiction of the town.

- i. 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).

(Code 1986, app. A, § 22.1; Ord. No. 00-463, 10-10-2000)

Sec. 40-520. - Petition for an amendment.

The following action shall be taken by the applicant:

- (1) *Application.* An application for any amendment shall contain:
 - a. A description of the current and proposed zoning regulation or district boundary to be applied;
 - b. 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;
 - c. The names and addresses of the owners of the property involved, and of adjacent property owners. (See subsection (4) of this section.)
- (2) *Filing period of application.* Such completed application shall be filed with the planning department no later than 28 working days prior to the planning and zoning commission meeting at which the application is to be considered.
- (3) *Fees.* A fee in accordance with the town's adopted fee schedule shall be submitted to the Zoning 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.
- (4) *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.
- (5) *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.
- (6) *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.
- (7) *Exemption.* Town agencies are exempt from subsections (2), (3) and (4) of this section.

(Code 1986, app. A, § 22.2; Ord. No. 00-463, 10-10-2000; Ord. No. 06-654, 8-8-2006)

Sec. 40-521. - Action by planning and zoning commission.

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.

(Code 1986, app. A, § 22.3; Ord. No. 00-463, 10-10-2000; Ord. No. 08-766, 11-10-2008)

Sec. 40-522. - Action by town council.

- (a) *Notice and public hearing.* No amendment shall be adopted 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. ~~160A-364~~ [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. 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 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. 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 shall be required to post a sign describing the proposed change at least 105 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.

- (b) *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 G.S. ~~460A-384~~ 160D-601, that is:
- (1) 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 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.
 - (2) The first class mail notice required under subsection (b)(1) 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 (b)(1) of this section or may as an alternative elect to publish notice of the hearing as required by G.S. ~~460A-364~~ 160D-601, 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 (b)(1) of this section.
 - (3) 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 and shall occur at least 105 days and no more than 25 days prior to the meetings at which the request is to be heard and shall be effected.
- (c) *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.
- (1) 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.
 - (2) 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.

(d) 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 Town's CAMA Land 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 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:

(1) the size, physical conditions, and other attributes of any areas proposed to be rezoned;

(2) the benefits and detriments to the landowners, the neighbors, and the surrounding community;

(3) the relationship between the current actual and permissible development and the development under the proposed amendment;

(4) why the action taken is in the public interest; and

(5) any changed conditions warranting the amendment. (NC GS 160D-605)

(Code 1986, app. A, § 22.4; Ord. No. 00-463, 10-10-2000; Ord. No. 06-652, 8-8-2006)

Sec. 40-523. - Citizen comments.

(a) In accordance with G.S. ~~160A-385~~ 160D-603 as may be amended from time to time, if any resident or property owner in the city submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance to the clerk to the board at least two business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to the city council. If the proposed change is the subject of a quasi-judicial proceedings under G.S. ~~160A-388~~ 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.

(Code 1986, app. A, § 22.5; Ord. No. 00-463, 10-10-2000; Ord. No. 08-762, 10-7-2008)

Sec. 40-524. - Resubmission of a denied petition.

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 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 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 applications may be filed for rezoning and/or part of the same property within any 12-month period.

(Code 1986, app. A, § 22.6; Ord. No. 00-463, 10-10-2000)

Sec. 40-525. - Prohibition of certain testimony.

Under a general rezoning, the applicant shall be prohibited from offering any testimony or evidence concerning the specific manner in which he intends to use or develop the property.

(Code 1986, app. A, § 22.7; Ord. No. 00-463, 10-10-2000)

Sec. 40-526. - Appeals.

- (a) Any person aggrieved by any amendment to this chapter, decision by the board of adjustment or decision of the town council shall have standing for purposes of seeking further review by a court of competent jurisdiction. For purposes of this section, the term "person aggrieved" shall mean any person, firm, corporation, or group of persons of common interest, including the town, its officials, agents and employees, and any town departments, boards or agencies, that are directly or indirectly affected substantially by an amendment or decision as set out herein.
- (b) The applicant shall be entitled to argue on appeal only those objections or grounds asserted in the original hearing which are preserved in the notice of appeal. The reviewing authority shall not decide any matters that were not discussed or considered below it and which are not set forth in the written notice of appeal.

(Code 1986, app. A, § 22.8; Ord. No. 00-463, 10-10-2000)

Secs. 40-527—40-545. - Reserved.

ARTICLE XVIII. - DEFINITIONS

Sec. 40-546. - General.

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 "chapter" or "regulations" shall mean the provisions of this chapter, 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.
- (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.

(Code 1986, app. A, § 23.1; Ord. No. 00-463, 10-10-2000)

Sec. 40-547. - Use of fractions.

When any requirement of this chapter results in a fraction of a unit, a fraction of one-half or more shall be considered a whole unit and a fraction of less than one-half 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 or more shall be considered a dwelling unit and a fraction of less than one-half shall be disregarded.

(Code 1986, app. A, § 23.1; Ord. No. 00-463, 10-10-2000)

Sec. 40-548. - Definitions.

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

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 Chapter 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. Also see article IX of this chapter, day nurseries.

Adult entertainment establishment means retail or service establishments permitted in Class II as defined in 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). (Also see article IX of this chapter, adult entertainment establishment.)

Agricultural use, for the purposes of this chapter, 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.

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.

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. Any commercial facility used for the purpose of the boarding, treatment, grooming, or sale of domesticated animals. Domesticated animals, for the purpose of this chapter, 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 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.

Art galleries means a building containing the display of photographs, paintings, sketches, sculptures or other items of art for show or sell.

As-built survey means a survey prepared by a registered land surveyor and performed at the final stage of construction to detail the position of all improvements on a tract, parcel or lot of land.

Attached single-family residential. 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 exterior door to each building. This allowance shall not apply to connecting accessory structures together.

Automobile repair garage means any building or part thereof wherein is kept or stored motor vehicles and wherein painting, body and fender work, engine overhauling or other repair of motor vehicles is performed.

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.

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 percent 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 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. 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, a room intended primarily for sleeping](#)

Billboard means any sign or advertisement used as an outdoor display for the purpose of making anything known, the origin or point of sale of which is remote from such display. (Also see definition of *Sign*.)

Block means the length of street between two street intersections.

Board means the board of adjustment (B.O.A.).

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 to 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.

Body piercing facility. 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 chapter. 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.

Buildable means not constrained by environmentally sensitive conditions that would retard 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 chapter.

Building means any structure enclosed and isolated by exterior walls constructed ~~or used for residence, business, industry or other purposes~~ for supporting or sheltering any use or occupancy.

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 front street line.
- (2) The 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 line. 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.

Building or structure, existing, means any structure erected prior to the adoption of the ordinance from which this chapter is derived, or one 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.

Building setback line means a line that establishes the minimum allowable horizontal distance between the lot line and the nearest portion of any structure on the lot.

Bus means any motor vehicle designed to carry more than nine 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*.

Cellar means a story having more than 40 percent of its height below the average level of the adjoining ground. A cellar shall not be counted as a story for the purpose of height measurement.

Certificate of compliance means a certification that a premises conforms to provisions of the this chapter and building code and may be used or occupied; also known as a certificate of occupancy. (Also see section 40-461.)

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.

Commercial means a nonresidential use providing for the sale of general merchandise or convenience goods and services.

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 parties under easement agreement, erected upon a line separating two parcels of land, each of which is a separate real estate entity.

~~conditional~~ *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 ~~conditional~~ *special* use permit process.)

~~Conditional use permit means the granting of permission by the town council for certain property uses with conditions attached. (See article IX of this chapter for special development standards and article XI of this chapter for conditional use permit process.)~~

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 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.

Day care center, adult, means a place receiving a payment, fee or grant for the temporary, part-time care of more than five adults, for more than four hours per day. (See article IX of this chapter for development standards.)

Day care center, child, means a place receiving a payment, fee or grant for the temporary, part-time care of more than five children, 13 years of age or less, for more than four hours per day, without transfer of custody. The term "day care center, child" includes "kindergartens," "day nurseries," "nursery schools" or other similar establishments. (See article IX of this chapter for development standards.)

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.

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 intends to undertake any development and who has a legal or equitable interest in the property to be developed.~~ 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 ~~any manmade change to improved or unimproved real estate, including, but not limited to the construction, erection, structural alteration, enlargement, or rehabilitation of any buildings or other structures, including farm buildings; mining; dredging; filling; grading; paving; excavation or drilling operations; clearing of vegetation; any division of a parcel of land into two or more parcels and any use or change in use of any structures or land. Development shall also include 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.~~
 unless the context clearly indicates otherwise, any of the following:

- a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
- b. The mining, dredging, paving, excavation, grading, filling, clearing, or alteration of land.
- c. The subdivision of land as defined in G.S. 160D-802.
- d. The initiation or substantial change in the use of land or the intensity of use of land.
- e. 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.

This definition does not alter the scope of regulatory authority granted by NC G.S. Chapter 160D.

Development approval means an administrative or quasi-judicial approval made pursuant to this Chapter that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to this Chapter, 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. The line established by the town representing the seaward-most allowable location of oceanfront development.

Distillery. 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 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/thru 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 automobiles.

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 layers of boats.

Dwelling means a building that contains one 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. A building where the practice of making holes in the lobes or edges of the ears to allow the wearing of earrings.

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:

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.

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.

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.

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.

Established grade means the elevation of the street grade as fixed by the town.

Estuarine tidal water, for purposes of this chapter, 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 Zoning 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.

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 mile in all directions as delineated on the official zoning map for the town.

Family means one or more individuals occupying a premises and living as a single nonprofit housekeeping unit, including domestic servants, provided that a group of five 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 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.

Fire escape means a fireproof stairway down an outside wall, to help people escape from a burning building.

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 NCGS Chapter 75A does not preclude a structure from classification as a floating structure.

Flood protection elevation means the elevation to which structures and uses regulated by this chapter 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 ten-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.

Fuel pump island means any device or group of devices used for dispensing motor fuel or similar petroleum products to the general public.

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, public, means any building or premises, except those described as a private garage, used for the storage or care of motor vehicles, or where any such vehicles are equipped for operation, repaired or kept for hire or sale.

Garage, repair. See *Automobile repair garage*.

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.

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 unenclosed areas where business is conducted. The area shall be considered enclosed if any type of vertical surface other than typical mesh screening has been installed, whether it is on a temporary or permanent basis. Vertical surfaces shall include plastic roll

downs or similar devices that prevent the free flow of air and weather into the commercial area. Vertical surfaces shall not include enclosures for garage areas.

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 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.

High rise means a multi-story building over five stories or over 50 feet.

Home occupation means an occupation for gain or support customarily conducted on the premises by a person or family residing thereon. (See article IX of this chapter for conditions.)

Hotel (motel) means a building providing sleeping accommodations commonly available on a daily basis for pay to transient and permanent guests or tenants, in six or more rooms. Dining rooms, restaurants or cafes, if existing, shall be conducted in the same building or buildings in connection therewith.

Hotel-iminium/motel-iminium means a structure containing individually owned hotel or efficiency units, and operated in the manner of a hotel or motel.

Hotel room means a room used for transient lodging, which in addition to a sleeping area may provide kitchen accommodations.

Housing unit (dwelling unit) means one or more rooms together, constituting a separate, independent housekeeping establishment ~~for owner occupancy, or rental or lease on a weekly or longer basis,~~ 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 family.

Housing unit, types.

Single-family detached	A structure, other than a manufactured home, containing one housing unit only.
Manufactured home	See article IX of this chapter for definitions and development standards related to manufactured homes.
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.
Multi-family structure	A structure containing three or more housing units, none of which are available for rental periods of less than one month. Has the same meaning as "apartment house."

Two-family dwelling (duplex)	A structure containing two housing units divided by a separation wall.
Triplex	A structure containing three housing units divided by separation walls.
Quadraplex	A structure containing four housing units divided by separation walls.
Garage apartment	A detached accessory or subordinate building to an existing single-family dwelling, containing living facilities for not more than one family and having sufficient enclosed area for one parked automobile.
Townhouse	A single-family dwelling containing at least two but not more than six housing units <u>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 sides.</u> where the land is subdivided for individual units under the principal structure. The unit is separated on one or both sides from a similar unit or units by a party wall or walls. No unit shall be connected on more than two sides by common walls.

Impact fee means a fee charged by the town, in the amount so specified, which covers the costs of impacts created by the development which does not justify the expenditure of public money to supply the needs created (i.e., parking impact fee—not the responsibility of the public to supply the parking required by the business creating the need).

Junk yard or 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.

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 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 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 ~~development~~ vesting plan ~~or a phased development plan~~ under this section, in the manner allowed by ordinance.

Least dimensions means the least dimension of a yard is the least of the horizontal dimensions of such yards. If two 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 Chapter or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Article 10 of G.S. Chapter 160D.

Legislative hearing means a hearing to solicit public comment on a proposed legislative decision.

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 chapter. For the purpose of this chapter, the term "lot" shall mean any number of contiguous lots or portions thereof upon which one principal building and its accessory buildings 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 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 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 frontage means that portion of a lot abutting a street. In the case of a corner lot, the narrower side fronting on the street shall be considered to be the front of the lot. In case the corner lot has equal frontage on two 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 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. No lot shall front on an alley.

Lot line means a line dividing one 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.

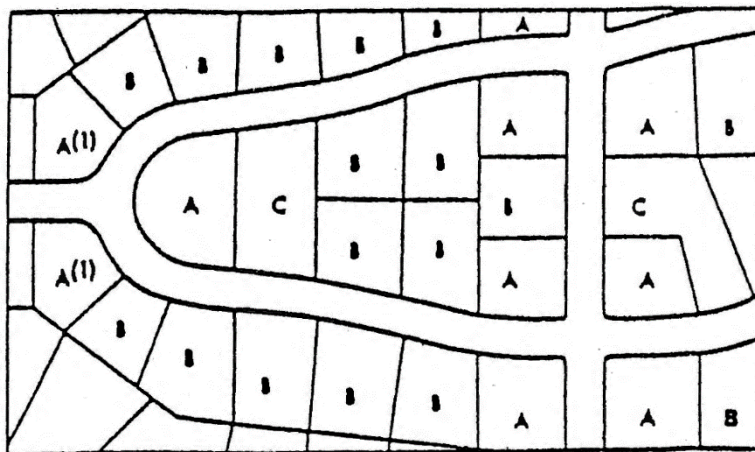
Lot of record means a lot which is a part of a subdivision, a plat of which has been recorded in the office of the register of deeds of the county or a lot described by metes and bounds, the description of

which has been so recorded at the time of adoption of the ordinance from which this chapter is derived, and which actually exists as so shown.

Lot types. Figure 1 illustrates terminology used in this chapter 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 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 frontage on a street.
C	Through Lot	A lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots.

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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 (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.

Marina means a boat basin with facilities for berthing, securing or storing various types of watercraft.

Marina, commercial, means any marina 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.

Mixed use commercial-residential means a building that contains at least one floor devoted to allowed commercial use and at least one devoted to allowed residential use.

Mobile home (manufactured home). See article IX of this chapter for definitions and development standards related to manufactured homes.

Motel. See *Hotel*.

Multi-use facility means a facility containing less than 25,000 square feet of gross floor area containing more than two 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

- (i) is submitted for site plan approval for construction to occur in more than one phase and
- (ii) 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.

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 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 chapter, or because land or buildings are used for purposes made unlawful by the ordinance. (See article XIV of this chapter.)

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 chapter 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. (See article XIV of this chapter.)

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. (See article XIV of this chapter.)

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.

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.

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. (See article IX of this chapter.)

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.

~~*Phased development plan* means a site-specific development plan which has been submitted to the town by a landowner that illustrates several stand alone projects that are planned to be built in phases, and where these subsequent phases are anticipated to have a start of construction date of up to five years out from the date of the site-specific development plan approval.~~

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. (See article XII of this chapter.)

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 town planning and zoning commission.

Planning Director means the Town Planning and Zoning Director.

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 published once a week for two successive calendar weeks in a newspaper having general circulation in the town.

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 or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board.

Recreation, commercial, means any form of play, amusement, or relaxation used for monetary gain.

Recreation, commercial indoor, means any form of play, amusement or relaxation used for monetary gain conducted within an enclosed structure.

Recreation, commercial outdoor, means any form of play, amusement, or relaxation used for monetary gain not conducted within an enclosed structure.

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.

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.

Restaurant means an establishment whose principal business is the sale of foods, frozen desserts, or beverages to a customer in a ready-to-consume state, and whose design and principal method of operation determines its classification as follows:

(1) *Table service or cafeteria.*

- a. Customers are provided with an individual menu and served by an employee at the same table or counter at which their food and/or beverages are consumed; or
- b. A cafeteria-type of operation where foods and/or beverages generally are consumed within the restaurant.

(2) *Carry-out/fast food.* Food is usually served in edible containers or in paper, plastic, or other disposable containers by an employee at a standing counter or drive-in window. Consumption may be off the premises, within the principal building, or at other facilities on the premises outside the principal building.

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 line. See *Building setback line.*

Shopping center/big box means one or more commercial establishments, containing 25,000 square feet or more of indoor gross floor area on one site. This definition would include malls, a commercial unit or plaza with multiple units, and any community shopping area designed to utilize shared facilities (i.e., parking, signage, landscaping).

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. See article VIII of this chapter to view the definitions associated with signs.

Site-specific ~~development vesting~~ plan means a plan ~~which has been~~ submitted to the town ~~by a landowner~~ describing with certainty the type and intensity of use for a specific parcel or parcels of property. Such site-specific ~~development vesting~~ plan shall be presented to the town as specified and subject to all provisions of article XI of this chapter, ~~conditional special~~ use permit approval process. 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 special~~ use permit, a conditional zoning or any other ~~land-use approval designation 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 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.

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 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 percent of the total floor area of the story immediately below it;
- (2) *Penthouse*: If it exceeds 25 percent 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 for the town on file with the Zoning 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.

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.

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 percent of its perimeter.

Swimming pools, private, means any swimming pool operated in conjunction with a 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).

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.

Technical review committee means a committee 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.

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 established to tow or remove motor vehicles from one 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.

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.

Variance means a relaxation of the terms of this chapter 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.

Vehicle means any of the following:

Commercial vehicle means a vehicle designed, maintained or used primarily for the transportation of merchandise or materials used in a business.

Junked vehicle means a motor vehicle that:

- (1) Is partially dismantled or wrecked; and
- (2) Cannot be self-propelled or moved in the manner in which it was originally intended; or
- (3) Is more than five years old and appears to be worth less than \$100.00; or
- (4) Does not display a current license plate when the motor vehicle is required by laws of this state to have such a license plate to operate on public roads, unless stored within an enclosed structure.

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.

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 boats, water craft or off-road vehicles.

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 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 ~~development~~ [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 ten 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 points by a straight line to form a triangular shaped area over the corner. One support post not to exceed five 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, 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.

Water oriented business 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.

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.

Front yard means the area between side lot lines across the front of a lot adjoining a street. 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.

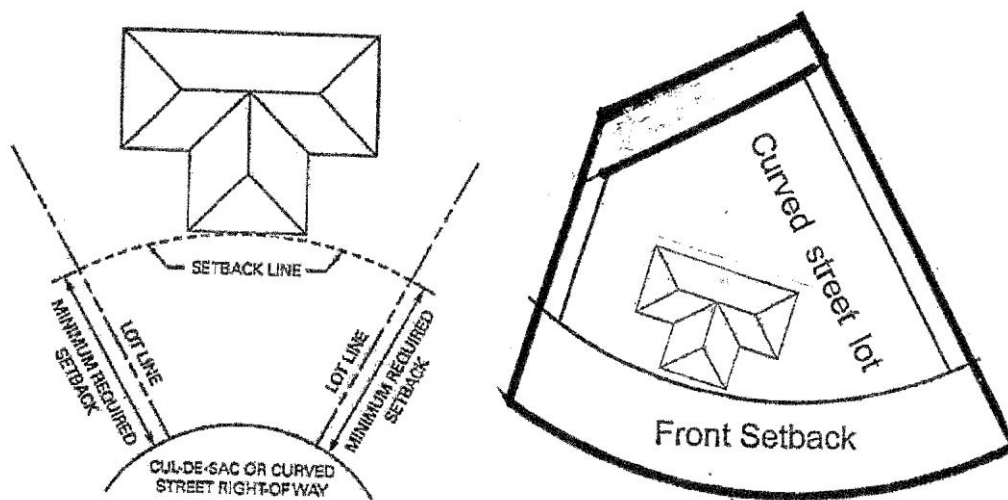
- (1) *Through lots:* Front yards shall be provided on all frontages.
- (2) *Corner lots:* For the purposes of this section, a front yard of the required depth shall be provided in accordance with the district requirements for one frontage designated by the owner at the time of the building permit issuance and the second yard shall conform to the side yard requirements as defined here. In the case of corner lots with more than two frontages, the third or more yards shall conform to the side yard requirements as defined herein.

Rear yard means the area between the side lot lines across the rear of the lot. Through lots have no rear yard, only front and side yards.

Side yard means the area extending from the rear line of the required front yard to the foremost lines of the rear yard. 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 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.

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Yard sale means all general sales, open to the public, conducted from or on a residential premise in any residential district for the purpose of disposing of personal property. The term "yard sale" shall include all such herein described as sales whether or not they are "garage," "lawn," "yard," "attic," "porch," "room," "backyard," "patio," "flea market," or "rummage" sale.

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. In zero lot line developments, which are allowed by conditional special use permit only, dwelling units can be placed no closer than three feet from the nearest side lot line unless a maintenance easement is provided that will allow a minimum of three 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 side yards required under a conventional building placement.

Zoning Administrator means the Town of Carolina Beach officer or other designated authority charged with the administration of this chapter, or his duly authorized representative or agent.

(Code 1986, app. A, § 23.1; Ord. No. 00-463, 10-10-2000; Ord. No.03-538, 5-13-2003; Ord. No. 03-543, 7-8-2003; Ord. No. 04-558, 7-13-2004; Ord. No. 04-574, 11-9-2004; Ord. No. 06-621, 2-14-2006; Ord. No. 06-634, 5-9-2006; Ord. No. 06-653, 8-8-2006; Ord. No. 07-668, 1-9-2007; Ord. No. 07-674, 3-13-2007; Ord. No. 07-679, 3-13-2007; Ord. No. 07-681, 4-10-2007; Ord. No. 07-689, 6-12-2007; Ord. No. 07-695, 7-10-2007; Ord. No. 08-731, 3-11-2008; Ord. No. 08-748, 7-7-2008; Ord. No. 08-756, 9-9-2008; Ord. No. 08-757, 9-9-2008; Ord. No. 08-769, 12-9-2008; Ord. No. 09-773, 1-13-2009; Ord. No. 09-778, 3-10-2009; Ord. No. 09-779, 3-10-2009; Ord. No. 09-782, 4-14-2009; Ord. No. 09-809, 9-8-2009; Ord. No. 09-813A, 10-13-2009; Ord. No. 09-813B, 2-9-2010; Ord. No. 10-825, 4-13-2010; Ord. No. 10-843, 8-10-2010; Ord. No. 10-844, 8-10-2010; Ord. No. 10-847, 9-14-2010; Ord. No. 10-851, 10-12-2010; Ord. No. 10-852, 10-12-2010; Ord. No. 10-853, 11-9-2010; Ord. No. 11-856, 2-8-2011; Ord. No. 11-858, 2-8-2011; Ord. No. 11-865, 5-10-2011; Ord. No. 11-866, 5-10-2011; Ord. No. 11-879, 10-11-2011; Ord. No. 12-901, 10-9-2012; Ord. No. 12-902, 12-11-2012; Ord. No. 13-906, 1-8-2013; Ord. No. 14-926, 2-11-2014; Ord. No. 15-969, 1-13-2015; Ord. No. 14-961, 3-10-2015; Ord. No. 15-971, 3-10-2015; Ord. No. [16-1024](#), 9-13-2016; Ord. No. [16-1018](#), 7-12-2016; Ord. No. [16-1033](#), 1-10-2017; Ord. No. [17-1044](#), 4-11-2017; Ord. No. [18-1071](#), 1-9-2018; Ord. No. [18-1098](#), 12-11-2018; Ord. No. [19-1124](#), 10-8-2019)

Chapter 36 - SUBDIVISIONS^[1]

Footnotes:

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State Law reference— Planning and regulation of development, G.S. 160A-360 et seq.; interlocal cooperation, G.S. 160A-460 et seq.

ARTICLE I. - IN GENERAL

Secs. 36-1—36-18. - Reserved.

ARTICLE II. - SUBDIVISION REGULATIONS^[2]

Footnotes:

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State Law reference— Subdivision regulation, G.S. 160A-371 et seq.

DIVISION 1. - GENERALLY

Sec. 36-19. - Title.

This article shall be known as, referred to, or cited as the "Subdivision Regulations, Carolina Beach, North Carolina."

(Code 1977, § 9-3001; Code 1986, § 12-36)

Sec. 36-20. - 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:

Administrator means the officer designated by the town council to administer this article.

Alley means a special public way affording only secondary access to abutting properties.

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.

Block means a tract of land bounded by streets or by a combination of one or more streets and public parks, cemeteries, railroad rights-of-way, bulkhead lines or shorelines of waterways, or corporate boundary lines.

Building means any structure having a roof supported by columns or walls.

Building setback line means a line parallel to a lot line and at a distance from the lot line to comply with the yard requirements of chapter 40, zoning.

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.

Comprehensive plan means any extensively developed plan, also called a master plan, prepared and adopted 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, and subdivision control ordinances and capital improvement programs shall also be considered a part of the comprehensive plan.

Cul-de-sac street means a minor street closed at one end with a turnaround provided for vehicular traffic.

Deeded lot means a lot created by metes and bounds description and which is not a legal lot of record.

Director of Planning and Development means the town Planning and Development Director.

Dune means a ridge or mound of loose, wind-blown material, usually sand.

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.

Frontage means the smallest dimension of a lot abutting a public street measured along the street line.

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.

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.

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.

Legal lot of record 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 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 article.

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, through, means a lot which has a pair of opposite lot lines along two substantially parallel streets and which is not a corner lot. On a through lot, both street lines shall be deemed front lot lines; in the case of two or more contiguous through lots, there shall be a common front lot line.

Mean sea level datum means sea level datum, as established by chapter 30, flood damage prevention, as established by the United States Coast and Geodetic Survey.

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.

Navigable stream means any stream capable of floating any boat, skiff, or canoe of the shallowest draft used for recreation purposes.

Official means the Town Manager or the Manager's designee with the primary responsibility for those matters set forth in this chapter and enforcing the same through any applicable provision of law. The term "official" also includes any other person as may otherwise be designated by law as having authority in a particular matter within the scope of this chapter.

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 or more other adjacent outlots or lots in adjacent subdivisions or minor subdivisions in the future for the purpose of creating buildable lots.

Planning and zoning commission means the board created by the town council as authorized by G.S. 160A, article 19 (G.S. 160A-360 et seq.).

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 percent chance of being equaled or exceeded in any given year) for the area plus six 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).

Public way means any public road, street, highway, walkway, drainage, or part thereof.

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.

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.

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 means and includes all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose, whether immediate or future, of sale or building development, and shall include all divisions of land involving the dedication of a new street or 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 article:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown by the regulations prescribed by this article;
- (2) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors;
- (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved, and where the resultant lots are equal to or exceed the standards of the municipality, as shown by the subdivision regulations contained in this article.

The town may provide for expedited review of specified classes of subdivisions as specified in section 36-74.

Surety bond means a bond guaranteeing performance of a contract or obligation through possible forfeiture of the bond if such contract or obligation is unfulfilled by the subdivider.

Wetlands means those lands which are partially or wholly covered by marshland flora and generally covered with shallow standing water, or lands which are wet and spongy due to a high-water table.

(Code 1977, §§ 9-3111, 9-3022; Code 1986, § 12-37; Ord. No. 80-03, 9-11-1979; Ord. No. 87-222, 7-14-1987; Ord. No. 04-563, 8-10-2004; Ord. No. 10-824, 3-23-2010; Ord. No. 10-831, 3-23-2010; Ord. No. 11-860, 3-8-2011)

State Law reference— "Subdivision" defined, G.S. 160A-376.

Sec. 36-21. - Authority.

This article is adopted under the authority granted by G.S. Chapter 160A, article 19 (G.S. 160A-360 et seq.) and specifically by G.S. 160A-371—160A-376 and amendments thereto.

(Code 1977, § 9-3001; Code 1986, § 12-38)

Sec. 36-22. - Penalties.

- (a) Any person violating any provisions of this article, or who shall violate or fail to comply with any order made under these articles, shall be punishable by a fine as designated in the annually adopted rates and fee schedule, subject to civil penalty as set out in section 1-6, or both.
- (b) Each day such violation shall be permitted to exist shall constitute a separate offense.

(Code 1977, § 9-3030; Code 1986, § 12-39; Ord. No. 82-53A, § 9-3077, 6-8-1982; Ord. No. 86-190, 5-22-1986)

State Law reference— Each day's violation as separate offense, G.S. 160A-175.

Sec. 36-23. - Injunctive relief.

- (a) Whenever the town council has cause to believe that any person is violating or threatening to violate this article or any rule or order adopted or issued pursuant to this article, or any term, condition, or provision of harbor and pierhead line, it may, either before or after the institution of any other action or proceeding authorized by this article, institute a civil action in the appropriate court in the name of the town for injunctive relief to restrain the violation or threatened violation.
- (b) The institution of an action for injunctive relief under this section shall not relieve any party to such proceeding from any civil or criminal penalty prescribed for violation of this article. Nothing in this article shall restrict any right which any person or class of persons may have under any statute or common law to seek injunctive or other relief.

(Code 1986, § 12-40; Ord. No. 82-53A, § 9-3077, 6-8-1982)

Sec. 36-24. - Purpose.

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.

(Code 1977, § 9-3002; Code 1986, § 12-41)

Sec. 36-25. - Intent.

It is the general 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) Provide penalties for violation of this article, and implement those town, regional, or other comprehensive plans and their components adopted by the town.

(Code 1977, § 9-3003; Code 1986, § 12-42)

Sec. 36-26. - Duty of county register of deeds.

The planning and zoning commission or the town council shall file a copy of this article with the register of deeds of the county. The register of deeds shall not thereafter file or record a plat of a subdivision located within the territorial jurisdiction of the town without the approval of the planning and zoning commission and the town council as required in this article. The landowner shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat as to whether or not any land shown thereon is within the jurisdiction of this article as defined in this article. The filing or recording of a plat of a subdivision without the approval of the planning and zoning commission and the town council as required by this article shall be null and void. The clerk of superior court of the county shall not order or direct the recording of a plat where such recording would be in conflict with this article.

(Code 1977, §§ 9-3008, 9-3041; Code 1986, § 12-43)

Sec. 36-27. - Abrogation and greater restrictions.

It is not intended by this article to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, rules, regulations, or permits previously adopted or issued pursuant to law. However, where this article imposes greater restrictions, the provisions of this article shall govern.

(Code 1977, § 9-3004; Code 1986, § 12-44)

Sec. 36-28. - Article requirements deemed minimum.

In their interpretation and application, the provisions of this article shall be held to be minimum requirements and shall not be deemed a limitation or repeal of any other power granted by the general statutes of the state.

(Code 1977, § 9-3005; Code 1986, § 12-45)

Sec. 36-29. - Jurisdiction.

This article shall be effective through the town's planning jurisdiction. The town's planning jurisdiction comprises the area within the corporate boundaries as well as the extraterritorial jurisdiction. Such jurisdiction may be modified from time to time in accordance with state law.

(Code 1977, § 9-3021; Code 1986, § 12-46; Ord. No. 80-03, 9-11-1979)

Sec. 36-30. - Compliance with additional regulations.

No person shall divide any land located within the jurisdictional limits of this article which results in a subdivision or a replat as defined in this article; no such subdivision or replat shall be entitled to record; and no street shall be laid out or improvements made to land without compliance with all requirements of this article and:

- (1) Rules or regulations of the state board of transportation governing proposed streets, highways, and drainage systems;
- (2) Plans, rules, or regulations of the county board of education governing proposed school sites;
- (3) Rules or regulations of the county board of health governing proposed water and sewerage systems;
- (4) Comprehensive plans or components of such plans prepared by state, regional, county, or municipal agencies duly adopted by the town council;
- (5) All other applicable regulations, including, but not limited to, zoning, sanitary, building, and thoroughfare plan map ordinances.

(Code 1977, § 9-3023; Code 1986, § 12-47)

State Law reference— Rules and regulations of board of transportation, G.S. 143B-350.

Sec. 36-31. - Improvements.

- (a) Before approval of any final plat within the jurisdictional limits of the town, the subdivider shall install street, utility and other public improvements as required by this article. If such improvements are not installed as required at the time that the final plat is submitted for approval, the subdivider shall, before recording of the final plat, enter into contract with the town agreeing to install the required improvements and shall file with such contract surety meeting the approval of the town in an amount equal to 110 percent of the cost of the improvements as estimated by a certified engineer and approved by the town as a guarantee that such improvements will be completed by the subdivider not later than one year from the date of recording of the final plat.
- (b) Before final approval of any plat the subdivider shall install survey monuments placed in accordance with the requirements of G.S. 39-32.4 and the regulations of division 4 of this article.

(Code 1977, § 9-3025; Code 1986, § 12-49; Ord. No. 96-378A, 4-9-1996)

Sec. 36-32. - Variances.

- (a) *Hardships.* Where the planning and zoning commission finds that extraordinary hardships or particular difficulties may result from strict compliance with this article, it may recommend variances or exceptions to this article so that substantial justice may be done and the public interest secured, provided that such variation or exception shall not have the effect of nullifying the intent and purpose of this article; and further provided that the planning and zoning commission shall not recommend variations or exceptions to the regulations of this article unless it shall make findings based upon the evidence presented to it in each specific case that:
 - (1) The granting of the variation will not be detrimental to the public safety, health, or welfare or injurious to other property or improvements in the neighborhood in which the property is located;
 - (2) The conditions upon which the request for a variation is based are unique to the property for which the variation is sought, and are not applicable, generally, to other property;
 - (3) Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship, as distinguished from a mere inconvenience, to the owner would result if the strict letter of this article is carried out;
 - (4) The purpose of the variation is not based exclusively upon a desire to make more money out of the property.
- (b) *Conditions.* In recommending variations and exceptions, the planning and zoning commission may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements of this article.
- (c) *Procedure.* A petition for any such variation shall be submitted in writing by the subdivider at the time when the preliminary plat is submitted for the consideration of the planning and zoning commission. The petition shall state fully the grounds for the application and all the facts relied upon by the petitioner.
- (d) *Planning and zoning commission action.* The planning and zoning commission shall review the petition for variations at the same time it reviews the submitted preliminary plat as provided in section 36-66. Such variations and exceptions approved by the commission shall be recorded in said official meeting minutes.

(Code 1977, § 9-3026; Code 1986, § 12-50; Ord. No. 96-378A, 4-9-1996)

Sec. 36-33. - Land suitability.

No land shall be subdivided which is held unsuitable for its intended use by the planning and zoning commission for reason of soil conditions with a limitation rating of "severe" and "very severe" for residential development as classified by the United States Soil Conservation Service soil survey for the

county, severe erosion potential, unfavorable topography, inadequate water supply or sewage disposal capabilities or any other feature harmful to the health, safety, or welfare of the future residents of the proposed subdivision or community. However, the planning and zoning commission may approve the preliminary plat if the subdivider improves the land to overcome the limitations of the land to where it would be consistent with the standards of this article and other applicable ordinances to make the area, in the opinion of the planning and zoning commission, suitable for its intended use. The planning and zoning commission may also approve the preliminary plat if the subdivider agrees to make suitable improvements and places a sum in escrow pursuant to section 36-31 to guarantee performance.

(Code 1977, § 9-3027; Code 1986, § 12-51; Ord. No. 04-563, 8-10-2004)

Sec. 36-34. - Appeals.

Any person aggrieved by an objection to a plat or a failure to approve a plat may appeal [according to the rules set forth in 160D-1403](#) ~~therefrom, within 60 days of notification of such objection or rejection of the plat, by presenting to a court of record a petition for a writ of certiorari directed to the town council. The court shall direct that the plat be approved if it finds that the action of the town council is arbitrary, unreasonable, or discriminatory.~~

(Code 1977, § 9-3031; Code 1986, § 12-54)

State Law reference— Certiorari, G.S. 1-269.

Sec. 36-35. - Severability and nonliability.

If any section, provision, or portion of this article is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this article shall not be affected thereby. The town does not guarantee, warrant, or represent that only those areas designated as floodlands will be subject to periodic inundation and thereby asserts that there is no liability on the part of the town council, its agencies, or employees for sanitation problems, flood damages, or structural damages that may occur as a result of reliance upon, and conformance with, this article.

(Code 1977, § 9-3006; Code 1986, § 12-55; Ord. No. 82-53A, § 9-3077, 6-8-1982)

Secs. 36-36—36-60. - Reserved.

DIVISION 2. - PLAT REVIEW AND APPROVAL PROCEDURE³¹

Footnotes:

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State Law reference— Plat approval, G.S. 160A-373.

Sec. 36-61. - General procedure.

To obtain final plat approval by the Director of Planning and Development, the subdivider shall follow the steps in this division.

(Code 1977, § 9-3041; Code 1986, § 12-71; Ord. No. 04-563, 8-10-2004)

Sec. 36-62. - Preapplication consultations.

It is recommended that, prior to the filing of an application for the approval of a preliminary plat, the subdivider consult with the administrator of this article in order to obtain advice and assistance. This consultation is neither formal nor mandatory, but is intended to inform the subdivider of the purpose and objectives of this article, the adopted town, county, or regional comprehensive plans or adopted plan components, and duly adopted plan implementation ordinances of the town and to otherwise assist the subdivider in planning his development.

(Code 1977, § 9-3042; Code 1986, § 12-72; Ord. No. 87-222, § 3.1, 7-14-1987)

Sec. 36-63. - Preliminary plat—Submittal.

All applicants shall adhere to the submittal requirements listed in this table. Upon determining that an application is complete, and the appropriate application fee received, the official shall then place the proposal on the agenda for the next regularly scheduled meeting.

Order of Review	Number of Copies	Deadline for Submittals
(1) Technical Review Committee	3 paper and one electronic	14 days prior to the meeting date
(2) Planning and Zoning Commission	9 paper and one electronic	14 days prior to the regularly scheduled meeting date
(3) Town Council	9 paper and one electronic	10 days prior to the regularly scheduled meeting date

(Code 1977, § 9-3043; Code 1986, § 12-73; Ord. No. 96-378A, 4-9-1996)

Sec. 36-64. - Same—Preparation; contents.

The preliminary plat shall be prepared by a land surveyor or engineer licensed to practice in the state. The preliminary plat shall be drawn to a scale of one inch to 50 feet or larger and shall contain or be accompanied by the following information which is, in the latter case, made a part of the preliminary plat by reference thereon.

- (1) *Description.*
 - a. Proposed name of subdivision;
 - b. Name of owner, surveyor, and designer;
 - c. Graphic scale, true and grid north points, and date of preparation;
 - d. Locational sketch map showing relationship of the subdivision site to the surrounding area, at a scale of one inch to 800 feet.
- (2) *Existing conditions.*

- a. Topography by contours at vertical intervals of not more than two feet tied to mean sea level datum;
 - b. 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;
 - c. Names of adjoining property owners or subdivisions;
 - d. The boundary lines of the tract to be subdivided drawn accurately with all bearings and distances;
 - e. Acreage to be subdivided;
 - f. In case of resubdivision, a copy of existing plat;
 - g. Location of streams, lakes, ocean, and swamps with direction of flow and elevations;
 - h. 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;
 - i. Regulatory flood elevations and boundaries of flood-prone areas, including floodways, if known;
 - j. Identify any lots located in the CAMA AEC.
- (3) *Proposed conditions.*
- a. Layout and elevation of roads, alleys, and public crosswalks, with widths noted; road names or designation; grades and cross sections;
 - b. 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;
 - c. 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;
 - d. 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;
 - e. Preliminary plan of the drainage system with grade, pipe size, and location of outlet;
 - f. Preliminary plan of the water supply system, if any, with pipe sizes and location of hydrants;
 - g. Proposed fill or other structure elevating techniques, levees, channel modifications, seawalls and other methods to overcome flood- or erosion-related hazards;
 - h. In subdivisions where a lot or lots or street rights-of-way will be created by land filling, additional data shall be provided:
 - 1. Sources of fill;
 - 2. Types of fill;
 - 3. Method of filling;
 - 4. Method of disposing of vegetation and other undesirable materials;
 - 5. Proposed elevations;
 - 6. Test boring analysis of fill material;

- 7. Preliminary letter of review and comment by the United States Soil Conservation Service/United States Army Corps of Engineers;
- i. 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;
- j. Draft of proposed restrictive covenants (if any) to be imposed and areas subject to special restrictions;
- k. 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.
- l. The following certificate shall appear (lettered or stamped) on the preliminary plat:

Certificate of Approval by Planning and Zoning Commission.

The Town Planning and Zoning Commission hereby approves the preliminary plat of the _____ subdivision.

Date	

Chairman	

(Code 1977, § 9-3044; Code 1986, § 12-74; Ord. No. 80-03, 9-11-1979; Ord. No. 96-378A, 4-9-1996)

Sec. 36-65. - Conformity with regulations; recommendations.

The preliminary plat shall be reviewed by the planning and zoning commission to determine its conformity to this article, to all other ordinances and regulations in force which affect subdivisions and to duly adopted comprehensive plans and components thereof for the town.

(Code 1977, § 9-3045; Code 1986, § 12-75)

Sec. 36-66. - Planning and zoning commission review; approval.

- (a) The planning and zoning commission shall review and take final action on each preliminary plat within 45 days of their first meeting.
- (b) Upon completion of the preliminary plat review, the planning and zoning commission shall forward its recommendation to the town council for final approval.

(Code 1977, § 9-3046; Code 1986, § 12-76; Ord. No. 96-378A, 4-9-1996; Ord. No. 04-563, 8-10-2004)

Sec. 36-67. - Town council review; approval.

- (a) *Review and action on preliminary plat.* The town council shall review and take final action on each preliminary plat within 45 days of receipt of such plat.
- (b) *Commendation standards.* Upon completion of the preliminary plat review, the town council shall approve or disapprove the plat.
- (1) *Approval.*
- a. If the plat is approved, approval shall be noted on at least two copies of the plat by the clerk of the town council. One copy shall be retained by the town council as record of its proceedings; one copy shall be returned to the subdivider.
 - b. Each map, plat, site plan or other document evidencing a site-specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under G.S. 160A-385.1. Unless terminated at an earlier date, the zoning vested right shall be valid for a period of two years following town council approval." (Date to be entered and notarized.)
 - c. A zoning right that has been vested as provided in this section shall terminate:
 1. At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;
 2. With the written consent of the affected landowner;
 3. Upon findings by the town council, by ordinance after notice and a public 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 site-specific development plan;
 4. Upon findings by the town council, by ordinance after notice and a 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 council on the site-specific development plan; or
 5. Upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site-specific development plan, in which case the approval authority may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.
- (2) *Disapproval.* If the plat is disapproved, objections to it shall be noted in writing; one copy shall be returned to the planning and zoning commission, and one copy shall be returned to the subdivider. The subdivider may make the recommended changes and submit a revised preliminary plat per section 36-63.
- (c) *Installation/arrangement of plat improvements.* Upon approval of the preliminary plat by the town council, the subdivider may proceed with the installation or arrangement for required improvements in accordance with the approved preliminary plat and the requirements of this article, and then may proceed with the preparation of the final plat.

(Code 1977, § 9-3047; Code 1986, § 12-77; Ord. No. 91-289, 11-19-1991; Ord. No. 96-378A, 4-9-1996)

Sec. 36-68. - Final plat—Generally.

- (a) 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 article.

- (b) No final plat shall be approved unless and until the subdivider shall have installed all improvements required by this article or shall have guaranteed their installation in a manner satisfactory to the town, as provided in this article.

(Code 1977, § 9-3048; Code 1986, § 12-78; Ord. No. 04-563, 8-10-2004)

Sec. 36-69. - Same—Preparation; contents.

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:

- (1) All information required on the preliminary plat including, but not limited to, 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;
- (2) 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 be boundary of curved streets. All dimensions shall be measured to the nearest one-hundredth of a foot and all angles to the nearest minute;
- (3) The accurate locations and descriptions of all monuments, markers, and control points;
- (4) The blocks numbered consecutively throughout the entire subdivision and the lots numbered consecutively throughout each block;
- (5) Minimum building setback lines;
- (6) 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;
- (7) The plans for water mains, sanitary sewers, and storm sewers showing sizes, outfalls, and hydrants;
- (8) The name of the subdivision, the owner, and the surveyor or engineer.
- (9) The date of the survey and plat preparation, a north arrow indicating whether true or magnetic, and graphic scale;
- (10) A statement indicating whether deed restrictions exist and the subject and location of same;
- (11) A notation of all variations and exceptions approved by the planning and zoning commission;
- (12) Any other information considered by either the subdivider or the planning and zoning commission to be pertinent to the review of the final plat.

(Code 1977, § 9-3049; Code 1986, § 12-79; Ord. No. 96-378A, 4-9-1996; Ord. No. 04-563, 8-10-2004)

Sec. 36-70. - Required certification.

The following signed certificates (lettered or stamped) shall appear on each copy of the final plat which is submitted to the planning and zoning commission by the subdivider:

- (1) *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.

_____	_____
Date	Owner(s)

(2) *Certificate of survey and accuracy.*

I, _____, certify that this map was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) (deed description recorded in Book _____, Page _____, Book _____, Page _____, etc.) (other); that the error of closure as calculated by latitudes and departures is 1: _____; that the boundaries not surveyed are shown as broken lines plotted from information found in _____ (source); that this map was prepared in accordance with G.S. 47-30, as amended. Witness my hand and seal this _____ day of _____ A.D. 20_____.

Surveyor

(3) *Certificate of approval of the design and installation of streets, utilities, and other required improvements.*

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.

_____	_____
Date	Director of Operations

(4) *Certificate of approval for recording.*

I hereby certify that the Subdivision Plat shown hereon has been found to comply with the Subdivision Regulations for 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 Council has accepted the dedication of streets, easements, and public parks, rights-of-way, or other lands shown thereon.

Date	

Town Council	
Town of Carolina Beach	

(5) *Certificate of registration by register of deeds.*

North Carolina

New Hanover County

Filed for registration on the _____ day of _____ at _____ (a.m./p.m.) and duly recorded in the Map Book _____ at page _____.

Register of Deeds	

(Code of 1977, § 9-3050; Code 1986, § 12-80; Ord. No. 96-378A, 4-9-1996; Ord. No. 04-563, 8-10-2004)

Sec. 36-71. - Review by Director of Planning and Development—Approval.

- (a) Town officials shall review the final plat together with other appropriate agencies and shall schedule a town council meeting for final approval or disapproval of the plat within 30 days from submittal.
- (b) If the final plat is disapproved by the Town Council, the reasons for such disapproval shall be specified in the motion for denial.

(Code 1986, § 12-82; Ord. No. 04-563, 8-10-2004)

Sec. 36-72. - Same—Recording.

The subdivider shall file the approved final plat with the register of deeds of the county for recording within 60 days after the date of the approval from the town; otherwise, such approval shall be null and void.

(Code 1977, §§ 9-3049, 9-3053; Code 1986, § 12-83; Ord. No. 04-563, 8-10-2004)

State Law reference— Plats and subdivisions, mapping, G.S. 47-30.

Sec. 36-73. - Resubdivision procedures.

For any replatting or resubdivision of land, the same procedures, rules, and regulations shall apply as prescribed in this division for an original subdivision. Lot sizes may, however, be varied on an approved plan after recording, provided that:

- (1) No lot or tract of land shall be created or sold that is smaller than the size shown on the approved plan;
- (2) Drainage, easements, or rights-of-way shall not be changed;
- (3) Street alignment and block sizes shall not be changed;
- (4) The property line between the back of the lots shall not be changed;
- (5) The rear portion of lots shall not be subdivided from the front part; and
- (6) The character of the area shall be maintained.

(Code 1977, § 9-3054; Code 1986, § 12-84)

Sec. 36-74. - Minor subdivisions.

- (a) *Generally.* In order to condense the review process for small subdivisions of land having a lesser impact on town's development, a minor subdivision shall require a final plat only and shall abide by the following procedure in the approval process.
- (b) *Qualifications.* In order to qualify as a minor subdivision, the property shall meet all of the following:
 - (1) No more than five lots to be subdivided;
 - (2) No new road or street for access purposes;
 - (3) No new extension of town water/sewer facilities;
 - (4) No new drainage improvements or easements to serve the applicant's property;
 - (5) No conflict with the town's land use plan.
- (c) *Preapplication consultation.* It is recommended that the subdivider meet with the town official prior to submitting an application for approval of a final plat in order to assure that the subdivision qualifies as a minor subdivision and also to familiarize himself with the requirements of this article. The subdivider shall supply one paper print copy, one electronic copy, and one final plat suitable for reproduction to the town official. This final plat shall be accompanied by an appropriate fee, as established by the budget ordinance, payable to the town.
- (d) *Final plat.* The final plat shall be drawn with an engineer's scale at one inch equals 50 feet or larger and shall contain the following information:
 - (1) Sufficient engineering data to determine readily and reproduce on the ground every straight or curved boundary line, street lines, 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 five seconds.
 - (2) The final plat shall be prepared and drawn by a licensed professional, duly registered with the state.
 - (3) The accurate locations and descriptions of all monuments, markers and control points.
 - (4) The blocks numbered consecutively throughout the entire subdivision and the lots numbered consecutively throughout each block.

- (5) Minimum building setback lines.
 - (6) 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.
 - (7) The name of the subdivision, the owner and the surveyor or engineer.
 - (8) The date of the survey and plat preparation, a north arrow indicating whether true or magnetic, and graphic scale.
 - (9) A statement indicating whether deed restrictions exist, the subject and location of same.
 - (10) Location of areas of environmental concern as per the North Carolina Coastal Area Management Act maps.
 - (11) Location of the 100-year flood areas as per the town flood hazard maps.
- (e) *Certification.* The following signed certification (lettered or stamped) shall appear on each copy of the final plat which is submitted to the town official by the subdivider:
- (1) *Certificate of ownership and dedication.* The certificate of ownership and dedication shall read as follows:

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.

_____ Date	_____ Owner(s)
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- (2) *Certificate of survey and accuracy.* The certificate of survey and accuracy shall read as follows:
I, _____, certify that this map was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) (deed description recorded in Book _____, Page _____), (other); that the error of closure as calculated by latitudes and departures is 1: _____; that the boundaries not surveyed are shown as broken lines plotted from information found in _____ (Source) _____; that this map was prepared in accordance with G.S. 47-30, as amended. Witness my hand and seal this _____ day of _____ A.D. 20____.

_____ Surveyor or Engineer

- (3) *Certificate of approval by the town official.* The certificate of approval shall read as follows:
I hereby certify that the subdivision plat shown hereon has been found to comply with provisions of the Town of Carolina Beach Subdivision Regulations and that this map has been approved for recording in the office of the New Hanover County Registrar of Deeds.

_____	_____
Date	Town Official

(4) *Notary certification.* The notary certification shall read as follows:

I, _____, a Notary Public of New Hanover County, and State aforesaid certify that _____, a registered land surveyor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this _____ day of _____, 20____.

Notary Public	
SEAL/STAMP	
My Commission Expires _____	

(5) *Certificate of registration by register of deeds.* The certificate of registration shall read as follows:

North Carolina

New Hanover County

Filed for registration on the _____ day of _____ at _____ (a.m./p.m.) and duly recorded in the Map Book _____ at page _____.

Register of Deeds	

(f) *Action by the town official.*

- (1) The town official shall approve or disapprove the final plat within 45 days of its first consideration.
- (2) If the town official approves the final plat, such approval shall be indicated on each copy of the plat by the signed certificate specified in subsection (e)(3) of this section.

- (3) No final plat shall be approved until it meets the requirements set forth, all required fees have been paid, and certificates required by this section to appear on the final plat have been properly filled out, dated and signed.
- (4) If the town official disapproves the final plat, the town official shall state in writing its reasons for such action, specifying the provisions of this section with which the plat does not comply. One copy of this statement shall be transmitted to the subdivider within 15 days of disapproval, the other copy shall be retained by the town official as a part of its proceedings.
- (5) If the town official fails to approve or disapprove the final plat within 45 days after first consideration or fails to provide the subdivider with written notice stating reasons for further delay not to exceed an additional 30 days, such failure shall be deemed approval.

(Code 1986, § 12-85; Ord. No. 87-222, § 3.1(1)—(6), 7-14-1987)

Sec. 36-75. - Recombination of deeded lots with town approved lots fronting on Virginia Avenue only.

In circumstances where an owner of a deeded lot wishes to combine the lot with an adjacent legal lot of record that has frontage on Virginia Avenue the following requirements shall be met prior to the recombination and recordation at the county register of deeds:

- (1) All lots involved in the recombination shall be in single ownership.
- (2) No resultant lot shall be smaller in area nor narrower in lot width of any of the lots prior to the recombination.
- (3) The total number of lots shall not be increased.
- (4) The resultant lot shall have frontage on a town approved public right-of-way.
- (5) If the resultant lot is "split zoned" each portion of the recombined lot shall conform with the development standards for each zoning district that the lot is located within.
- (6) The Planning Director or his designee is authorized to approve such recombination plats where the above conditions have been met.
- (7) Only expansions to existing single-family or new single-family homes located on legal lots of record shall be permitted to expand onto deeded lots. No separate or independent dwelling units or accessory buildings shall be permitted on deeded lots.

(Code 1986, § 12-86; Ord. No. 11-860, 3-8-2011)

Secs. 36-76—36-94. - Reserved.

DIVISION 3. - MINIMUM DESIGN STANDARDS

Sec. 36-95. - Street arrangement—Generally.

Streets shall be designed and located:

- (1) In relation to:
 - a. Existing and planned streets;
 - b. Topographical conditions and natural terrain features such as streams, lakes or other waterways, and existing tree growth;
 - c. Public convenience and safety; and
- (2) In appropriate relation to the proposed uses of land to be served by such streets.

(Code 1977, § 9-3061; Code 1986, § 12-96)

Sec. 36-96. - Same—Specific standards.

- (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) 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) 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) 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.
- (f) In business and industrial 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.

(Code 1977, § 9-3062; Code 1986, § 12-97)

Sec. 36-97. - Access to major streets.

Where a subdivision borders on or contains an existing or proposed major street, the planning and zoning commission may require that access to such streets be limited by one of the following means:

- (1) The subdivision of lots so as to back onto the major street and front onto a parallel local street; no access shall be provided from the major street and screen planting shall be provided in a strip of land along the rear property line of such lots;
- (2) A series of cul-de-sacs, U-shaped streets, or short loops entered from and designed generally at right angles to such a parallel street, with the rear lines of their terminal lots backing onto the major street;
- (3) A marginal-access or service street (separated from the major street by a planting or grass strip or having access thereto at suitable points);
- (4) The number of residential streets entering a major street shall be kept to a minimum.

(Code 1977, § 9-3064; Code 1986, § 12-99)

Sec. 36-98. - Alleys.

- (a) Alleys shall be provided in all business, commercial, and industrial areas, except that the planning and zoning commission may waive this requirement where other definite and suitable provision is made for service areas, such as off-street loading and parking, consistent with and adequate for the uses proposed.

- (b) The width of alleys 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.
- (d) Alleys shall not be provided in residential areas.

(Code 1977, § 9-3065; Code 1986, § 12-100)

Sec. 36-99. - Minor streets.

Minor streets immediately adjacent and parallel to railroad rights-of-way shall be avoided, and location of minor streets immediately adjacent to arterial streets and highways and railroad rights-of-way shall be avoided in residential areas.

(Code 1977, § 9-3067; Code 1986, § 12-101)

Sec. 36-100. - Street design specifications.

- (a) *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 state department of transportation standards.
- (b) *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.
- (c) *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) *Street grades.*
 - (1) Unless necessitated by exceptional topography, subject to the approval of the planning and zoning commission, the maximum centerline grade of any street or public way shall not exceed the state department of transportation standards.
 - (2) The grade of any street shall in no case exceed 12 percent or be less than one-half of one 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 this minimum for all other streets.
- (e) *Radii of curvature.* When a continuous street centerline deflects at any one point by more than ten 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.

A tangent at least 100 feet in length shall be provided between reverse curves on arterial and collector streets.

- (f) *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.

(Code 1977, § 9-3068; Code 1986, § 12-102)

Sec. 36-101. - 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.

(Code 1977, § 9-3066; Code 1986, § 12-103)

Sec. 36-102. - 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 new streets at an angle of less than 70 degrees shall not be acceptable.
- (2) Not more than two streets shall intersect at any one point unless specifically approved by the planning and zoning commission.

(b) *Spacing of intersections.*

- (1) Proposed new intersections along one 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 percent, a leveling area shall be provided having not greater than four 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 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.

(Code 1977, § 9-3069; Code 1986, § 12-104)

Sec. 36-103. - 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 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.* Pedestrian ways of not more than ten feet in width may be required between rear lot lines where deemed necessary by the planning and zoning commission to provide safe and convenient pedestrian circulation between the individual lots, streams, lakeshores or other waterways, parklands or other public areas; 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.
- (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.

(Code 1977, § 9-3070; Code 1986, § 12-105)

Sec. 36-104. - Lots.

- (a) *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 (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.
- (b) *Arrangement and layout of lots.*
 - (1) 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.
 - (2) 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.
 - (3) 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.
 - (4) Every lot shall front or abut for a distance of at least 50 feet on a public street. Lots with access only to private drives or streets shall be permitted only with the approval of the planning and zoning commission.
 - (5) 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.
 - (6) 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.

(c) *Area and dimensions.*

- (1) Area and dimensions of all lots shall conform to the requirements of chapter 40 (zoning), when applicable .
- (2) 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.
- (3) 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.

(d) *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. 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.

(Code 1977, § 9-3071; Code 1986, § 12-106; Ord. No. 80-03, 9-11-1979; Ord. No. 08-742, 5-13-2008; Ord. No. 12-884, 2-14-2012)

Sec. 36-105. - Building setback lines.

Building setback lines, appropriate to the location and type of development contemplated, which are more restrictive than the regulations of the zoning district, when applicable, in which the plat is located, may be required by the planning and zoning commission.

(Code 1977, § 9-3072; Code 1986, § 12-107)

Sec. 36-106. - Easements.

- (a) *Utility easements.* The planning and zoning commission may require easements of widths deemed adequate for the intended purpose 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; 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.

(Code 1977, § 9-3073; Code 1986, § 12-108)

Sec. 36-107. - Public sites and open spaces.

In the design of the plat, due consideration shall be given to the reservation of suitable sites of adequate area for future schools, parks, playgrounds, drainageways, and other public purposes. Consideration shall be given in the location of such sites to the preservation of scenic and historic sites, stands of fine trees, sand dunes, marshes, tidal marshes, lakes and ponds, watercourses and watersheds.

(Code 1977, § 9-3074; Code 1986, § 12-109)

Sec. 36-108. - Waterfront subdivisions.

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 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 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 ten 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 a covenant stating either:
 - a. That he will dedicate the required amount of water access lots to the town; or
 - b. That he will convey title to the water access lots to the purchasers of each interior lot.

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 to accept the responsibility of maintaining the lots and the preliminary plan and the final plat must show the dedication. If the title is transferred to the interior lot owners, the preliminary plan and final plat shall designate the following:
 - a. The lot or lots that are to serve as water access lots; and
 - b. The lots the owners of which are to have common title to the water access lots (example: Owners of Lots 1, 2, 3, 4, 5, etc., to have undivided fee simple title to this water access lot).

(Code 1977, § 9-3075; Code 1986, § 12-110)

Sec. 36-109. - Establishment of harbor and pierhead line.

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:

- Legal description of the revised pierhead line in the Myrtle Grove Sound Area for the Town of Carolina Beach.
- Located in the Town of Carolina Beach, Federal Point Township, New Hanover County, State of North Carolina and being described as follows:
- 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.

(Code 1986, § 12-111; Ord. No. 82-53A, § 9-3076, 6-8-1982; Ord. No. 12-900, 8-14-2012)

Secs. 36-110—36-131. - Reserved.

DIVISION 4. - REQUIRED IMPROVEMENTS

Sec. 36-132. - Survey monuments.

- (a) Permanent monuments of stone or concrete shall be placed at one or more corners of the subdivision to be designated as control corners. Permanent monuments shall also be placed at the point of intersection on the centerlines of intersecting streets and at the point of intersection of the tangents or curves when such point lies completely within the right-of-way of the proposed street. Otherwise, monuments shall be placed on the centerline at the points of curvature and also at the points of tangency of all curved areas which are to be dedicated for street purposes.
- (b) Such monuments shall be set nine inches below the finished grade of pavement. A metal casting of an approved type shall be mounted over the monument with its base flange mounted on a brick foundation with mortar joints of at least two course thickness, the top of which must be a minimum of 1¾ inches higher than the highest point of the monument. Permanent monuments shall be either of stone or concrete. They shall be at least 30 inches in length, six inches in diameter, and shall have a metal pin or punch-marked metal plate imbedded therein marking the point represented on the final plat. The location of all monuments shall be shown on the final plat.

(Code 1977, § 9-3081; Code 1986, § 12-126)

Sec. 36-133. - Grading.

- (a) Cut and filled lands shall be graded to a minimum slope of one on four or the soil's angle of repose, whichever is the lesser, and covered with permanent vegetation.
- (b) After the installation of temporary block corner monuments by the subdivider and approval of street grades by the planning and zoning commission, or the state department of transportation, the subdivider shall grade the right-of-way of all streets proposed to be dedicated in accordance with plans and standard specifications approved by the planning and zoning commission, or the state department of transportation. The subdivider shall grade the roadbeds in the street right-of-way to subgrade.

(Code 1977, § 9-3082; Code 1986, § 12-127)

Sec. 36-134. - Surfacing.

After the installation of all utility and stormwater drainage improvements, the subdivider shall surface all roadways and streets proposed to be dedicated to the widths prescribed by, and in accordance with, the standards of the planning and zoning commission, or the state department of transportation. Such surfacing shall be done in accordance with plans and standard specifications approved by the planning and zoning commission and the state department of transportation.

(Code 1977, § 9-3083; Code 1986, § 12-128)

Sec. 36-135. - Curbs and gutters.

After the installation of all utility and stormwater drainage improvements, the subdivider shall construct curbs and gutters in accordance with plans and standard specifications approved by the planning and zoning commission. This requirement may be waived where a permanent rural street section has been approved by the planning and zoning commission. Wherever possible, provision shall be made at the time of construction for driveway-access curb cuts.

(Code 1977, § 9-3084; Code 1986, § 12-129)

Sec. 36-136. - Sidewalks.

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 specifications approved by the planning and zoning commission.

(Code 1977, § 9-3086; Code 1986, § 12-130)

Sec. 36-137. - Rural street sections.

When permanent rural street sections have been approved by the planning and zoning commission, the subdivider shall finish grade all shoulders and road ditches, install all necessary culverts at intersections and, if required, surface ditch inverts to prevent erosion and sedimentation in accordance with plans and standard specifications approved by the planning and zoning commission and the state department of transportation.

(Code 1977, § 9-3085; Code 1986, § 12-131)

Sec. 36-138. - Street lamps.

The planning and zoning commission shall require the subdivider to install street lamps along all streets proposed to be dedicated of a design in accordance with the ordinances of the town.

(Code 1977, § 9-3091; Code 1986, § 12-132)

Sec. 36-139. - Street name signs.

The planning and zoning commission shall require the subdivider to install at the intersection of all streets proposed to be dedicated a street name sign of a design specified by the planning and zoning commission.

(Code 1977, § 9-3092; Code 1986, § 12-133)

Sec. 36-140. - Street trees.

The subdivider shall plant at least one tree of approved species and of at least six feet in height for each 50 feet of frontage on all 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.

(Code 1977, § 9-3093; Code 1986, § 12-134)

Sec. 36-141. - Sewage disposal facilities.

When public sewer facilities are available to the subdivision plat or when it is proposed to establish a private community sanitary sewerage system to serve two or more lots, the subdivider shall construct sanitary sewerage facilities in such a manner as to make adequate sanitary sewage service available to each lot within the subdivision, according to state and county public health laws and regulations:

- (1) *Laterals.* The planning and zoning commission may require the installation of sewer laterals to the street lot line.
- (2) *Size.* The size, type, and installation of all sanitary sewers and sanitary sewer laterals proposed to be constructed shall be in accordance with plans and standard specifications approved by the planning and zoning commission, the office of water and air resources, and the state department of natural resources and community development.
- (3) *Cost.* The subdivider shall assume the cost of installing all sanitary sewers, sewer laterals, and sewer appurtenances within the proposed subdivision, except for the added cost of installing sewers greater than eight 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 sanitary 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 ratio which the total area of the proposed plat is to the total drainage area to be served by such larger sewers.

(Code 1977, § 9-3087; Code 1986, § 12-135)

Sec. 36-142. - Stormwater drainage facilities.

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.

- (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 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 commission.
- (3) *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.

(Code 1977, § 9-3088; Code 1986, § 12-136)

Sec. 36-143. - Water supply facilities.

Where public water supply and distribution facilities are available to the subdivision, the subdivider shall cause connections to be made to such water supply and distribution facilities and it shall be installed in such a manner to make adequate water service available to each lot in the subdivision. When a public water supply system is not available and it is proposed to establish a privately owned public water supply

system to serve two or more lots, the subdivider shall cause such water supply and distribution facilities to be installed in such a manner as to make adequate water service available to each lot in the subdivision. The plans and specifications for a water system of either type, as outlined above, must be submitted to and approved by the state department of health and human services.

- (1) *Laterals.* The planning and zoning commission may require the installation of water laterals to the street lot line.
- (2) *Size.* The size, type, and installation of all public water mains proposed to be constructed shall be in accordance with plans and standard specifications approved by the planning and zoning commission.
- (3) *Cost.* The subdivider shall assume the cost of installing all water mains, water laterals, and water system appurtenances within the proposed subdivision, except for the added cost of installing water mains greater than eight inches in diameter.

(Code 1977, § 9-3089; Code 1986, § 12-137)

Sec. 36-144. - Other utilities.

- (a) 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 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.
- (b) 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.

(Code 1977, § 9-3090; Code 1986, § 12-138)

Sec. 36-145. - Shoreland planting and sediment control.

- (a) The subdivider shall plant those grasses, trees, shrubs, and vines of a species and size specified by the planning and zoning commission necessary to prevent soil erosion, protect stream banks, lake banks, and other waterways and sand dunes, and substantially screen all development within five years from surface water users.
- (b) In addition, the planning and zoning commission may require the subdivider to provide or install certain stream, lake, and other waterway protection and rehabilitation measures, such as fencing, sloping, seeding, rip-rap, revetment, jetties, clearing, dredging, snagging, drop structures, and grade stabilization structures.

(Code 1977, § 9-3094; Code 1986, § 12-139)

Secs. 36-146—36-173. - Reserved.

DIVISION 5. - CONSTRUCTION

Sec. 36-174. - Commencement.

No construction or installation of improvements shall commence in a proposed subdivision until the preliminary plat has been approved by the appropriate authority.

(Code 1977, § 9-3101; Code 1986, § 12-151)

Sec. 36-175. - Compliance with article; issuance of permits.

- (a) 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.
- (b) 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.

(Code 1977, § 9-3102; Code 1986, § 12-152)

Sec. 36-176. - Inspections.

The subdivider, prior to commencing any work within the subdivision, shall make arrangements with the administrator of this article 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.

(Code 1977, § 9-3103; Code 1986, § 12-153)

Sec. 36-177. - Erosion control.

- (a) The subdivider shall cause all grading, excavations, open cuts, side slopes, and other land surface disturbances to be so mulched, seeded, sodded, or otherwise protected that erosion (wind or water), siltation, sedimentation, and washing are prevented in accordance with plans and specifications and within such time periods approved by the planning and zoning commission.
- (b) Sod shall be laid in strips at those intervals necessary to prevent erosion and at right angles to the direction of drainage or wind current.

(Code 1977, § 9-3104; Code 1986, § 12-154)

Sec. 36-178. - Protection of existing flora.

- (a) The subdivider shall make every effort to protect and retain all existing trees, shrubbery, vines, and grasses not actually lying in public roadways, drainageways, building foundation sites, private driveways, soil absorption waste disposal areas, paths, and trails.
- (b) Such trees are to be protected and preserved during construction in accordance with sound conservation practices recommended by the United States Department of Agriculture in Agricultural Information Bulletin No. 285, "Protecting Trees Against Damage From Construction Work," United States Government Printing Office, 1964. Such trees are to be preserved by well islands or retaining walls whenever abutting grades are altered.
- (c) Temporary vegetation and mulching shall be used to protect critical areas, and permanent vegetation shall be installed as soon as practical.
- (d) Construction at any given time shall be confined to the smallest practical area and for the shortest practical period of time.

- (e) Sediment basins shall be installed and maintained at all drainageways to trap, remove, and prevent sediment and debris from being washed outside the area being developed.

(Code 1977, § 9-3105; Code 1986, § 12-155)



AGENDA ITEM COVERSHEET

PREPARED BY: Gloria Abbotts, Planner

DEPARTMENT: Planning

MEETING: Planning & Zoning – 13 MAY 2021

SUBJECT: A discussion regarding potential changes to Chapter 40, Article VII, Fence Regulations to review restrictions and how to measure height.

BACKGROUND:

P&Z requested staff to review Fence Regulations, particularly related to how height is measured. Staff will present a range of options related to setbacks from retaining walls, maximum height, front yard setbacks, and measurement.

ACTION REQUESTED:

Discuss and provide feedback for future ordinance adjustments

RECOMMENDED MOTION:

Fences



Chapter 40 Zoning Article VII, Sec. 40-204 Height restrictions

BACKGROUND

P&Z Requested staff to review Fence regulations, particularly related to how height is measured. Staff took P&Z feedback to TRC and discussed various fencing ordinance changes. These changes were compiled into several updates related to how fences are controlled and inspected. Proposed changes include changing how height is measured, adjusting the front yard setback, maximum height, and retaining walls. After last month's P&Z discussion, staff took feedback back to TRC and has come up with the below options for discussion for a future text amendment.

OPTIONS

1. Maximum Height

Sec. 40-204(b)(1) No fence shall exceed six feet in height.

Proposed Change:

- a. No fence shall exceed seven feet in height. Fences exceeding six feet in height must meet all NC State building code requirements.

2. Height – Front Yard Setback

Sec. 40-204(b)(2) No fence shall exceed four feet in height when located in the front yard setback.

Proposed Changes:

- a. No fence shall exceed four feet in height within 10 feet of the front property line
- b. No fence shall exceed four feet in height within 15 feet of the front property line
- c. No fence shall exceed four feet in height within 20 feet of the front property line

3. Measurement

Sec. 40-204(a)(1) Height shall be measured at the highest point, not including columns or posts, of the fence section to the existing natural grade. The point of measurement shall be along the outside of the fence adjacent to the abutting property.

Proposed Change:

- a. The point of measurement shall be along the inside of the fence.

4. Retaining Walls

Sec. 40-204(a)(3) Any retaining wall or berm below the fence shall be considered as part of the overall height of the fence. (Maximum height of 7ft cumulatively)

Proposed Changes:

- a. If the retaining wall is on the property line, for every foot in height of retaining wall the fence must be setback the same height from the property line.
- b. If the retaining wall is on the property line, for every foot in height of the retaining wall over 3ft, the fence must be setback the same number as the additional height from the property line.
- c. Fences over 4ft must be setback 5ft (or other number) from the internal edge of the retaining wall.
- d. When the overall fence height including the retaining wall would be greater than 7 feet, the fence must be setback 5 feet from the property line.