



TOWN OF SOUTHERN SHORES

CODE OF ORDINANCES

Public Hearing Draft
December 2018



ACKNOWLEDGEMENTS



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TABLE OF AMENDMENTS¹

ORDINANCE #	DATE ADOPTED	TITLE	AFFECTED UDO SECTION(S)	DESCRIPTION

¹ This table is included for the Town's use in tracking amendments.

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GUIDANCE FROM CODE ASSESSMENT:

This section (and all other pages with blue text throughout this document) identifies guidance from the Town of Southern Shores Code Assessment (finalized in October 2016). The Code Assessment is a preliminary document that identifies the input received from the Town Council, Planning Board, Town Manager, the citizens, and Town staff regarding how the current Town Code of Ordinances should be revised. Each chapter in this draft version of the Town Code includes a section on “Guidance from Code Assessment” that details the issues and recommendations from the Code Assessment relevant to that particular chapter. Guidance from the Code Assessment is included for informational purposes during the review and adoption phases of the project, but these guidance pages are not intended for inclusion in the final adopted version of the Town Code of Ordinances.

This document is the Code of Ordinances for the Town of Southern Shores. It establishes the Town’s legal authority to provide public services (like police, fire, and solid waste), control activities occurring in the public realm (streets, sidewalks, the beach, etc.), and control the use of private land through zoning and subdivision regulations.

This document is proposed to replace the Town’s current Code of Ordinances (adopted in August, 2009) and revised through June 30, 2016. The Town’s objectives in preparing this document are to:

- Eliminate the redundancies found in the current Code of Ordinances;
- Remove inconsistent language in the current Code;
- Reformat the current Code text to make it more clear, and predictable;
- Reorganize the current Code chapter sequence to make it more intuitive;
- Add navigation aids for the reader to the updated Code, like cross references, descriptive headers, and index, and similar features;
- Include illustrations in the updated Code, where appropriate, to aid in comprehension;
- Remove policy language from the current Code (for inclusion elsewhere) as the updated Code is a regulatory document that should not contain policy statements; and
- Revise the standards for compliance with changing state laws.

As with most code update projects, the Southern Shores Town Code Update Project includes a public outreach component to ensure the public has an opportunity to weigh in on proposed code revisions. A Citizen Survey was prepared and administered on-line for 45 days in late 2015/early 2016. The survey included 23 questions related to possible changes in land use regulation or other code-related aspects. The results of the survey were presented to the Town Manager on April 5, 2016 and the Council was polled as to whether or not a particular survey question topic should or should not be explored by the Code Assessment. Survey questions (and the associated topic area) identified for exclusion from the Code Assessment were not subject to additional research, and current code standards related to these topics are simply carried forward in this document with no substantive modifications. Survey questions (and the associated topic area) identified for inclusion in the Code Assessment by the Town were subsequently analyzed and addressed through new language in this draft code document.

In addition to input from citizens and the elected officials, the consulting team also collected a series of detailed comments from Town staff about how the current Town Code should be revised for easier administration. Pages 16 through 24 of the Code Assessment include a table summarizing the staff comments on the current Town Code language, organized by current code section. In many cases, footnotes within the draft text identify instances where current Town Code language has been revised based on staff comments. These revisions are proposed for the Town’s consideration and approval by the Town Council.

There are a series of “universal” changes identified in the staff comments intended for application to all chapters in the updated draft Town Code. These comments are listed in below, and they influence the structure, format, or contents of language throughout the draft Town Code.

- Revise inconsistencies in code structure: location of references, format of section titles, references to County, State, and Federal codes.
- Consolidate definitions and make location consistent across chapters.
- Remove repetitive or conflicting definitions.
- Reorganize chapter structure so that related chapters are near each other.

- Integrate searchability into the code.
- Incorporate a new page layout with nested text for easier navigation through code sections.
- Add graphics to measurements and standards for ease of use.
- Add summary tables where possible to replace or supplement long blocks of text.
- Remove policy statements from code text.

Pages 8 through 10 of the Code Assessment identify a series of changes in state law related to local government codes that have been approved by the General Assembly over the last five years or so. Local government codes are required to comply with these changing state laws, and in many cases, the current Southern Shores Town Code has not yet been amended for compliance. This draft document includes changes to the current Town Code provisions necessary for compliance with these changing state laws. The language suggested in this draft document is open for further adjustment or modification as long as compliance with state law is maintained. These changes to the current Town Code text, like staff comments, are identified by a footnote.

Finally, Pages 11 through 15 of the Code Assessment describe a series of four “technical changes” to the current Town Code, including revisions to the current chapter structure (chapter names and sequence), a new page layout (font size, navigational aids, heading text, etc.), inclusion of illustration and graphics (such as flow charts, summary tables, and images), and a new consolidated chapter with definitions and rules of measurement. Since these technical changes deal with the updated code’s structure and composition, these changes are not generally highlighted or identified in the “Guidance from Code Assessment” pages.

This draft Town Code proposes a substantially different chapter structure from the current Town Code. To the right is a graphic comparing the current Town Code structure with the new proposed Town Code chapter structure to aid in translation during review. Note that some current chapters are broken up and relocated to other draft chapters as described in the Code Assessment.

current code.

TABLE 2.4.1: CURRENT AND PROPOSED TOWN CODE CHAPTER STRUCTURE

CURRENT Town Code Chapter Structure	PROPOSED Town Code Chapter Structure
1. General Provisions	1. General Provisions
2. Administration	2. Administration
4. Animals	4. Definitions [NEW]
6. Buildings and Building Regulations	6. Fire Prevention and Protection
8. Businesses and Business Regulations	8. Motor Vehicles and Traffic
10. Cemeteries	10. Emergency Management
12. Emergency Management	12. Solid Waste
14. Fire Prevention and Protection	14. Wastewater
16. Flood Damage Prevention	16. Cable Television [NEW]
18. Law Enforcement	18. Streets, Sidewalks, and Other Public Property
20. Motor Vehicles and Traffic	20. Buildings and Building Regulations
22. Offenses and Miscellaneous Provisions	22. Zoning
24. Planning [deleted]	24. Businesses and Business Regulations
26. Solid Waste	26. Subdivisions
28. Streets, Sidewalks, and Other Public Property	28. Flood Damage Prevention
30. Subdivisions	30. Waterways and Beaches
32. Utilities	32. Cemeteries
34. Waterways and Beaches	34. Animals
36. Zoning	36. Offenses and Enforcement

CHAPTER 1. GENERAL PROVISIONS

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GUIDANCE FROM CODE ASSESSMENT:

Chapter 1 of the current Town Code includes the prefatory material for the Town Code, including the title, general definitions, rules of language construction, and a comprehensive list of violations. This draft of the Town Code maintains this information as Chapter 1, but relocates the definitions to new Chapter 4, Definitions, and the violations to a new comprehensive chapter on enforcement, Chapter 36, Offenses and Enforcement. The language has been reviewed and revised for greater clarity in accordance with the input summaries in the Code Assessment and the section-by-section review in the Appendix of the Code Assessment.

Text shown in yellow highlight includes a cross reference to be filled in as part of the draft of the document proposed for public hearing.

1.1. TITLE²

The provisions embraced in this and the following chapters and sections shall constitute and be designated as the "Code of Ordinances, Town of Southern Shores, North Carolina," and may be cited as the "Southern Shores Town Code," "the Town Code," and "this Code" or "this Ordinance."

1.2. RULES OF LANGUAGE CONSTRUCTION

1.2.1. WORDS OR TERMS³

For the purpose of this Ordinance, certain words or terms used herein shall be interpreted in the following ways.

- A.** Words used in the masculine gender shall include the feminine and the neuter.
- B.** Words used in the present tense include the future and past tense.
- C.** Words used in the singular shall include the plural and words used in the plural shall include the singular.
- D.** The word "person" includes a firm, co-partnership, company, organization, trust, association, or corporation, as well as an individual.
- E.** The word "lot" includes the words "plot," "site," "parcel," or "tract."
- F.** The word "building" includes the word "structure."
- G.** The word "used" or "occupied," as applied to any land or building, shall be construed to include the words "intended, arranged, or designed to be used or occupied."
- H.** The word "shall" is always mandatory.
- I.** The word "may" is permissive.
- J.** Provisions giving authority to the Town Manager shall be also give authority to a professional employee of the Town designated by the Town Manager to execute a task or action.
- K.** Provisions giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.
- L.** Provisions that reference any officer, department, board, commission, or other agent, agency, or representatives shall be construed as if followed by the words, "of the Town of Southern Shores."
- M.** Provisions that authorize or require an officer or employee of the Town to do some act or perform some duty shall be construed to authorize the officer or employee to designate, delegate and authorize subordinates to perform the act or duty unless the terms of the provision specifically provide otherwise.

1.2.2. COMPUTATION OF TIME

- A.** In computing any period of time prescribed or allowed by this Code, including rules respecting publication of notices, the day of the act, event, default, or publication after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed in less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. A half-day holiday shall be considered as other days and not as a holiday.
- B.** The term "month" means a calendar month.
- C.** The term "year" means a calendar year.
- D.** Whenever certain hours are named, they shall mean standard time or daylight saving time as may be in current use.

² This section carries forward Section 1-1 of the current code and supplements it with common ways of referencing the Code.

³ This section carries forward Section 36-56 of the current code.

1.2.3. AMENDMENTS TO GENERAL STATUTES⁴

Whenever any provision of this Town Code refers to or cites a section of the North Carolina General Statutes and that section is later amended or superseded, the provision in this Code shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

1.3. CONTINUATION⁵

The provisions appearing in this Code, so far as they are the same as ordinances adopted prior to this Code and included in this Code, shall be considered as continuations thereof and not as new enactments.

1.4. HEADINGS AND REFERENCES⁶

1.4.1. FORMATTED TEXT

The heading text of the sections of this Code printed in boldface or colored type are intended as mere headings to summarize the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the section; nor, unless expressly so provided, shall they be so deemed when any of such sections, including the headings, are amended or reenacted.

1.4.2. SUPPLEMENTAL TEXT

The history notes and state law references following sections of the Code are for the benefit of the user only, and are not a part of this Code.

1.5. REPEAL OR EXPIRATION⁷

1.5.1. STATUS UNAFFECTED

The repeal of an ordinance, or its expiration by virtue of any provision contained therein, shall not affect any right accrued, any offense committed, any penalty or punishment incurred, or any proceeding commenced before the repeal took effect or the ordinance expired.

1.5.2. NO AUTOMATIC REVIVAL

When an ordinance which repealed another shall itself be repealed, the previous ordinances shall not be revived without express words to that effect.

1.6. AMENDMENTS AND SUPPLEMENTATION⁸

Amendments to any of the provisions of this Code shall be made in accordance with the standards in Sections 160A-77 and 160A-78 of the North Carolina General Statutes.

1.7. ORDINANCES NOT AFFECTED BY CODE⁹

1.7.1. NO REPEAL

⁴ This is new language included to address situations where statutory language is amended.

⁵ This section carries forward Section 1-4 of the current code.

⁶ This section carries forward Section 1-3 of the current code and supplements it with clarification that history notes and state law references are not part of the codified language, as noted in the Code Assessment.

⁷ This section carries forward Section 1-5 of the current code.

⁸ This section replaces current Sections 1-10 and 1-11 with citations of the N.C.G.S. provisions related to the amendment and supplementation of code language. This change was made at the suggestion of Town staff, as detailed in the Code Assessment.

⁹ This section carries forward Section 1-9 of the current code.

- A.** Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following:
 - 1. Any ordinance promising or guaranteeing the payment of money for the Town, or authorizing the issuance of any bonds of the Town or any evidence of the Town's indebtedness;
 - 2. Any ordinance providing for public improvements and assessments therefor;
 - 3. Any ordinance describing cemetery lot conveyance certificates, applications for regulation of parking, or lease agreements;
 - 4. Any appropriation ordinance or ordinance providing for an annual budget or for the transfer of funds;
 - 5. Any ordinance annexing territory to the Town or discontinuing territory as a part of the Town;
 - 6. Any ordinance granting any franchise, permit, or other right;
 - 7. Any ordinance approving, authorizing or otherwise relating to any contract or agreement; or
 - 8. Any ordinance consistent with this Code establishing fees, license taxes or other charges.
- B.** All such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

1.8. EXTRA TERRITORIAL JURISDICTION¹⁰

The following areas shall be included in the Town's extra territorial jurisdiction (ETJ) for the purposes of application of the standards pertaining to development and subdivision of land in accordance with Sections 160A-360 through 160A-459 of the North Carolina General Statutes.

1.8.1. TRACT # 1: MARTIN'S POINT COMMERCIAL

All that certain tract of land located and bordered on the east by Ginguite (a/k/a Jean Guite) Creek, on the south by U.S. Highway 158, on the west by Currituck Sound, and on the north by the Martin's Point residential lots and bounded as follows: beginning at the intersection of the north margin of the right-of-way of U.S. Highway 158, the same being the north boundary of the Town of Kitty Hawk, with the west shoreline of Ginguite Bay or Creek; thence along the northern margin of the right-of-way of U.S. Highway 158 south 70 deg. 03 min. 05 sec. west 1624.11 feet to the eastern shoreline of Currituck Sound; thence cornering and along the eastern shoreline of Currituck Sound north 27 deg. 13 min. 01 sec. west 260.69 feet to a point; thence cornering and along the southern boundary of the Martin's Point residential lots north 63 deg. 24 min. 14 sec. east 187.33 feet; thence north 27 deg. 13 min. 01 sec. west 50.00 feet; thence north 64 deg. 08 min. 47 sec. east 1496.90 feet to the western shoreline of Ginguite Creek; thence cornering along the western shoreline of Ginguite Creek south 20 deg. 31 min. 20 sec. east 333.43 feet to the point of beginning.

1.8.2. TRACT # 2: CURRITUCK SOUND WATERS

All those waters lying within one mile of the western corporate limits of Southern Shores in Ginguite (a/k/a Jean Guite) Creek also known as Martin's Point Creek and Currituck Sound but excluding those sound waters located westward of Martin's Point and more particularly described as follows: beginning at the intersection of the north margin of the right-of-way of U.S. Highway 158, the same being the north boundary of the Town of Kitty Hawk, with the east shoreline of Ginguite Bay or Creek the same being the western corporate limits of Southern Shores; thence along the northern margin of the right-of-way of U.S. Highway 158 westward to its intersection with the east shoreline of Martin's Point; thence northward along the east shoreline of Martin's Point following the meanderings of the mean high water mark to the northernmost point of Martin's Point; thence westward in Currituck Sound on a course of south 67 deg. 31 min. 23 sec. west 2,358.78 feet to a point; thence cornering north 10 deg. 21 min. 11 sec. west 7,670.27 feet to a point; thence cornering north 64 deg. 29 min. 04 sec. east 4994.96 feet to the northwestern corner of the Southern Shores corporate limits located at the intersection of the eastern shoreline of Currituck Sound with the southern boundary of the lands known as the H.C. Hargrave Tract; thence cornering and in a southerly direction along the western corporate limits of Southern Shores, following the meanderings thereof to a point at the intersection of the eastern shoreline of Ginguite Bay or Creek with the north margin of the right-of-way of U.S. Highway 158, the point of beginning.

1.8.3. TRACT # 3: ATLANTIC OCEAN WATERS

All those waters lying within one mile of the eastern corporate limits of Southern Shores in the Atlantic Ocean and bounded as follows: beginning at the southeast corner of the corporate limits of Southern Shores at the

¹⁰ This section carries forward the standards in Section 24-2 of the current code with no substantive changes.

intersection of the north boundary of the Town of Kitty Hawk with the shoreline of the Atlantic Ocean; thence from the beginning point north 64 deg. 29 min. 04 sec. east, 5,020.12 feet to a point; thence cornering north 25 deg. 04 min. 52 sec. west 19,617.00 feet to a point; thence cornering south 64 deg. 29 min. 04 sec. west 5,020.13 feet to the northeast corner of the Southern Shores corporate limits at the intersection of the southern boundary of the lands known as the H.C. Hargrave Tract with the shoreline of the Atlantic Ocean; thence cornering and along the shoreline of the Atlantic Ocean in a southerly direction following the meanderings thereof to the point of beginning.

1.9. SEVERABILITY¹¹

If any section, subsection, sentence, clause, or phrase of this Town Code or any part of any officially-adopted map is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Town Code or of the map. The Town Council hereby declares that it would have passed this Ordinance and each section, clause, and phrase thereof, irrespective of the fact that any one or more sections, sentences, clauses, or phrases be declared invalid.

¹¹ This section carries forward Section 36-450 and Section 1-7 from the current code and combines them into one section.

CHAPTER 2.

ADMINISTRATION

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GUIDANCE FROM CODE ASSESSMENT:

Chapter 2, Administration, of the current Town Code includes a series of provisions related to the appointment and powers and duties of the Town Manager. It also includes procedures for the disposal of surplus property by the Town Manager. Interestingly, while the chapter is titled “Administration”, it includes no information or references to the Town Council, other Town officials, or the Planning Board.

One of the main objectives for the Town Code update is removal of language or provisions that repeat statutory language in favor of simple references. This reduces the bulk of the code document and helps limit inconsistencies between the Town Code and the General Statutes as state laws are modified over time.

As a result, we suggest the updated Chapter 2 include references to the Town Charter with respect to the composition, powers and duties, and rules of operation for the Town Council. Likewise, listing of the Town Manager’s powers and duties are proposed to be replaced with references to the applicable language in General Statutes (including 160A-148 and 160A-266 related to disposal of property).

2.1. PURPOSE AND INTENT¹²

The purpose of this chapter is to identify and empower the various individuals and bodies responsible for administration of this Town Code.

2.2. STATUTORY AUTHORITY¹³

The statutory authorization for the standards and procedures in this chapter is derived from the following laws:

2.2.1. REFERENCES

- A.** North Carolina General Statutes Chapter 160A, regarding the powers and duties of cities and towns generally;
- B.** North Carolina General Statutes Chapter 159, regarding local government finance;
- C.** North Carolina General Statutes Chapter 163; regarding elections;
- D.** North Carolina General Statutes Chapter 158, regarding local development;
- E.** North Carolina General Statutes Chapter 160A-400, regarding historic districts and landmarks;
- F.** North Carolina General Statutes Chapter 160A-67, regarding government and general management of municipality vested in a governing body;
- G.** North Carolina General Statutes Chapter 160A-146, authorization the governing body to organize and reorganize municipal government; and
- H.** North Carolina General Statutes Chapter 160A-174, regarding general ordinance-making power.

2.3. TOWN COUNCIL¹⁴

The Town Council shall be the governing body of the Town as established and empowered in the Town of Southern Shores Town Charter, Chapter III, Governing Body. The Town Council may organize Town government in accordance with Section 160A-146 of the North Carolina General Statutes.

2.4. TOWN STAFF

2.4.1. TOWN MANAGER

A. APPOINTMENT¹⁵

The Town Manager, or “Manager,” shall be appointed by and serves at the pleasure of the Town Council in accordance with Section 160A-147 of the North Carolina General Statutes.

B. RESIDENCY

The Town Manager is not required to be a resident of the Town.

C. POWERS AND DUTIES¹⁶

1. GENERALLY

¹² This is a new section proposed for the Town’s consideration.

¹³ This section comes from the footnote at the head of current Chapter 2.

¹⁴ As noted in the Code Assessment, this chapter should mention the Town Council, but should not repeat information that is housed in the Town Charter. As such, a cross reference to the appropriate chapter of the Charter is included here.

¹⁵ This section and “Residency” are carried forward from current code Section 2-21.

¹⁶ This section is carried forward from code Section 2-22 with minor formatting revisions but no substantive change.

The Town Manager shall be the chief administrative officer of the Town and with exception of the Town Engineer and Town Attorney, shall be responsible to the Town Council for administering all municipal affairs.

2. SPECIFIC POWERS AND DUTIES

The Town Manager shall have the specific powers and duties identified in Section 160A-148 of the North Carolina General Statutes, and the following.

- a. The Town Manager shall nominate all town officers, department heads, and employees, with the exception of Town Engineer and Town Attorney, to the Town Council.
- b. The Town Manager shall direct and supervise the administration of all departments, offices, and agencies of the Town, with the exception of the Town Engineer and Town Attorney, subject to the general direction and control of the Town Council.
- c. The Town Manager shall attend all meetings of the Town Council and recommend any measures deemed expedient.
- d. The Town Manager shall cooperate with and provide liaison with the Chief of Police in seeing that the laws of the State, the Town Charter, and the ordinances, resolutions, and regulations of the Town Council are faithfully executed within the Town.
- e. The Town Manager shall prepare and submit the annual budget and capital program to the Town Council.
- f. The Town Manager shall annually submit to the Town Council and make available to the public a complete report on the finances and administrative activities of the Town as of the end of each fiscal year.
- g. The Town Manager shall make any other reports that the Town Council may require concerning the operations of Town departments, offices, and agencies subject to the direction and control of the Town Council.
- h. The Town Manager shall perform any other duties that may be required or authorized by the Town Council.
- i. The Town Manager, or a designee, shall have all necessary authority to administer and enforce Chapter 22, Zoning, and Chapter 26, Subdivisions, including the ordering, in writing, of the remedying of any condition found in violation of Chapter 24, and the bringing of legal action to ensure compliance with Chapter 24, including injunction, abatement, or other appropriate action or proceeding.¹⁷
- j. The Town Manager is empowered to dispose of surplus personal property owned by the Town as authorized by Sections 160A-148 and 160A-266 of the North Carolina General Statutes.¹⁸
- k. The Town Manager may be provided with the assistance of such other persons as the Town Council may direct.

3. EMERGENCY MANAGEMENT POWERS AND DUTIES¹⁹

- a. The Town Manager shall be responsible to the Town Council in regard to all phases of emergency management activity.
- b. The Town Manager shall be responsible for the planning, coordination, and operation of the emergency management activities in the Town. He shall maintain liaison with the County authorities and the authorities of nearby political subdivisions so as to ensure the most effective operation of the Emergency Management Plan.
- c. The Town Manager's duties with regards to emergency management shall include, but not be limited to, the following:
 - i. Coordinating the recruitment of volunteer personnel and agencies to augment the personnel and facilities of the Town for emergency management purposes;
 - ii. Development and coordination of plans for the immediate use of all facilities, equipment, manpower, and other resources of the Town for the purpose of minimizing or preventing damage to persons and property;

¹⁷ This section carries forward the standards in Section 36-296 of the current code. Instead of continuing to refer to differing staff members, such as the Zoning Administrator, Building Inspector, Floodplain Administrator, etc., this Town Code simply references the Town Manager or a designee

¹⁸ This provision replaces current code Sections 2-43, 2-44, 2-45, and 2-46, as proposed in the Code Assessment, to reduce the bulk of the code and make use of statutory cross-references.

¹⁹ This section comes from Section 12-5 of the current Town Code.

- iii. Protecting and restoring to usefulness governmental services and public utilities necessary for the public health, safety, and welfare;
- iv. Negotiating and concluding agreements or contracts, with owners or persons in control of buildings or other property and resources, for the use of such buildings or other property and resources for the emergency management purposes, and designating suitable buildings as public shelters of last resort;
- v. Through public informational programs, educating the populace as to actions necessary and required for the protection of their persons and property in case of disaster, either impending or present;
- vi. Conducting public practice alerts within the Town alone or in connection with countywide alerts, to ensure the efficient operation of the emergency management forces of the Town and to familiarize town residents with emergency management regulations, procedures and operations; and
- vii. Coordinating the activity of all other public and private agencies of the Town engaged in any emergency management activities.

4. FLOODPLAIN ADMINISTRATOR POWERS AND DUTIES²⁰

The Town Manager, when acting as the Floodplain Administrator, shall perform the duties in Section 28.4.2.D, Duties and Responsibilities of the Floodplain Administrator.

2.4.2. TOWN CLERK²¹

A. APPOINTMENT

There shall be a Town Clerk assigned by the Town Manager who shall serve the Town in accordance with Section 160A-171 of the North Carolina General Statutes.

B. RESIDENCY

The Town Clerk is not required to be a resident of the Town.

C. POWERS AND DUTIES

The duties of the Town Clerk shall be to:

- 1. Give notice of meetings of the Town Council;
- 2. Maintain a journal or record of the proceedings of the Town Council;
- 3. Be the custodian of all Town records, including this Code, the Official Zoning Map as set out in Section 22.3.1, Official Zoning Map, and the Official Traffic Signal and Stop Sign Map as set out in Section 18.3, Official Traffic Signal and Stop Sign Map;
- 4. Receive applications, reports, and notices of appeals as set out in the various chapters of this Code;
- 5. Receive notification of unlawful wastewater discharges, as set out in Section 14.5.714.5.7, Unlawful Discharges;
- 6. Provide notice of hearing for the suspension or revocation of any license or permit as described in Chapter 36, Offenses and Enforcement; and
- 7. Perform any other duties as assigned by the Town Council or as may be required by State law.

2.4.3. TOWN ATTORNEY

A. APPOINTMENT

A Town Attorney shall be appointed by and serves at the pleasure of the Town Council in accordance with Section 160A-173 of the North Carolina General Statutes.

B. RESIDENCY

The Town Attorney is not required to be a resident of the Town.

C. POWERS AND DUTIES

It shall be the duty of the Town Attorney to:

²⁰ This section carries forward the floodplain administrator duties from Section 16-4.C of the current code.

²¹ This is a new suggested section for the Town’s consideration. It has been drafted based on best practices in use by similar municipalities reflects the contents of the remainder of the code.

1. Prosecute and defend suits against the Town;
2. Advise the Mayor, Town Council, Town Manager, or any other officer of the Town in regard to matters connected with the Town's business;
3. Attend meetings of the Town Council when requested to do so by them;
4. Draw such deeds, contracts, bonds, notes and other legal papers as may be required for the proper conduct of the Town's business; and
5. Approve all ordinances as to form.

2.4.4. TOWN ENGINEER

A. APPOINTMENT

A Town Engineer shall be appointed by and serves at the pleasure of the Town Council.

B. RESIDENCY

The Town Engineer is not required to be a resident of the Town.

C. POWERS AND DUTIES

The Town Engineer shall do all civil engineering required by the Town Manager in the prosecution of all authorized works of public improvement as referred. The Engineer shall do such surveying as may be required by this Ordinance or as may be needed for public streets, public lands, and for public and private drainage, under instructions from the Town Manager.

2.5. CHIEF OF POLICE

2.5.1. APPOINTMENT

There shall be Chief of Police assigned by the Town Manager who shall serve the Town in accordance with Section 160A-171 of the North Carolina General Statutes.

2.5.2. RESIDENCY

The Chief of Police is not required to be a resident of the Town.

2.5.3. POWERS AND DUTIES

The Chief of Police shall be the chief executive officer of the Town's law enforcement force and shall have the following powers and duties:

- A.** General supervision of the police force;
- B.** Promulgation of all orders and regulations made or given by Town Manager; and
- C.** Perform all duties required by the laws of the State and the Town Charter.

2.6. FIRE CHIEF OR OTHER FIRE OFFICIAL²²

2.6.1. AUTHORIZATION

- A.** The Town Fire Chief, or Other Fire Official, as authorized by the Town Manager, shall be the officer charged with the administration and enforcement of the fire prevention code.²³

2.6.2. POWERS AND DUTIES

- A.** The Fire Chief or Other Fire Official conducting operations in connection with the extinguishment and control of any fire, explosion, or other emergency shall have full power and authority to direct all operations of fire extinguishment or control and to take the necessary precautions to save life, protect property and prevent further injury or damage. In the pursuit of such operation, including the investigation of the cause of such

²² This section carries forward Section 14-1, 2, and 3 of the current code with suggested amendments.

²³ This section comes from Section 14-30 of the current Town Code.

emergency, the fire official may control or prohibit the approach to the scene of such emergency by any vehicle, vessel or thing and all persons.

- B.** The Fire Chief or Other Fire Official in charge of an emergency scene shall have the authority to establish fire line barriers to control access in the vicinity of such emergency and to place, or cause to be placed, ropes, guards, barricades, or other obstructions across any street or alley to delineate such fire barrier. No person, except as authorized by the fire official in charge of the emergency, may cross such fire line barriers.
- C.** The Fire Chief or Other Fire Official in charge of an emergency scene may issue passes entitling the holders to cross fire line barriers. Such passes shall not authorize trespass at the scene of an emergency. Credentials which clearly establish the authority and identity of the holder thereof to enter the premises may be honored by the fire official in charge.
- D.** The Fire Chief or Other Fire Official is authorized to investigate the cause, origin, and circumstances of every fire occurring in the Town in which property has been destroyed or damaged. The Fire Chief shall comply with the procedures of investigating and reporting fires as detailed in Chapter 58, Article 79 of the North Carolina General Statutes.
- E.** Members of the fire department shall have authority to do all acts reasonably necessary to extinguish fires and protect life and property from fire.
- F.** The Fire Chief or Other Fire Official shall annually assess the Town's susceptibility to wildfire per the adopted Hazard Mitigation Plan and submit a report to the Town listing lots and areas that have such combustible accumulations.²⁴

2.7. PLANNING AND CODE ENFORCEMENT DEPARTMENT²⁵

2.7.1. ESTABLISHED

The Planning and Code Enforcement Department is hereby established to administer planning, code enforcement, and permitting in accordance with Chapter 160A of the North Carolina General Statutes.

2.7.2. POWERS AND DUTIES

The Planning and Code Enforcement Department:

- A.** Is charged with the responsibility of administering and enforcing the State Building Code and all pertinent state and local laws pertaining thereto. Any of the functions of the Planning and Code Enforcement Department may be provided internally or through any means allowed by the North Carolina General Statutes;
- B.** Shall have and exercise all powers as may be prescribed from time to time by the North Carolina General Statutes and such powers as may be authorized by the Town Council from time to time; and
- C.** Shall be headed by an appropriate department head who shall be appointed by Town Manager and who shall have such other duties as may be prescribed by the Town Manager from time to time.

2.8. PLANNING BOARD²⁶

2.8.1. ESTABLISHMENT

- A.** There is hereby established a board to be known as the Town of Southern Shores Planning Board ("Planning Board") whose jurisdiction shall include the area within the corporate limits of the Town and areas of extraterritorial jurisdiction, as provided for by State law.

²⁴ This section comes from Section 14-35(e) of the current Town Code.

²⁵ This section comes from Section 6-2 of the current Town Code.

²⁶ The material in this section comes from Sections 24-23 through 24-27 of the current Town Code. It has been relocated here from Article II of current Chapter 24 to be with like material concerning authorities.

- B.** The Planning Board is hereby designated as the planning agency for the preparation or revision of the zoning ordinances and comprehensive plans of the Town in accordance with Section 160A-361 and Section 160A-387 of the North Carolina General Statutes.

2.8.2. QUORUM

A. GENERALLY

1. No official business of the Planning Board may be conducted without a quorum present.
2. A majority of the actual membership of the Planning Board, excluding vacant seats, shall constitute a quorum.
3. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

B. ACTION PERTAINING TO CORPORATE LIMITS

For taking action on matters pertaining to land within the corporate limits only, a quorum of three Town Planning Board members shall be required.

C. ACTION PERTAINING TO EXTRATERRITORIAL JURISDICTION

When the Planning Board is enlarged by addition of extraterritorial representation, official actions will require a quorum of four members, and at least four members of the Planning Board, as thus constituted, must support any official action.

2.8.3. COMPOSITION

- A.** The Planning Board shall be composed of five regular members and two alternate members appointed by the Town Council.
- B.** Planning Board members and alternates shall be residents of the Town.
- C.** Noncontiguous areas of extraterritorial jurisdiction shall each be entitled to a representative on the Planning Board, on such occasions when their respective areas are under consideration by the Planning Board, for the purpose of participation and voting on matters of direct interest to their respective areas.
- D.** In the absence of any member of the Planning Board, as recorded in the roll call at the beginning of any meeting, an alternate member, if available, shall be selected by the chairman to participate and vote in the member absence.

2.8.4. TERMS & VACANCIES

- A.** The members and alternates of the Planning Board shall be appointed for staggered terms of three years.
- B.** Vacancies occurring for reasons other than expiration of terms shall be filled as they occur, for the period of the unexpired term, by the Town Council.

2.8.5. CHAIR AND VICE-CHAIR

- A.** The Planning Board shall elect its chair and vice-chair subject to the approval of the Town Council.
- B.** The term of the chair and vice-chair shall be for one year, with eligibility for reelection.

2.8.6. RULES OF PROCEDURE

- A.** The Planning Board shall adopt rules for the transaction of its business and shall keep a record of its members' attendance and of its resolutions, discussions, findings, and recommendations, which record shall be available for public inspection.
- B.** Regular monthly meetings shall be scheduled and all meetings shall be open to the public.
- C.** The Planning Board may set up special committees to assist it in the study of specific problems.
- D.** It may authorize such expenditures as it may see fit, subject to limitation of funds provided for the Planning Board in the Town's annual budget.

2.8.7. POWERS & DUTIES

- A.** The Planning Board is authorized to perform any of the actions authorized for municipal planning boards in Section 160A-361 and Section 160A-387 of the North Carolina General Statutes.
- B.** It shall be the duty of the Planning Board to prepare plans and to coordinate the plans of the Town and surrounding communities so as to bring about a coordinated and harmonious development of the area.
- C.** In addition, the Planning Board is directed and authorized to:
 - 1. Acquire and maintain in current form such basic information and materials as are necessary to an understanding of past trends, present conditions, and forces at work to cause changes in these conditions;
 - 2. Prepare and, from time to time, amend and revise a comprehensive and coordinated plan for the physical development of the area including, among other things, the general location, character, and extent of streets, bridges, waterways, parks, playgrounds, open spaces, and public utilities;
 - 3. Prepare and recommend ordinances or amendments to existing ordinances promoting orderly development of the area, along the lines indicated in the comprehensive plan, including zoning ordinance and subdivision regulations;
 - 4. Determine whether specific proposed developments referred to it by governmental or private agencies in the area conform to the principles and requirements of the comprehensive plan for the area and to make recommendations concerning them;
 - 5. Provide any other recommendations which it sees fit for improving the development of the area;
 - 6. Perform any other duties which may lawfully be assigned to it; and
 - 7. Keep the Town Council and the general public informed and advised as to matters subject to its review and consideration.
- D.** In carrying out its powers and duties, the Planning Board is authorized to receive contributions from private agencies and organizations or from individuals, in addition to any sums which may be appropriated for its use by the Town Council. It may accept and disburse such contributions for special purposes or projects, subject to any specified conditions which it deems acceptable, whether or not such projects are included in the approved budget.

2.9. BOARD OF ADJUSTMENT²⁷

2.9.1. ESTABLISHMENT

- A.** The Board of Adjustment is hereby established in accordance with Section 160A-388 of the North Carolina General Statutes.
- B.** The Planning Board is hereby authorized to serve as the Board of Adjustment and to perform the duties of a Board of Adjustment as provided in this section.
- C.** In no instance shall the Planning Board perform its role as a Board of Adjustment contemporaneously while seated as the Planning Board.

2.9.2. QUORUM

- A.** A quorum of three members shall be seated and present in order to open a meeting of the Board of Adjustment and to take action on non-quasi-judicial matters.
- B.** In order to take action on a quasi-judicial matter the Board of Adjustment must have a quorum of five members seated and present unless the appellant or applicant consents to moving forward with less than five members.
- C.** For calculating a quorum to take action on a quasi-judicial matter, the number of members seated and present includes members who were seated at the opening of the meeting that have been disqualified from voting on the particular matter if there are no qualified alternates available to take the place of such members.
- D.** In the event that a quorum cannot be met due to vacant positions or a lack of qualified members, the Board of Adjustment may continue its meeting in order for absent members to become available and, if necessary,

²⁷ The material in this section comes from Sections 36-361 through 36-365 of the current Town Code. It has been relocated here from Article XII of current Chapter 36 to be with like material concerning authorities.

for the Town Council to make appointments filling vacant seats or to make appointments of temporary alternate members who can fulfill the Board of Adjustment's duties.

2.9.3. COMPOSITION

- A.** The Board of Adjustment shall be composed of five regular members and two alternate member appointed by the Town Council.
- B.** Board members and alternates shall be residents of the Town.
- C.** Noncontiguous areas of extraterritorial jurisdiction shall each be entitled to a representative on the Board of Adjustment, on such occasions when their respective areas are under consideration by the Board of Adjustment, for the purpose of participation and voting on matters of direct interest to their respective areas.
- D.** In the absence of any member of the Board of Adjustment, as recorded in the roll call at the beginning of any meeting, an alternate member, if available, shall be selected by the Chair to participate and vote in the member absence.
- E.** Each alternate member serving on behalf of any regular member has all the powers and duties of a regular member.

2.9.4. TERMS & VACANCIES

- A.** The members and alternates of the Board of Adjustment shall be appointed for staggered terms of three years.
- B.** Vacancies occurring for reasons other than expiration of terms shall be filled as they occur, for the period of the unexpired term, by the Town Council.

2.9.5. CHAIR

- A.** The Board of Adjustment shall elect a Chair and Vice-Chair, subject to the approval of the Town Council.
- B.** The term of the Chair and Vice-Chair shall be for one year, with eligibility for reelection.

2.9.6. RULES OF PROCEDURE

A. GENERALLY

- 1. The Board of Adjustment may adopt from time to time such rules and regulations as it may deem necessary to carry into effect the provisions of this Ordinance.
- 2. Where this Ordinance and the rules adopted by the Board of Adjustment are in conflict, the provisions of this Ordinance shall prevail.

B. MEETINGS

- 1. All meetings of the Board of Adjustment shall be held at a regular place and shall be open to the public.
- 2. The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, an indication of that fact.
- 3. Any party may appear in person or be represented by an attorney.

C. NOTICE

- 1. Notice of hearings conducted pursuant to this Ordinance shall be provided in accordance with the standards in Section 22.2.2.E, Public Notification.
- 2. In the absence of evidence to the contrary, the Town may rely on the Dare County tax listing to determine owners of property entitled to mailed notice.

D. SUBPOENAS

- 1. The Board of Adjustment through the Chair, or in the Chair's absence anyone acting as Chair, may subpoena witnesses and compel the production of evidence.
- 2. To request issuance of a subpoena, persons with standing under Section 160A-393(d) of the North Carolina General Statutes, may make a written request to the Chair explaining why it is necessary for certain witnesses or evidence to be compelled.
- 3. The Chair shall issue requested subpoenas they determine to be relevant, reasonable in nature and scope, and not oppressive.
- 4. The Chair shall rule on any motion to withdraw or modify a subpoena.
- 5. Decisions regarding subpoenas made by the Chair may be appealed to the full Board of Adjustment.

6. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment or the party seeking the subpoena may apply to the Superior Court for Dare County 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.

E. OATHS

1. The Chair of the Board of Adjustment or any member acting as Chair and the Clerk to the Board of Adjustment are authorized to administer oaths to witnesses in any matter coming before the Board of Adjustment.
2. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

F. VOTING

1. The concurring vote of four-fifths majority of the Board of Adjustment shall be necessary to grant a variance.
2. 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.
3. For the purposes of this subsection, vacant positions on the Board of Adjustment 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.

G. BURDEN OF PROOF

The burdens of production, persuasion and proof for all quasi-judicial decisions of the Board of Adjustment lie with the applicant or appellant seeking such a decision.

H. IMPARTIALITY

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

2.9.7. POWERS & DUTIES

The Board of Adjustment shall have the following powers and duties:

- A. The Board of Adjustment shall hear and decide requests for variances of the provisions of Chapter 22 and Chapter 26 in accordance with Section 22.2.3.L, Variance; and
- B. The Board of Adjustment shall hear and decide appeals of decisions of administrative officials charged with enforcement of Chapter 22 and Chapter 26 in accordance with Section 22.2.3.K, Appeals.

2.10. HISTORIC LANDMARKS COMMISSION²⁸

2.10.1. ESTABLISHMENT

The Southern Shores Historic Landmarks Commission is hereby established in accordance with the standards in Section 160A-400.7 of the North Carolina General Statutes.

2.10.2. QUORUM

- A. No official business of the Historic Landmarks Commission may be conducted without a quorum present.

²⁸ This section carries forward the standards from Ordinance 2016-10-01. The ordinance has been reorganized to follow the organization of the draft Town Code, but no substantive change is proposed.

- B.** A majority of the actual membership of the Historic Landmarks Commission, excluding vacant seats, shall constitute a quorum.
- C.** A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

2.10.3. COMPOSITION

- A.** The Historic Landmarks Commission shall consist of five members that are appointed by the Town Council.
- B.** All members of the Historic Landmarks Commission shall reside within the planning and zoning jurisdiction of the Town.
- C.** A majority of the members shall have demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields.
- D.** The Historic Landmarks Commission may appoint advisory bodies and committees, as appropriate.

2.10.4. TERMS AND VACANCIES

- A.** Members of the Historic Landmarks Commission shall serve terms of three years.
- B.** Terms shall be staggered with three of the initial commissioners designated to serve an initial two-year term by the Town Council.
- C.** Vacancies occurring for reasons other than expiration of terms shall be filled by the Town Council as they occur, for the period of the unexpired term.

2.10.5. CHAIR AND VICE CHAIR

- A.** The Historic Landmarks Commission shall elect a Chair and a Vice Chair from its membership.
- B.** The term of the Chair and the Vice Chair shall be for one year, with eligibility for reelection.

2.10.6. RULES OF PROCEDURE

- A.** Prior to any official action, the Historic Landmarks Commission shall adopt rules of procedure governing its meetings, the conduct of official business, the election of officers, and related matters.
- B.** The Historic Landmarks Commission shall prepare and adopt principles and guidelines for altering, restoring, moving, or demolishing properties designated as landmarks.

2.10.7. MEETINGS

All meetings of the Historic Landmarks Commission shall be open to the public in accordance with the North Carolina Open Meeting Laws in Chapter 143, Article 33C of the North Carolina General Statutes.

2.10.8. POWERS & DUTIES

The Historic Landmarks Commission shall have the following powers and duties:

- A.** Prepare and recommend the official adoption of a preservation element as part of the Town of Southern Shore's Land Use Plan;
- B.** Undertake an inventory of properties of historic, prehistoric, architectural, or cultural significance;
- C.** Recommend to the Town Council individual structures, buildings, sites, areas, or objects to be designated, by ordinance, as landmarks;
- D.** Review and act upon proposals for the alteration or demolition of designated landmarks;
- E.** Conduct an educational program with respect to historic landmarks within the Town;
- F.** Cooperate with state, federal, and other local governments in pursuance of the purpose of these standards;
- G.** Offer or request assistance, aid, guidance, or advice concerning matters under its purview or mutual interest;
- H.** Contract with any agency of the state or the federal government or any other organization when authorized by the Town Council and provided the terms are not inconsistent with state or federal law; and
- I.** Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof- provided however, no member, employee, or agent of the Historic

Landmarks Commission may enter any private building or structure without the express consent of the owner or occupant thereof.

CHAPTER 3.

[RESERVED]

CHAPTER 4.

DEFINITIONS

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GUIDANCE FROM CODE ASSESSMENT:

The current Town code includes definitions throughout the document. In some cases definitions are repetitive or inconsistent, or include standards within the definition. The new Chapter 4, Definitions, consolidates all the definitions in the Town Code into a single location, removes inconsistencies, and relocates standards to the appropriate chapter.

For the time being, the origin of each defined term is included in yellow highlight at the end of the term. This origin information could be deleted from the adopted code or used to color code the table rows by chapter origin.

In cases where the same term is defined differently in different chapters of this Code, all uses of the term are distinguished from one another.

The chapter also includes a glossary of abbreviations used in the Code.

Text shown in yellow highlight that includes a cross reference to another code section is to be filled in following adoption.

The text includes numerous footnotes that track the origin of proposed text.

4.1. PURPOSE AND INTENT

This chapter sets out the definition of terms and the abbreviations used in this Town Code of Ordinances.

4.2. GLOSSARY OF ABBREVIATIONS

Table **Error! Reference source not found.**: Abbreviations, sets out the abbreviations used in this Town Code. In cases where agency names or abbreviations change, these abbreviations are intended to refer to the most recently amended name or nomenclature.

TABLE ERROR! REFERENCE SOURCE NOT FOUND.: ABBREVIATIONS	
ABBREVIATION	ASSOCIATED TERM
AE	AE Flood Zone designation
AEC	Areas of Environmental Concern
ANSI	American National Standards Institute
APHA	American Public Health Association
AWWA	American Waterworks Association
BFE	Base Flood Elevation
BOD	Biochemical Oxygen Demand
BUA	Built Upon Area
CAMA	Coastal Area Management Act
CBIA	Coastal Barrier Improvement Act
CFR	Code of Federal Regulations
CLG	Certified Local Government
COD	Chemical Oxygen Demand
CBRS	Coastal Barrier Resources System
CRC	Coastal Resources Commission
CoBRA	Coastal Barrier Resources Act 1982
CTS	Cooperating Technical State [Agreement]
DCM	Division of Coastal Management
DEQ	Department of Environmental Quality (State)
EIA	Electronic Industry Association
EPA	Environmental Protection Agency
FEMA	Federal Emergency Management Agency
FIRM	Flood Insurance Rate Map
FIS	Flood Insurance Study
G.S.	General Statutes of the State of North Carolina
HAG	Highest Adjacent Grade
LAG	Lowest Adjacent Grade
LOMA	Letter of Map Amendment
LOMR	Letter of Map Revision
LPO	Local Permit Officer
msl	Mean Sea Level

TABLE ERROR! REFERENCE SOURCE NOT FOUND.: ABBREVIATIONS	
ABBREVIATION	ASSOCIATED TERM
NAVD	North American Vertical Datum
NCAC	North Carolina Administrative Code
NCDEQ	North Carolina Department of Environmental Quality
NCDOT	North Carolina Department of Motor Vehicles
N.C.G.S.	General Statutes of the State of North Carolina
NFPA	National Fire Protection Association
NPDES	National Pollution Discharge Elimination System
OPA	Otherwise Protected Area
SSCA	Southern Shores Civic Association
SFHA	Special Flood Hazard Area
TIA	Telecommunications Industry Association
TSS	Total Suspended Solids
U.S.C.	United States Code
VE	VE Flood Zone designation
WPCF	Water Pollution Control Federation
WSE	Water Surface Elevation

4.3. DEFINED TERMS²⁹

Table 4.3: Defined Terms, sets out the meanings of words, terms, and phrases, as used in this Ordinance. These definitions shall apply except where otherwise specifically indicated, or the context clearly indicates a different meaning:

TABLE 4.3: DEFINED TERMS	
TERM	DEFINITION
"A" Weighting Scale	The sound pressure level, in decibels, as measured with the sound level meter using the "A" weighted network (scale). The standard unit of notation is dB(A). new – offenses (noise)
A	
Abandoned Vehicle	As defined in Section 160A-303 of the North Carolina General Statutes, a vehicle that is designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle and: (1) Is left upon a public street or highway in violation of a law or ordinance prohibiting parking; or (2) Is left on a public street or highway for longer than seven days; or (3) Is left on property owned or operated by the Town for longer than 24 hours; or (4) Is left on private property without the consent of the owner, occupant or lessee thereof for longer than two hours. vehicles

²⁹ The current ordinance includes numerous definitions across 19 different code sections. This draft ordinance includes all definitions in a single summary table. This table carries forward the current definition and identifies the origin of the definition in yellow highlight (to be removed after adoption). In cases where a definition included standards (such as many use type definitions from the zoning ordinance), those standards have been relocated to the appropriate chapter of this draft code. In cases where two chapters use the same term, but use it in different ways, the definition identifies how the term is to be interpreted depending on the applicable usage.

Chapter 4 Definitions

4.3 Defined Terms 28F

TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
Accessory Building	See “Building, Accessory.”
Accessory Structure (Appurtenant Structure)	A structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building. flood damage prevention
Accessory Use	See “Use, Accessory.” zoning
Addition (to an existing building)	An extension or increase in the floor area or height of a building or structure. flood damage prevention
Adult Arcade	Any place to which the public is permitted or invited wherein coin-operated or token-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to one or more persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas. zoning
Adult Bookstore	An adult use as defined in Section 14-202.10(1) of the North Carolina General Statutes. zoning
Adult Cabaret	A nightclub, bar, restaurant, or similar commercial establishment that, for at least ten percent of its business hours in any day, features: <ol style="list-style-type: none"> 1. Persons who appear in a state of nudity or semi-nudity; 2. Live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities; 3. Films, motion pictures, videocassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas; or 4. Persons who engage in lewd, lascivious, or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers. zoning
Adult Escort	A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person for the purpose of participating in, engaging in, providing, or facilitating specified sexual activities. zoning
Adult Escort Agency	A person or business that furnishes, offers to furnish, or advertises to furnish adult escorts as one of its business purposes for consideration. zoning
Adult Establishment	An adult use as defined in Section 14-202.10(2) of the North Carolina General Statutes. zoning
Adult Live Entertainment	An adult use as defined in Section 14-202.10(3) of the North Carolina General Statutes. zoning
Adult Live Entertainment Business	An adult use as defined in Section 14-202.10(4) of the North Carolina General Statutes. zoning
Adult Media Center	Includes, but is not limited to, an adult bookstore and an adult video store and means any place: <ol style="list-style-type: none"> (1) Which receives more than 50 percent of its gross income during any calendar month from the sale, rental, or both of books, periodicals, magazines, videotapes, CD-ROMs, computer software, movies, and other products offered in photographic, print, electronic, magnetic, or digital or other imaging medium which are distinguished or characterized by their emphasis on matter depicting, describing, or presenting specified anatomical areas as defined in Section 14-202.10(10) of the North Carolina General Statutes, or specified sexual activities as defined in Section 14-202.10(11) of the North Carolina General Statutes, or sexually oriented devices as defined in Section 14-202.10(9) of the North Carolina General Statutes, or any combination thereof. (2) Has more than 25 percent of its merchandise inventory consisting of books, periodicals, magazines, videotapes, CD-ROMs, computer software, movies, and other products offered in photographic, print, electronic, magnetic, or digital or other imaging medium which are distinguished or characterized by their emphasis on matter depicting, describing, or presenting specified anatomical areas as defined in Section 14-202.10(10) of the North Carolina General Statutes, or specified sexual activities as defined in Section 14-202.10(11) of the North Carolina General Statutes, or sexually oriented devices as defined in Section 14-202.10(9) of the North Carolina General Statutes, or any combination thereof. (3) Which is a commercial establishment and may have other business purposes on the

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4.3 Defined Terms 28F

TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
	same building site that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as adult media center. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult media center so long as one of its business purposes is the offering for sale or rental for consideration the specified materials which depict or describe specified sexual activities or specified anatomical areas. zoning
Adult Mini Motion Picture Theater	An adult use as defined in Section 14-202.10(6) of the North Carolina General Statutes. zoning
Adult Motel	A hotel, motel, or similar commercial establishment that: (1) Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmission, films, motion pictures, videocassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way that advertises the availability of this adult type of photographic reproductions; (2) Offers a sleeping room for rent for a period of time that is less than 12 hours; or (3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 12 hours. zoning
Adult Motion Picture Theater	An adult use as defined in Section 14-202.10(5) of the North Carolina General Statutes. zoning
Adult Theater	A theater, concert hall, auditorium, or similar commercial establishment that for ten percent or more of its business hours in any day, features persons who appear in a state of nudity or live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities. zoning
Adult Video Store	A commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion picture, videotapes or videocassettes, video reproductions, CD-ROMs, slides, or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or any combination thereof. zoning
Adverse Impact	Anything that would destroy, harm, impair, diminish, or degrade the value or integrity of a sand dune for storm protection or wildlife habitat. waterways
Alarm System Business	Any person that sells or leases and installs, services or maintains automatic protection devices, signaling devices or automatic protection systems. fire
Antenna	Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services. zoning
Apiary	A place where bee colonies are kept. animals
Appeal	A request for review of an administrative official's or decision-making body's interpretation or decision made under this Code. new
Applicant	The person or entity filing an application. zoning
Application	All written documentation, verbal statements, and representations made by an applicant to the Town in pursuit of a development approval, permit, interpretation, or other decision. For the purposes of the wireless telecommunications provisions in Chapter 22 , a request that is submitted by an applicant to the Town for a permit to collocate wireless facilities or to approve the installation, modification, or replacement of a utility pole, Town utility pole, or wireless support structure. new
Approving Authority	For the purposes of the wastewater regulations, approving authority means the Town Council. wastewater
Area of Special Flood Hazard	See "Special Flood Hazard Area (SFHA)". flood damage prevention
At Large	Refers to a dog that is off the premises of its owner or keeper and is not under the control of its owner or his agent by leash or chain and collar or a similar restraining device. animals
Authorization to Construct	State certification that wastewater system plans and specifications comply with State standards. wastewater
Authorized Emergency Vehicle	Vehicles of the fire department, police vehicles, and such ambulances designated or authorized by the Chief of Police. vehicles

Chapter 4 Definitions

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TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
Authorizing Official	The supervisory employee of the police department or the Town Manager, respectively, who is designated to authorize the removal of vehicles under the provisions of this Ordinance. vehicles
Automatic Protection Device	Any mechanical or electrically-operated device designed to monitor and/or detect an emergency situation. fire
Automatic Protection System	Any mechanical or electrically operated installation consisting of an automatic protection device or devices, a signaling device which transmits a warning signal by any means to an off-premises location. fire
Average Ground Elevation	See Section <u>22.1.8.G, Elevation</u> .
B	
Bank	For the purposes of <u>Chapter 22, Zoning</u> , a building, property, or activity, the principal use or purpose of which is the provision of financial services including, at a minimum, the operation of indoor or outdoor teller windows for the intake and disbursement of funds, including cash, to and from customer financial accounts, including individual checking, savings, or credit accounts. Zoning For the purposes of <u>Chapter 30, Waterways and Beaches</u> , the land adjacent to a waterway. waterways
Base Flood	The flood having a one percent chance of being equaled or exceeded in any given year. flood damage prevention
Base Flood Elevation (BFE)	A determination of the water surface elevations of the base flood as published in the flood insurance study. When the BFE has not been provided in a special flood hazard area, it may be obtained from engineering studies available from a federal, state or other source, using FEMA approved engineering methodologies. This elevation, when combined with the freeboard, establishes the regulatory flood protection elevation. flood damage prevention
Base Station	A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics. zoning
Basement	Any area of the building having its floor subgrade (below ground level) on all sides. flood damage prevention
Beach	The lands consisting of unconsolidated soil materials that extend for a distance of 100 yards east of the mean low water mark landward to a point where either the growth of stable natural vegetation occurs or a distinct change in slope or elevation alters the configuration, whichever is farther landward. Waterways
Bee	Any stage of the common domestic honey bee, <i>apis melifera</i> , species, excluding the Africanized Honeybee (<i>apis melifera scutellate</i>). animals
Beekeeper	A person who owns or is in charge of an apiary. animals
Beneficial Uses	Uses of the waters of the State, that may be protected against quality degradation, including domestic, municipal, agricultural and industrial supply, power generation, recreation, aesthetic enjoyment, navigation and the preservation and enhancement of fish, wildlife and other aquatic resources or reserves and other uses, both tangible and intangible, as specified by federal or state law. wastewater
Berm	An elongated earthen mound typically designed or constructed on a site to separate, screen, or buffer adjacent uses or site features. new
Biochemical Oxygen Demand (BOD)	The empirical test run in accordance with the latest edition of "Standard Methods for Analysis of Water and Wastewater," published by the American Public Health Association and Water Pollution Control Federation, or "Methods for the Analysis of Water and Wastes," published by the EPA, to determine the relative oxygen requirements of wastewater effluent and polluted waters. wastewater
Block	A portion of any street located between two intersections next adjacent to each other. vehicles
Bonfire	An outdoor fire used for ceremonial or recreational purposes. fire
Bottoms	The ground under a waterway. waterways
Boundary, Real Property	For the purposes of applying the noise standards in <u>Chapter 36, Offenses and Enforcement</u> , a line along the ground surface and its vertical extension, which separates the real property

Chapter 4 Definitions

4.3 Defined Terms 28F

TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
	owned by one person from that owned by another. new – offenses (noise)
Breakaway Wall	A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system. flood damage prevention
Buffer Strip	A device or material (including, but not limited to evergreen trees and shrubs) and/or space used to provide sight and sound screening from adjoining properties. The required height and width of the buffer strip and the materials used in its construction may vary according to use. zoning
Building	As used in Chapter 28, Flood Damage Prevention, see “Structure.” flood damage prevention Any structure enclosed and isolated by exterior walls constructed or used for residence, business, industrial, or public purposes. Zoning
Building Inspector	A code enforcement officer who is appointed by the Town Manager to perform the function, in whole or in part, of a building inspector as authorized by this Ordinance. zoning
Building Permit	An official administrative authorization issued by the Town prior to beginning construction consistent with the provisions of Section 160A-417 of the North Carolina General Statutes. new For the purposes of the wastewater regulations in Chapter 14, Town authorization to begin construction. wastewater
Building Setback Line	A line parallel to or concentric with the street right-of-way edge that establishes the minimum allowable distance between the right-of-way or front lot line and the nearest portion of any building, excluding any allowable encroachments. zoning; subdivisions
Building Sewer	The service extension from a building to a sanitary sewer. Also, called house connection or service lateral. wastewater
Building, Accessory	A subordinate building consisting of walls and a roof, the use of which is clearly incidental to that of the principal building on the same lot, even when the accessory building is attached to the principal structure by breezeways, covered walkways, walkways, or other structures not constituting enclosed living space. zoning
Building, Principal	A building containing the principal use of the lot on which it is located. zoning
Bulk Container	A container with a lid designed to be emptied mechanically by specially designed trucks. solid waste
Bulkhead	A vertical wall structure designed to retain shoreline materials and prevent erosion due to wave activity. waterways
Business District	The territory contiguous to a highway when 75 percent or more of frontage thereon for a distance of 300 feet or more is occupied by buildings in use for business. vehicles
Business Unit	A building or structure or any portion thereof used for the transaction of business or the rendering or receiving of professional services, including offices. fire
C	
Coastal Area Management Act (CAMA)	North Carolina's Coastal Area Management Act. This act, along with the Dredge and Fill Law and the Federal Coastal Zone Management Act, is managed through the North Carolina Department of Environment and Quality's Division of Coastal Management (DCM). flood damage prevention
Certificate of Compliance	For the purposes of Chapter 14, Wastewater, design engineer certification of wastewater system construction compliance with approved plans and specifications. wastewater
Certificate of Occupancy	For the purposes of Chapter 14, Wastewater, Town authorization to occupy premises. wastewater
Chemical Oxygen Demand (COD)	The quantity of oxygen used in the chemical oxidation or decomposition of organic substances in a sample. wastewater
Chemical Storage Facility	A building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products. flood damage prevention
Chief (Fire Chief)	The Chief of the Southern Shores Fire Department. fire
Child Day Care	Any child care arrangement where three or more children, less than 13 years old, receive care away from their own home by persons other than their parents, grandparents, aunts, uncles, brothers, sisters, first cousins, guardians or fulltime custodians, or in the child's own home where other unrelated children are in care. zoning

Chapter 4 Definitions

4.3 Defined Terms 28F

TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
Child Day Care Center	Any child care facility which provides care for more than six children, other than the provider's own children, under the age of 13 years on a regular basis of at least once per week for more than four hours per day but less than 24 hours per day, regardless of the time of day and regardless of whether the same or different children attend. zoning
Child Day Care, Residential	A child care facility in which care is provided in the provider's home for a maximum of six children, other than the provider's own children, under the age of 13 years. zoning
Coastal Area	The territory adjacent to, adjoining, intersected by, or bounded by the Atlantic Ocean or an estuarine waterway.
Coastal Barrier Resources System (CBRS)	Undeveloped portions of coastal and adjoining areas established by the Coastal Barrier Resources Act (CoBRA) of 1982, the Coastal Barrier Improvement Act (CBIA) of 1990, and subsequent revisions, and includes areas owned by federal or state governments or private conservation organizations identified as otherwise protected areas (OPA). flood damage prevention
Coastal High Hazard Area	A special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a flood insurance rate map (FIRM), or other adopted flood map as determined in <u>Section 28.3.3, Basis for Establishing the Special Flood Hazard Areas</u> , as zone VE. flood damage prevention
Code Enforcement Officer	One or more persons appointed by the Town Manager to perform the function, in whole or in part, of the Code Enforcement Officer as authorized by this Town Code. zoning
Collection	As used in <u>Chapter 12, Solid Waste</u> , the act of removing solid waste to the transfer stations or the facility. solid waste
Collector Road	See "Road, Collector."
Collocation	The placement, installation, maintenance, modification, operation, or replacement of wireless facilities on, under, within, or on the surface of the earth adjacent to existing structures, including utility poles, Town utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with the applicable codes. The term "collocation" does not include the installation of new utility poles, Town utility poles, or wireless support structures.
Commercial Establishment	As used in <u>Chapter 12, Solid Waste</u> , any nonresidential establishment including, but not limited to, religious, governmental, retail, wholesale, institutional, hotel or motel, or private club, which may generate commercial solid waste. solid waste
Commercial Solid Waste	All types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial waste. solid waste
Communications Facility	The set of equipment and network components, including wires and cables and associated facilities used by a communications service provider to provide communications service.
Communications Service	Cable service as defined in 47 U.S.C. Section 522(6), information service as defined in 47 U.S.C. Section 153(24), telecommunications service as defined in 47 U.S.C. Section 153(53), or wireless services.
Communications Service Provider	A cable operator as defined in 47 U.S.C. Section 522(5); a provider of information service, as defined in 47 U.S.C. Section 153(24); a telecommunications carrier, as defined in 47 U.S.C. Section 153(51); or a wireless provider.
Communications Tower, Municipal and Fire Station	A tower serving as an accessory structure to a fire station or municipal building that provides emergency, municipal, fire, and/or police communications services only. zoning
Community Beach Access	Platforms, walks, ramps (including ramps intended for vehicular access), steps, sidewalks, and related accessories such as bike racks, parking areas, flagpoles, and signage owned or operated by a not-for-profit entity which is constructed for use by property owners, members, authorized guests, or by Town service providers for the purposes of providing ocean access over or across ocean dunes. zoning
Community Recreational Facilities	A recreational facility owned and operated by a not-for-profit entity which is constructed for, open to, and available for use by members, property owners, and their guests. zoning
Community Wastewater System	See "Wastewater System, Community."
Compatible Pollutant	Pollutants such as BOD, TSS, pH, oil and grease, ammonia nitrogen (NH ₃ --N), and fecal coliform bacteria, or any additional pollutants, for which a treatment works is designed to treat and/or remove to a substantial degree. Any other pollutant shall be classified as incompatible.

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TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
	wastewater
Conditional Use	See “Use, Conditional.”
Condominium	Development comprised of a lot or parcel of land, along with certain parts of a building used by all the occupants, that is under common ownership, combined with individual units in the building owned in fee simple by individuals. zoning
Construction and Demolition (C&D) Waste	Solid waste resulting solely from construction, remodeling, repair, or demolition operations, on buildings or other structures, but does not include inert debris, land clearing debris, yard debris, used asphalt, asphalt mixed with dirt, sand, gravel, rock, concrete, or similar nonhazardous material. solid waste
Contained Fire	An outdoor fire where the fuel being burned is contained in a fireproof container such as an incinerator, burn barrel, outdoor fireplace or barbecue grill used for recreation, religious, ceremonial, cooking, warmth, or similar purposes. fire
Corner Lot	See Section 22.1.8, Rules of Measurement.
Corner Side Setback	See Section 22.1.8, Rules of Measurement. zoning
Corporation Council	The Town Attorney of Southern Shores. fire
Council	See “Town Council.”
Country Club	A private recreational facility which is open to members and their guests that may include a golf course, clubhouse, swimming pool, tennis courts, and meal services. zoning
County	The County of Dare, in the State of North Carolina, except as otherwise provided. general provisions
Crosswalk	That portion of a roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks at intersections. Any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface. vehicles
Cul-de-sac	A road permanently terminated by a turnaround or dead end. subdivisions
Cul-de-Sac Lot	See Section 22.1.8, Rules of Measurement. zoning
D	
Daytime Hours	As used in Section 36.6.5, Noise, Daytime Hours means the time between 7:00 AM and 10:00 PM local time. new - offenses (noise)
Dead-end road, minor	See “Cul-de-sac.”
Density	See Section 22.1.8.E, Residential Density. zoning
Density, Maximum	See Section 22.1.8.E, Residential Density. zoning
Destroyed Structure	A structure that is a total loss or damaged to such an extent that repairs are not technically or economically feasible (i.e., 50 percent or more of the replacement cost of the entire structure at the time of damage or destruction). zoning
Development	Any man-made change to improved or unimproved real estate, including but not limited to: buildings or other structures; mining; dredging; filling; grading; paving; excavation; drilling operations; or storage of equipment or materials. Development is also any land-disturbing activity that adds to or changes the amount of impervious or partially impervious cover on a land area or that otherwise decreases the infiltration of precipitation into the soil. new As used in Chapter 28, Flood Damage Prevention, any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials. flood damage prevention
Disaster	Includes, but is not limited to, extraordinary fire, flood, storm, epidemic, accident, chemical spill or other impending or actual calamity endangering, or threatening to endanger, health, life, or property of constituted government. emergency

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TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
Disposal	The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters, or as defined in Section 130A-290(a)(6) of the North Carolina General Statutes. flood damage prevention
Dock	A pier, wharf, or platform for the unloading of materials or other items. waterways
Domestic Wastes	The liquid wastes from bathrooms, toilet rooms, home kitchens and home laundries. wastewater
Double Frontage Lot	See <u>Section 22.1.8, Rules of Measurement</u> .
Drive-In Restaurant or Refreshment Stand	Any place or premises used for sale, dispensing, or serving of food, refreshments, or beverages in automobiles, including those establishments where customers may serve themselves and may consume food, refreshments, or beverages on the premises. zoning
Driver	The operator of a vehicle. The terms "driver" and "operator" and similar terms are synonymous. vehicles
Drive-Through Facility, Large	A customer service facility intended to enable the customer to transact business with a customer service person associated with the principal structure without exiting their motor vehicle and then exit the premises immediately upon the transaction of business. zoning
Drive-Through Facility, Small	A customer service facility located on a lot of less than 20,000 square feet in area with a principal structure that serves items over a general service counter for the customer to carry to a small seating area, to a motor vehicle, or off-premises.
Driveway	A private driveway, road, field road, or other traveled way or path, that allows motorized vehicle access from a public highway, Town road, or a private road to one or more buildings located or to be constructed on adjacent lands. zoning
Dune System, Frontal Dune	See "Frontal Dune."
Dune System, Primary Dune	See "Primary Dune."
Dune Walkover Access, Improved	A raised walkway constructed for the purpose of providing access to the beach from points landward of the dune system. waterways
Dune Walkover Access, Unimproved	A sand walkway or path used for the purposes of providing pedestrian access to the beach which is located in an area where there is no escarpment present between the dune structure and the beach. waterways
Dwelling Unit	One or more rooms or living spaces connected together, constituting a separate, independent housekeeping establishment that is physically separated from any other rooms, living spaces, or dwelling units which may be in the same structure and containing a stove or oven and sleeping facilities for a single family made available for owner occupancy, rental, or lease. zoning
Dwelling, Large Home	Any principal residential structure that exceeds the maximum size for such structures in the zoning district in which it is located.
Dwelling, Multifamily	A building or portion thereof, including apartment houses and condominiums, used or designed as a residence for three or more families living independently of each other and doing their own cooking therein. zoning
Dwelling, Single-Family	A detached building designed for or occupied exclusively by one family. zoning
Dwelling, Townhouse	A single-family dwelling unit located on its own lot. The dwelling unit may or may not be attached to adjacent single-family dwellings as part of a single cohesive structure. Individual lots may or may not have required yards or setbacks, and are surrounded by a larger parcel owned in common or by the developer. new
Dwelling, Two-Family (Duplex)	A detached building, divided horizontally or vertically, and designed for or occupied by two single-family housekeeping units contained entirely under one roof and having one dividing partition common to each unit. zoning
E	
Easement	A grant by the property owner for use by the public, a corporation, or person, of a strip of land for specified purposes. subdivisions

Chapter 4 Definitions

4.3 Defined Terms^{28F}

TABLE 4.3: DEFINED TERMS	
TERM	DEFINITION
Electronic Sound Amplification System	Any radio, tape player, compact disc player, loud speaker or other electronic device used for the amplification of sound. new – offenses (noise)
Elevated Building	A building without a basement which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns. flood damage prevention
Eligible Facilities Request	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. zoning
Emergency Management	The basic government function of maintaining the public peace, health, and safety during an emergency. This term shall include plans and preparations for protection and relief, recovery, and rehabilitation from effects of a disaster. emergency
Emergency Management Forces	The employees, equipment and facilities of all Town departments, boards, councils, institutions, and commissions; and in addition, it shall include all volunteer personnel, equipment and facilities contributed by, or obtained from, volunteer persons or agencies. emergency
Emergency Management Volunteer	Any person duly registered, identified, and appointed by the Town Manager and assigned to participate in the emergency management activity. emergency
Emergency Situation	A fire, unauthorized intrusion, criminal activity, automobile accident, medical emergency, hurricane evacuation, or similar emergency situation requiring prompt, official response to protect or assist individuals or property. fire
Emergency Work	Work necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger by private or public utilities when restoring utility service. new – offenses (noise)
Enclosed Living Space	See “Living Space.”
Encroachment	The advance or infringement of uses, fill, excavation, buildings, permanent structures, or development into a floodplain, which may impede or alter the flow capacity of a floodplain. flood damage prevention
Equipment Compound	An area surrounding or near the base of a wireless support structure within which a wireless facility is located. zoning
Erosion Escarpment	The normal vertical drop in the beach profile caused from high tide and/or storm tide erosion. zoning
Escarpment	The vertical drop or steep slope in the beach profile separating two comparatively level or more gentle sloping surfaces caused from high tide or storm tide erosion. Escarpments for the purposes of this Ordinance shall only be determined to exist in areas where the height and slope of the escarpment would preclude reasonable pedestrian access to the beach without causing an adverse impact to the dune structure. waterways
Establishment	That portion of a building owned or held through tenancy used for the purpose specified. zoning
Event Facility ³⁰	An establishment, structure, or property designed, maintained, advertised, or used for the primary purpose of hosting pre-planned events. An event facility does not include the use of a residential structure or property on which a residential structure is located for non-commercial social gatherings, private parties, or for traditional family events. zoning
Event, Traditional Family	An event including, but not limited to, holiday parties and meals, birthday parties, funeral services, religious ceremonies, and weddings for family members related by blood or marriage to: 1. Any of the individual holders of legal title to the property. 2. A majority of the owners of a business entity holding legal title to the property. 3. The beneficiaries of a trust holding legal title to the property. zoning
Events	Events include, but are not limited to: private parties, community uses (charitable, political, governmental, or civic), weddings, rehearsal dinners, corporate meetings, retreats, sporting events, cultural events, musical events, celebrations, festivals, fairs, carnivals, circuses, or similar events that are planned in advance of their occurrence. zoning

³⁰ This definition is taken from the current zoning chapter, but has been split into three different terms. In addition, the requirement for issuance of a conditional use permit for food sales is relocated to the use-specific standards.

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TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
Existing Manufactured Home Park or Manufactured Home Subdivision	As used in <u>Chapter 28, Flood Damage Prevention</u> , a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the original effective date of the floodplain management regulations adopted by the community. flood damage prevention
Exterior Features	Exterior features includes the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of the doors, windows, light fixtures, signs, and other appurtenant features. Exterior features also includes historic signs and significant landscape, archeological, and natural features of the area. In the case of outdoor advertising signs, exterior features shall be construed to mean the style, material, size, and location of all such signs.
F	
Facility	As used in <u>Chapter 12, Solid Waste</u> , the East Carolina Environmental Landfill in Bertie County, North Carolina. solid waste
Facility Owner	For the purposes of the wind energy facilities standards in this Ordinance, facility owner means the entity or entities having controlling or majority equity interest in the wind energy facility, including their respective successors and assigns. zoning
Fall Zone	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. zoning
False Alarm	A visual, electronic, and/or audible signal transmitted by a signaling device which indicates the existence of an emergency situation, when in fact, no such emergency situation exists. fire
Family	One or more persons occupying a single-family dwelling unit, provided that unless all members are related by blood or marriage or that the dwelling unit is being used as a vacation rental under the North Carolina Vacation Rental Act (Chapter 42A of the North Carolina General Statutes), then no such family shall contain more than five persons. zoning
Federal Act	For the purposes of the <u>Chapter 14, Wastewater</u> , Public Law 92-500, the Federal Water Pollution Control Act. wastewater
Fee	An amount charged in accordance with the regulatory adopted fee schedule of the Town. general provisions
Fence	A physical barrier or enclosure consisting of wood, stone, brick, block, wire, metal, or similar material used as a boundary or means of protection or confinement, but not including a hedge or vegetation. new
Fire Chief or Other Fire Official	Individual(s) appointed by the Southern Shores Town Manager who hold valid certificates issued by the North Carolina Code Officials Qualification Board. fire
First Line of Stable Natural Vegetation	The line representing the boundary between the normal dry sand beach, which is subject to constant flux due to waves, tides, storms, and wind, and more stable upland areas. <ol style="list-style-type: none"> 1. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. 2. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line, based on visual observations of plant composition and density. 3. The vegetation may be considered natural when the majority of the plants are mature and additional species is native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent area that are naturally occurring. 4. In areas where there is no stable natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on-ground observations or by aerial photographic interpretation.
Flag Lot	See <u>Section 22.1.8, Rules of Measurement</u> . zoning
Flood Insurance	The insurance coverage provided under the National Flood Insurance Program. flood damage prevention
Flood Insurance Rate Map (FIRM)	An official map of a community, issued by the Federal Emergency Management Agency, on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated. flood damage prevention
Flood Insurance Study (FIS)	An examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data, in a community, issued

TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
	by the Federal Emergency Management Agency. The flood insurance study report includes flood insurance rate maps (FIRMs). flood damage prevention
Flood or Flooding	A general and temporary condition of partial or complete inundation of normally dry land areas from: 1. The overflow of inland or tidal waters; and/or 2. The unusual and rapid accumulation or runoff of surface waters from any source. flood damage prevention
Flood Zone	A geographical area shown on a flood hazard boundary map or flood insurance rate map that reflects the severity or type of flooding in the area. flood damage prevention
Floodplain	Any land area susceptible to being inundated by water from any source. flood damage prevention
Floodplain Administrator	The individual appointed to administer and enforce the floodplain management regulations. flood damage prevention
Floodplain Development Permit	Any type of permit that is required in conformance with the provisions of this chapter, prior to the commencement of any development activity. flood damage prevention
Floodplain Management	The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans. flood damage prevention
Floodplain Management Regulations	The standards and requirements in Chapter 22 and Chapter 28 of this Ordinance pertaining to zoning, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in floodprone areas. This term also describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage. flood damage prevention
Floodprone Area	See “Floodplain.” flood damage prevention
Floodproofing	Any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents. flood damage prevention
Following	Refers to the next items appearing immediately after the term. general provisions
Footprint	An area as located on the ground directly beneath a structure, as measured on the vertical plane along the outside perimeter of the structure, including the areas of any raised, elevated, or cantilevered portions of the structure located on or above the ground or on pilings, but excluding eaves or overhangs. zoning
Freeboard	The height added to the base flood elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization on the watershed. The base flood elevation plus the freeboard establishes the regulatory flood protection elevation. flood damage prevention
Front Lot line	See Section 22.1.8, Rules of Measurement .
Front Setback	See Section 22.1.8, Rules of Measurement .
Frontal Dune	In areas where there is a primary dune, that dune shall be deemed to be the frontal dune. Where there is no primary dune, the frontal dune is deemed to be the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value. Manmade mounds seaward of the natural line of frontal dunes and dunes created after June 1, 1979, shall not be considered to be frontal or primary dunes, except where no frontal or primary dune exists. new
Frontal Dune Dune System	See “Dune System, Frontal Dune.”
Functionally Dependent Facility	A facility which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities. flood damage prevention

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TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
Garbage	All putrescible waste, including animal offal and carcasses, recognizable industrial byproducts, and solid wastes from the domestic and commercial preparation, cooking, and dispensing of food and from the handling, storage, and sale of produce. Garbage does not include sewage and human waste. Wastewater
Geographic Antenna Coverage Area	The general vicinity within which an antenna serves the transmission requirements of a cellular or other broadcasting network. zoning
Grease and Oils	A group of substances with similar physical characteristics, including hydrocarbons, fatty acids, soaps, waxes, oils and any other material, that is extracted with a stated solvent from an acidified sample and that is not volatilized during the test. wastewater
Ground Elevation, Average	See <u>22.1.8.G, Elevation</u> .
Ground Elevation, Lowest	See <u>22.1.8.G, Elevation</u> .
Group Development	Multiple principal buildings on a single lot or site, such as a shopping center or group of apartments, where the land is not subdivided into customary streets and lots. subdivisions
Group Development, Residential	Development consisting solely of single-family detached or townhouse dwellings on individual lots less than 20,000 square feet in area in the RS-10 zoning district. zoning
H	
Habitable Floors and Stories	Enclosed living space within a structure located below the top plate. zoning
Habitable Space	See "Living Space."
Hazardous waste	Solid waste, or a combination of solid wastes that, because of quantity, concentration, or physical, chemical, or infectious characteristics, may: 1. Cause or significantly contribute to an increase in mortality, or an increase in serious irreversible or incapacitating reversible illness; or 2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. solid waste
Hazardous Waste Facility	As used in <u>Chapter 28, Flood Damage Prevention</u> , a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste as defined in Section 130A-290(a)(9) of the North Carolina General Statutes. flood damage prevention
Height, Maximum	See <u>Section 22.1.8.F.2, Height Determination</u> .
Height, Top Plate	See <u>Section 22.1.8.F.2, Height Determination</u> .
High Hazard Flood Area	A special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM, or other adopted flood map as zone "VE." new
Highest Adjacent Grade (HAG)	The highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure. flood damage prevention
Highway	See "Street."
Historic Structure	As used in <u>Chapter 28, Flood Damage Prevention</u> , any structure that is: 1. Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; 2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; 3. Individually listed on a local inventory of historic landmarks in communities with a Certified Local Government (CLG) Program; or 4. Certified as contributing to the historical significance of a historic district designated by a community with a Certified Local Government (CLG) Program. Certified Local Government (CLG) Programs are approved by the U.S. Department of the Interior, in cooperation with the state department of cultural resources through the state historic preservation officer, as having

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TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
	met the requirements of the National Historic Preservation Act of 1966, as amended in 1980. flood damage prevention
Hive	Any receptacle or container, or part of receptacle or container, which is made or prepared for the use of bees, or which is inhabited by bees. animals
Holding Tank Waste	Any waste from holding tanks, vessels, chemical toilets, campers, trailers, septic tanks, and vacuum pump tank trucks. wastewater
Home Occupation	A business, profession, occupation, or trade conducted for gain or support as an accessory use within a residential dwelling subject to the applicable accessory uses standards in <u>Chapter 22, Zoning</u> . zoning
Home-Based Business	See “Home Occupation.”
Hotel or Motel	A building or group of buildings in which sleeping accommodations are offered to the public and intended for temporary occupancy on an overnight or short term basis. Accessory uses may include restaurants, bars, offices, and onsite recreational facilities. Single-family homes are not hotels or motels. new
Household Trash	Waste material of any kind, other than garbage, associated with residential housekeeping including, but not limited to, sweepings, rags, cans, and dust. solid waste
I	
Ice Vending Structure (Automated)	An enclosed, free standing, unmanned structure that produces and vends bagged and bulk ice. zoning
Immediate Family	A person who is a father, mother, brother, sister, son, daughter, grandparent, or grandchild. offenses
Improved Dune Walkover Access	See “Dune Walkover Access, Improved.”
Incipient Inlet	An ocean-to-sound inlet which has been formed, or an inlet in the first stages of formation, or an inlet which has opened and is now closed as a result of a severe storm event. emergency
Indoor Entertainment	Performances, entertainment, or presentations consisting of or using electric or electronic amplified sound by live entertainers, or by prerecorded media, presented before audiences or customers (excluding adult entertainment). zoning
Indoor Entertainment Facilities	Facilities as a part of, or included in, the design or plan of, a building or structure to accommodate indoor entertainment as a principal or accessory use. zoning
Industrial Waste	For the purposes of <u>Chapter 14, Wastewater</u> , liquid or water-carried wastes from institutional, commercial and industrial processes and operations. wastewater
Intersection	The area included within the prolongation of the lateral curblines or, if none, then the lateral edge of roadway lines of two or more streets which join one another at any angle whether or not one such street crosses the other. Where a street includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided street by an intersecting street shall be regarded as a separate intersection. In the event that such intersecting street also includes two roadways 30 feet or more apart, then every crossing of two roadways of such streets shall be regarded as a separate intersection. vehicles
J	
Junked Motor Vehicle	As authorized and defined in Section 160A-303.2 of the North Carolina General Statutes, a vehicle that does not display a current license plate lawfully upon that vehicle and that: (1) Is partially dismantled or wrecked; (2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or (3) Is more than five years old and appears to be worth less than \$100.00. vehicles
K	
L	
Large Drive Through Facility	See “Drive Through Facility, Large.”
Large Home Dwelling	See “Dwelling, Large Home.”

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TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
Livestock	All animals except those commonly known as household pets, which includes dogs, cats, and small animals which may be kept in cages within a residence as household pets. Livestock shall include, but not be limited to, horses, cattle, goats, sheep, swine, and animals commonly known as farm animals. animals
Living Space	Enclosed conditioned areas within a structure that are designed or constructed for human habitation. All conditioned areas within a structure are presumed to be constructed for human habitation unless affirmatively shown to be to the contrary in a manner such that the use of the area cannot be modified (e.g., a conditioned wine cellar or refrigerated storage area).
Local Damage Assessment Team	A damage assessment team, required by the state division of emergency management, whose function is to assess losses to property immediately after a storm. The assessment is used to determine if the area can qualify for federal or state disaster assistance. emergency
Local Permit Officer	The designated CAMA official who administers and enforces the minor CAMA development permit program in areas of environmental concern (AEC) as established by the Coastal Management Act.
Lot	Any piece or parcel of land located entirely within the Town or the Town's ETJ, the boundaries of which have been established by some legal instrument of record, which fronts on and has ingress and egress by means of a public right-of-way or Town-approved private street and which is occupied or intended to be occupied by a building or group of buildings as provided herein with the customary accessories and open spaces. See <u>Section 22.1.8, Rules of Measurement</u> , for details on lot types, lot lines, and how dimensional standards are determined. Zoning A portion of a subdivision or any other parcel of land intended as a unit for transfer of ownership or for development or both. The term "lot" includes the term "plot," "parcel" or "tract." subdivisions
Lot Area	See <u>Section 22.1.8, Rules of Measurement</u> . zoning
Lot Coverage	See <u>Section 22.1.8, Rules of Measurement</u> . zoning
Lot Depth	See <u>Section 22.1.8, Rules of Measurement</u> . zoning
Lot Line, Front	See <u>Section 22.1.8, Rules of Measurement</u> . zoning
Lot Line, Rear	See <u>Section 22.1.8, Rules of Measurement</u> . zoning
Lot Line, Side	See <u>Section 22.1.8, Rules of Measurement</u> . zoning
Lot of Record	A lot which is part of a subdivision recorded in the office of the Dare County Register of Deeds, or a lot or parcel described by metes and bounds, the description of which has been so recorded. zoning
Lot Width	See <u>Section 22.1.8, Rules of Measurement</u> . zoning
Lot, Corner	See <u>Section 22.1.8, Rules of Measurement</u> . zoning
Lot, Cul-de-Sac	See <u>Section 22.1.8, Rules of Measurement</u> . zoning
Lot, Double Frontage	See <u>Section 22.1.8, Rules of Measurement</u> . subdivisions
Lot, Flag	See <u>Section 22.1.8, Rules of Measurement</u> . zoning
Lowest Adjacent Grade (LAG)	The elevation of the ground, sidewalk, or patio slab immediately next to the building, or deck support, after completion of the building. flood damage prevention
Lowest Floor	As used in <u>Chapter 28, Flood Damage Prevention</u> , the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable requirements of this Ordinance. flood damage prevention
Lowest Ground Elevation	See <u>22.1.8.G, Elevation</u> .

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TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
M	
Major Damaged Structure	A structure that can be made habitable with extensive repairs. Damage may include foundation, roof structure, and major structural components. The indicator for this category is if the cost to repair is greater than ten percent and less than 50 percent of the replacement cost of the entire structure at the time of damage. Zoning, emergency
Manufactured Home	As used in <u>Chapter 28, Flood Damage Prevention</u> , a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a recreational vehicle. flood damage prevention
Manufactured Home Park or Subdivision	As used in <u>Chapter 28, Flood Damage Prevention</u> , a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale. flood damage prevention
Marginal Access Road	See "Road, Marginal Access."
Market Value	As used in <u>Chapter 28, Flood Damage Prevention</u> , the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal, replacement cost depreciated for age of building and quality of construction (actual cash value), or adjusted tax assessed values. flood damage prevention
Maximum Density	See <u>Section 22.1.8.E, Residential Density</u> . zoning
Maximum Height	See "Height, Maximum."
Mean High Water Line	The average of all the high water heights observed over a period of several years.
Mean Low Water Line	The average of all the low water levels observed over a period of several years.
Mean Sea Level	The National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which base flood elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used. flood damage prevention
Measurement Line	The line from which the ocean hazard setback, as described in <u>Section 22.5.8.C, General Standards for Ocean Hazard Areas</u> , is measured in the unvegetated beach area of environmental concern, as determined in accordance with Section 15A NCAC 07H. 0305(a)(9) of the North Carolina Administrative Code. new
Medical Clinic	A building or structure or portion thereof where medical services are provided on an outpatient basis. Zoning
Micro Wireless Facility	A small wireless facility that is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.
Minor Damaged Structure	A structure that can be made habitable in a short period of time with minimal repairs. Damage may include doors, windows, floors, furnaces, water heaters, and other minor structural damage. An indicator for this category is if the cost to repair is ten percent or less of the replacement cost of the entire structure at the time of damage. Zoning, emergency
Minor Dead-end Road	See "Road, Minor Dead End."
Minor Works	Exterior changes to a designated landmark structure, building, area, or object that do not involve substantial alterations, additions, or removals that could impair the integrity of the property. Minor works shall be limited to those identified as minor works as those listed in the Historic District Commission's Design Guidelines documents.
Mobile Home	A preassembled dwelling unit, subject to federal Housing and Urban Development (HUD) Department standards, built on a chassis, with body width exceeding eight feet and body length exceeding 32 feet, designed to be used as a dwelling when connected to the required utilities, with or without a permanent foundation. zoning
Modular Home	A factory fabricated transportable building, subject to local building codes, designed to be used by itself or to be incorporated with similar units at a building site into a modular structure. zoning
Monopole	A slender self-supporting telecommunications tower consisting of a single pole. zoning

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TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
Moped	Vehicles having two or three wheels and operable pedals and equipped with a motor which does not exceed 50 cubic centimeters piston displacement and cannot propel that vehicle at a speed greater than 20 miles per hour on a level surface. vehicles
Motel	See “Hotel or Motel.” new
Motor Boat	Any vessel which operates on water and is propelled by an engine or motor, including, but not limited to, boats, barges, amphibious craft, water ski towing devices, jet skis, and hovercraft. new - noise
Motor Vehicle	As used in <u>Chapter 36, Offenses and Enforcement</u> , with regards to noise violations, a motor vehicle is any vehicle which is propelled or drawn on land by a motor, including but not limited to motorcycles, passenger cars, trucks, truck-trailers, semitrailers, campers, go-carts, amphibious craft on land, dune buggies, racing vehicles, mopeds, motorized bicycles, motorized scooters or skateboards. new - noise As used in <u>Chapter 8, Motor Vehicles and Traffic</u> , any machine designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle. Mopeds are exempted from this definition. vehicles
Muffler	An apparatus consisting of a series of chambers or baffled plates designed for the purpose of transmitting gases while reducing sound emanating from such apparatus. new - noise
Multifamily Dwelling	See “Dwelling, Multifamily.”
Multiuse Path	See “Sidewalk, Path, or Multiuse Path.”
N	
National Pollution Discharge Elimination System (NPDES) Permit	Surface water discharge permit administered by Federal and State authority (N.C. Environmental Management Commission). wastewater
Net Acreage	See <u>Section 22.1.8.E, Residential Density</u> . zoning
New Construction	As used in <u>Chapter 28, Flood Damage Prevention</u> , structures for which the start of construction commenced on or after the effective date of the original version of the Town’s flood damage prevention ordinance and includes any subsequent improvements to such structures. flood damage prevention
Night	The period of time each day beginning one hour after sunset and ending one hour before sunrise. offenses
Nighttime Hours	As used in <u>Section 36.6.5, Noise, Nighttime Hours</u> means the time between 10:01 PM and 6:59 AM local time. new – offenses (noise)
Noise	Any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans. new – offenses (noise)
Noise Disturbance	Any sound which endangers or injures the safety or health of humans or animals; a noise that disturbs a reasonable person with normal sensitivities; endangers or injures personal or real property; or is unreasonably loud, disturbing, or excessive. new – offenses (noise)
Noise Sensitive Zone	Any area designated by the Town for the purpose of ensuring exceptional quiet. Examples include rest homes, healthcare facilities, places of worship, educational institutions, and day care facilities. new – offenses (noise)
Nondischarge Permit	A permit for nondischarge treatment/disposal facilities, pretreatment facilities, or sewer collection systems (public and private) administered by the appropriate State authority (N.C. Environmental Management Commission). wastewater
Noncommunity Wastewater System	See “Wastewater System, Noncommunity.”
Nonconforming Use	See “Use, Nonconforming.”
Nude Model Studio	Any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. There is exempted from this definition any studio which is part of a school for artists who are regularly enrolled in a course of instruction in the arts, and in which the use of nude models involves less

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TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
	than ten percent of the course hours. zoning
Nudity or State of Nudity	Display of a human bare buttocks, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernibly turgid state even if completely and opaquely covered. zoning
Nuisance Vehicle	<p>A vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful, including a vehicle found to be:</p> <ol style="list-style-type: none"> (1) A breeding ground or harbor for mosquitoes, other insects, rats, or other pests; (2) A point of heavy growth of weeds or other noxious vegetation over eight inches in height; (3) A point of collection of pools or ponds of water; (4) A point of concentration of quantities of gasoline, oil, or other flammable or explosive materials as evidenced by odor; (5) One which has areas of confinement which cannot be operated from the inside, such as trunks, hoods, etc.; (6) So situated or located that there is a danger of it falling or turning over; (7) One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind; (8) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; or (9) Any other vehicle specifically declared a health and safety hazard and a public nuisance by the Town Manager. vehicles
O	
Oath	The term "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in like cases the terms "swear" and "sworn" shall be equivalent to the terms "affirm" and "affirmed." general provisions
Obstruction	Any object, building, or sign, whether manmade or natural including, without limitation, vehicles and trailers, dirt and sand berms, wood chip and/or mulch piles, fences, yard decorations, stakes, poles, posts, bulkheads, large stones/rocks, and concrete or other masonry walls. public property
Occupant	The term "occupant," applied to a building or land, includes any person who occupies the whole or a part of such building or land, whether alone or with others. general provisions
Occupied Building	For the purposes of the wind energy facilities standards in this Ordinance, occupied building means a residence, school, hospital, church, public library, or other buildings used for public gathering that is occupied or in use when the permit application is submitted. zoning
Ocean Beach	<p>The area of land consisting of unconsolidated soil material that extends from the mean low water line of the Atlantic Ocean landward to a point where either:</p> <ol style="list-style-type: none"> 1. The growth of vegetation occurs; or 2. A distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward. zoning
Ocean Dune Platform	A platform constructed on the frontal dune. zoning
Ocean Erodible Area	Ocean erodible area means the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. For rules for determining the extent of the ocean erodible area, see Section 22.1.8, Rules of Measurement. zoning
Ocean Hazard Area	<p>Ocean hazard areas include beaches, frontal dunes, inlet lands, and other areas in which geologic, vegetative and soil conditions indicate a substantial possibility of excessive erosion or flood damage.</p> <p>Ocean hazard areas are generally divided into two zones or areas: the ocean erodible area and the high hazard flood area. zoning; updated per statutes</p>
Oceanfront Setback	<p>A portion of oceanfront land measured landward from the first line of stable and natural vegetation whose improvement is limited and regulated by the North Carolina Coastal Resources Commission.</p> <p>For each lot developed adjacent to or near the Atlantic Ocean, the ocean hazard area of environmental concern (AEC) shall be determined by the ocean hazard setback, established for the ocean hazard AEC, as administered by the local permit officer representing the North Carolina Office of Coastal Management in accordance with the North Carolina Coastal Management Act (CAMA) of 1974.</p>

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TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
Office	A room or group of rooms used for conducting the affairs of a business, profession, or service industry. Examples include business, financial, governmental, and medical and professional offices. (first sentence is new; examples are from zoning)
Official Maps	Any maps officially adopted by the Town Council as a guide for the development of the Town. subdivisions
Official Plans	Any plans officially adopted by the Town Council as a guide for the development of the Town. subdivisions
Official Traffic Control Devices	All signs, signals, markings and devices not inconsistent with this Ordinance placed or erected by authority of the Town Manager or official having jurisdiction for the purpose of regulating, warning, or guiding traffic. vehicles
Official Traffic Signals	Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and proceed. vehicles
Otherwise Protected Area	An otherwise protected area. flood damage prevention
Opaque	The inability to see across or through a landscaping buffer or similar visual screen. new
Open Air Camping	Any act of living, residing, or sleeping at night, in the open air in a tent, sleeping bag, blanket, hammock, in an automobile or vehicle, or without any paraphernalia other than the clothes worn on the body. offenses
Open Burning	The burning of materials wherein products of combustion are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber. Open burning does not include road flares, smudgepots and similar devices associated with safety. For purposes of this definition, a chamber shall be regarded as enclosed when, during the time combustion occurs, only apertures, ducts, stacks, flues or chimneys necessary to provide combustion air and permit escape of exhaust gas are open. fire
Open Space	Unoccupied space that is open to the sky. zoning
Open Storage	An unroofed storage area, whether fenced or not. zoning
Operations Permit	For the purposes of the wastewater regulations, State, County, and Town authorization to operate the wastewater system. wastewater
Owner	The term "owner," applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant, or tenant by the entirety, of the whole or a part of such building or land. general provisions For the purposes of the Chapter 14, Wastewater, the individual, legal entity, or corporation to whom the Town issues all necessary permits and certificates to operate the wastewater system within the Town. wastewater
P	
Park	The standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while engaged in loading or unloading. vehicles
Parking Space	A vehicular storage space plus the necessary access space. zoning
Path	See "Sidewalk, Path, or Multiuse Path."
Pedestrian	Any person afoot. vehicles
Permits	For the purposes of the Chapter 14, Wastewater, all Federal, State, County and local written authorizations for wastewater system construction and operation. wastewater
Person	An individual, proprietorship, partnership, corporation, association, or other legal entity. zoning
Personal Property	See "Property, Personal."
Piling	A vertical post or column set in a bank or bottom. waterways
Planned Unit Development	Complete development of land which is under central control or for which central control mechanisms have been established in accordance with the requirements in Section 22.2.3.C, Planned Unit Development. zoning

Chapter 4 Definitions

4.3 Defined Terms^{28F}

TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
Police Officer	Every sworn officer of the Town police department. ³¹ vehicles
Pollution	For the purposes of Chapter 14, Wastewater , an alteration of the quality of the waters of the State by waste to a degree which unreasonably affects such waters for beneficial use, or affects the facilities which serve such beneficial uses. Pollution may include contamination. wastewater
Post	To erect, attach, or affix in any manner, including without limitation nailing, tacking, tying, gluing, pasting, painting, staking, marking, or writing. zoning
Post-Flood Insurance Rate Map (FIRM)	Construction or other development for which the start of construction occurred on or after the effective date of the initial flood insurance rate map for the Town. flood damage prevention
Preceding	Refers to the item or items appearing immediately before the term. general provisions
Pre- Flood Insurance Rate Map (FIRM)	Construction or other development for which the start of construction occurred before the effective date of the initial flood insurance rate map for the Town. flood damage prevention
Premises	For the purposes of Chapter 14, Wastewater , a parcel of real estate or portion thereof, including any improvements thereon, which is determined by the Town to be a single user for purposes of receiving, using and paying for service. wastewater
Primary Dune	The first mounds of sand located landward of the ocean beach having an elevation equal to the mean flood level for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind the same mound of sand.
Primary Dune Dune System	See Dune System, Primary Dune.”
Primary Frontal Dune	As used in Chapter 28, Flood Damage Prevention , A continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and over-topping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope. flood damage prevention
Primary Road	See “Road, Primary.”
Principal Building	See “Building, Principal.”
Principally Above Ground	As used in Chapter 28, Flood Damage Prevention , a condition where at least 51 percent of the actual cash value of the structure is above ground. flood damage prevention
Private Party	Events conducted at an event venue that are not open to the public, and are held by or on behalf of an individual or organization for the primary purpose of socializing or gathering. zoning
Private Road or Driveway	Every road or driveway not open to the use of the public as a matter of right for purposes of vehicular traffic. vehicles
Private Wastewater System	See “Wastewater System, Private.”
Property	The term "property" includes real and personal property. general provisions
Property, Personal	Includes every type of property except real property as defined in this Ordinance. general provisions
Property, Real	Land, tenements, and buildings. general provisions
Public Conveyance	Any vehicle, other than a taxicab, for transporting for a fare. vehicles
Public Right-of-Way	The entire area between property boundaries, which is owned by a government, dedicated to public use, or impressed with an easement for public use; which is primarily used for pedestrian or vehicular travel; and which is publicly maintained, in whole or in part, for such use; and includes without limitation the street, gutter, curb, shoulder, sidewalk, sidewalk area, parking or parking strip, planting strip, and any public way. zoning
Public Road	For the purposes of the wind energy facilities standards in this Ordinance, public road means a full passage right-of-way. zoning

³¹ Definition amended based on staff comment.

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TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
Public Safety and/or Nuisance	As used in <u>Chapter 28, Flood Damage Prevention</u> , anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin. flood damage prevention
Putrescible	Solid waste capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors and gases, such as kitchen wastes, offal, and animal carcasses. solid waste
Q	
R	
Real Property	See "Property, Real."
Real Property Boundary	See Boundary, Real Property."
Rear Lot Line	See <u>Section 22.1.8, Rules of Measurement</u> .
Rear Setback	See <u>Section 22.1.8, Rules of Measurement</u> .
Receptacles	For the purposes of <u>Chapter 12, Solid Waste</u> , two-wheeled separate receptacles for solid waste and for recycling. solid waste
Recreational Equipment	Boats and boat trailers, pickup campers or coaches (designed to be mounted on automotive vehicles), motorized dwellings, tent trailers, and similar devices. zoning
Recreational Fire	An outdoor fire burning materials other than rubbish or yard debris where the fuel being burned has a total fuel area of less than three feet or less than two feet in height for pleasure, religious, ceremonial, cooking, warmth or similar purposes. fire
Recreational Vehicle (RV)	As used in <u>Chapter 28, Flood Damage Prevention</u> , a vehicle which is: 1. Built on a single chassis; 2. 400 square feet or less when measured at the largest horizontal projection; 3. Designed to be self-propelled or permanently towable by a light-duty truck; and 4. Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use. flood damage prevention
Recyclable Materials	The following items will be accepted for recycling: steel food cans; aluminum cans, foil, and plates; green, brown, and clear glass bottles and containers (but excluding mirrors, window panes, and other flat glass); high-density polyethylene (HDPE) and polyethylene terephthalate (PETE) containers (e.g., detergent bottles); plastic milk, water, and #1 or #2 bottles (excluding auto lubricant bottles); paper, newspapers, magazines, catalogs, mail, cardboard, and corrugated boxes. solid waste
Recycling	The process by which solid waste or recovered materials are collected, separated, and processed for reuse or return to use in the form of raw materials and products. solid waste
Redevelopment	Any change of use or site plan amendment associated with existing development that requires approval by the Town. zoning
Reference Level	The bottom of the lowest horizontal structural member of the lowest floor, excluding the foundation system, for structures within all special flood hazard areas. flood damage prevention
Regulations	As used in <u>Chapter 10, Emergency Management</u> , all plans, programs and other emergency procedures deemed essential to emergency management. emergency
Regulatory Flood Protection Elevation	The base flood elevation plus the freeboard. In special flood hazard areas where base flood elevations (BFEs) have been determined, this elevation shall be the base flood elevation plus two feet of freeboard. flood damage prevention
Remedy a Violation	As used in <u>Chapter 28, Flood Damage Prevention</u> , to bring the structure or other development into compliance with state and Town floodplain management regulations or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the Ordinance or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development. flood damage prevention
Residential Child Day Care	See "Child Day Care, Residential."

Chapter 4 Definitions

4.3 Defined Terms 28F

TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
Residential Group Development	See “Group Development, Residential.”
Restaurant	A business engaged in the service of food and beverages to patrons seated inside a building, on a deck as delineated in a site plan approved by the Town or in a vehicle at a drive-through facility. zoning
Retail Shopping Center	A commercial structure which includes or is designed to include two or more retail establishments on a single or contiguous lot or parcel. zoning
Retail Store	Commercial enterprises that provide goods and/or services directly to the consumer, where such goods are available for immediate purchase and removal from the premises by the purchaser. Examples include antiques, books, cameras, candy, clothing, craft goods, delicatessens, drugs, flowers, food stores, gifts, hardware, health and beauty aids, hobby goods, household appliances, jewelry, leather goods, magazines, medical supplies, music and musical instruments, office supplies, sporting goods, tobacco products, toys, video rentals, and wine stores. (first sentence is new, examples list is from zoning.)
Right-of-Way	For the purposes of determining obstructions in the right-of-way, a right-of-way is any street, or that area adjacent to any street, that is owned, dedicated to, and accepted by the Town. zoning For the purposes of Section 36.6.5, Noise, right-of-way means street, avenue, boulevard, highway, sidewalk or alley which is owned or controlled by a governmental entity. new – offenses (noise)
Right-of-Way	For the purposes of the regulations in Chapter 8, Motor Vehicles and Traffic, the privilege of the immediate use of the roadway. Vehicles For the purposes of the regulations in Chapter 18, Streets, Sidewalks, and Other Public Property, right-of-way is defined as any street, or that area adjacent to any street, that is owned or dedicated to, and accepted by, the Town. public property
Riverine	Relating to, formed by, or resembling, a river (including tributaries), stream, brook, etc. flood damage prevention
Road	See “Street.”
Road, Collector	See “Road, Secondary.”
Road, Marginal Access	A minor or service road which parallels and is immediately adjacent to a primary road or highway, which provides access to the properties abutting it and which separates the abutting properties from high-speed vehicular traffic. subdivisions
Road, Primary	A road designed to carry heavy volumes of vehicular traffic. subdivisions
Road, Secondary	A road designed to carry medium volumes of vehicular traffic, to provide access to the primary road system and to provide access to abutting properties. subdivisions
S	
Safety Zone	A traffic island or other space officially set aside within a street for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone. vehicles
Salvage Yard	As used in Chapter 28, Flood Damage Prevention, Any nonresidential property used for the storage, collection, and/or recycling of any type of equipment, and includes, but is not limited to, vehicles, appliances, and related machinery. flood damage prevention
Sanitary Sewer	An underground, closed conduit (pipe) that transports liquid and waterborne wastes from residences, commercial buildings, and institutions, to a point of treatment and disposal. wastewater
Search Ring	The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure. zoning
Secondary Road	See “Road, Secondary.”

TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
Seminude	A state of dress in which clothing covers no more than the human bare buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernibly turgid state even if completely and opaquely covered. zoning
Septic System Improvement Permit	State and County certification of system plans and specifications and authorization to construct system from the North Carolina Department of Environmental Quality. ³² wastewater
Service Establishment	An establishment primarily engaged in the provision of frequent or recurrent needed services of a personal nature. Examples include banks; barber shops and beauty shops; business services such as copying, photocopying, and computer services; churches; dry cleaning and laundry pickup stations; funeral homes; indoor motion picture theaters; pharmacies; radio and television broadcasting studios, excluding transmitter sites; and shoe repair. (first sentence is new, examples list is from zoning.)
Setback	See <u>Section 22.1.8, Rules of Measurement.</u> zoning
Setback, Corner Side	See <u>Section 22.1.8, Rules of Measurement.</u> zoning
Setback, Front	See <u>Section 22.1.8, Rules of Measurement.</u> zoning
Setback, Oceanfront	See "Oceanfront Setback."
Setback, Rear	See <u>Section 22.1.8, Rules of Measurement.</u> zoning
Setback, Side	See <u>Section 22.1.8, Rules of Measurement.</u> zoning
Sexual Encounter Center	A business or commercial enterprise that, as one of its business purposes, offers for any form of consideration: (1) Physical contact by customers in the form of wrestling or tumbling between persons of the opposite sex; or (2) Activities between male and female persons, or persons of the same sex when one or more of the persons is in a state of nudity or seminudity. zoning
Sexually Oriented Business	A business which offers its customers or patrons any device, activity, or demonstration depicting specified sexual activities, or which is intended to appeal to sexual interests, titillation, or arousal of the customer or patron. A sexually oriented business shall include an adult establishment as defined in Section 14-202.10(2) of the North Carolina General Statutes and, in addition, without limitation: adult arcade, adult bookstore, adult video store, adult cabaret, adult media center, adult live entertainment business, adult motel, adult motion picture theater, adult mini motion picture theater, adult theater, adult escort agency, nude model studio, and sexual encounter center. zoning
Sexually Oriented Business Activities	Those activities usually provided for, promoted, or offered by a sexually oriented business as defined herein, whether or not, as the principal business purpose or as a sideline or accessory business purpose and whether or not in connection with or on the same premises with a business which is not a sexually oriented business. zoning
Sexually Oriented Devices	Devices defined in Section 14-202.10(9) of the North Carolina General Statutes. zoning
Sharps	Needles, syringes, scalpel blades, and broken glass. solid waste
Short Telecommunications Tower	See "Telecommunications Tower, Short."
Side Lot Line	See <u>Section 22.1.8, Rules of Measurement.</u>
Side Setback	See <u>Section 22.1.8, Rules of Measurement.</u>
Sidewalk, Path, or	Any portion of a street between the curblin and the adjacent property line intended for the use of pedestrians. general provisions

³² NCDEQ has been inserted to replace NCDNR in then original text. Change directed by staff.

TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
Multiuse Path	For the purpose of <u>Chapter 8, Motor Vehicles and Traffic</u> , that portion of a street between the curblines or the lateral lines of a roadway and the adjacent property lines intended for the use of pedestrians. vehicles
Sign	Any writing, pictorial representation, illustration, decoration (including any material used to differentiate sign copy from its background), landscaping form, emblem, symbol, design, trademark, banner, flag, pennant, captive balloon, streamer, spinner, ribbon, sculpture, statue, or any other figure or character that: (1) Is a structure or any part thereof (including the roof or wall of a building); or (2) Is written, printed, projected, painted, constructed, or otherwise placed or displayed upon or designed into landscaping or a structure or a board, plate, canopy, awning, marquee, or vehicle, or upon any material object or device whatsoever; and (3) By reason of its form, color, wording, symbol, design, illumination or motion, attracts or is designed to attract attention to the subject thereof or is used as a means of identification, advertisement, or announcement or political or artistic expression or decoration; but (4) Landscaping constitutes a sign only to the extent that it is planted, trimmed, graded, arranged, or installed in such a manner as to convey an explicit commercial message. zoning
Sign, Temporary	A sign intended to display messages of a transitory or temporary nature. Portable signs, or any sign not permanently embedded in the ground, or not permanently affixed to a building or sign structure that is permanently embedded in the ground, are considered temporary signs. A temporary sign is: (1) Intended for a temporary period; (2) Typically constructed from nondurable materials, including paper, cardboard, cloth, plastic, and/or wallboard; and (3) Does not constitute a structure subject to the Town's building code and zoning provisions. zoning
Sign, Vehicle	A permanent or temporary sign affixed, painted on or placed in or upon any parked vehicle, parked trailer, or any parked device capable of being towed, which is displayed in public view under such circumstances as to location on the premises, time of day, duration, availability of other parking space on the premises, and the proximity of the vehicle to the area on the premises where it is loaded, unloaded or otherwise carries out its principal function, which circumstances indicate that the primary purpose of said display is to attract the attention of the public rather than to serve the business of the owner thereof in the manner which is customary for said vehicle. zoning
Signaling Device	An electrically-operated instrument which automatically transmits a voice alarm or electronic pulse over regular or leased telephone lines upon detection of an emergency situation. fire
Signature	The term "signature" includes a mark when the person cannot write as well as an electronic signature. general provisions
Single Residential Unit	Each dwelling occupied by one family. solid waste
Single-Family Dwelling	See "Dwelling, Single-Family."
Small Drive Through Facility	See Drive Through Facility, Small."
Small Wireless Facility	A wireless facility that meets both of the following qualifications: 1. Each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than six cubic feet. 2. All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For purposes of this sub subdivision, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground based enclosures, grounding equipment, power transfer switches, cut off switches, vertical cable runs for the connection of power and other services, or other support structures.

Chapter 4 Definitions

4.3 Defined Terms^{28F}

TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
Smoking	The inhaling, exhaling, burning, or carrying of a lighted pipe, cigar, cigarette, or other combustible tobacco product. "Smoking" includes the use of electronic cigarettes, or "e-cigarettes," and vapor inhalation devices. ³³ public property
Solid Waste	1. The term "solid waste" means any hazardous or nonhazardous garbage, refuse, or sludge (from a waste treatment plant, water supply treatment plant, air pollution control facility, or domestic sewage and sludge generated by the treatment thereof) that is either discarded or being accumulated and stored prior to being discarded. 2. The term does not include: a. Fecal waste from fowl and animals, other than humans; b. Solid or dissolved material in domestic sewage, irrigation return flows, wastewater sludge and discharges, incidental to and generated by point sources, subject to permits under Section 402 of the Water Pollution Control Act (PL 92-500) and permits granted under Section 143-215.1 of the North Carolina General Statutes by the Environmental Management Commission; c. Oils and other liquid hydrocarbons controlled under Sections 143-215.75 through 143-215.104.U of the North Carolina General Statutes; d. Any source, special nuclear or byproduct material governed by the Atomic Energy Act of 1954, as amended (42 USC 2011); or e. Mining refuse covered by Sections 74-46 through 74-68 of the North Carolina General Statutes. solid waste
Solid Waste	Any solid wastes that may be disposed of in sanitary landfills, including, without limitation, garbage, refuse, trash and other discarded material, whether from residential, commercial, industrial, or institutional sources, which wastes are typically found in household, commercial, or municipal refuse. solid waste
Solid Waste Collector	Any person who collects, transports, or disposes of solid wastes for compensation, other than one who removes solid waste from his own premises. solid waste
Solid Waste Disposal Facility	As used in <u>Chapter 28, Flood Damage Prevention</u> , any facility involved in the disposal of solid waste as defined in Section 130A-290(a)(35) of the North Carolina General Statutes. flood damage prevention
Solid Waste Disposal Site	As used in <u>Chapter 28, Flood Damage Prevention</u> , any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method, as defined in Section 130A-290(a)(36) of the North Carolina General Statutes. flood damage prevention
Solid Waste License or License	A license for the collection, transportation, and disposal of solid waste pursuant to <u>Section 12.8.1, Solid Waste License Required</u> . solid waste
Sound Amplification Device	Any radio, tape player, compact disc player, MP3 player, loud speaker, amplifier, or other device used for the amplification of sound. new – offenses (sound)
Sound Dissipating Device	See "Muffler."
Sound Level in Decibels	The level measured on the A-weighted scale as defined in the American National Standards S-1.4-1983. new – offenses (sound)
Sound Level Meter	An instrument designed for the measuring of sound levels and a means of displaying the sound level using the A-weighting network. new – offenses (sound)
Special Flood Hazard Area (SFHA)	The land in the floodplain subject to a one percent or greater chance of being flooded in any given year, as determined in Section 28.3.3, <u>Basis for Establishing the Special Flood Hazard Areas</u> . flood damage prevention
Special Item Collection	Material, other than garbage, that requires special efforts or increased manpower or machinery to pick up. Large bulky items, such as stoves, refrigerators, water heaters, sofas, box springs, etc., which cannot normally be loaded in an automated garbage truck, is considered a special item for collection. Special items for collection do not include building materials, roofing, soil, rocks, concrete, tree stumps, etc. solid waste
Specified Anatomical Areas	Areas of the human body defined in Section 14-202.10(10) of the North Carolina General Statutes. zoning
Specified Sexual Activities	Activities defined in Section 14-202.10(11) of the North Carolina General Statutes. zoning

³³ At staff's recommendation, clarifying language has been added to include use of e-cigarettes and vapor devices in the definition of smoking.

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TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
Standing	Any stopping of a vehicle, whether occupied or not. vehicles
Start of Construction	As used in <u>Chapter 28, Flood Damage Prevention</u> , the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building. flood damage prevention
State	The State of North Carolina. general provisions
Stealth Structure	A wireless support structure designed to look like or incorporated within a structure which has a primary purpose as something other than a wireless support structure or is otherwise designed in a manner in which all wireless facilities attached to the structure are concealed from view, including, but not limited to trees, flag poles, slick sticks (flag poles without flags), clock towers, bell towers, or church steeples. zoning
Stop or Stopping	For the purpose of <u>Chapter 8, Motor Vehicles and Traffic</u> , the complete cessation of movement. When stopping is prohibited, "stop" means any stopping of a vehicle except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer or traffic control sign or signal. vehicles
Storm Drain or Storm Sewer	A sewer which carries stormwater or surface water runoff. wastewater
Storm Event	Any natural weather event causing damage and destruction of property, including, but not limited to: hurricanes, northeasters, tornadoes, lightning, waterspouts, rain, ice, or snow storms.) emergency
Street	For the purposes of <u>Chapter 22, Zoning</u> , any permanently dedicated right-of-way which has been accepted for maintenance by NCDOT or the Town or, any other open area providing the principal means of access for vehicles or pedestrians from a public right-of-way to a building or use of land. zoning For the purposes of <u>Chapter 8, Motor Vehicles and Traffic</u> , the entire width between property or right-of-way lines of every way or place of whatever nature; when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic. The terms "highway" and "street" and their cognates are synonymous. vehicles
Structure	As used in <u>Chapter 28, Flood Damage Prevention</u> , a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground. flood damage prevention Anything constructed or erected, the use of which requires location of the ground, or attachment to something having location on the ground. zoning
Subdivider	Any person who subdivides or develops any land deemed to be a subdivision as defined in this Ordinance. subdivisions
Subdivision	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 are created for the purpose of sale or building development (whether immediate or future), and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by <u>Chapter 26, Subdivisions</u> : 1. The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the Town as required by <u>Chapter 26, Subdivisions</u> . 2. The division of land into parcels greater than ten acres if 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. 4. The division of a tract of land in single ownership, the entire area of which is no greater than two acres, into not more than three lots, where no street right-of-way dedication is involved, and

Chapter 4 Definitions

4.3 Defined Terms 28F

TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
	if the resultant lots are equal to or exceed the standards of the Town as required by <u>Chapter 26, Subdivisions</u> . subdivisions
Subscription	The term “subscription” includes a mark when the person cannot write. general provisions
Substantial Damage	As used in <u>Chapter 28, Flood Damage Prevention</u> , damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See Substantial improvement. The term "substantial damage" also means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. flood damage prevention
Substantial Improvement	As used in <u>Chapter 28, Flood Damage Prevention</u> , any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either: 1. Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the Town Manager or a designee and which are the minimum necessary to ensure safe living conditions; or 2. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure. flood damage prevention
Substantial Modification	For the purposes of the wireless telecommunications standards in this Ordinance, substantial modification means collocating of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure or the equipment enclosure. A collocation is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a collocation does not meet the listed criteria constitutes a substantial modification to the physical dimensions of the wireless support structure or equipment compound. (1) Increasing the existing vertical height of the structure by the greater of (i) more than ten percent or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet. (2) Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance. (3) Increasing the square footage of the existing equipment compound by more than 2,500 square feet. zoning
Sunshade	A permanent or removable fixture on an ocean dune platform that is designed to shield persons on the platform from the rays of the sun. The sunshade may be comprised of wood, metal, plastic, or fabric stretched over a frame. new
Surfboard	A fiberglass and foam combination, at least five feet in length, having a minimum of one fin and used in conjunction with a leash. waterways
Surfing Leash	A line capable of being attached to a board used for surfing and to the surfer, which is of sufficient diameter and strength to restrain the board at a distance from the surfer no greater than the length of the line. waterways
Swimming	Is defined to mean and include any entry into a waterbody whether or not assisted by a raft, float, or other aid or device commonly used, but shall not include any entry assisted by a surfboard as defined in this section. waterways
Swimming Lessons	A period of instruction in teaching a person to propel through water by means of movement of the body. A residential service, which shall not be deemed a home occupation as provided in <u>Chapter 22, Zoning</u> . zoning
Swimming Pool	Any structure intended for swimming or recreational bathing that contains waters over 24 inches deep. This includes in-ground, aboveground and on-ground pools. zoning
T	
Tall Telecommunications	See “Telecommunications Tower, Tall.”

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TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
Tower	
Telecommunications Accessory Equipment Structure	A building or cabinet-like structure located adjacent to, or in the immediate vicinity of a wireless support structure or antenna to house equipment incidental to the receiving or transmitting of wireless broadcasts, cellular telephone calls, voice messaging, and paging services. zoning
Temporary Sign	See "Sign, Temporary."
Temporary Use Permit	A permit authorizing the operation of a temporary use or special event.
Tenant	The term "tenant," applied to a building or land, includes any person who occupies the whole or a part of such building or land, whether alone or with others. general provisions
Tent	Portable shelter supported by a framework of multiple poles. waterways
Top Plate	The point at which the structural wall framing and the structural roof framing join together at the top of the uppermost habitable floor. In cases where a building is designed with top plates at more than one horizontal level, the uppermost plate is the top plate. zoning
Top Plate Height	See <u>Section 22.1.8.F.2, Height Determination</u> .
Total Suspended Solids (TSS)	The measure of the solids that either float on the surface or are held in suspension in wastes, and which are removable from the liquid by laboratory filtering. wastewater
Tower, Short Telecommunications	A telecommunications tower with a height that is less than 70 feet. zoning
Tower, Tall Telecommunications	A telecommunications tower with a height that is 70 feet tall or greater up to a height of 195 feet tall. zoning
Tower, Telecommunication	A freestanding wireless support structure, including stealth structures which are not incorporated within another type of structure, which are intended to support one or more wireless facilities. zoning
Town	The term "the Town" or "this Town" means the Town of Southern Shores in Dare County, North Carolina. general provisions; wastewater
Town Council	The term "Town Council" or "Council" means the elected members of the Town Council of the Town of Southern Shores. general provisions
Town Manager	The term "Town Manager" means the appointed Town Manager of the Town of Southern Shores or his designee. general provisions
Town Right-of-Way	A right-of-way owned, leased, or operated by the Town, including any public street or alley that is not a part of the State highway system.
Town Utility Pole	A pole owned by the Town located in the Town right-of-way that provides lighting, traffic control, or a similar function.
Townhouse Dwelling	See "Dwelling, Townhouse."
Traditional Family Event	See "Event, Traditional Family."
Traffic	Pedestrians, ridden or herded animals, vehicles, and other conveyances either singly or together while using any street for purposes of travel. vehicles
Trailer	A use type including any of the following: (1) Travel trailer. A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation uses. (2) Pickup coach. A structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation, and vacation. (3) Motor home. A portable, temporary dwelling to be used for travel, recreation, and vacation, constructed as an integral part of a self-propelled vehicle. (4) Camping trailer. A folding structure of canvas or other material mounted on wheels and designed for travel, recreation and vacation use. zoning
Transfer Stations	The following three transfer stations: Chowan/Gates/Perquimans Counties Transfer Station, Currituck County Transfer Station, and Dare County Transfer Station. solid waste
Treatment Works or Plants	Any devices and systems used in the collection, storage, treatment, recycling, and reclamation of community or non-community wastewater or industrial wastes of a liquid nature, wastewater collection systems, pumping, power, and other equipment and appurtenances, extensions,

Chapter 4 Definitions

4.3 Defined Terms 28F

TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
	improvements, remodeling, additions and alterations thereof; and any works, including site acquisition of the land, that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of community wastes, or industrial and sanitary sewer systems. wastewater
Two-family Dwelling	See “Dwelling, Two-Family.”
U	
Unimproved Dune Walkover Access	See “Dune Walkover Access, Unimproved.”
Use	Any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained, or occupied; or any activity, occupation, business or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land. zoning
Use, Accessory	A use that is incidental, appropriate, and subordinate to the principal use of land or buildings and located on the same lot.
Use, Conditional	A use that may not be appropriate in the zoning district where proposed without additional restriction on the number, area, location, or relation to the neighborhood, to promote the public health, safety, morals, and general welfare. zoning
Use, Nonconforming	A use of building or land which does not conform with the regulations of the district in which it is situated, but was lawful before adoption of this Town Code. zoning
Utility Pole	A structure that is designed for and used to carry lines, cables, wires, lighting facilities, or small wireless facilities for telephone, cable television, electricity, lighting, or wireless services. zoning
V	
Variance	A relaxation of the terms of this Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this Town Code would result in unnecessary and undue hardships. zoning
Vegetation Line	See “First Line of Stable Vegetation.”
Vehicle	Every device in, upon, or by which any person or property is or may be transported or drawn upon a street, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided that for the purposes of <u>Chapter 8, Motor Vehicles and Traffic</u> , bicycles shall be deemed vehicles and every rider of a bicycle upon a street shall be subject to the provisions of in Chapter 8 applicable to the driver of a vehicle, except those which by their nature can have no application. vehicles
Vehicle Sign	See “Sign, Vehicle.”
Violation	As used in <u>Chapter 28, Flood Damage Prevention</u> , the failure of a structure or other development to be fully compliant with the Town’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in <u>Section 28.4, Administration, Administration, and Section 28.5, Flood Hazard Reduction</u> , is presumed to be in violation of this Ordinance until such time as that documentation is provided. flood damage prevention
Volunteer	Contributing a service, equipment, or facilities to the emergency management team without remuneration. emergency
W	
Waste	Sewage and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation of whatever nature, including such waste placed within containers for whatever nature prior to, and for purposes of, disposal. wastewater
Wastewater	Wastes and water, whether treated or untreated, discharged to a treatment works or plant. wastewater
Wastewater Constituents and Characteristics	The individual chemical, physical, bacteriological and radiological parameters, including volume and flowrate, and such other parameters that serve to define, classify or measure the contents, quality and strength of wastewater. wastewater

Chapter 4 Definitions

4.3 Defined Terms 28F

TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
Wastewater Systems, Community	Any treatment works which serves at least 15 service connections (dwelling units) used by year-round residents. wastewater
Wastewater Systems, Noncommunity	Any treatment works which serves hotels, motels, restaurants, schools, factories, and other public accommodations. wastewater
Wastewater Systems, Private	Any treatment works which is neither a community nor non-community system. Included are single-family and multifamily dwelling units, some private business offices or any system restricted to public use. wastewater
Water Surface Elevation (WSE)	The height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas. flood damage prevention
Water Tower	A water storage tank, 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. zoning
Watercourse	As used in Chapter 28, Flood Damage Prevention , a lake, river, creek, stream, wash, channel, or other topographic feature on or over which waters flow at least periodically. The term "watercourse" includes specifically designated areas in which substantial flood damage may occur. flood damage prevention
Waterways	Those bodies of water within the borders of the Town which connect to each other and with Currituck Sound or Ginguite Bay, commonly called lagoons, inlets, or canals. waterways
Wind Energy Conversion Facility	A single system designed to supplement other electricity sources as an accessory use to a structure, wherein the power generated is used primarily for on-site consumption. The facility may consist of a wind turbine, support structure, foundation, battery bank, and transformer. The support structure may be free standing or attached to a structure. zoning
Wind Power	The conversion of wind energy into another form of energy. zoning
Wind Turbine	A wind energy conversion system that converts wind energy into electricity. zoning
Wireless Facility	Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, wires, coaxial or fiber optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term shall not include any of the following: (1) The structure or improvements on, under, within, or adjacent to which the equipment is collocated; (2) Wireline backhaul facilities; or (3) Coaxial or fiber optic cable that is between wireless structures or utility poles or city utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna. zoning
Wireless Infrastructure Provider	Any person with a certificate to provide telecommunications service in the State who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures for small wireless facilities but that does not provide wireless services.
Wireless Provider	A wireless infrastructure provider or a wireless services provider.
Wireless Services	Any services, using licensed or unlicensed wireless spectrum, including the use of Wi Fi, whether at a fixed location or mobile, provided to the public using wireless facilities.
Wireless Services Provider	A person who provides wireless services.
Wireless Support Structure	A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole or a Town utility pole is not a wireless support structure. zoning
Wireless Telecommunications Site	The combination of all of the materials and equipment on a site used to provide wireless telecommunications service including, but not limited to, any wireless support structures, telecommunications towers, wireless facilities, antennae, ground based communications equipment, telecommunications accessory equipment structures, and equipment compounds. zoning
Writing or Written	The terms "writing" and "written" include printing, engraving, lithographing, and any other mode of representing words and letters. general provisions

X

TABLE 4.3: DEFINED TERMS

TERM	DEFINITION
Y	
Yard	A required open space, other than a court, unoccupied and unobstructed 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, ocean dune platforms, walks, accessible ramps, steps and other customary yard accessories, ornaments, and furniture may be permitted in any required yard subject to height limitations and requirements limiting obstruction of visibility or any other requirements of this Town Code. zoning
Yard Trimmings or Yard Waste	Leaves, twigs, and grass clippings, or the combination of these, that are usually associated with yard or lawn maintenance activity. Such refuse shall not be placed in any receptacles for collection by the Town. solid waste
Z	
Zoning Administrator	A person who is appointed by the Town Manager and is responsible for administering and enforcing <u>Chapter 22, Zoning</u> , of this Town Code. zoning
Zoning Permit	A permit issued by the Town Manager or a designee, which authorizes the recipient to make use of property in accordance with the requirements established in this Town Code. zoning

CHAPTER 5.

[RESERVED]

CHAPTER 6. FIRE PREVENTION AND PROTECTION

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GUIDANCE FROM CODE ASSESSMENT:

Chapter 6 sets out the fire-related provisions. The current provisions in Chapter 14 are somewhat disjointed, include no names for the individual permits required, blend standards for individuals with requirements applied to the Town, and include provisions related to burglar alarms under the heading of fire alarms.

We suggest the fire-related chapter be reorganized to relocate the definitions to the consolidated definitions chapter, and relocate the administrative aspects (like powers & duties) to the administration chapter.

There were several important staff comments regarding this section, including referencing the North Carolina State Fire Prevention Code, updating statutory references generally, and removing inconsistent or confusing language such as that found in Section 14.4.a , 14.37.a, and 14.68.9.

There were also several calls for additional clarity involving fire inspections generally, which uses require fire protection systems, requirements for fire lane marking, prohibition of landscaping near fire lanes and standpipes, exemptions to the flammable storage prohibitions, and the requirements for fire hydrants. There were also suggestions for modifications to the open burning provisions including more limits on what may be burned and the minimum age limit for supervision of open burning.

6.1. STATUTORY AUTHORITY³⁴

6.1.1. REFERENCES

The statutory authorization for the standards and procedures in this chapter are derived from:

- A.** Chapters 58 and 69 of the North Carolina General Statutes, regarding fire protection generally;
- B.** Section 160A-291 et seq. of the North Carolina General Statutes, regarding fire protection in municipalities;
- C.** Section 69-8 et seq. of the North Carolina General Statutes, regarding fire escapes;
- D.** Section 69-39 of the North Carolina General Statutes, regarding authority of firefighters;
- E.** Section 14-136 et seq. of the North Carolina General Statutes, regarding setting fires unlawfully;
- F.** Section 160A-293 of the North Carolina General Statutes, regarding authorization of municipalities to install and maintain water mains and hydrants; and
- G.** Section 160A-183 of the North Carolina General Statutes, regarding authorization of municipalities to regulate or prohibit explosive and corrosive substances.

6.2. PURPOSE AND INTENT³⁵

The purpose of this chapter is to promote the public safety and welfare and to prescribe regulations governing conditions hazardous to life and property from fire or explosions by the adoption of minimum fire prevention standards.

6.3. FIRE PREVENTION CODE

6.3.1. ADOPTION OF STATE FIRE PREVENTION CODE³⁶

For the purpose of prescribing regulations governing conditions hazardous to life and property from fire and explosions, the Town Council hereby adopts the North Carolina State Building Code: Fire Prevention Code as amended, including all future editions and amendments, which by reference, is adopted and incorporated in this chapter.

6.3.2. FIRE LIMITS³⁷

A. ESTABLISHED

1. A fire district (also known as primary fire limit) is hereby established.
2. This fire district is the fire district referenced in Chapter 3, volume I of the State Building Code.
3. The fire district is shown on a map entitled "Town of Southern Shores, Fire District Overlay", which is hereby adopted, and which shall be maintained by the Town Clerk.
4. In the event of a conflict between the written description of the fire district boundaries and the map, the written description of the fire district boundaries and the map, the written description shall prevail.

B. DEFINED

1. The fire district is defined as the area within the following boundaries:
 - a. South of residential Block 176, Southern Shores;
 - b. West of public right-of-way of Juniper Trail;
 - c. East of that parcel of land now or formerly known as number 5655 U.S. Hwy 158;
 - d. North of public right-of-way of U.S. Hwy 158; and

³⁴ This section is derived from the footnotes at the head of current chapter 14.

³⁵ This new purpose and intent section is offered for the Town's consideration.

³⁶ This section comes from Section 14-28 of the current Town code. It has been revised based on comments by the Fire Marshal.

³⁷ This section comes from Section 14-36 of the current Town Code.

- e. North of land parcels now or formerly known as Wachovia Bank and East Carolina Bank, such area being generally known as The Marketplace Shopping Center.
2. Building restrictions and exceptions thereto shall be as set forth in appendix D, 101.1 of the State Building Code.

6.3.3. ENFORCEMENT AND INSPECTIONS

A. SCHEDULE FOR INSPECTION³⁸

1. The Fire Inspector will conduct periodic inspections of all structures or premises that are regulated by the Fire Code which may pose danger to life, property, or public welfare from the hazard of fire, explosion or related hazards.
2. Such inspections will be composed of, but not limited to, prevention, detection, evacuation, fire containment and extinguishing systems. Inspections will be conducted as outlined in Section 106 of the North Carolina Building Code: Fire Prevention Code.
3. One- and two-family dwellings are exempt from these inspections in accordance with Sections 153A-351 and 160A-351 North Carolina General Statutes.

B. INSPECTION OF PREMISES³⁹

1. The Fire Inspector has the right at all reasonable hours, for the purpose of examination, to enter into and upon all commercial and public buildings and premises within the Town.
2. When a Fire Inspector shall find in any building or upon any premises combustible material or inflammable conditions dangerous to the safety of such buildings or premises, they shall order the same to be removed or remedied.

C. WARRANTS FOR INSPECTION⁴⁰

Warrants to carry out inspection shall be issued and carried out as specified in Section 15-27.2 of the North Carolina General Statutes.

D. HAZARD MITIGATION⁴¹

Annually, the Fire Chief or Other Fire Official shall assess the Town's susceptibility to wildfire per the Town's adopted Hazard Mitigation Plan and submit a report to the Town listing lots and areas that have combustible accumulations.

6.3.4. PERMITS

A. FIRE PREVENTION PERMITS GENERALLY

1. When required, a permit shall be obtained from the Town Manager, or a designee, and a copy of such certificate shall be filed with the Fire Inspector prior to beginning any such work.
2. Any person to whom a certificate has been granted shall, upon request, produce and show proper identification and the certificate to anyone, including the Fire Inspector.
3. Any application for, or acceptance of, any permit requested or issued pursuant to this chapter constitutes agreement and consent by the person making the application and accepting the permit to allow the Fire Inspector to enter the premises at any reasonable time to conduct such inspections.

B. REQUIRED PERMITS⁴²

A permit is required of the responsible person conducting any of the following activities when such activities are conducted on a for-hire basis:

1. Use of any explosive material;
2. Any blasting or demolition activity;
3. Any fireworks display;

³⁸ This section comes from Section 14-35(d) of the current Town Code. It has been revised based on comments by the Fire Marshal.

³⁹ This section comes from Section 14-35(a) of the current Town Code.

⁴⁰ This section comes from Section 14-35(c) of the current Town Code.

⁴¹ This section comes from Section 14-35(e) of the current Town Code.

⁴² This section comes from Section 14-38 of the current Town Code with minor text revisions for clarity.

Chapter 6 Fire Prevention and Protection

6.4 Automatic Protection System (Fire Alarm) Permit^{44F}

4. The repair or testing of any portable or fixed fire extinguishing device or system;
5. Except for work done in single-family and two-family dwellings, the installation of any fire alarm, fire communication system or fixed fire extinguishing device or system; or
6. Cleaning of ducts used for the removal of grease-laden vapors.

6.3.5. VIOLATIONS

See Section 36.5.15, Violations of the Fire Code, in Chapter 36, Offenses and Enforcement.

6.3.6. ABATEMENT⁴³

An order of the Fire Inspector to remove or remedy dangerous conditions shall be complied with by the owner or occupant of such buildings or premises.

6.3.7. APPEAL⁴⁴

- A. Unless otherwise provided by law, appeals from any order, decision, or determination by a member of the inspection department pertaining to the State Building Code or the State Fire Prevention Code or other state building laws shall be taken to the Commissioner of Insurance or his designee or other official specified in Section 143-139, of the North Carolina General Statutes, by filing a written notice with the Commissioner and the Town Manager, or a designee, within ten days after the order, decision, or determination.
- B. Further appeals may be taken to the State Building Code Council or to the courts as provided by Section 160A-434 of the North Carolina General Statutes.

6.4. AUTOMATIC PROTECTION SYSTEM (FIRE ALARM) PERMIT⁴⁵

6.4.1. APPLICABILITY

- A. No automatic protection system which utilizes a signaling device shall be installed until a permit has been obtained in the name of the owner of the premises by either the owner of the premises or an alarm system business which services or maintains the automatic protection system.
- B. Single-family and two-family dwellings are exempt from the requirement for a fire alarm permit.

6.4.2. APPLICATION

- A. Applications for permits shall be submitted to the Town Manager, or a designee, on a form supplied by the Town and shall include, but not be limited to the following information:
 1. The name, address, and telephone number of the business or premises where the system will be installed; and
 2. The type of signaling device installed.
- B. Permit applications shall be submitted by the alarm system business or property owner in the name of the owner of the business or premises where the system is to be installed.
- C. Permit applications shall contain the following "hold harmless" statement:

"The owner of the premises for which the permit is issued, by his acceptance thereof, agrees for himself, his lessees, agents, heirs, successors and assigns that for so long as an automatic protection system is installed on the premises he shall hold the Town of Southern Shores harmless and the Town of Southern Shores, its agents and employees, and the fire department and its members shall not be liable for any damage to the premises caused by the entry of any member of the Southern Shores police department or the fire department or its members in response to an alarm initiated by the automatic protection system."

6.4.3. APPROVAL

⁴³ This section comes from the remaining portion of Section 14-35(a) of the current Town Code.

⁴⁴ This section comes from Section 14-35(b) of the current Town Code.

⁴⁵ At the suggestion of staff, references to burglar alarms have been removed from this section. This section comes from Section 14-4 of the current Town Code. Staff recommended revisions have been included in this text.

- A.** The Fire Inspector shall approve applications for a permit required by this section if they find that:
1. The automatic protection system is to be installed, serviced, and maintained according to the North Carolina Fire Code and NFPA 72 National Fire Alarm and Signaling Code by an alarm system business which maintains a service organization capable of promptly and effectively repairing, maintaining, or otherwise servicing the automatic alarm system sold or leased by it;
 2. The alarm is to be installed, serviced, and maintained by an alarm system business, licensed in North Carolina pursuant to Section 74D of the North General Statutes; and
 3. The proposed use of the automatic protection system is to transmit a signal message or warning to a designated communications center.
- B.** It shall be unlawful for any person to install, maintain, or operate an automatic protection system, containing an off-premises signaling device, where the signal is transmitted to any Dare County emergency dispatch telephone number.
- C.** The Town may require all automatic protection systems to be compatible with a uniform monitoring system designed to receive visual and/or audible signals over a signal line or by electronic transmission.

6.4.4. ISSUANCE

Upon approval of the application for a permit by the Fire Inspector, the automatic system protection permit shall be issued in the name of the owner of the business or premises.

6.4.5. INSPECTION

The Fire Chief or Other Fire Official shall have the right to inspect any automatic protection system on the premises where it is installed at reasonable times.

6.4.6. REVOCATION OF PERMITS

A. REVOCATION FOR VIOLATION

The Fire Inspector may revoke or suspend any permit issued pursuant to the provisions of this section (after giving written notice, by certified mail, to the permit holder and an opportunity for the permit holder to be heard) if he determines the automatic protection system under the permit has been installed or operated in violation of the provisions of this section.

B. FALSE ALARMS

1. Each person holding a permit for an automatic protection system shall be responsible for any false alarm transmitted by the system.
2. The Town shall investigate and maintain a record of all false alarms so transmitted and, pursuant to the required notice and opportunity to be heard, the Town may revoke or suspend the permit for the operation of any automatic protection system involved in the transmission of services.
3. The Town may amend its fee schedule to include a fee or penalty for the third or any subsequent false alarm received from the same premises in a calendar year.

6.4.7. TOWN LIABILITY LIMITED

The Town assumes no liability for any defects in operation of automatic protection systems nor for any failure or neglect to respond appropriately upon receipt of an alarm from such a source, nor for the failure or neglect of any person in connection with the installation and operation of equipment, the transmission of alarm signals, and pre-recorded alarm messages or the relaying of such signals and messages.

6.5. FIRE SAFETY STANDARDS

6.5.1. FIRE EXTINGUISHING EQUIPMENT

A. FIRE PROTECTION SYSTEM⁴⁶

⁴⁶ This section comes from Section 14-37(a) of the current Town Code but has been modified as suggested by the Fire Marshal.

All buildings and premises covered by the Fire Code shall maintain appropriate fire protection systems as required within the Code. The Fire Inspector shall be notified by the owner or user of an automatic fire extinguishing system of its becoming inoperable or taken out of service or when service is restored.

B. FIRE SPRINKLER SYSTEMS⁴⁷

Structures with sprinkler systems shall cause them to be inspected by a certified sprinkler inspector each year. Reports of such inspections shall be kept on the premises and a copy forwarded to the Fire Inspector.

6.5.2. "NO SMOKING" SIGNS⁴⁸

- A.** The Fire Inspector shall post "No Smoking" signs on any premises where conditions exist which make smoking a fire hazard.
- B.** No person shall smoke cigarettes, cigars, e-cigarettes, or vapor devices in an area designated by a "No Smoking" sign.
- C.** It shall be prohibited to remove or destroy a "No Smoking" sign.

6.5.3. FIRE LANES

- A.** Fire lanes shall conform to the provisions of the North Carolina Building Code: Fire Prevention Code, and this Ordinance.⁴⁹
- B.** Where required by the Fire Chief or Other Fire Official, fire apparatus access lanes shall be marked with a permanent "NO PARKING – FIRE LANE" sign(s), curb marking, or lane painting, as specified.⁵⁰

6.5.4. FIRE HYDRANTS

A. FIRE HYDRANTS⁵¹

The developer or builder of any residential dwelling, subdivision, or commercial development project, as defined in this Ordinance, shall provide a water and fire hydrant system for the dwelling, subdivision, or commercial development as approved by the Fire Inspector, capable of meeting the needed fire flow requirements.

B. HYDRANT MAP⁵²

The Town shall create and maintain a map of public and private fire hydrants within the Town and the extraterritorial jurisdiction area of Martins Point, which shall be maintained by the Town Clerk.

C. REPORT

The Fire Chief or Other Fire Official shall submit a yearly report to the Town on the conditions of all hydrants, based on an annual flow test and an indication of potential problems due to lack of water for the fire loads present in the Town based on the calculated needed fire flow requirements as established by the Rating System of the Office of the State Fire Marshal.⁵³

6.5.5. STORAGE AND HANDLING OF HAZARDOUS MATERIALS⁵⁴

A. TRANSPORTATION

NC Highway 12 is hereby established as the motor vehicle route for transporting:

- 1.** Explosives and blasting agents;

⁴⁷ This section comes from Section 14-37 of the current Town Code.

⁴⁸ This section comes from Section 1-37(b) of the current Town Code. The references to e-cigarettes and vapor devices were added at staff suggestion to account for evolving methods of tobacco usage.

⁴⁹ This section comes from Section 14-34 of the current Town Code.

⁵⁰ This is an addition suggested by the Fire Marshal.

⁵¹ This section comes from Section 14-37(c) of the current Town Code with revisions suggested by the Fire Marshal.

⁵² This section comes from Section 14-37(d) of the current Town Code.

⁵³ This section comes from Section 14-05 of the current Town Code. It has been amended as suggested by staff.

⁵⁴ This section comes from Section 14-33 of the current Town Code.

2. Hazardous chemicals; and
3. Other dangerous articles.

B. FIREWORKS

Manufacture, sale,⁵⁵ and storage of fireworks is prohibited within the corporate limits of the Town.

C. FLAMMABLE LIQUIDS

1. Storage of flammable liquids in outside aboveground tanks is prohibited within the corporate limits of the Town.
2. As an exception to subsection 1 above, tanks meeting the requirements as outlined in the North Carolina Fire Code, as amended, may be used to store flammable liquids needed for cooking or to heat and cool those businesses and residences permitted by Town ordinances, provided the tank(s) have been issued a permit by the Town.⁵⁶

D. LIQUEFIED PETROLEUM GAS

1. Bulk storage of liquefied petroleum gas(es) is prohibited within the corporate limits of the Town.
2. As an exception to subsection 1 above, tanks meeting the requirements as outlined in the North Carolina Fire Code, as amended, may be used to store liquefied petroleum gases used for cooking or to heat and cool those businesses and residences permitted by municipal ordinances.⁵⁷

E. BULK PLANTS

New bulk plants are prohibited within the corporate limits of the Town.

F. HAZARDOUS MATERIALS PERMIT⁵⁸

1. A person, firm, or corporation shall not maintain, store, or handle materials or conduct processes which produce conditions hazardous to life or property, or install equipment used in connection with such activities without first obtaining a permit from the Fire Inspector.
2. The Fire Inspector, in the discharge of his duties, may request and receive the assistance and cooperation of other Town officials.

6.6. OPEN BURNING

6.6.1. EXEMPTIONS⁵⁹

The following activities involving open burning shall be exempt from the provisions of this section provided all fire safety precautions are observed, the burning is conducted under professional supervision and the activities are in the best interest of the community:

- A.** Fires built or set by the fire department for the training of its personnel;
- B.** Fires built or set in emergency situations, as designated in writing by the Town Manager or a designee to dispose of combustible materials that cannot otherwise be reasonably removed; and
- C.** Marsh burns supervised by the NC Forest Service for hazard mitigation purposes.

6.6.2. OPEN BURNING PROHIBITED

- A.** It shall be unlawful for any person to start or set a fire of any kind on the beach.
- B.** It shall be unlawful for any person to burn any materials that produce heavy dense smoke such as that generated by the burning of automobile tires, inner tubes, tar paper, asphalt, shingles, or by the burning of synthetic materials that produce irritating and/or hazardous fumes.

6.6.3. PERMITTED WITH AN OPEN BURN PERMIT⁶⁰

⁵⁵ The word “sale” has been added based on Fire Marshal’s suggestion.

⁵⁶ This section is part of Section 14-33(d) of the current Town Code, but amended as suggested.

⁵⁷ This section is part of Section 14-33(g) of the current Town Code, but amended as suggested.

⁵⁸ This section comes from Section 14-31 of the current Town Code.

⁵⁹ This section comes from Section 14-66 of the current Town Code.

A. OPEN FIRE ON UNDEVELOPED PROPERTY

No fire of any type shall be built or set on unimproved property (any property where a permanent dwelling or business unit does not exist) until the site has been inspected and an open burn permit has been issued by the Fire Inspector.

B. RECREATIONAL FIRES

A recreational fire is permitted provided it:

1. Takes place within a burn barrel, outdoor fireplace, barbeque grill, or pit; and
2. Maintains a total fuel area of less than three feet and a total height of less than two feet.

C. OTHER LOCATIONS

No open fire shall be built or set in a marina area, picnic area, or in any other area owned by a civic or owner's association without an open burn permit.

6.6.4. PERMITTED WITHOUT AN OPEN BURN PERMIT⁶¹

A contained fire on a developed lot is permitted without an open burn permit provided it take place in accordance with the following:

- A.** The occupant of a permanent dwelling may set an open fire to burn small amounts of natural vegetation, tree branches, brush, or scrap lumber, originating from the lot, provided the burning is:
 1. Conducted within 100 feet of the dwelling;
 2. Confined within a cleared and protected area;
 3. Supervised by a person of 14 years in age or older; and
 4. Provided with adequate fire protection equipment at the immediate fire site.
- B.** Adequate fire protection equipment is considered to be a charged hose line, shovel, rake, and loose sand or dirt with which to cover the fire.
- C.** House occupants or landowners starting or setting fires as permitted above are responsible for assuring themselves that a prohibition against burning as stated in Section 14-139 of the North Carolina General Statutes, is not in effect.
- D.** Initial burning shall generally be allowed only between the hours of 9:00 a.m. and 6:00 p.m. but no combustible materials shall be added to the fire after 3:00 p.m., except that under favorable meteorological conditions, deviations may be granted by the Fire Chief or Other Fire Official.

6.6.5. OPEN BURN PERMIT REQUIREMENTS⁶²

- A.** Any person proposing to set a fire other than those permitted in Section 6.6.1, Exemptions or Section 6.6.4, Permitted Without an Open Burn Permit, shall, before lighting such fire, obtain an open burn permit from the Fire Inspector. The permit shall be obtained by applying to the office of the Fire Inspector and completing a permit application on the form supplied. At the Fire Inspector's discretion, the open burn permit may be obtained on the site of the proposed fire. An open burn permit will authorize such burnings only on the date or dates specified in the permit.⁶³
- B.** A fee may be charged for issuance of an open burn permit as specified in the Town fee schedule.
- C.** Open burn permits must be posted within ten feet of the pavement in front of the property for which the permit is issued during the time of the burn and must be removed when the fire is extinguished, and returned to the Town when the permit expires.
- D.** Issuance of an open burn permit may be denied during extremely dry periods, when the winds are, or are predicted to be, unfavorable at the proposed time of burning, or when a prohibition has been placed on open burning by the State. Open burn permits already issued may be cancelled or postponed under the foregoing

⁶⁰ This section comes from Section 14-68 of the current Town Code, but amended as suggested.

⁶¹ Revised in accordance with Staff comments from 7-18-18.

⁶² This section comes from Section 14-70 of the current Town Code.

⁶³ This section of the current code (Section 14-70(a)) also exempts fires under current section 14-68(2), which is translated here as 6.8.1.A.1, from requiring a permit. However, in the text of 6.8.1.A.1, it says that a permit is required. We have removed the exemption from the current code to remedy the resulting contradiction in the most conservative way possible (requiring a permit).

6.6 Open Burning

conditions. In case of postponement, a new open burn permit will be issued without charge specifying a new date or dates for such burnings.

- E.** The fact that an open burn permit has been issued in no way relieves the person from the responsibility for any damage resulting from the burning activity or from prosecution for violation of a prohibition on burning.

CHAPTER 7.

[RESERVED]

CHAPTER 8. MOTOR VEHICLES AND TRAFFIC

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GUIDANCE FROM CODE ASSESSMENT:

Chapter 20 of the current Town Code includes the Motor Vehicles and Traffic standards, which are organized into six articles: General Provisions, Traffic Control Devices, Operation of Vehicles, Stopping, Standing, and Parking, Enforcement, and Bicycle Safety Rules. There are also extensive provisions embedded in the Stopping, Standing, and Parking standards related to abandoned and junked vehicles.

The current standards are a blend of provisions related to the operation of motorized and non-motorized vehicles as well as more infrastructure-related provisions.

As a first step, we suggest the traffic map, traffic control device, and street-related provisions in Section 20-2 and 20-69 through 20-72 be relocated to new Chapter 18, Streets, Sidewalks, and other Public Property.

As with other chapters, we also suggest the definitions be relocated to the consolidated chapter on definitions, enforcement –related provisions be relocated to new Chapter 36, Offenses and Enforcement, off-street parking provisions be relocated to the zoning chapter, and that the remaining standards be reorganized into a more intuitive grouping.

In addition we address the standards be revised to address staff comments to allow a variety of Town vehicles to operate on the beach and multi-use paths.

8.1. STATUTORY AUTHORITY ⁶⁴⁶⁵

8.1.1. REFERENCES

The statutory authorization for this the standards and procedures in this chapter are derived from the following:

- A.** Section 30-169 of the North Carolina General Statutes, regarding the traffic powers of local authorities;
- B.** Section 160A-300 of the North Carolina General Statutes, pertaining to regulation and control of pedestrian and vehicular traffic on public streets, sidewalks, alleys and bridges;
- C.** Section 160A-300.1 of the North Carolina General Statutes, regarding civil enforcement of traffic laws by means of traffic control photographic system;
- D.** Section 160A-301 of the North Carolina General Statutes, regarding regulation and prohibition of parking on public streets, alleys and bridges; and
- E.** Section 160A-303 of the North Carolina General Statutes, regarding removal of junked and abandoned motor vehicles.

8.2. AUTHORITY OF POLICE UNDER CERTAIN CONDITIONS ⁶⁶

In the event of a fire or other emergency or when necessary to expedite traffic or safeguard pedestrians, police officers may direct traffic as conditions may require, notwithstanding the provisions of this chapter.

8.3. PURPOSE AND INTENT ⁶⁷

The purpose and intent of this chapter is to:

8.3.1. REDUCE HAZARDOUS CONDITIONS

Reduce hazardous traffic conditions resulting from the use of streets within areas zoned for residential, commercial, or recreational uses;

8.3.2. PROTECT AND PRESERVE DISTRICTS

- A.** Protect those districts from polluted air, excessive noise, trash, and refuse caused by the entry of vehicles;
- B.** Protect the residents of those districts from unreasonable burdens in gaining access to their residences;
- C.** Preserve the character of all districts;

8.3.3. PROMOTE EFFICIENCY

Promote efficiency in the maintenance of streets in a clean and safe condition;

8.3.4. PRESERVE PROPERTY VALUE

Preserve the value of the property in all districts; and

8.3.5. PRESERVE SAFETY

Preserve the safety of children and other pedestrians and traffic safety, and the peace, good order, comfort, convenience and welfare of the inhabitants of the Town.

⁶⁴ In accordance with the Code Assessment, the traffic map, traffic control device, and street-related portions of Section 20-2 and 20-69 through 20-72 (current code) have been relocated to the new Chapter 18, Streets, Sidewalks, and other Public Property. All definitions have been relocated to the consolidated Chapter 4, Definitions. Enforcement items have been relocated to the new Chapter 36, Offenses and Enforcement.

⁶⁵ This section comes from "Footnotes" section of Chapter 20 of the current code. It has been modified for clarity and consistency with other sections of this draft.

⁶⁶ This section comes from Section 20-3 of the current code.

⁶⁷ This section comes from Section 20-142 of the current code.

8.4. COMPLIANCE REQUIRED⁶⁸

The driver or operator of any motor vehicle, bicycle, or nonmotorized vehicle shall obey the provisions of this section and other ordinances of the Town, unless otherwise directed by a police officer, subject to the exceptions granted by this chapter to the driver of an authorized emergency vehicle.

8.5. OFFICIAL TRAFFIC MAP⁶⁹

8.5.1. ADOPTED BY REFERENCE

The Town Council shall adopt, and the Town Clerk shall maintain, an Official Traffic Map that denotes speed limits, intersections, one-way streets, school zones, and other street- or traffic-related aspects on streets and street rights-of-way, within the Town's jurisdiction. The Official Traffic Map is hereby adopted and incorporated by reference into this Ordinance.

8.5.2. AMENDMENTS

Changes to the Official Traffic Map shall be adopted by the Town Council in accordance with this Ordinance.

8.6. MOTOR VEHICLE OPERATION

8.6.1. GENERALLY⁷⁰

A. SPEED LIMITS⁷¹

1. Except as otherwise provided in subsection (2) below, and as otherwise indicated on the Town's Official Traffic Map, no person shall drive a vehicle on any street of the Town in excess of 25 miles per hour.
2. When signs have been erected giving notice that a particular speed limit is applicable to a certain street or portion of street as designated on the Town's Official Traffic Map as adopted by the Town Council, no person shall operate a vehicle in excess of such speed limit.
3. Nothing in this section shall be interpreted to permit any person to drive a vehicle at a speed greater than is reasonable and prudent under the conditions then existing.

B. YIELD INTERSECTIONS⁷²

When signs have been erected at those intersections designated as yield right-of-way intersections on the Town's Official Traffic Map as adopted by the Town Council, the driver of any vehicle shall approach such intersection with caution and shall yield the right-of-way to any vehicle approaching on the intersected street.

C. STOP INTERSECTIONS⁷³

When signs have been erected at those intersections designated as stop intersections on the Town's Official Traffic Maps as adopted by the Town Council, no person shall drive a vehicle into such an intersection unless he shall have come to a complete stop and has determined that such movement will not conflict with traffic.

D. ONE-WAY STREETS⁷⁴

Upon those streets and parts of streets described on the official traffic maps of the Town as one-way streets, vehicular traffic shall move only in the indicated direction, when signs indicating the direction of the

⁶⁸ This section comes from Section 20-69 of the current code.

⁶⁹ This is a new section.

⁷⁰ Several items have been eliminated as requested by staff because they duplicate General Statutes.

⁷¹ This section comes from Section 20-110 of the current code.

⁷² This section comes from Section 20-111 of the current code.

⁷³ This section comes from Section 20-112 of the current code.

⁷⁴ This section comes from Section 20-113 of the current code.

traffic are erected and maintained at every intersection where movement in the opposite direction is prohibited.

E. SCHOOL ZONES⁷⁵

Whenever authorized signs are placed, erected, or installed indicating any street or portion of a street as a school zone, all drivers of motor vehicles using such street shall exercise the greatest care in driving upon such street for the protection of children.

F. EMERGING FROM ALLEY OR PRIVATE DRIVEWAY⁷⁶

The driver of a vehicle emerging from an alley, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk, or into the sidewalk areas extending across any alleyway, and upon entering the roadway he shall yield the right-of-way to all vehicles approaching on such roadway.

G. BACKING⁷⁷

The driver of a vehicle shall not back such vehicle into any intersection, or over a crosswalk, and shall not in any event, or at any place, back a vehicle unless such movement can be made in safety, and he shall have given ample warning to those who may be behind, by hand and horn, or other signal.

8.6.2. WEIGHT LIMITS⁷⁸

A. MOTOR VEHICLES IN EXCESS OF 10,000 POUNDS PROHIBITED

1. WEIGHT LIMIT

No person, firm, or corporation shall drive or operate or cause to be driven or operated a motor vehicle, including vans, trucks, tractors, tractor-trailer combinations, tractor-semi-trailer combinations having a total gross weight, including load, in excess of 10,000 pounds on, along, or through any Town street, except as further provided in this section.

2. VEHICLES SPECIFICALLY EXEMPTED FROM PROHIBITION

The following vehicles shall be exempt from the prohibition of this section:

a. Emergency and Municipal Vehicles

- i. Due to the nature of their work and the need for unhindered access to all Town streets, authorized emergency vehicles and vehicles owned or operated by a government or another municipality, which would otherwise be regulated by this section, are hereby specifically exempt from application of this section.
- ii. This shall include, but not be limited to the following municipal/government vehicles:
 - 1) Fire vehicles;
 - 2) Police vehicles;
 - 3) Highway, sanitation and public works vehicles;
 - 4) Vehicles of any agent of a municipality including school buses; and
 - 5) Contracted services such as tree service, provided that such vehicles are engaged in official municipal business within the Town.

b. Recreation Vehicles

Vehicles commonly referred to as "recreational vehicles" or "RV's" and which would otherwise be regulated by this section, including but not limited to:

- i. House coaches;
- ii. Motor homes;
- iii. Campers; and
- iv. Boat or jet ski trailer combinations.

3. REGULATION OF MOTOR VEHICLES IN EXCESS OF 10,000 POUNDS

⁷⁵ This section comes from Section 20-114 of the current code.

⁷⁶ This section comes from Section 20-105 of the current code.

⁷⁷ This section comes from Section 20-106 of the current code.

⁷⁸ This section comes from Section 20-115 of the current code; the format has been slightly changed for user-friendliness and fit with the format of the code.

This section shall not be construed to prevent the service, delivery, or pickup of merchandise or other property within the Town from which such vehicles and combinations are otherwise excluded; provided the regulations and requirements of this section are complied with.

B. THROUGH TRUCKS

1. Through truck traffic in excess of five tons is not permitted on the streets within the Town.
2. This restriction shall be designated with appropriate signage such as a "No Thru Trucks over 5-Ton" sign.

8.7. OPERATION OF BICYCLES AND NON-MOTORIZED VEHICLES⁷⁹

8.7.1. APPLICABILITY⁸⁰

Every person propelling any pushcart, riding a bicycle or an animal, driving any animal-drawn vehicle, or operating a non-motorized vehicle upon a roadway in the Town shall be subject to the provisions in this chapter applicable to the driver of any vehicle, except those provisions of this chapter which, by their nature, cannot be easily applied.

8.7.2. STREETS

- A.** No person operating, riding in, riding on, or by means of any coaster, toy vehicle, off-road vehicle, whether motorized or not, shall go upon any street, highway, or roadway except to cross at a designated crosswalk or at a street intersection.
- B.** This section shall not apply to law enforcement or public works employee engaged in the necessary discharge of a duty.

8.7.3. MULTIPURPOSE PATHWAY

- A.** No motorized vehicle shall be allowed to operate, park, or be left standing on any portion of a multipurpose pathway.
- B.** This section shall not apply to law enforcement or public works employee engaged in the necessary discharge of a duty.

8.7.4. SHOPPING CENTER OR BUSINESS COMPLEX

- A.** No person on or operating, riding in, riding on or by means of any coaster, toy vehicle, off-road vehicle, roller skates, scooter, inline skates, or skate board, whether motorized or not, shall go upon the sidewalks and public vehicular areas of any shopping center or business complex.
- B.** Use of roller skates, scooters, inline skates, or skate boards that are not motorized may be allowed upon the sidewalks and public vehicular areas of any shopping center or business complex with the permission of the property owner.⁸¹

8.7.5. HIGHWAYS

Except upon a multipurpose pathway, no person upon any roller skates, scooter, inline skates, or skate boards shall go upon any portion of U.S. Highway 158 or N.C. Highway 12, except to cross at a designated crosswalk or at a street intersection.

8.7.6. ILLUMINATED LIGHT REQUIRED

Operating, riding in, riding on, or by means of any roller skates, inline skates, scooter or skateboard between the hours of sunset and sunrise upon any street, highway, or roadway or multipurpose path must have a white light illuminated at all times.

⁷⁹ The balance of this section comes from Section 20-11 of the current code.

⁸⁰ This section comes from Section 20-5 of the current code.

⁸¹ This section was included at the direction of staff.

8.8. OPERATION OF TOWN VEHICLES ON THE BEACH AND PATHS⁸²

The official use of a vehicle being operated by Town officials, including law enforcement, fire fighters, ocean rescue, and public works employees, serving in their official capacities, is allowed on both the beach and multipurpose paths.

8.9. STANDING, STOPPING, AND ON-STREET PARKING

8.9.1. WHERE PROHIBITED

A. BLOCKING DRIVEWAYS, FIRE HYDRANTS, OR INTERSECTIONS FORBIDDEN⁸³

It shall be forbidden to park in a manner that blocks:

1. A driveway;
2. A fire hydrant; or
3. An intersection.

B. PARKING RESTRICTIONS ON CERTAIN STREETS⁸⁴

When signs have been erected giving notice that certain streets or portions of streets as designated on the Official Traffic Map are subject to certain restrictions or limitations on the parking of vehicles, no person shall park any vehicle on such streets or portions of streets except in conformity with the directions of such sign.

8.9.2. WHERE AUTHORIZED⁸⁵

A. PARKING PERMIT

1. Vehicles bearing current Town parking permit stickers may park in designated Town parking areas.
2. This in no way modifies existing or future signs prohibiting parking completely or limiting parking in certain areas.

B. PARKING ON SHOULDER

When parking on shoulders, vehicles shall not impede two-way traffic.

C. UTILIZE GRASSY AREAS

All efforts will be made to utilize grassy areas on the shoulders and not to destroy vegetation, trees, and shrubs.

8.10. ABANDONED, NUISANCE, AND JUNKED VEHICLES⁸⁶

The police department and the Town Manager shall be responsible for the administration and enforcement of these standards in accordance with the following:

8.10.1. GENERALLY

It shall be a violation of this Ordinance for the registered owner or person entitled to possession of a vehicle to abandon it or allow it to be a nuisance or junked vehicle in accordance with the standards in Section 36.5.6, Motor Vehicle Violations, Generally.

8.10.2. ADMINISTRATION

⁸² This section was included for clarification at the direction of staff.

⁸³ This section comes from Section 20-149(d) of the current code.

⁸⁴ This section comes from Section 20-146(a) of the current code.

⁸⁵ This section comes from Section 20-149 of the current code.

⁸⁶ This section comes from Section 20-167 of the current code.

- A.** The police department shall be responsible for administering the removal and disposition of vehicles determined to be abandoned on the public streets and highways within the Town, and on property owned by the Town.
- B.** The Town Manager shall be responsible for administering the removal and disposition of abandoned, nuisance, or junked motor vehicles located on private property.
- C.** The Town may, on an annual basis, contract with private tow truck operators or towing businesses to remove, store, and dispose of abandoned vehicles, nuisance vehicles and junked motor vehicles in compliance with this division and applicable state laws.
- D.** Nothing in this division shall be construed to limit the legal authority or powers of officers of the police department and fire department in enforcing other laws or in otherwise carrying out their duties.

8.10.3. REMOVAL AUTHORIZED

A. ABANDONED VEHICLES⁸⁷

Upon investigation, proper authorizing officials of the Town may determine that a vehicle is an abandoned vehicle and order the vehicle removed.

B. NUISANCE VEHICLES⁸⁸

Upon investigation, the Town Manager may determine and declare that a vehicle is a health or safety hazard or a nuisance vehicle as defined in Chapter 4, Definitions, and order the vehicle removed.

C. JUNKED VEHICLES⁸⁹

- 1. Upon investigation, the Town Manager may order the removal of a junked motor vehicle, as defined in this division, after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood, or area appearance.
- 2. The following, among other relevant factors, may be considered:
 - a. Protection of property values;
 - b. Promotion of tourism and other economic development opportunities;
 - c. Indirect protection of public health and safety;
 - d. Preservation of the character and integrity of the community; and
 - e. Promotion of the comfort, happiness and emotional stability of area residents.
- 3. No vehicle that is used on a regular basis for business or personal use shall be removed or disposed of pursuant to this section.

D. EXCEPTIONS⁹⁰

Nothing in this division shall apply to any vehicle which is:

- 1. Located in a bona fide automobile graveyard or junkyard, as defined in Section 136-143 of the North Carolina General Statutes, in accordance with the Junkyard Control Act in Section 136-141 et seq., of the North Carolina General Statutes;
- 2. In a fully enclosed building such that the vehicle is not visible from off-site areas;
- 3. On the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise; or
- 4. In an appropriate storage place or depository maintained in a lawful place and manner by the Town.

E. UNLAWFUL REMOVAL OF IMPOUNDED VEHICLE⁹¹

It shall be unlawful for any person to remove or attempt to remove from any storage facility designated by the Town any vehicle which has been impounded pursuant to the provisions of this Ordinance unless and until all towing and impoundment fees which are due, or bond in lieu of such fees, have been paid.

⁸⁷ This section comes from Section 20-169(b) of the current code.

⁸⁸ This section comes from Section 20-170(b) of the current code.

⁸⁹ This section comes from Section 20-171(b) of the current code.

⁹⁰ This section comes from Section 20-180 of the current code.

⁹¹ This section comes from Section 20-181 of the current code.

8.10.4. NOTICE OF REMOVAL, PRE-TOWING

A. PRETOWING NOTICE REQUIREMENTS⁹²

1. NOTICE REQUIRED

Except as set forth in Section 8.10.4.B, Exceptions to Pretowing Notice Requirement, an abandoned, nuisance, or junked vehicle which is to be removed shall be towed only after notice to the registered owner or person entitled to possession of the vehicle.

2. FORM OF NOTICE

- a. In the case of a nuisance or a junked motor vehicle, if the names and mailing addresses of the registered owner or person entitled to the possession of the vehicle or the owner, lessee, or occupant of the real property upon which the vehicle is located can be ascertained in the exercise of reasonable diligence, the notice shall be given by first-class mail. The person who mails the notice shall retain a written record to show the name and address to which mailed and the date mailed.
- b. If such names and addresses cannot be ascertained, or if the vehicle to be removed is an abandoned motor vehicle, notice shall be given by affixing on the windshield or some other conspicuous place on the vehicle a notice indicating that the vehicle will be removed by the Town on a specific date. The notice shall state that the vehicle will be removed by the Town on a specified date no sooner than seven days after the notice is affixed or mailed, unless the vehicle is moved by the owner or legal possessor prior to that time.

3. APPEAL

- a. The registered owner or person entitled to possession of an abandoned, nuisance, or junked motor may appeal the determination that the vehicle meets the criteria for removal as set out in Section 8.10.3, Removal Authorized.
- b. Such appeal shall be made to the Town Council in writing and heard at the next regularly scheduled meeting of the Town Council.
- c. Further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.

B. EXCEPTIONS TO PRETOWING NOTICE REQUIREMENT⁹³

The requirement that notice be given prior to the removal of an abandoned, nuisance, or junked motor vehicle may, as determined by the Town Manager, or a designee, be omitted in certain situations. Such findings shall, in all cases, be entered by the authorizing official in the appropriate daily records. Circumstances justifying the removal of vehicles without prior notice include the following:

1. VEHICLE ON PRIVATE PROPERTY

The vehicle is left on private property without the consent of the owner, occupant, or lessee thereof for longer than two hours and the owner, occupant, or lessee has complied with Section 8.10.9, Removal From Private Property.

2. PUBLIC SAFETY AND WELFARE

In those circumstances where there is a special need for prompt action to eliminate traffic obstructions or to otherwise maintain and protect the public safety and welfare.

3. VEHICLES ABANDONED ON THE STREETS

For vehicles left on the public streets and highways, the Town Manager hereby determines that immediate removal of such vehicles may be warranted when they are:

- a. Obstructing traffic;
- b. Parked in violation of an ordinance prohibiting or restricting parking;
- c. Parked in a no-stopping or standing zone;
- d. Parked in loading zones;
- e. Parked in bus zones; or
- f. Parked in violation of temporary parking restrictions imposed under Code sections.

4. OTHER ABANDONED OR NUISANCE VEHICLES

⁹² This section comes from Section 20-172 of the current code.

⁹³ This section comes from Section 20-173 of the current code.

With respect to other abandoned or nuisance vehicles, such vehicles may be removed without giving prior notice in those circumstances where the authorizing official finds a special need for prompt action to protect and maintain the public health, safety and welfare. By way of illustration and not of limitation, such circumstances include vehicles blocking or obstructing ingress or egress to businesses and residences, vehicles parked in such a location or manner as to pose a traffic hazard, and vehicles causing damage to public or private property.

5. VEHICLES LEFT PARKED LONGER THAN TWO HOURS ON PRIVATE PROPERTY

The vehicle has been left on private property without the consent of the owner, occupant, or lessee thereof for longer than two hours and the owner, occupant or lessee has complied with Section 8.10.9, Removal From Private Property.

8.10.5. VEHICLE REMOVAL

A. REMOVAL OF VEHICLES⁹⁴

Any abandoned, nuisance, or junked motor vehicle which has been ordered removed may, as directed by the Town, be removed to a storage garage or area by the tow truck operator or towing business contracting to perform such services for the Town.

B. NOTICE OF REMOVAL REQUIRED

1. Whenever such a vehicle is removed, the Town Manager, or a designee shall immediately notify the last-known registered owner of the vehicle, such notice to include the following:
 - a. The description of the removed vehicle;
 - b. The location where the vehicle is stored;
 - c. The violation with which the owner is charged, if any;
 - d. The procedure the owner must follow to redeem the vehicle; and
 - e. The procedure the owner must follow to request a probable cause hearing on the removal.
2. The Town shall attempt to give notice to the vehicle owner by telephone; however, whether or not the owner is reached by telephone, written notice, including the information set forth in this section, shall also be mailed to the registered owner's last-known address, unless this notice is waived in writing by the vehicle owner or his agent.
3. If the vehicle is registered in the state, notice shall be given within 24 hours. If the vehicle is not registered in the state, notice shall be given to the registered owner within 72 hours from the removal of the vehicle.
4. Whenever an abandoned, nuisance or junked motor vehicle is removed and such vehicle has no valid registration or registration plates, the authorizing Town official shall make reasonable efforts, including checking the vehicle identification number, to determine the last-known registered owner of the vehicle and to notify him of the information in this section.

8.10.6. RIGHT TO PROBABLE CAUSE HEARING⁹⁵

- A.** After the removal of an abandoned, nuisance, or junked motor vehicle, the owner or any other person entitled to possession is entitled to a hearing for the purpose of determining if probable cause existed for removing the vehicle.
- B.** A request for hearing must be filed in writing with the county magistrate designated by the chief district court judge to receive such hearing requests.
- C.** The magistrate will set the hearing within 72 hours of receipt of the request, and the hearing will be conducted in accordance with the provisions of Section 20-222 of the North Carolina General Statutes, as amended.

8.10.7. REDEMPTION OF VEHICLE DURING PROCEEDINGS⁹⁶

- A.** At any stage in the proceedings, including before the probable cause hearing, the owner may obtain possession of the removed vehicle by paying the towing fee, including any storage charges, or by posting a

⁹⁴ This section comes from Section 20-174 of the current code.

⁹⁵ This section comes from Section 20-175 of the current code.

⁹⁶ This section comes from Section 20-176 of the current code.

bond for double the amount of such fees and charges to the tow truck operator or towing business having custody of the removed vehicle.

- B.** Upon regaining possession of a vehicle, the owner or person entitled to the possession of the vehicle shall not allow or engage in further violations of this division.

8.10.8. SALE BY TOWN⁹⁷

- A.** Any abandoned, nuisance, or junked motor vehicle which is not claimed by the owner or other party entitled to possession will be disposed of by the tow truck operator or towing business having custody of the vehicle.
- B.** Disposition of such vehicle shall be carried out in coordination with the Town and in accordance with Chapter 44A, Article 1 of the North Carolina General Statutes.

8.10.9. REMOVAL FROM PRIVATE PROPERTY⁹⁸

- A.** Except as provided in Section 8.10.3.C, Junked Vehicles, the Town shall not remove a vehicle from private property if the owner, occupant or lessee of such property could have the vehicle removed under applicable state law procedures.
- B.** In no case will a vehicle be removed by the Town from private property without a written request of the owner, occupant or lessee, except in those cases where a vehicle is a nuisance or junked motor vehicle which has been ordered removed by the Town Manager pursuant to Section 8.10.3.C, Junked Vehicles.
- C.** The Town shall require any person requesting the removal of an abandoned, nuisance, or junked vehicle from private property to indemnify the Town against any loss, expense, or liability incurred because of the removal, storage, or sale thereof.

⁹⁷ This section comes from Section 20-177 of the current code.

⁹⁸ This section comes from Section 20-178 of the current code.

CHAPTER 9.

[RESERVED]

CHAPTER 10. EMERGENCY MANAGEMENT

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GUIDANCE FROM CODE ASSESSMENT:

Chapter 12 of the current Town Code sets out the emergency management provisions, which are focused on Town operations and recovery during and after an emergency (such as a flood, hurricane, or Act of God). The chapter is organized into three divisions: general standards, state of emergency, and hurricane and storm reconstruction. The general standards address the authority to execute an emergency management plan, and the powers and responsibilities of Town officials during emergencies. The state of emergency provisions address proclamations (by the Mayor) of an emergency, the imposition of restrictions, and how the proclamation is ended or withdrawn. The reconstruction provisions establish a Reconstruction Task Force and include provisions about the manner in which post-emergency reconstruction will take place (including a potential moratorium on development).

We suggest only minor revisions to these provisions for greater consistency with the balance of the updated Town Code, such as the relocation of definitions to the consolidated definitions chapter and relocation of Town Manager powers and duties to the Administration chapter.

Staff comments on the materials call for clarifying language that the powers authorized by the standards during a state of emergency are only available during the duration of the proclaimed emergency, and the powers are extinguished when the state of emergency is over. There were some addition minor comments referring to the name of the Chickahauk Property Owner's Association.

10.1. STATUTORY AUTHORITY⁹⁹

The statutory authorization for the standards and procedures in this chapter is derived from the following regulations:

10.1.1. REFERENCES

- A.** Sections 14-288.1 through 14.288.20 of the North Carolina General Statutes, regarding riots and civil disorders;
- B.** Section 14-228.12 of the North Carolina General Statutes, regarding authority for the Town to enact ordinances dealing with state of emergency;
- C.** Section 166A-7(b) of the North Carolina General Statutes, regarding municipal authority to maintain emergency management agencies subject to coordination by the County; and
- D.** Section 166A-8 of the North Carolina General Statutes, regarding local emergency authorizations.

10.2. PURPOSE AND INTENT¹⁰⁰

10.2.1. PURPOSE

The purpose and intent of this chapter is to:

- A.** Establish an office that will ensure the complete and efficient utilization of all of the town's resources to combat disaster resulting from disasters;
- B.** Establish the Town's Emergency Management Plan; and
- C.** Establish the Town's Emergency Management Team and empower it as the instrument through which the Town Council may exercise the authority and discharge the responsibilities vested in them during disaster emergencies.

10.2.2. RELATIONSHIP TO CHARTER AND OTHER AGENCIES

This chapter does not relieve any Town department of the moral responsibilities or authority given to it in the Town Charter or by local ordinances, nor will it adversely affect the work of any volunteer agency organized for relief in disaster emergencies.

10.3. EMERGENCY MANAGEMENT PLAN¹⁰¹

10.3.1. PURPOSE AND INTENT

- A.** The Town Manager shall prescribe in the emergency management plan those positions within the comprehensive emergency management plans that shall be adopted and maintained by resolution of the Town Council.
- B.** In the preparation of these plans, as it pertains to municipal organization, it is intended that the services, equipment and facilities, and personnel of all existing departments and agencies shall be utilized to the fullest extent.
- C.** When approved, it shall be the duty of all departments and agencies to perform the functions assigned by these plans, and to maintain their portions of the plans in a current state of readiness at all times.

10.3.2. SUCCESSION

⁹⁹ This section comes from the footnote at the head of current Chapter 12.

¹⁰⁰ This section comes from Section 12-2 of the current Town code with minor revision as suggested in the Code Assessment.

¹⁰¹ This section comes from Section 12-6 of the current Town Code. It has been reorganized for greater clarity, but with no substantive change.

- A.** The Town Manager shall prescribe in the emergency plans those positions within the disaster organization, in addition to his own, for which lines of succession are necessary.
- B.** In each instance the responsible person will designate, and keep on file with the Town Manager, a current list of persons as successors to his position.
- C.** The list will be in order of succession and will as nearly as possible designate the persons best capable of carrying out all assigned duties and functions.

10.3.3. RESPONSIBILITIES

- A.** Each service chief and department head assigned responsibility in the plans shall be responsible for carrying out all duties and functions assigned therein.
- B.** Duties will include the organization and training of assigned employees or volunteers.
- C.** Each chief shall formulate the standard operating procedure to implement the plans for his service.

10.3.4. AUTHORITY TO SEEK ASSISTANCE

- A.** When a required competency or skill for a disaster function is not available within government, the Town Manager is authorized to seek assistance from persons outside of government.
- B.** The assignment of duties, when of a supervisory nature, shall also include the granting of authority for the persons so assigned to carry out such duties prior to, during, and after the occurrence of a disaster.
- C.** Such services from persons outside of government may be accepted by local government on a volunteer or contracted basis. Such citizens shall be enrolled as emergency management volunteers or contracted personnel.

10.3.5. AMENDMENTS

- A.** Amendments to the emergency management plan shall be submitted to the Town Manager.
- B.** If approved, the Town Manager will then submit the amendments to the Town Council with a recommendation.
- C.** Amendments shall take effect from the date of approval.

10.3.6. IMPLEMENTATION¹⁰²

- A.** Upon proclamation of a State of Emergency, the comprehensive Emergency Management Plan shall be implemented immediately, to the extent determined by the Town Council.
- B.** The emergency management plan shall have the effect of law whenever a disaster has been proclaimed.

10.4. EMERGENCY MANAGEMENT TEAM¹⁰³

10.4.1. ESTABLISHMENT

An agency of emergency management is hereby established under the direction of the Town Council.

10.4.2. COMPOSITION

- A.** The head of the emergency management team shall be the Town Manager.
- B.** Assistants and other employees, as are deemed necessary for the proper functioning of the team, shall be appointed or contracted by the Town Council.
- C.** The employees and resources of all Town departments, boards, institutions, and councils shall participate as members of the Emergency Management Team.

¹⁰² This section comes from Section 12-8 of the current Town Code.

¹⁰³ This section comes Section 12-4 of the current Town Code. The format has been modified for user-friendliness and consistency with the rest of the updated code. Current section 12-4(b) has been deleted at the suggestion of staff, as it is redundant with the requirement in updated section 10.3.2.A.

- D.** Volunteer and contracted personnel and agencies offering service to, and accepted by, the Town, may also participate as members of the Emergency Management Team.

10.4.3. POWERS AND DUTIES

The duties assigned to a Town department in its role as part of the Emergency Management Team shall be the same as, or similar to, the normal duties of the department, where possible.

10.5. MUNICIPAL AND PRIVATE LIABILITY¹⁰⁴

A. MUNICIPAL LIABILITY

This chapter, and activity undertaken in accordance with it, is an exercise by the Town of its governmental functions for the protection of the public peace, health, and safety, and neither the Town nor agents and representatives, or any individual, receiver, firm, partnership, corporation, association, or trustee, or any of the agents thereof, in good faith carrying out, complying with, or attempting to comply with any order, rule, or regulation promulgated pursuant to the provisions of this chapter shall be liable for any damage sustained to persons or property as the result of that activity.

B. PRIVATE LIABILITY

Any person owning or controlling real estate or other premises, who voluntarily and without compensation grants the Town the right to inspect, designate, and use the whole or any part of such real estate or premises for the purpose of sheltering persons during an actual, impending, or practice disaster situation, shall not be civilly liable for the death of, or injury to, any persons on or about such real estate or premises under such license, privilege, or other permission; or for loss of, or damage to, the property of any person.

10.6. STATE OF EMERGENCY

10.6.1. DEEMED TO EXIST¹⁰⁵

A state of emergency shall be deemed to exist whenever, during times of public crisis, disaster, rioting, catastrophe, or similar public emergency, for any reason, public safety authorities are unable to maintain public order or afford adequate protection for lives, safety, or property, or whenever the occurrence of any such condition is imminent.

10.6.2. PROCLAMATION

A. AUTHORITY¹⁰⁶

1. When a state of emergency is deemed to exist¹⁰⁷, the Mayor is hereby authorized and empowered under Section 14-288.12 of the North Carolina General Statutes, to issue a public proclamation declaring to all persons the existence of such a state of emergency.
2. In order to more effectively protect the lives and property of people within the Town, the Mayor is authorized and empowered to:
 - a. Place in effect, by proclamation, the application of all or any part of such restrictions to any area specifically designated or described within the Town;
 - b. To specify hours of the day or night where restrictions apply; and
 - c. To exempt from all or any part of such restrictions, while acting in the line of and within the scope of their respective duties, law enforcement officers, firefighters and other public employees, rescue squad members, doctors, nurses, employees of hospitals and other medical facilities, on-duty military personnel, whether state or federal, on-duty employees of public utilities, public transportation companies, and newspaper, magazine, radio broadcasting, and television

¹⁰⁴ This section comes from Section 12-7 of the current Town Code.

¹⁰⁵ This section comes from Section 12-35(a) of the current Town Code.

¹⁰⁶ This section comes from Section 12-35(b)&(c) of the current Town Code.

¹⁰⁷ Clarification added at staff recommendation.

broadcasting corporations operated for profit, and such other classes of persons as may be essential to the preservation of public order and immediately necessary to serve the safety, health, and welfare needs of the people within the Town.

3. Nothing herein shall limit the authority of the Town when such authority has been otherwise granted or inferred by law.

B. ABSENCE OR DISABILITY OF MAYOR¹⁰⁸

1. In case of the absence or disability of the Mayor, the Mayor Pro Tempore shall have and exercise all of the powers given the Mayor in this chapter.
2. In case of the absence or disability of the Mayor Pro Tempore, such other person as may be designated by the Town Council shall have and exercise all of the powers given the Mayor in this chapter.

C. PROCLAMATION CONTENTS AND PROCEDURE, GENERALLY

The Mayor, by proclamation, may impose the prohibitions and restrictions specified in this section and in Section 10.6.3, Specific Restrictions Authorized.¹⁰⁹

1. The Mayor may impose as many of the specified prohibitions and restrictions as are necessary, because of an emergency, to maintain an acceptable level of public order and services, and to protect lives, safety, and property.
2. The Mayor shall recite all findings in the proclamation.
3. The proclamation shall be in writing.
4. The Mayor shall take reasonable steps to give notice of the terms of the proclamation to those affected by it and shall post a copy of it in the Town Hall.
5. The Mayor shall retain a text of the proclamation and furnish, upon request, certified copies of it for use as evidence. The proclamation, generally, may prohibit or restrict:¹¹⁰
 - a. Movements of people in public places;
 - b. The operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate;
 - c. Price gouging, herein defined as the sale of goods in excess of the manufacturer's suggested retail price or at a price above the pre-emergency level, unless the merchant can document purchase of the goods at increased cost. Any restrictions imposed under this subsection shall extend for a period of 90 days following the date of the declaration of the state of emergency unless sooner terminated by proclamation or resolution; and
 - d. Other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency, within the area designated in the proclamation.

10.6.3. SPECIFIC RESTRICTIONS AUTHORIZED

A. PROHIBITIONS AND RESTRICTIONS IMPOSED BY PROCLAMATION

1. **CURFEW¹¹¹**
 - a. The proclamation may impose a curfew prohibiting, in certain areas and during certain periods, the appearance in public of anyone who is not a member of an exempted class.
 - b. The proclamation shall specify the geographical area and the period during each 24 hours to which the curfew applies.
 - c. The Mayor may exempt from some or all of the curfew restrictions classes of people whose exemption the Mayor finds necessary for the preservation of the public health, safety and welfare. The proclamation shall state the exempt classes and the restrictions from which each is exempted.
 - d. Unless otherwise specified in the proclamation, the curfew shall apply during the specified period each day until the Mayor, by proclamation, removes the curfew.
2. **POSSESSION OR CONSUMPTION OF INTOXICATING LIQUOR, BEER, OR WINE¹¹²**

¹⁰⁸ This section comes from Section 12-46 of the current Town Code. "Article" has been replaced with "chapter".

¹⁰⁹ This section comes from Section 12-36 of the current Town Code.

¹¹⁰ This section comes from Section 12-42 of the current Town Code.

¹¹¹ This section comes from Section 12-37 of the current Town Code.

- a. The proclamation pursuant to this section may prohibit the possession or consumption of any intoxicating liquor, including beer and wine, other than on one's own premises, and may prohibit the transfer, transportation, sale, or purchase of any intoxicating liquor within the area of the Town described in this proclamation.
 - b. The prohibition, if imposed, may apply to transfers of intoxicating liquor by employees of alcoholic beverage control stores as well as by anyone else within the geographical area described.
- 3. POSSESSION, TRANSPORTATION, AND TRANSFER OF DANGEROUS WEAPONS AND SUBSTANCES¹¹³**
- a. The proclamation pursuant to this chapter may prohibit the transportation or possession off one's own premises, or the sale or purchase of, any dangerous weapon or substance.
 - b. The Mayor may exempt, from some or all of the restrictions, classes of people whose possession, transfer, or transportation of certain dangerous weapons or substances is necessary to the preservation of the public health, safety, or welfare.
 - c. The proclamation shall state the exempted classes and the restrictions from which each is exempted.
 - d. If imposed, the restrictions shall apply throughout the jurisdiction of the Town or such part thereof designated in the proclamation.
- 4. ACCESS TO AREAS**
- a. The proclamation, pursuant to this chapter, may prohibit obtaining access, or attempting to obtain access, to any area, designated in the manner described in this section, in violation of any order, clearly posted notice, or barricade, indicating that access is denied or restricted.
 - b. Areas to which access is denied or restricted shall be designated by the Town Manager. When acting under this authority, the Town may restrict or deny access to any area, street, highway, or location within the Town if that restriction, or denial of access or use, is reasonably necessary to promote efforts being made to overcome the emergency or to prevent further aggravation of the emergency.

B. EVACUATION¹¹⁴

1. The Mayor's proclamation may require the emergency evacuation of any area.
2. The proclamation shall state the geographic boundaries of the area to be evacuated and, upon issuance of the proclamation, the Town Manager shall take all necessary action to remove all persons from the area and to deny access to the area, as set out in Section 10.6.3.A.4, Access to Areas.

10.6.4. AMENDMENT, EXTENSION, & SUPERSEDING PROCLAMATIONS¹¹⁵

A. AMENDMENT

The Mayor may amend the proclamation under this section, making any modifications as authorized to include in the original proclamation.

B. EXTENSION

The Mayor may extend the proclamation under this section.

C. SUPERSEDING PROCLAMATIONS

The Mayor may invoke the restrictions authorized by this chapter in separate proclamations, and may amend any proclamation by means of a superseding proclamation.

10.6.5. EXPIRATION OR REMOVAL OF RESTRICTIONS¹¹⁶

- A.** The proclamation shall expire five days after its last imposition, unless sooner terminated or extended.

¹¹² This section comes from Section 12-38 of the current Town Code.

¹¹³ This section comes from Section 12-39 of the current Town Code.

¹¹⁴ This section comes from Section 12-41 of the current Town Code.

¹¹⁵ This section comes from Sections 12-43 & 44 of the current Town Code.

¹¹⁶ This section comes from Section 12-45 of the current Town Code.

- B.** The Mayor shall, by proclamation, remove the prohibitions and restrictions under this chapter as the emergency no longer requires them, or when directed to do so by the Town Council.

10.7. RECONSTRUCTION TASK FORCE

10.7.1. PURPOSE AND INTENT¹¹⁷

- A.** A reconstruction Task Force may be created for the purpose of advising the Town Council on a wide range of post-storm reconstruction issues in accordance with the standards of this section.
- B.** It is the intent of this section that the Town establish, prior to a storm, a special Reconstruction Task Force which will oversee the recovery and reconstruction process and serve as an advisory body to the Town Council on recovery/reconstruction issues.
- C.** A primary responsibility of Reconstruction Task Force is to identify opportunities to mitigate future storm damages through the management of reconstruction.

10.7.2. COMPOSITION¹¹⁸

- A.** The reconstruction task force will be composed of the following individuals, reflecting a broad-based representation of community interests:
 1. Two elected officials;
 2. The Town Manager;
 3. Two Planning Board members;
 4. One representative each from the Southern Shores Civic Association (SSCA) and the Chicahauk Property Owners' Association;¹¹⁹
 5. The Building inspector;
 6. The Police Chief, or a representative;
 7. The Fire Chief, or a representative; and
 8. One representative from either the realty or the construction community.
- B.** The Reconstruction Task Force shall be appointed by the Town Council.

10.7.3. POWERS AND DUTIES¹²⁰

A. RESPONSIBILITIES GENERALLY

The Reconstruction Task Force shall have the general responsibilities outlined in this subsection:

1. A primary function is to receive and review damage reports and other analyses of post-storm circumstances and to compare these circumstances with mitigation opportunities identified prior to the storm, to discern appropriate areas for post-storm change and innovation.
2. Where needed, review, in a more specific fashion, alternative mechanisms for bringing these changes about and recommend the coordination of internal and external resources for achieving these ends.

B. SPECIFIC RESPONSIBILITIES

In addition to the responsibilities in Section 10.7.3.A, Responsibilities Generally, the reconstruction task force shall:

1. Review the nature of damages, identify and evaluate alternate program approaches for repairs and reconstruction, and formulate recommendations for handling community recovery;
2. Recommend rezoning changes in areas of damage;
3. Set a calendar of milestones for reconstruction tasks in conjunction with the Town Council;
4. Initiate requests for repairs to critical utilities and facilities;
5. Recommend the expiration or extension of a moratorium for major and minor repairs;

¹¹⁷ This section comes from Section 12-69(a) and the second half of 12-66 of the current Town Code.

¹¹⁸ This section comes from Section 12-69(c) of the current Town Code.

¹¹⁹ The reference to the Chicahauk POA has been revised as suggested.

¹²⁰ This section comes from Section 12-69(b) of the current Town Code with minor organizational revisions but no substantive change.

6. Recommend the lifting or extension of a moratorium for the outstanding building moratorium;
7. Evaluate hazards and the effectiveness of mitigation policies and recommend the amendment of policies, if necessary;
8. Initiate recommendations for negotiations for relocations and acquisitions of property;
9. Participate in federal hazard mitigation planning; and
10. Recommend any changes in zoning, subdivision regulations, setback, density, elevation requirements, building codes, or any other ordinances which it deems necessary or advisable to prevent recurrence of coastal storm damage.

C. NON-MITIGATIVE OPPORTUNITIES

The Reconstruction Task Force may also undertake a similar process for non-mitigative local objectives and opportunities. It may recommend for the Town Council's consideration the following specific opportunities:

1. Enhancement of local recreational and open space opportunities;
2. Enhancement of public access to estuarine and ocean beaches;
3. Enhancement and restoration of local natural ecosystems;
4. Reduction of traffic congestion, noise, and other transportation-related problems;
5. Enhancement of the long-term economic vitality of the local commercial and industrial base; or
6. Other goals which further the stated goals and policies of the Town.

10.7.4. ACTIVATION¹²¹

The Reconstruction Task Force shall be activated upon the declaration of the initial building moratorium. It shall be responsible for advising the Town Council on a wide range of post-storm reconstruction issues.

10.8. POST-STORM BUILDING MORATORIA

10.8.1. PURPOSE AND INTENT¹²²

- A. Following a damaging storm and enactment of a building moratorium, it is the intent of the Town to allow rebuilding and reconstruction in an orderly manner.
- B. The Town will control the issuance of building permits to manage the location, timing, and sequence of reconstruction and repair. Primary consideration will be afforded to those structures which are "Minor Damaged Structures" or are "Major Damaged Structures".
- C. To further the intent of this chapter, the Town will make every effort to develop its capacity to identify and coordinate various post-storm reconstruction resources, while at the same time ensuring maximum local control over the reconstruction process.

10.8.2. LOCAL DAMAGE ASSESSMENT TEAM

- A. A Local Damage Assessment Team is hereby established.
- B. The primary task of the Local Damage Assessment Team is to identify structures which, as a result of the storm event, have been damaged. It will recommend to the Building Inspector those structures which have been destroyed, received major damage, or received minor damage. The Building Inspector will then inspect the damaged structures and place each structure in one of the following categories:
 1. Destroyed Structures;
 2. Major Damaged Structure; or
 3. Minor Damaged Structure.

10.8.3. DECLARATION OF A BUILDING MORATORIUM¹²³

A post-storm reconstruction moratorium shall be declared in effect by the Town upon the occurrence of one or more of the following findings:

¹²¹ This section captures the balance of Section 12-69(a) of the current Town Code.

¹²² This section comes from Section 12-66 of the current Town Code.

¹²³ This section comes from Section 12-68(b) of the current Town Code. It has been edited to include a part of Section 36-472(1) of the current Town Code.

- A.** The Town is struck by a hurricane of force equal to or greater than four on the Saffir-Simpson scale, as determined by the National Weather Service;
- B.** The Town is declared a disaster area by either the Governor or the President of the United States;
- C.** 25 or more structures have received major damage or have been destroyed, as determined by the Building Inspector; or
- D.** Upon the finding by the Mayor, or in the absence of the Mayor, the Mayor Pro Tem, of the existence of a state of emergency, in accordance with Section 14-288 of the North Carolina General Statutes, as amended.
- E.** The Mayor, or the Mayor Pro Tem, as the case may be, shall declare the initial building moratorium, pursuant to Section 160A-174 of the North Carolina General Statutes, where the Mayor finds a moratorium is necessary for the protection of lives, safety, and property, or due to the inability of the Town to maintain acceptable levels of public order and services. The Mayor may, based upon the above finding, extend the initial moratorium until such time as the state of emergency no longer exists.

10.8.4. PROCEDURES DURING MORATORIUM

A. EMERGENCY REPAIRS¹²⁴

- 1. While a moratorium is in effect, no construction or reconstruction activity may be undertaken, excepting only minor interior repairs and emergency repairs necessary to prevent injury or loss of life or imminent collapse or other substantial additional damage to the structure.
- 2. Items that constitute minor repairs may include:
 - a. Temporary roof repairs to avoid further water damage;
 - b. Minor repairs to steps; and
 - c. The temporary shoring up of a structure to avoid imminent collapse.

B. INITIAL BUILDING MORATORIUM¹²⁵

Upon the declaration of a building moratorium, the initial post-storm moratorium shall be in effect for a minimum period of 48 hours. No building permits shall be issued during this time period.

C. ADDITIONAL MORATORIA AND REQUIREMENTS¹²⁶

After expiration of this initial building moratorium, the following moratoria and additional requirements shall apply:

1. DESTROYED STRUCTURE MORATORIUM

- a. No building permit shall be issued within 30 days following the expiration of the initial moratorium for the replacement of any structure which has been destroyed.
- b. Any replacement building shall be subject to meeting the requirements of Section 22.5.8.C, General Standards for Ocean Hazard Areas, Hurricane and Storm Reconstruction and Redevelopment and General Use Standards for Ocean Hazard Areas, all applicable sections pertaining to zoning, and all applicable Town codes, prior to the issuance of a building permit.
- c. The following additional requirements must be met prior to the issuance of any building permit for construction of a new structure:
 - i. A post-storm survey and/or site plan from a registered state surveyor, as applicable, of the lot and the proposed structure;
 - ii. Site plan or survey approval as provided in Section 22.2.3.E, Site Plan;
 - iii. Verified location of CAMA setback boundaries;
 - iv. On-site inspection of lot by the Town Manager or a designee;
 - v. Potable water will be restorable at street frontage of lot;
 - vi. Direct, uninterrupted, approved vehicular access to lot;
 - vii. Electrical service restorable to building site;

¹²⁴ This section comes from Section 12-68(d) of the current Town Code.

¹²⁵ This section comes from Section 12-68(c) of the current Town Code.

¹²⁶ This section integrates information on additional requirements from Section 36-472(2) of the current Town Code along with information from Section 12-68(c)1.

- viii. All debris removed from lot; and
- ix. Septic improvements permit issued by the Dare County Environmental Health Department or the NC Division of Environmental Health.

2. MAJOR DAMAGED STRUCTURE MORATORIUM

- a. No building permit for repairs of a major damaged structure shall be issued for at least seven days following the expiration of the initial moratorium.
- b. All repairs to a major damaged structure shall meet the requirements of Section 22.5.8.C, General Standards for Ocean Hazard Areas, all applicable sections pertaining to zoning, and all applicable Town codes, prior to the issuance of a building permit.
- c. The following additional requirements must be met prior to issuance of a building permit for a major damaged structure:
 - i. A post-storm survey and/or site plan, as applicable, of the lot and structure if there is a proposed increase in the footprint of the structure over the pre-storm structure.
 - ii. In addition, the following information shall be provided on the survey/site plan:
 - 1) CAMA setback boundary;
 - 2) The location of all property boundary lines; and
 - 3) The possible existence of any nonconformities.
 - iii. Site plan or survey approval as provided in Section 22.2.3.E, Site Plan;
 - iv. On-site inspection of lot by the Town Manager or a designee, in addition to verification there will be no increase in any nonconformities, as regulated in Section 22.6, Nonconformities.
 - v. Potable water will be restorable at street frontage of lot;
 - vi. Direct, uninterrupted, approved vehicular access to lot;
 - vii. Electrical service restorable to building site;
 - viii. All debris removed from lot; and
 - ix. Septic improvements permit issued by the Dare County Environmental Health Department or the NC Division of Environmental Health, if required.

3. MINOR DAMAGED STRUCTURE MORATORIUM

- a. Permits for the repair of minor damaged structures may be issued following the expiration of the initial moratorium.
- b. All repairs to minor damaged structures shall meet the requirements of Section 22.5.8.C, General Standards for Ocean Hazard Areas, all applicable sections pertaining to zoning, and all applicable Town codes, prior to the issuance of a building permit.
- c. The following additional requirements must be met prior to issuance of a building permit to repair a minor damaged structure:
 - i. A post-storm survey and/or site plan, as applicable, of the lot and structure if there is a proposed increase in the footprint of the structure over the pre-storm structure;
 - ii. The location of all property boundary lines shall be provided on the survey/site plan;
 - iii. Site plan or survey approval as provided in Section 22.2.3.E, Site Plan;
 - iv. On-site inspection of lot by the Town Manager or a designee, in addition to verification that there will be no increase in any nonconformities, as regulated in Section 22.6, Nonconformities;
 - v. Vehicular access to lot;
 - vi. All debris removed from lot; and
 - vii. Septic improvements permit issued by the Dare County Environmental Health Department or the NC Division of Environmental Health, if required.

4. OUTSTANDING BUILDING PERMITS MORATORIUM

- a. All building permits for incomplete development which were issued prior to the storm event shall be revoked and shall not be reissued for a minimum period of 30 days following the expiration of the initial moratorium, unless upon finding by the Building Inspector, on a case-by-case basis, that sufficient inspection capability is available to adequately inspect the structures, should construction begin or resume.
- b. All permits issued prior to the storm event must meet the additional requirements of Section 22.5.8.C, General Standards for Ocean Hazard Areas, before construction can resume.
- c. Applications for building permits revoked under this section shall be reissued at no charge.

5. SITE PLAN REVIEW

- a. Site plans which have been submitted to the Town prior to the storm event shall not be reviewed by the staff, Planning Board, or Town Council for a period of 30 days following the expiration of the initial moratorium.
 - b. All submittal dates and review periods shall be adjusted accordingly to reflect the time period covered by this 30-day moratorium.
- 6. NEW SITE PLANS, ZONING REQUESTS AND SUBDIVISION PLATS**
- a. No new site plans, zoning permit requests, or subdivision plats shall be accepted by the Town for a period of 30 days following the expiration of the initial moratorium.
 - b. All submittal dates and review periods shall be adjusted accordingly to reflect the time period covered by this 30-day moratorium.

10.8.5. MORATORIUM EXTINGUISHED¹²⁷

All moratoria, other than the initial moratorium as enacted in [Section 10.8.4.B, Initial Building Moratorium](#), shall be in effect for the length of time described above and may be cancelled or extended by the Mayor or resolution by the Town Council.

¹²⁷ This section comes from Section 12-68(c)(2) of the current Town Code.

CHAPTER 11.

[RESERVED]

CHAPTER 12. SOLID WASTE

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GUIDANCE FROM CODE ASSESSMENT:

The Town’s solid waste provisions are currently located in Chapter 26 of the Town Code and are organized into two main sections: a series of sections on refuse and recycling provisions applied to individual landowners and uses, and a series of provisions addressing solid waste collectors contracting with the Town.

We suggest a variety of changes to the current regulations, including consolidation of similar provisions related to refuse and recycling containers serving residential lots and removal of repetitive language throughout the chapter.

There are several staff comments about the need to revise the provisions for greater consistency with Town practice, particularly with respect to the required number of individual refuse containers and pick-up placement standards for containers serving single-family detached residential uses.

There are several references to the County as the solid waste collection provider that should be revised to reference the Town's identified contractor.

12.1. STATUTORY AUTHORITY¹²⁸

The statutory authorization for the standards and procedures in this chapter are derived from the following:

12.1.1. REFERENCES

- A.** Section 14-399 of the North Carolina General Statutes, regarding litter offenses;
- B.** Section 104E-1 et seq., of the North Carolina General Statutes, regarding radioactive waste;
- C.** Section 130A-290 et seq., of the North Carolina General Statutes, regarding solid waste management;
- D.** Section 136-18.3, of the North Carolina General Statutes, regarding garbage containers on highway rights-of-way;
- E.** Section 136-91, of the North Carolina General Statutes, regarding placement of injurious obstructions in the road;
- F.** Section 160A-193, of the North Carolina General Statutes, regarding abatement of health and safety nuisances;
- G.** Section 160A-303.1, of the North Carolina General Statutes, regarding the placement of refuse within municipal limits;
- H.** Section 160A-317(b), of the North Carolina General Statutes regarding required use of solid waste services;
- I.** Section 160A-311 et seq., of the North Carolina General Statutes, regarding public enterprises; and
- J.** Section 15A NCAC 13B.1601 et seq., of the North Carolina Administrative Code, regarding municipal solid waste landfill facilities.

12.2. PURPOSE & INTENT¹²⁹

The purpose of this chapter is to regulate the storage, collection, and disposal of solid waste and recyclable materials in the Town.

12.3. WASTE COLLECTION RECEPTACLES

12.3.1. APPLICABILITY¹³⁰

- A.** Every person, owner, occupant, or operator of any single residential unit within the Town, and in areas covered by scheduled collections of the Town's solid waste service provider, and every operator or owner of any commercial establishment within such areas, shall be required to have and maintain Town-approved receptacles, except as provided in this section for special bulk waste containers.¹³¹
- B.** Only materials placed within an approved container shall be collected by the Town's solid waste service provider.

12.3.2. REQUIRED NUMBER AND TYPE OF WASTE RECEPTACLES

¹²⁸ This section comes from the footnote at the head of current Town Code Chapter 26. This section replaces the vague references to "NCGS ch. 160A....and various federal and state statutes" currently located in the second half of section 26-1.

¹²⁹ This section comes from current code Section 26-1; the second part of this section has been deleted and replaced by the more specific statutory citations in new section 12.1.

¹³⁰ This section combines Section 26-4 and Section 26-3 of the current Town Code. Edits for clarification have been included, as have edits suggested by staff.

¹³¹ To reflect changes in practice, all instances referring to the "Town Department of Public Works," "County Department of Public Works," etc. have been replaced with reference to "the Town's solid waste service provider," referring to the contracted-out waste service currently in use.

A. SINGLE-FAMILY RESIDENTIAL USES¹³²

1. Each single-family dwelling unit shall have at least one Town-approved solid waste receptacle.
2. Residential units of four or fewer bedrooms which are offered as vacation rentals shall have at least two solid waste receptacles.
3. Residential units of five or more bedrooms offered which are offered as vacation rentals shall have at least three solid waste receptacles.
4. The Town Manager may require property owners to have more than the minimum number of solid waste receptacles if the Town Manager determines that more are required to accommodate the materials typically generated at the property.

B. COMMERCIAL, INSTITUTIONAL, AND MULTI-FAMILY USES¹³³

The property owner or tenant of a commercial, institutional, or multi-family residential use¹³⁴ is required to supply adequate receptacles to accommodate all materials generated at the site:

1. The owner, tenant, or occupant shall purchase a bulk container from the Town's solid waste service provider or from a private contractor providing waste removal services.
2. In cases where a single establishment generates an insufficient volume of waste to require the use of a bulk container, the owner, tenant, or occupant shall purchase a sufficient number of waste receptacles from the Town's solid waste service provider to dispose of the waste generated by the establishment.

12.3.3. RECEPTACLE AND CONTAINER PLACEMENT FOR PICK UP¹³⁵

A. WASTE AND RECYCLING RECEPTACLES¹³⁶

1. Regular waste and recycling receptacles shall be placed within the right-of-way of the improved streets and roads in the Town within two feet of the paved portion of the street on designated collection days.
2. Four feet of clearance shall be left around each container.
3. The container shall be faced with the lid opening towards the street.

B. BULK CONTAINERS

1. Bulk containers shall be placed on sites in accordance with the site plan as approved or by direction of the Town Manager or a designee.
2. Sufficient space shall be provided on the premises for the location of a bulk solid waste container.
3. A bulk container may be located in a required parking lot so long as it does not occupy a required off-street parking space or maneuvering space and provides convenient and safe access to the servicing vehicle.¹³⁷

12.3.4. MAINTENANCE OF PICK UP AREA

- A.** Residential and commercial use occupants shall be responsible for ensuring the pick up area is clean of debris and vegetation.
- B.** In the case of shopping centers or multiple tenant buildings, it shall be the joint responsibility of owners and tenants to ensure the pickup area remains clean of debris and vegetation.

12.3.5. PROHIBITED MATERIALS¹³⁸

The following items shall not be placed in the town's regular solid waste receptacles for collection:

- A.** Antifreeze (i.e., ethylene glycol);

¹³² This section comes from Section 26-6 of the current Town Code.

¹³³ This section comes from Section 26-6(b) of the current Town Code with minor revisions but no substantive change.

¹³⁴ Expanded to cover additional uses.

¹³⁵ This section comes from Section 26-5 of the current Town Code. Edited to cover additional uses.

¹³⁶ At the suggestion of staff, the requirement for receptacles to be moved from the street within 24 hours has been removed due to its unenforceability.

¹³⁷ Section 36-163(2)(i) [off-street parking in zoning chapter].

¹³⁸ This section comes from Section 26-19 of the current Town Code. It has been amended as suggested by staff.

- B.** Asbestos;
- C.** Building materials;
- D.** Burning or smoldering materials or any other materials which could create a fire hazard;
- E.** Hazardous, radioactive, or medical waste;
- F.** Lead-acid batteries (may be recycled);
- G.** Liquid waste;
- H.** Paint, motor oil, or other toxic or flammable liquids;
- I.** Motor vehicle tires;
- J.** Pesticides;
- K.** Rocks, dirt, sand;
- L.** Sharps not properly contained or wrapped; or
- M.** Yard trimmings (may be composted or burned with Fire Department permission).

12.4. RECYCLING

12.4.1. REQUIRED NUMBER AND TYPE OF RECYCLING RECEPTACLES¹³⁹

A. SINGLE-FAMILY RESIDENTIAL USES¹⁴⁰

1. Each single-family residential dwelling unit shall have at least one Town-approved recycling receptacle.
2. Residential units of four or fewer bedrooms that are offered as vacation rentals shall have at least one recycling receptacle.
3. Residential units of five or more bedrooms that are offered as vacation rentals shall have two¹⁴¹ recycling receptacles.
4. The Town Manager or a designee may require property owners to have more than the minimum number of recycling receptacles if it is determined that more are required to accommodate the materials typically generated at the property.

B. COMMERCIAL, INSTITUTIONAL, AND MULTI-FAMILY USES¹⁴²

1. The owner, tenant, or occupant of a commercial, institutional, or multi-family establishment shall obtain at least one recycling receptacle from the Town or a private contractor.
2. The owner, tenant, or occupant is required to supply adequate receptacles to accommodate all materials generated at the site.

12.4.2. PLACEMENT OF RECYCLING FOR PICK UP¹⁴³

1. Curbside collection shall be provided as specified in the Town's regularly published collection schedule for residential customers.
2. All recyclable material shall be placed in the receptacles.
3. Items not inside receptacles will not be picked up.
4. Recycling receptacles shall be subject to the standards in Section 12.3.3. Receptacle and Container Placement for Pick Up.

12.4.3. AUTHORIZED MATERIALS¹⁴⁴

¹³⁹ This section (A & B) come from Sections 26-4 of the current Town Code.

¹⁴⁰ This section comes from Section 26-6 of the current Town Code.

¹⁴¹ Number increased from one to two based on staff recommendation.

¹⁴² This section comes from Section 26-6(b) of the current Town Code. The title has been expanded to include additional uses.

¹⁴³ This section comes from Section 26-9(c) of the current Town Code.

¹⁴⁴ This section comes from Section 26-9 of the current Town Code.

A. SEPARATION REQUIRED

Each person who owns, leases, rents or manages a residence or residential unit shall remove recyclable materials from the solid waste generated, as required in Section 12.4.3.B, Available for Recycling.

B. AVAILABLE FOR RECYCLING

1. All recyclable materials shall be separated from other solid waste and made available for recycling.
2. Recyclable materials shall not be mixed with or disposed of with other solid waste.
3. Recyclable materials shall consist of the following items and shall be prepared for recycling in accordance with these standards:
 - a. All brown, green, and clear glass that has been rinsed;
 - b. Steel food cans that have been rinsed;
 - c. Aluminum cans, foil, and plates that have been rinsed and flattened;
 - d. Plastic milk, water, and soft drink bottles that have been rinsed, cleared of caps and rings, flattened, to extent possible;
 - e. Other plastic bottles (except those containing oils, salad dressings, motor oil, which are not recyclable) that have been rinsed and clear of caps;
 - f. Loose dry cardboard, newspapers, magazines, and mixed papers; and
 - g. Those items specified by the Town according to its current recycling collection contract.

C. RECYCLING CENTERS

Items not permitted in municipal solid waste, such as the materials listed in Section 12.3.5, Prohibited Materials, shall be taken to approved recycling centers as specified by the Town.

D. OWNERSHIP

1. Ownership of the recyclable material shall transfer from the property owner to the Town at the time the Town or its solid waste service provider takes possession of the material.
2. Nothing in this section is intended to prevent any person from donating or selling recyclable materials to any other person.

12.5. CONSTRUCTION AND DEMOLITION WASTE¹⁴⁵

12.5.1. SPECIAL CONTAINER REQUIRED

- A.** Construction or demolition contractors, homeowners, and any other persons disposing of construction and demolition waste or debris shall provide a separate, specially designated container for construction and demolition waste and must arrange for the pickup of such waste by a contractor.
- B.** No construction or demolition waste or debris shall be placed in a municipal solid waste container or recycling container for collection by the Town.

12.5.2. MAINTAINED IN A CLEAN CONDITION

All scrap building materials and other trash produced by those working on the site shall be contained and the site shall be maintained in a clean and litter free condition.

12.5.3. DAILY REMOVAL REQUIRED

- A.** Lot clearing waste, including any waste taken from the Town street right-of-way, shall be removed from the site by the contractor and disposed of in an approved location.
- B.** Dirt, mud, sand, construction materials or other debris deposited upon any public or private property as a result of construction or demolition shall be removed immediately or by the end of the workday by the contractor.

12.5.4. COSTS OF REMOVAL

¹⁴⁵ This section comes from Section 26-10 of the current Town Code, with minor non-substantive revisions for clarity.

Costs for removal of building materials shall be borne by the contractor or owner.

12.6. STORAGE OF SOLID WASTE¹⁴⁶

12.6.1. ACCUMULATION PROHIBITED

- A.** Any unauthorized accumulation of solid waste on any lot, property, premises, public street, or other public or private place is prohibited.
- B.** It shall be unlawful for any person or the employees or agents of any person to throw or otherwise deposit solid waste, bottles, cans or other containers of any kind, garbage or any type of waste material, or to place or leave or cause to be placed or left, temporarily or permanently, any solid waste, garbage, bottles, cans or other containers of any kind, any scrapped or abandoned automobile, truck or other motor vehicle or part thereof, upon any property, whether public or private, except property designated as sanitary landfills, trash dumps, or garbage disposal areas by the Town.¹⁴⁷

12.6.2. UNLAWFUL TO ALLOW WASTE ACCUMULATION IN WATERWAYS

It shall be unlawful to dump, deposit, or otherwise cause any trash, landscape debris, or other material of any form, type, or nature to be placed in any canal, stream, channel, pond, or basin which regularly or periodically carries or stores water.¹⁴⁸

12.6.3. OVERFILLING RECEPTACLES PROHIBITED

- A.** Receptacles shall not be overfilled. The lids must be closed to prevent contents from blowing due to strong winds, or scattering caused by foraging animals.
- B.** It shall be unlawful for any person to leave outside any building or dwelling, in a place accessible to children, any appliance, refrigerator or other container of any kind which has an airtight door or cover with a snap lock or latch without first removing the lock or latch, door or cover from the appliance, refrigerator or container.

12.6.4. FILL EXEMPTED

The provisions of this section shall not apply to the depositing of fill material upon any building site for the purpose of constructing a foundation thereon, provided that fill material for such construction shall not consist of organic trash or garbage, wood or wood products, bottles, cans, containers, scrapped or abandoned automobiles, trucks or motor vehicles, or parts thereof.

12.7. YARD WASTE¹⁴⁹

Yard trimming waste that is approved for removal by the Town may be temporarily placed in the street right-of-way in accordance with the Town's current Limb and Branch Removal Program.

12.8. SOLID WASTE COLLECTORS¹⁵⁰

12.8.1. SOLID WASTE LICENSE REQUIRED

- A.** It shall be unlawful for any person to engage in business as a solid waste collector within any area of the Town, without first having procured a solid waste license from the Town Council.
- B.** All solid waste collectors within the Town shall dispose of all solid waste generated within any area of the Town only at authorized solid waste facility or transfer stations.

¹⁴⁶ This section comes from Sections 26-12(b),(c)&(d) of the current Town Code.

¹⁴⁷ This section comes from Section 26-14(a) of the current Town Code.

¹⁴⁸ This section comes from Section 26-14(b) of the current Town Code.

¹⁴⁹ This section comes from Sections 26-12(e) of the current Town Code, amended as suggested by staff.

¹⁵⁰ This section comes from Section 26-21(b) of the current Town Code.

12.8.2. APPLICATION AND ISSUANCE OF LICENSE

A. APPLICATION

All applicants for solid waste licenses shall file a written application with the Town Manager or a designee and shall furnish the following information:

1. The name and address of the applicant, and whether the applicant is a sole proprietorship, corporation, partnership, or other entity;
2. A list of the collection vehicles the applicant plans to use in the Town; and
3. Any other information the Town Manager may reasonably request.

B. FIVE-YEAR LICENSE

1. Solid waste licenses shall be issued for five-year periods.
2. Licenses may be renewed following submittal of the information designated in Section 12.8.2.A, Application, to the Town Manager or a designee, at least 30 days prior to the expiration of the existing and valid license.

C. SELECTION OF APPLICANTS, GRANTING OF LICENSES

The Town Manager or a designee shall review applications for solid waste licenses and license renewals, and shall issue licenses and renewals to applicants only in accordance with the requirements of this chapter.

D. INVESTIGATION OF SOLID WASTE COLLECTORS

Before issuing a license pursuant to this section, The Town Manager or a designee may inspect the facilities, equipment, and solid waste collection vehicles the applicant plans to use in the solid waste collection business.

E. LICENSE ISSUANCE

The Town Manager or a designee shall issue the applicant a license only when it is determined that the application is complete and the applicant is in compliance with this chapter.

F. STICKER REQUIRED

1. When a license is issued to a solid waste collector, the solid waste collector shall affix a sticker indicating that the solid waste collector has a valid license to all of its solid waste collection vehicles that are to be operated in the Town. The Town Manager or a designee shall issue stickers to the solid waste collector at the time the license is issued.
2. Licensees may obtain additional stickers from the Town Manager or a designee.

G. LICENSE DENIED

1. If the Town Manager or a designee denies an applicant a license, the applicant may request a hearing before the Town Council by giving written notice of appeal to the Town Manager within five working days of receipt of the decision denying the license.
2. After a hearing on the appeal, the Town Council shall either affirm the denial or direct the Town Manager or a designee to issue the license.

H. LICENSE FEE

The licensee shall pay the sum set in the adopted fee schedule, not to exceed \$50.00, for the issuance of the license, and the sum of \$1.00 for each sticker to be affixed to each solid waste collection vehicle.

I. NON-TRANSFERABILITY OF LICENSES

Solid waste licenses are non-transferable and non-assignable.

12.8.3. RESPONSIBILITIES OF LICENSEE

- A. The licensee shall serve every person who contracts with it for solid waste collection in such a manner that the licensee does not cause the person to be in violation of this chapter.
- B. The licensee shall dispose of all solid waste generated within any area of the Town only at a designated solid waste facility or transfer station.

- C.** A licensee shall submit an annual report to the Town Manager or a designee containing the following information:
1. A list of the collection vehicles the licensee used in the Town during the reporting year;
 2. The total amount of solid waste collected in the Town and the locations where the solid waste was disposed of during the reporting year;
 3. A certification that all solid waste collected in the Town was disposed of only at a designated solid waste facility or transfer station; and
 4. Any other information the Town Manager or a designee may reasonably request.

12.8.4. REVOCATION OF LICENSE¹⁵¹

- A.** If the Town Manager or a designee finds that a licensee has violated this chapter or the conditions of the license, the licensee shall receive written notice of the violation and be informed that if another violation occurs within 30 working days, or in the case of continuing violation if it is not corrected within ten working days, the license will be revoked.
- B.** If another violation occurs within the 30 working day period, or if the continuing violation is not corrected within 10 working days, the Town Manager or a designee shall give the licensee written notice that the license is revoked.
- C.** Upon receipt of the revocation, the licensee shall cease collecting, transporting, or disposing of solid wastes in any area of the Town immediately.
- D.** The Town Manager or a designee may reinstate a revoked license after the revocation has been in effect for 30 working days if it is found that the conditions causing the violation have been corrected.
- E.** A licensee whose license has been revoked may appeal the revocation to the Town Council by giving written notice of the appeal to the Town Manager or a designee within five working days of receiving notice of revocation from the Town Manager or a designee.
- F.** After a hearing on the appeal, the Town Council shall either affirm the revocation or direct the Town Manager or a designee to reinstate the license.

¹⁵¹ This section comes from Section 26-20(c)(5) of the current Town Code.

CHAPTER 13.

[RESERVED]

CHAPTER 14. WASTEWATER

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GUIDANCE FROM CODE ASSESSMENT:

The current wastewater management system standards are found in Chapter 32, Utilities, of the current Town Code. That chapter is comprised of four articles: General; Enforcement; Permits, Report, and Administration; and Wastewater Management Practices. This draft chapter of the Town Code has been renamed to “Wastewater” since all the provisions deal with wastewater management.

In accordance with other chapters in the updated Town Code, the individual chapter-based definitions have been relocated to the consolidated definitions chapter. Also, the various enforcement provisions in Article 2 have been relocated to the consolidated chapter on enforcement.

The current standards include a considerable amount of overlap and repetition of permit-related provisions in Article 3, Permits, and Article 4, Wastewater Management Facilities. These two different articles have been consolidated to help reduce repetition. In addition, there is a considerable amount of inconsistent terminology with respect to the permits described in the chapter (e.g., wastewater management system permit, site evaluation certification, certificate of compliance, operations permit, and an operation certification). These inconsistencies have been addressed and clarified. In addition, the chapter has been reorganized for greater clarity. The text includes footnotes that track the origin of proposed text.

Text shown in yellow highlight includes a cross reference to be filled in as part of the draft of the document proposed for public hearing.

14.1. STATUTORY AUTHORITY¹⁵²

The statutory authorization for the standards and procedures in this chapter are derived from the following.

14.1.1. REFERENCES

- A.** Chapter 62 of the North Carolina General Statutes, regarding public utilities;
- B.** Section 143-211 et. seq. of the North Carolina General Statutes, regarding water and air resources;
- C.** Section 159-80 et. seq. of the North Carolina General Statutes, regarding revenue bonds;
- D.** Section 160A-176 et seq. of the North Carolina General Statutes, regarding ordinances effective on municipal property outside limits;
- E.** Section 160A-185 of the North Carolina General Statutes, regarding municipal regulation of pollutants or contaminants;
- F.** Section 160A-193 of the North Carolina General Statutes, regarding health and safety nuisances;
- G.** Section 160A-216 et seq. of the North Carolina General Statutes, regarding special assessments;
- H.** Section 160A-296 of the North Carolina General Statutes, regarding excavations and placing pipes;
- I.** Section 130A-335 of the North Carolina General Statutes, regarding wastewater collection, treatment, and disposal;
- J.** Section 130A-342 of the North Carolina General Statutes, regarding residential wastewater treatment systems; and
- K.** Section 15A-2H.0900 et seq. of the North Carolina Administrative Code, pertaining to local pretreatment programs.

14.2. PURPOSE AND INTENT¹⁵³

The provisions of this chapter are intended to establish the basis for regulatory permit issuance to all wastewater systems, public and/or private, within the Town's jurisdiction.

14.3. RELATIONSHIP TO OTHER STANDARDS

14.3.1. STATE AND FEDERAL STANDARDS

- A.** All wastewater management systems with subsurface soil absorption systems shall comply with State and County regulations, as set forth in Sections 130A-333 through 130A-345 of the North Carolina General Statutes.
- B.** All wastewater management systems with surface discharge shall comply with federal (EPA) and state regulations as set forth in Title 15A, Chapter 2, Environmental Management Regulations (15A NCAC 02) of the North Carolina Administrative Code.

14.3.2. MOST RESTRICTIVE STANDARD APPLIES

The Town recognizes State and County regulations as minimum criteria for wastewater system compliance, but reserves the right to require stricter regulatory limits with State and County approval, as may be provided in Section 130A-39 of the North Carolina General Statutes.

14.3.3. ENFORCEMENT

¹⁵² This section comes from "Footnotes" section of Chapter 32 of the current code. It has been modified for clarity and consistency with other sections of this draft.

¹⁵³ This section comes from Section 32.2 and Section 32.3 of the current code.

- A.** The matters described in this chapter shall be subject to such enforcement, controls, or requirements, as necessary, to ensure the protection of the public health and safety as related to the management of wastewater treatment and disposal practices within the jurisdiction of the Town.
- B.** The supervision and enforcement of rules and regulations by State and/or County government shall be continuously monitored by the Town.

14.4. UNDEFINED TERMS¹⁵⁴

Terms used in this chapter, but not defined in Chapter 4, Definitions, shall have the meanings set forth in Section 40 CFR 34.905 or in the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association (APHA), the American Waterworks Association (AWWA), and the Water Pollution Control Federation (WPCF). Unless otherwise expressly stated in this chapter, waste constituents and characteristics shall be measured by methods set forth in the latest edition of "Standard Methods for the Examination of Water and Wastewater," and/or "Methods for Chemical Analysis of Waters and Wastes," published by the Environmental Protection Agency (EPA).

14.5. WASTEWATER MANAGEMENT SYSTEM ESTABLISHMENT

The standards in this section detail the steps necessary to construct and operate a wastewater management system in the Town.

14.5.1. WASTEWATER FACILITY PLAN¹⁵⁵

A. APPLICABILITY

For wastewater management projects, other than single-family dwellings, the owner/developer shall submit a Wastewater Facility Plan for the intended development prior to the submittal of an application for a wastewater system construction permit.

B. SUBMITTAL REQUIREMENTS

A Wastewater Facility Plan shall include:

1. Background information;
2. Regulatory compliance analysis;
3. Design criteria;
4. Operational data which directly relates to the specific treatment practices to be employed by the project;
5. Description of the need for the proposed facility and the methodology for compliance with existing State, County, and Town regulations; and
6. Demonstration that the selected treatment is implementable from legal, institutional, financial and management standpoints.

C. SITE EVALUATION CERTIFICATION FOR ON-SITE WASTEWATER SYSTEMS¹⁵⁶

1. For all wastewater projects requiring subsurface soil absorption systems, the applicant shall provide the Town, as part of the Wastewater Facility Plan, with a written site evaluation, prepared by a registered sanitarian with the Dare County Environmental Health Department.
2. The site evaluation shall address the following minimum criteria related to both the active and reserve drain field areas:
 - a. Soil texture and structure;
 - b. Depth of seasonally high water table;

¹⁵⁴ As with all chapters of this draft updated code, definitions have been consolidated in Chapter 4. This section clarifies that any other terms not defined in this code follow national regulatory agency definitions, and is taken from current code Section 32-1(b).

¹⁵⁵ This section comes from Section 32-100 of the current code, reformatted for user-friendliness but with no substantive change.

¹⁵⁶ This section comes from Section 32.101 of the current code.

- c. Overall suitability and assigned design loading rate (specify if rate is for conventional or low-pressure pipe system);
- d. Site limitations for other system components, such as septic tanks, pump stations, and collection sewers (e.g., proximity to water supplies and surface waters);
- e. Any other site/soil factors designated in state and county laws and rules governing sewage disposal systems; and
- f. Adjoining land uses and zoning.

14.5.2. WASTEWATER SYSTEM CONSTRUCTION PERMIT

Before commencement of construction of a wastewater management system, the owner shall obtain a written permit from the Town or another appropriate regulatory authority. A copy of the permit shall be accompanied by such supplementary data as deemed necessary by the Town to maintain an accurate file of such wastewater disposal systems.¹⁵⁷

A. WASTEWATER SYSTEM CONSTRUCTION PERMIT APPLICATION PROCEDURE¹⁵⁸

1. PRE-PLANNING REVIEW

Prior to filing detailed applications for development, applicants shall present the Planning Board with a written statement of intent, accompanied by the engineering planning report, as defined in Section 14.5.1, Wastewater Facility Plan. Only after pre-planning review approval by the Planning Board may the applicant submit a formal planning application.

2. FILING APPLICATIONS¹⁵⁹

- a. An application for a wastewater system construction permit shall be filed with the Town prior to commencement of project review by the Planning Board and staff.
- b. Every application for a wastewater system construction permit shall be made on a form prescribed by the Town and signed by the applicant.
- c. Applications shall be accompanied by the proper fee to cover the cost of processing, review, permit issuance, and related services as may be set out from time to time in a regularly adopted schedule of fees.
- d. All private wastewater systems shall be designed by a registered sanitarian or civil-sanitary engineer licensed to practice in North Carolina.
- e. All community and non-community wastewater systems (e.g., restaurants, commercial, condominium, motels) shall be designed by a professional engineer licensed to practice in North Carolina.
- f. The applicant shall submit two sets of State and County approved design plans and specifications for the proposed wastewater system to the Town.
- g. The applicant shall provide copies of the improvement permit or authorization to construct, as issued by the State and/or County regulatory agency having jurisdiction over the wastewater system, to the Town prior to issuance of a building permit.

3. FORMS DISTINGUISHED

Applicants for single-family and duplex residential housing shall file the short form application and all others shall file the long form application.

4. SHORT FORM APPLICATION

The short form application shall include:

- a. Owner's name, address, and phone number;
- b. Description of house;
- c. Contractor's name, address, and phone number;
- d. Site description: location, lot number, zoning designation;
- e. Dare County Health Department site report;
- f. A vicinity map;
- g. Surveyed plat map with proposed wastewater system location; and

¹⁵⁷ This section comes from Section 32-5(c) of the current code.

¹⁵⁸ This section comes from Section 32.99 of the current code.

¹⁵⁹ This section integrates Section 32-6 of the current code into the information from 32-99, and eliminates redundancy such as 32-6(a), which references the pre-application permit referenced in this section already.

h. Septic system improvement permit from the Dare County Health Department.

5. LONG FORM APPLICATION

The long form application shall include:

- a. Project title;
- b. Owner's name, address, and phone number;
- c. Engineer's name, address, and phone number;
- d. Wastewater facility planning report detailing facility description (e.g., number of dwelling units and number of bedrooms per unit, restaurant seats and/or square footage of dining area, number of employees, and other relevant information for determining design sewage flow); and estimating daily flow (total and for each subsystem);
- e. Site evaluation report from the Dare County Environmental Health Department;
- f. Vicinity map;
- g. Surveyed base map of appropriate scale for locating system components and evaluating proposed drain field and repair areas; and
- h. All applicable permits.

6. REVIEW

The Planning Board shall review all applications for compliance with applicable Town requirements prior to recommending the project to the Town Council for final approval.

B. ACTION ON APPLICATION

1. FINAL ACTION ON PERMIT APPLICATIONS

- a. The Town shall take final action on all applications not later than 60 days following receipt of a complete application and required supporting documents.
- b. All permits or renewals of permits and decisions denying permits or renewals shall be in writing.
- c. Following a decision on an application by the Town Council, the Town Manager is authorized to:
 - i. Issue a permit containing such conditions as are necessary to accomplish the purposes of this chapter.
 - ii. Issue a permit containing time schedules for achieving compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements.
 - iii. Modify or revoke, with sufficient cause and due process, any permit, upon giving 60 days' notice to the person affected.
 - iv. Suspend a permit, with sufficient cause and due process; or
 - v. Deny a permit application where necessary.
- d. The Planning Board shall submit to the Town Council at its regular meeting, a report which contains the action taken with respect to any permit application since the last Town Council meeting.

2. NOTIFICATION OF APPLICANTS

The Town shall notify an applicant by mail of the final decision on his permit application.

3. ADMINISTRATIVE HEARINGS

An applicant whose permit is denied, or is granted subject to conditions he deems unacceptable, shall have the right to a hearing before the Town Council upon giving written notice, identifying the specific issue to be contended, to the Town Clerk within 30 days following notice of final decision to deny or grant the permit. Unless such notice is given, the decision on the application shall be final and binding.

4. MODIFICATION, REVOCATION, AND SUSPENSION OF PERMITS

Any permit issued pursuant to this chapter is subject to revocation, suspension, or modification, in whole or part, for good cause, subject to the provisions of Section 14.5.8, Suspension or Revocation of Permit.¹⁶⁰

14.5.3. WASTEWATER SYSTEM CONSTRUCTION

A. TOWN SUPERVISION

¹⁶⁰ Section 32.6(a)(b)&(c) have been omitted because they are redundant and less specific than the section used above. Section 32.6(d) has been moved to 14.5.7., Temporary Permit.

1. The construction or modification of wastewater systems shall be coordinated with the Building Inspector and subject to periodic inspection as work progresses.
2. If the Town determines that construction is not in compliance with established standards, further work shall stop until corrective measures have been completed.¹⁶¹
3. The Town, acting through the Building Inspector or other authorized representative, shall cause to be made as many inspections as may be necessary to determine that work is being done according to the provisions of any applicable Town, County, or State laws and the terms of the permit document, including the engineering plans and specifications.
4. The following inspections shall be required during construction of all wastewater systems except private wastewater systems:
 - a. Preconstruction field conference at which time all field stakeout, location of buried utilities, and updated plans and specifications will be verified. Further, the contractor will be required to have, on-site, an emergency phone contact list to facilitate quick reporting of accidents to the proper authorities.
 - b. A foundation inspection to be made after trenches are excavated, and all necessary reinforcement and forms are in place, and before any concrete or block is placed. For other types of foundations, inspections shall be made as soon as the foundation is installed.
 - c. An equipment inspection shall be made prior to installation to verify supply in accordance with plans and specifications.
 - d. A framing inspection shall be made after all structural framing is in place and the roughing-in of plumbing, electrical and heating has been installed, and after the structure is enclosed or covered. Poured concrete structural elements shall be inspected before each pour of any structural member.
 - e. An insulation inspection shall be made after all insulation is installed.
 - f. A final inspection is due when all construction is complete, and the building is ready for occupancy, but before the building is occupied.
5. At least 24 hours' advance notice must be given the Building Inspector for any inspection required by this chapter. In the event any work inspected is unsatisfactory, a re-inspection shall be made at the convenience of the Building Inspector upon notification of the correction of discrepancies. A failure to call or notify the Building Inspector for inspections, and proceeding without approval at any stage of construction, shall be deemed a violation of this Ordinance.

B. ADDITIONAL CONSTRUCTION SUPERVISION AND INSPECTION¹⁶²

1. Installation of wastewater management systems shall be completed under the direction or supervision of the design sanitarian or engineer, as applicable, and the Dare County Health Department.
2. Prior to occupancy, operation, and startup, the sanitarian or engineer shall provide a certification to the Town that the wastewater management system has been installed and will operate in accordance with the facility plan and design plans and specifications.

14.5.4. WASTEWATER SYSTEM CERTIFICATION¹⁶³

A. CERTIFICATION REQUIRED BEFORE OCCUPANCY

No new building, or an addition to a building, shall be occupied, no change in use of a building or part of a building shall be made and no wastewater system shall start operation until the design sanitarian/engineer certifies, in writing, that the wastewater management system has been installed in accordance with the approved plans and specifications, and the installation is approved by the Dare County Health Department or NC Division of Environmental Management, whichever is applicable, and all other conditions of the wastewater improvement permit have been met.

B. CERTIFICATION NOT REQUIRED

Notwithstanding subsection A above, a new building, or an addition to a building, may be occupied without issuance of a wastewater system certification if:

¹⁶¹ This section comes from Section 32.12(a) and (b) of the current code.

¹⁶² This section comes from Section 32.104 of the current code.

¹⁶³ This section comes from Section 32.105 of the current Code. A new name for the required certification is suggested in order to prevent confusion with similar terms. Originally called "Certificate of Compliance"; now suggested to be referred to as "Wastewater System Certificate."

1. That portion of the wastewater management system installed in accordance with the approved plans and specifications is sufficient to treat and dispose of wastewater from the new building, or an addition to a building, for which a certificate of occupancy is sought; or
2. The applicant for a certificate of occupancy for a new building, or an addition to a building, that is served by a wastewater system that is only partially installed posts a cash or cash equivalent performance bond in an amount equal to the cost to complete construction and installation of the wastewater system, in accordance with approved plans, specifications and conditions of the wastewater permit for the wastewater system, plus 25 percent of that amount, which bond shall ensure completion of the wastewater system.

C. OPERATION CERTIFICATION¹⁶⁴

Prior to issuance of an operations permit, the applicant shall comply with the following requirements, to the extent deemed appropriate by the County and Town, given the capacity and special use considerations of the applicant's project:

1. Provide an engineer's certificate of compliance.
2. Provide the Town with two sets of as-built plans and specifications and a complete listing of the mechanical equipment employed within the project, as prepared by a professional land surveyor or professional engineer.
3. Provide the Town with two copies of the complete operations and maintenance manual and the assurance of adequate manuals available on the project site. At a minimum, the operations and maintenance manual should include the following:
 - a. Name, address, and phone number of a responsible agent and system operator and operations state certification number, including 24-hour emergency numbers;
 - b. Equipment lists and manufacturer's maintenance guidelines; maintenance process and performance monitoring schedule;
 - c. Emergency operations plan; and
 - d. Copy of state operations permit.
4. Provide the Town with an executed operation and maintenance contract for a minimum of three years. The contract shall stipulate that actual field operation, monitoring and control shall be provided by a trained operator, certified to the proper plant grade level by the state division of environmental management. No wastewater treatment system operations permit shall be issued without the owner having retained the maintenance services of a state certified operator, unless such operation is exempt under current state regulations.
5. Where applicable, provide the Town with assurances that an emergency warning system, with remote telemetry, has been installed and is operable. In specific cases, the Town may require that remote telemetry be tied into the police department.
6. Provide the Town with an operation and maintenance reporting schedule and schedule for semiannual inspections of facility operations by the Town.

D. CERTIFICATE OF COMPLIANCE¹⁶⁵

1. No new building, or an addition to a building, shall be occupied, no change in use of a building or part of a building shall be made and no wastewater system shall start operation until the design sanitarian/engineer certifies, in writing, that the wastewater management system has been installed in accordance with the approved plans and specifications, and the installation is approved by the Dare County Health Department or NC Division of Environmental Management, whichever is applicable, and all other conditions of the wastewater improvement permit have been met.
2. Notwithstanding the foregoing, a new building, or an addition to a building, may be occupied if:
 - a. That portion of the wastewater management system installed in accordance with the approved plans and specifications is sufficient to treat and dispose of wastewater from the new building, or an addition to a building, for which a certificate of occupancy is sought; and
 - b. The applicant for a certificate of occupancy for a new building, or an addition to a building, that is served by a wastewater system that is only partially installed posts a cash or cash equivalent performance bond in an amount equal to the cost to complete construction and installation of the wastewater system, in accordance with approved plans, specifications and conditions of the

¹⁶⁴ This section comes from Section 32.106 of the current code.

¹⁶⁵ This section comes from Section 32-105 of the current code.

wastewater permit for the wastewater system, plus 25 percent of that amount, which bond shall ensure completion of the wastewater system.

14.5.5. WASTEWATER SYSTEM OPERATION PERMITS¹⁶⁶

A. DURATION OF PERMITS

1. Wastewater system operation permits shall be issued for a specified time period, not to exceed three years.
2. A permit may be issued for a period less than a year or may be stated to expire on a specific date.
3. The owner shall apply 30 days prior to expiration in order to extend a permit (single-family housing is exempt).
4. The terms and conditions of the permit may be subject to modification and change by the Town during the life of the permit. The owner shall be informed of any proposed changes in his permit at least 30 days prior to the effective date of the change.
5. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

B. TRANSFER OF A PERMIT PROHIBITED

Wastewater permits are issued to a specific owner for a specific operation. A wastewater permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or another or changed operation.

14.5.6. TEMPORARY WASTEWATER PERMIT¹⁶⁷

- A.** The Town, where applicable, may issue temporary wastewater¹⁶⁸ permits in lieu of an operations permit or certificate of occupancy if, in the Town's judgment, unusual circumstances prevent full permit compliance within a reasonable time period.
- B.** The temporary wastewater permit is issued for a limited period of time and stipulate the conditions for issuance and restriction and compliance efforts needed.
- C.** Failure to comply with State, County, Town permit conditions within the specified period may result in a stop work order, condemnation, or fine.
- D.** Temporary wastewater permits shall only be issued with Dare County Health Department concurrence.

14.5.7. UNLAWFUL DISCHARGES

- A.** Any person who discharges wastes in violation of this chapter shall, upon discovery thereof, immediately notify the Town Clerk and Dare County Health Department so that necessary countermeasures may be taken to minimize the damage to the community.
- B.** In addition, such owner shall, within 15 days of such occurrence, deliver to the Town Clerk a written detailed report describing the cause of such discharge and the measures taken to prevent a reoccurrence in the future.¹⁶⁹

14.5.8. SUSPENSION OR REVOCATION OF PERMIT¹⁷⁰

Any owner who violates the conditions of a wastewater permit, any provisions of this chapter, applicable State and federal regulations, or any of the following, is subject to having a wastewater permit suspended or revoked:

- A.** Failure of the owner to factually report the wastewater constituents and characteristics of his discharge;
- B.** Failure of the owner to report significant changes in operations, or wastewater constituents and characteristics;
- C.** Refusal of reasonable access to the owner's premises for the purpose of inspection or monitoring;
- D.** Failure to report a chemical spill or accidental discharge;

¹⁶⁶ This section comes from Section 32-68 of the current code.

¹⁶⁷ This section comes from Section 32.6 of the current code.

¹⁶⁸ The term "use" has been revised to "wastewater" to eliminate confusion between types of permits.

¹⁶⁹ This section comes from Section 32.43 of the current code.

¹⁷⁰ This section comes from Section 32.68(c) of the current code. It has been kept here rather than relocated to the Enforcement chapter because it was under "Permit Conditions" in the code.

- E. Failure to properly handle sludge; or
- F. Failure to make required reports.

14.5.9. ENFORCEMENT

Any action by the Town shall be in accordance with the permit holder's right to due process and those portions of Chapter 36, Offenses and Enforcement.¹⁷¹

14.6. WASTEWATER STANDARDS

14.6.1. COMMUNITY, NON-COMMUNITY, AND PRIVATE WASTEWATER SYSTEMS¹⁷²

- A. The type, capacities, location, and layout of community, non-community, or a private wastewater management system shall comply with all requirements of the Dare County Health Department, NC Division of Environmental Management, or other agency, board, or authority having regulatory control over wastewater management development and practice.
- B. Any wastewater system within the Town shall have one owner, whether individual, corporate or other legal entity. The Town will issue all permits to this one owner and the owner will be responsible for the sanitary and safe operation of the wastewater system. The owner will be fully responsible for the control of all wastes dumped into the system. In case of unsatisfactory operation, the Town will institute formal actions with the owner, and the owner will be responsible for any inconveniences caused to the users of the wastewater system, should termination of system operation be required in order to restore efficient, safe and sanitary operations.
- C. No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by other county, state or federal agencies.

14.6.2. LOCATION OF WASTEWATER SYSTEMS¹⁷³

- A. The Town shall not permit a private on-site wastewater system to serve any dwelling units which are located in environmentally sensitive areas (i.e., floodplain, wetlands, and areas of environmental concern) until the development has been conditionally approved by the NC Division of Coastal Management, or the U.S. Army Corps of Engineers, and the Dare County Environmental Health Department.
- B. No wastewater system will be permitted on lands not owned or leased by the owner for the purposes intended.
- C. Only private wastewater systems shall be permitted in an area zoned RS-1.
- D. No service pipe or wastewater transport pipe shall be allowed to run across any property without proper easement rights or encroachment agreements for the pipeline corridor.

14.6.3. WASTEWATER SYSTEM DESIGN

- A. The Town shall require that any proposed wastewater plant or system be compatible with its natural surroundings through plant design and/or screening vegetation (see Figure 14.6.3: Wastewater System Screening).

¹⁷¹ Changed slightly to reflect that in accordance with the Assessment the following Sections from Chapter 32 were moved to Chapter 36, Enforcement: 32.10, 44, 45, 46, 47, 107, 109, and 110.

¹⁷² This section comes from Section 32.5 of the current code. Section 32.5(c) has been moved to 14.5.1., above.

¹⁷³ This section comes from Section 32.7 of the current code.

Figure 14.6.3: Wastewater System Screening

DO THIS:



NOT THIS:



B



- A** Screening Vegetation
- B** Plant Design
- C** Neither Fence Nor Vegetation Creates an Opaque Screen

- B.** All aboveground structures associated with wastewater treatment plant design, other than municipal or communitywide waste treatment facilities, shall be subject to the following provisions:
1. Excepting the drain fields, treatment works serving nonresidential users shall not be located less than 100 feet from an RS-1 zoning district as measured from the building to the nearest property line.
 2. The design and construction of the treatment works shall comply with such additional requirements as may be made by the Town, and shall be specifically required to comply with the following technical and aesthetic standards:
 - a. The exterior of the treatment works shall be architecturally compatible in features and materials with the other buildings in the project and shall have suitable vegetative landscaping and screening to be compatible with local aesthetic and environmental conditions.
 - b. The treatment works shall incorporate all technological improvements which are feasible and practicable as of the time of construction.

14.6.4. CONNECTIONS TO SYSTEMS OUTSIDE TOWN¹⁷⁴

No connection of any sewer line or wastewater system outside of the Town shall be made to any part of a sewer system within the Town, except for lots in existence as of January 1, 1997, with a total drainfield and repair area of 14,400 square feet or less, developed with subsurface drainfields and repair areas only, with no aboveground appurtenances.

¹⁷⁴ This section comes from Section 32.8 of the current code.

14.7. MONITORING

14.7.1. MAINTENANCE¹⁷⁵

- A.** The Town recognizes that wastewater treatment works generate solids, and over a period of time, the solids accumulation can adversely affect the operation and efficiency of a wastewater system. Consequently, for all new systems, a minimum solids evaluation schedule is required.
- B.** Wastewater solids handling shall be in accordance with Dare County regulations and only performed by a contractor licensed by the State of North Carolina.

14.7.2. MONITORING REPORTS¹⁷⁶

- A.** Every wastewater permittee, subject to this section, shall submit a monitoring or inspection report in accordance with applicable State or County law.
- B.** Reporting frequency and content shall be as set forth on the owner's operation permit.
- C.** Any person subject to the provisions of this chapter shall comply with the monitoring and reporting requirements which may be included as a condition of the permit.

14.7.3. INSPECTIONS¹⁷⁷

Where an owner has security measures in force which would require proper identification and clearance before entry into their premises, the owner shall make necessary arrangements with his security guards so that, upon presentation of suitable identification, personnel from the Town will be permitted to enter without delay for the purposes of performing their specific responsibilities.

¹⁷⁵ This section comes from Section 32.108 of the current code.

¹⁷⁶ This section comes from Section 32.69(b) of the current code.

¹⁷⁷ This section comes from Section 32.70(a) of the current code.

CHAPTER 15.

[RESERVED]

CHAPTER 16. CABLE TELEVISION

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GUIDANCE FROM CODE ASSESSMENT:

The cable services provisions address the ability of cable television providers to install infrastructure in the Town. The standards are currently located in Division 2 of Chapter 8. We suggest they be relocated to their own chapter. We also suggest the standards be reordered as proposed.

We note that the current code includes no detail on franchises, franchise agreements, customer service practices of the provider.

16.1. PURPOSE AND INTENT¹⁷⁸

The purpose of this chapter is to protect the public health, safety, and general welfare of the citizens and landowners of the Town of Southern Shores by regulating franchised cable utilities.

16.2. COMPLIANCE WITH LAWS¹⁷⁹

The construction, installation, and maintenance of the cable system shall be effectuated by the grantee in a manner that is consistent with the following laws.

16.2.1. APPLICABLE LAW

- A.** The laws, ordinances and construction standards of the State;
- B.** The Occupational Safety and Health Administration (OSHA);
- C.** The National Electrical Safety Code, National Electrical Code;
- D.** The Federal Communications Commission (FCC); and
- E.** All other laws, rules, regulations, and ordinances that are generally applicable and promulgated pursuant to the Town's lawful police power.

16.3. RIGHTS RESERVED TO GRANTOR¹⁸⁰

In addition to any rights specifically reserved to grantor by this chapter or a franchise agreement, the grantor reserves to itself every right and power that is required to be reserved by a provision of any other ordinance or under any other franchise.

16.4. USE OF GRANTEE FACILITIES¹⁸¹

16.4.1. RIGHTS OF THE TOWN

The Town shall have the right to install and maintain Town equipment on grantee's facilities, at the actual cost for the space, not including cost for existing space.

16.4.2. COSTS

- A.** Cost will be limited to any incremental cost for any wire or fixtures.
- B.** This applies to the excess space upon the poles and within the underground pipes and conduits of a grantee, any wires and fixtures desired by the Town to the extent that such installation and maintenance does not interfere or compete with existing operations of a grantee.

16.4.3. INTERFERENCE

The Town will relinquish its use of such poles and conduits upon 90 days' notice from a grantee that the Town's use interferes with the company's actual or anticipated use of the same.

16.5. INSTALLATION BY GRANTEE

16.5.1. COMPLIANCE WITH APPLICABLE LAW¹⁸²

¹⁷⁸ This statement is offered for consideration.

¹⁷⁹ This section comes from Section 8-22 of the current Town Code.

¹⁸⁰ This section comes from Section 8-19 of the current Town Code.

¹⁸¹ This section comes from Section 8-20 of the current Town Code.

¹⁸² This section comes from Section 8-21 of the current Town Code.

- A.** Prior to commencing any construction in the Town, a grantee must obtain all necessary permits and licenses required by federal, State and generally applicable Town laws, ordinances, and rules, and pay all associated nondiscriminatory fees.
- B.** Further, a grantee shall comply with all applicable laws, ordinances, rules, and standards relating to the construction, operation, and maintenance of a cable system.

16.5.2. MINIMUM INTERFERENCE WITH PRIVATE LAND¹⁸³

- A.** All of the grantee's construction, installation, operation, repair, and maintenance, and the arrangement of its lines, cables, and other appurtenances, on public or private property, shall be conducted in such a manner as to not unreasonably interfere with the rights and reasonable convenience of property owners that may be affected.
- B.** In the event such work is not in accordance with applicable rules and regulations, the Town may require the removal, within such period of time after notice as is reasonable under the circumstances, of grantee's lines, cables, and appurtenances from the public rights-of-way in question, at the sole expense of the grantee.

16.5.3. INTERFERENCE WITH PUBLIC LANDS OR UTILITIES

- A.** If the Town, in its reasonable judgment, shall determine that grantee's facilities interfere with the construction location or repair of any public right-of-way or public improvement, then all such facilities of grantee shall be removed or replaced, or temporarily disconnected, in such manner as shall be directed by the Town so that the same shall not interfere with the public works of the Town. Such removal or replacement shall be at the expense of grantee.
- B.** All open connections on splitters, couplers, and other devices shall be properly terminated.

16.5.4. REPAIR AND RESTORATION OF DAMAGED PROPERTY¹⁸⁴

- A.** Grantee shall promptly repair and restore any Town or private property which may be damaged as a result of the construction, installation, operation, repair, maintenance, or removal of the cable system.
- B.** Any property damaged or destroyed shall be promptly repaired and restored by grantee, at grantee's sole cost and expense, to the reasonable satisfaction of the Town, to its condition prior to being damaged, or shall be replaced by grantee with equivalent property.
- C.** The Town may inspect and approve the condition of the public rights-of-way and cables, wires, attachments, and poles after restoration.
- D.** In the event of a failure by the grantee to complete any repair or restoration work required by the Town, within the time as may be established by the Town, and to the reasonable satisfaction of the Town, the Town may, following reasonable notice to the grantee, cause such work to be done and the grantee shall reimburse the Town the cost thereof within 30 days after receipt of an itemized list of such cost, or the Town may, at its option, recover such costs through the performance bond provided by grantee.
- E.** The Town shall be permitted to seek legal and equitable relief to enforce the provisions of this section.
- F.** The liability, indemnity, insurance, and performance bond, as provided herein, shall continue in full force and effect during the period of any repair or removal and until the grantee has fully complied with the terms and conditions of this chapter and the franchise agreement.

16.5.5. WORK PERFORMED BY OTHERS¹⁸⁵

All provisions of this chapter shall apply to any subcontractors or others performing any work or services pursuant to the provisions of a franchise agreement on behalf of a grantee.

16.5.6. ERECTION OF POLES¹⁸⁶

- A.** Grantee shall not erect any pole on or along any public rights-of-way in an existing aerial utility system without the advance written approval of the Town.

¹⁸³ This section comes from Section 8-23 of the current Town Code.

¹⁸⁴ This section comes from Section 8-24 of the current Town Code

¹⁸⁵ This section comes from Section 8-31 of the current Town Code.

¹⁸⁶ This section comes from Section 8-25 of the Current Town Code.

- B.** If additional poles in an existing aerial route are required, grantee shall negotiate, as needed, with the owners thereof for the installation of the needed poles.
- C.** Grantee shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions.

16.5.7. FACILITY PLACEMENT¹⁸⁷

- A.** In those areas within the Town where cable television, telephone, or electrical facilities are currently placed underground, all cable system facilities shall remain or be placed underground.
- B.** In areas where either telephone or electric utility facilities are above ground at the time of installation, a grantee may install its cable system facilities above ground, provided that at such time as both electric and telephone utility facilities are placed underground, grantee shall likewise place its cable system facilities underground without cost to the Town.
- C.** Nothing contained in this section shall require a grantee to construct, operate, and maintain underground any ground-mounted appurtenances, except that grantee shall take steps to minimize the number and visual impact of such facilities. If the grantor reimburses any utility for such relocation, grantee shall be similarly reimbursed.
- D.** This section shall not prevent the Town or any of its agencies or joint agencies from requiring the installation or relocation of cable services facilities underground, pursuant to a separate ordinance or regulation or requirement imposed, in accordance with the exercise of the general police power or regulatory function of such agency or joint agency.

16.6. TOWN CONSTRUCTION OF PUBLIC UTILITY, SERVICE, OR OTHER PUBLIC WORK¹⁸⁸

16.6.1. WORK IN RIGHT-OF-WAY BY TOWN AUTHORIZED

- A.** Nothing in this chapter shall be construed to prevent the Town from constructing storm or sanitary sewers, grading, paving, repairing or altering any public rights-of-way, or laying down, repairing, or removing water mains, traffic signal control systems, Town fiber plant, or constructing or establishing any public utility, service, or other public work that the Town may operate or undertake now or in the future.
- B.** All such work shall be done, insofar as practicable, in such manner as not to obstruct, injure or prevent the free use and operation of poles, wires, conduits, conductors, pipes or appurtenances of grantee.

16.6.2. CONDUIT¹⁸⁹

The Town shall not be responsible for any cuts or damage to buried or underground facilities of a grantee that are not clearly marked or cannot be located through the State "one-call" service. The grantee shall provide a contact number for the Town to call in emergency situations requiring an immediate response on the part of the Town. If the grantee does not properly and effectively identify the precise location of its facilities within 45 minutes of an emergency call from the Town, the Town shall not be responsible for damage to the grantee's facilities.

16.6.3. REASONABLE CARE¹⁹⁰

Nothing contained in this chapter shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring grantee's facilities while performing any work connected with grading, regrading, or changing the line of any public rights-of-way, or with the construction or reconstruction of any sewer, water, or utility system.

¹⁸⁷ This section comes from Section 8-27 of the current Town Code.

¹⁸⁸ This section comes from Section 8-26 of the current Town Code, but has been edited as identified in the Code Assessment.

¹⁸⁹ This section comes from Section 8-28 of the current Town Code. Section 8-28(b) has been deleted as identified in the Code Assessment.

¹⁹⁰ This section comes from Section 8-32 of the current Town Code.

16.7. VEGETATION REMOVAL¹⁹¹

16.7.1. REMOVAL LIMITED TO WHAT IS REASONABLE

The grantee shall have the right to remove, trim, cut, and keep clear of its poles, cables, underground conduits, and related equipment, the trees in and along the public rights-of-way but, in the exercise of such right, grantee shall not cut such trees to any greater extent than is reasonably necessary for the construction, erection, installation, maintenance, and use of cable system equipment.

16.7.2. PRIOR NOTICE REQUIRED

Except in emergency situations, grantee shall not remove, trim, or cut such trees from any public rights-of-way without first providing reasonable notice to the Town stating its intention to do so, such notice to be delivered not less than ten days in advance.

16.7.3. COMPENSATION

The grantee shall compensate the Town or any private owners of such trees for any damage proximately caused by grantee's negligent conduct.

16.8. TEMPORARY RELOCATION¹⁹²

16.8.1. RELOCATION MAY BE REQUIRED

The grantee, on the request of the Town, or any person holding a building permit issued by the Town, or any permit issued by an appropriate state agency, shall temporarily move its wires, cables, poles, or other cable system facilities to permit the moving of large objects, vehicles, buildings or other structures.

16.8.2. PAYMENT BY REQUESTOR

The expense of such temporary moves shall be paid to grantee by the person requesting the same and grantee shall have the authority to require such payment in advance.

16.8.3. ADVANCE NOTICE

Grantee shall be given at least 30 days' advance notice to arrange for such temporary moves.

¹⁹¹ This section comes from Section 8-29 of the current Town Code.

¹⁹² This section comes from Section 8-30 of the current Town Code.

CHAPTER 17.

[RESERVED]

CHAPTER 18. STREETS, SIDEWALKS, AND OTHER PUBLIC PROPERTY

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GUIDANCE FROM CODE ASSESSMENT:

Chapter 18 of the updated Town Code is proposed to contain the provisions related to streets, sidewalks, and other public property.

The current provisions address obstructions of the right-of-way, encroachment agreements to allow some private features or activities to take place within the right-of-way, and the provisions governing removal of vegetation in the right of way. This material is proposed to be carried forward with only minor reorganization.

As suggested earlier, we also suggest some of the traffic and street-related provisions from the current moto vehicles chapter (Chapter 20) be relocated to this chapter on streets.

We also note there are several common provisions typically associated with this code chapter in other communities that are not included in Southern Shores, such as provisions governing conduct and procedure in public parks, provisions address the re-naming of streets, procedures addressing excavation, and repaving as part of new development.

Despite the chapter's current title, the current standards do not address sidewalks, paths, or beach accessways.

18.1. STATUTORY AUTHORITY¹⁹³

General authority over all public streets, sidewalks, and public passages within the Town limits is granted by Section 160A-296 of the North Carolina General Statutes.

18.2. PURPOSE & INTENT¹⁹⁴

It is the purpose of this chapter to provide for the orderly use of public rights-of-way, including streets, sidewalks, and other public passages, by establishing clear guidelines, standards and timeframes for use of the public rights-of-way.

18.3. OFFICIAL TRAFFIC SIGNAL AND STOP SIGN MAP¹⁹⁵

- A.** The Official Traffic Signal and Stop Sign Map¹⁹⁶ of the Town shall constitute the official codification of the Town's ordinances relative to those areas of traffic regulations set forth in this section.
- B.** The Official Town Traffic Map is hereby adopted and incorporated by reference into this Ordinance.¹⁹⁷

18.3.2. LOCATION

The Official map shall be kept on file in the office of the Town Clerk.¹⁹⁸

18.3.3. CONTENTS

The following features shall be shown on the Official Traffic Signal and Stop Sign Map:¹⁹⁹

- A.** The location of traffic control devices;
- B.** The location of areas or zones where certain regulations are applicable to the parking of vehicles;
- C.** The location of stop intersections;
- D.** The location of yield intersections;
- E.** The location of one-way streets; and
- F.** Speed limits applicable to certain streets.

18.4. ROADWAY STANDARDS

The roadway design standards for the Town shall be in accordance with Section 26.9.2, Roadways.

18.5. TRAFFIC CONTROL DEVICES

All regulatory traffic control devices within the purview of this chapter shall be approved by the Town Manager or a designee. The location and type of traffic signals and stop signs approved by the Town Manager or a designee shall be entered on the Official Town Traffic Signal and Stop Sign Map.²⁰⁰

18.5.1. COMPLIANCE WITH CONTROL DEVICES REQUIRED²⁰¹

¹⁹³ This section is taken from the footnote at the beginning of current Chapter 28.

¹⁹⁴ This is a new section offered for the Town's consideration.

¹⁹⁵ This section comes from Section 20-2 of the current code.

¹⁹⁶ This map has been given a new name.

¹⁹⁷ This section comes from Section 20-144 of the current code. The word "ordinance" replaces the word "article" in the original text because the map applies to multiple chapters in the new code.

¹⁹⁸ This statement combines Sec. 20.2 (a) and (b).

¹⁹⁹ List is edited as requested by staff to reflect current departmental policy.

²⁰⁰ This section comes from Section 20-71(b) of the current code. It has been edited because it has been split from Section 20-71(a).

The driver of any vehicle and any pedestrian shall obey the instructions of any applicable official traffic control device placed in accordance with the provisions of State law, this chapter, and other ordinances of the Town, unless otherwise directed by a police officer, subject to the exceptions granted by this chapter to the driver of an authorized emergency vehicle.

18.5.2. INSTALLATION²⁰²

A. ACCORDANCE WITH CODE

Traffic control devices of the Town shall be placed, erected, installed, changed, or removed only in accordance with this Ordinance.

B. UPDATE OF OFFICIAL MAP

When traffic control devices are placed, changed, or removed, the Official Town Traffic Signal and Stop Sign Map shall be updated.

C. REMOVAL UNLAWFUL

Any unauthorized removal or theft of a traffic control device or sign is unlawful and punishable as a misdemeanor.

18.5.3. NON-REGULATORY DEVICES MAY BE APPROVED²⁰³

- A.** Non-regulatory traffic control devices within the purview of this chapter and of a limited regulatory nature may be approved by the Town Manager or a designee.
- B.** Examples of non-regulatory traffic control devices include, but are not limited to, those indicating zones of quiet, play streets, children at play areas, bus stops, loading zones, and dead-end signs.
- C.** The following shall not be considered non-regulatory devices that may be approved by the Town Manager or a designee:
 - 1. Stop and yield intersections;
 - 2. Speed restrictions;
 - 3. One-way streets; or
 - 4. Prohibited or authorized parking areas.

18.6. SIGNAGE

No provision of this chapter for which signs are required shall be enforced against an alleged violator if, at the time and place of the alleged violation, an official sign is not in proper position and sufficiently legible to an ordinarily observant person.²⁰⁴

18.7. SPEED LIMITS

Speed limits on Town streets shall be in accordance with Section 8.6.1.A, Speed Limits.

18.8. ALLOWABLE OBSTRUCTIONS IN THE RIGHT-OF-WAY

Obstructions of the right-of-way are generally considered nuisances, but may be allowed in some instances, and shall be subject to the standards in this section.

18.8.1. ALLOWABLE OBSTRUCTIONS²⁰⁵

²⁰¹ This section comes from Section 20-69 of the current code.
²⁰² This section comes from Section 20-70 of the current code.
²⁰³ This section comes from Section 20-71(a) of the current code.
²⁰⁴ This section comes from Section 20-72 of the current code.
²⁰⁵ This section comes from Section 28-2(b) of the current code.

The following features may be allowed within the right-of-way, unless determined to be a nuisance or a safety hazard, by the Police Chief, the Fire Chief, or the Town Manager (see Figure 18.8.1: Obstructions in the Right-of-Way):

- A.** Commercially available newspaper and mailboxes;
- B.** Garbage/recycling containers, branches/brush, and other items temporarily placed on the right-of-way for scheduled pickup at times designated by the Town;
- C.** Property numbers on posts, as allowed by Section 20.6.3, Display of Address Numbers;
- D.** Driveway aprons and any minimum necessary accessory structures;
- E.** Landscaped beds at grade which may include grass, ground cover, sand, mulch, or dirt, but excluding trees and shrubs;
- F.** Self-propelled motor vehicles displaying Town parking permits, and legally parked in right-of-way parking areas, established in accordance with Section 8.9, Standing, Stopping, and On-Street Parking; and
- G.** Signage, in accordance with the standards in Section 22.5.4, Signage Standards.

Figure 18.8.1: Obstructions in the Right-of-Way



- A** Commercially available newspaper and mailboxes
- B** Garbage/recycling containers
- C** Property numbers on posts
- D** Driveway aprons
- E** Landscaped beds at grade
- F** Signage

18.8.2. REMOVAL OF OBSTRUCTIONS AUTHORIZED²⁰⁶

A. ORDER REMOVAL

1. If, in the course of providing a public safety service, any employee or volunteer of a public safety service provider finds that an obstruction within the right-of-way hinders the ability, in any way, of the provision

²⁰⁶ This section comes from Section 28-5 of the current Town code.

of a public safety service, then the Town Manager, Police Chief, Fire Chief, or authorized person on the scene and in charge of providing the public safety service may order the removal of the obstruction.

2. Any cost for the removal and cleanup of the obstruction shall be due and payable by the person, if known, placing the obstruction in the street. In all other cases, the Town may order the removal of any obstructions at any time, as provided in Section 18.8.2.B, Failure to Remove.

B. FAILURE TO REMOVE

If any person, having been ordered to abate an obstruction in a right-of-way, fails, neglects, or refuses to abate or remove the condition constituting the obstruction within 15 days from receipt of an order to remove an obstruction, the Town Manager or a designee may cause such condition to be removed or otherwise remedied at the owner's expense.

C. REMOVAL BY CONTRACTOR

Any person causing, permitting, or allowing an obstruction to exist, who has been ordered to abate or remove the obstruction, may, within the time allowed by this chapter, request the Town, in writing, to suggest possible contractors to remove such condition, the cost of which shall be paid directly to the contractor.

18.8.3. COSTS OF REMOVAL ASSESSED²⁰⁷

- A.** The actual cost incurred by the Town in removing an obstruction from a right-of-way shall be charged to the owner of such lot or parcel of land that caused, permitted, or allowed the obstruction to exist.
- B.** It shall be the duty of the Tax Collector to mail a statement of such charges to the owner or other person in possession of such premises with instructions that such charges are due and payable within 30 days from the mailing thereof.
- C.** If such costs charged in accordance with this section are not paid as herein stated, the costs shall be a lien upon the land or premises and shall be collected as unpaid taxes.

18.9. ENCROACHMENT AGREEMENTS²⁰⁸

18.9.1. GENERALLY

Notwithstanding the provisions of Section 18.8.1, Allowable Obstructions, property owners or their agents may apply for an encroachment agreement providing for the placement of obstructions within the right-of-way in accordance with these standards.

18.9.2. ENCROACHMENT AGREEMENTS DISTINGUISHED

Encroachment agreements shall be divided into three categories: Construction, Special Events, and Right-of-Way encroachment agreements. A property owner, or their agent, may apply for more than one type of encroachment agreement.

A. CONSTRUCTION ENCROACHMENT AGREEMENT

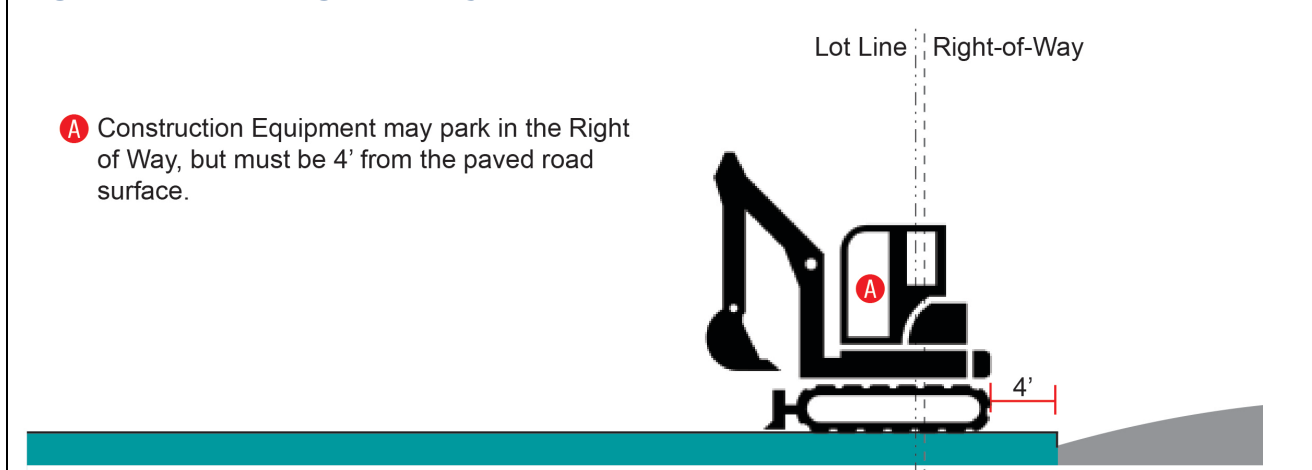
1. If approved by the Town Manager or a designee, the applicant may park construction related vehicles within the right-of-way, but no closer than four feet from the paved road surface or from any travel lane (see Figure 18.9.2.A: Right of Way Encroachments).
2. An application may only be approved after finding that the applicant cannot practicably park on the property during the construction period.
3. The street shall not be used for the storage of any construction materials, equipment, tools, or supplies including, but not limited to, temporary water and toilet facilities.
4. A construction encroachment agreement may be issued for a term no longer than six months and may be extended for two additional consecutive three-month terms so long as the applicant shall have maintained conformity with the ordinances of the Town.

²⁰⁷ This section comes from Section 28-6 of the current Town code; reformatted to highlight the duty of the Tax Collector to bill for the cost of removal, at staff's suggestion.

²⁰⁸ This section comes from Section 28-3 of the current Town code.

5. No certificate of occupancy may be issued until the Town Manager or a designee has made a written finding that any road surface is in the same or better condition than upon commencement of the construction process.

Figure 18.9.2.A: Right-of-Way Encroachments



B. SPECIAL EVENTS ENCROACHMENT AGREEMENT

1. A special event, for the purposes of this section, is defined as a previously scheduled event having a maximum duration of up to 20 hours in any 48-hour period.
2. If approved by the Town Manager, the applicant may park vehicles related to a special event on the side of the street, but no closer than one foot from the paved road surface or from any roadway (see [Figure 18.9.2.A, Right –of-Way Encroachments](#)).
3. Except for vehicles, the applicant of an approved special events encroachment agreement may not place any other obstruction within the street, except for traffic cones or small flexible flags (which shall be required to be in place during the duration of the event), indicating the boundaries of the area covered by the special events encroachment agreement.
4. A special events encroachment agreement may be issued for the same section of a street for a maximum term no longer than 20 hours in any 48-hour period and may not be extended beyond the approved duration without prior approval by the Town Manager.

C. RIGHT-OF-WAY ENCROACHMENT AGREEMENT

1. If approved by the Town Manager or a designee, the applicant may place an obstruction within the right-of-way.
2. Except where the Town Manager or a designee makes written findings showing no practicable alternative, the obstruction shall not be closer than four feet from the paved road surface or four feet from any roadway (see [Figure 18.9.2.A, Right –of-Way Encroachments](#)).
3. No obstructions may be placed within the street, except as otherwise provided by law.
4. A right-of-way encroachment agreement shall be recorded in the offices of the Dare County Register of Deeds and shall be made available by the applicant and any subsequent property owner to any future property owner.
5. Any obstruction authorized by a right-of-way encroachment agreement shall be installed no sooner than the date the agreement has been recorded in the County registry and the agreement shall automatically expire 30 days after the obstruction has been removed.

18.9.3. PROCEDURE

The Town Manager, the Police Chief, or a designee,²⁰⁹ is hereby authorized and directed to promulgate the rules, regulations, forms, and other matters related to the administration and enforcement of this section, as may be necessary.

²⁰⁹ Added per staff request as noted in the Code Assessment.

18.9.4. FEES²¹⁰

- A.** An initial fee of \$100.00 is hereby charged for a construction encroachment agreement and a \$100.00 fee for a right-of-way encroachment agreement, plus the cost of recording.
- B.** These fees may be changed periodically by resolution or other action of the Town Council.

18.10. TREE REMOVAL IN THE RIGHT OF WAY²¹¹**18.10.1. DOGWOOD TREES**

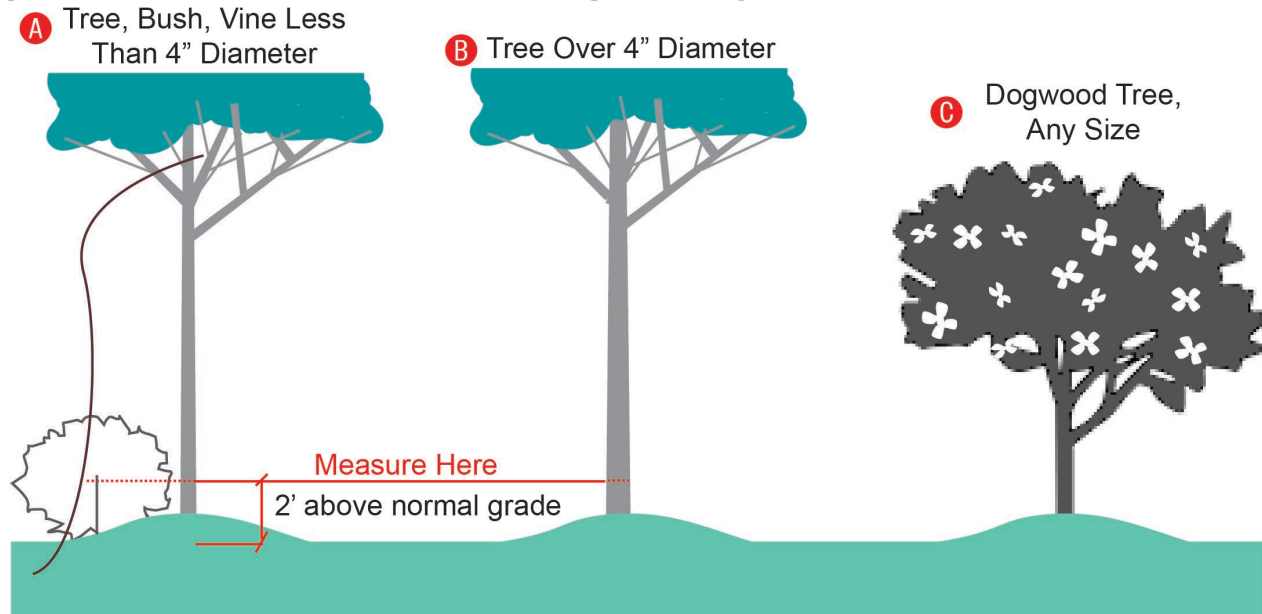
No person, except upon written permission from the Town Manager or a designee, may remove from within the right-of-way a living dogwood tree (genus Cornus).

18.10.2. TREES OVER FOUR INCHES IN DIAMETER

- A.** Property owners or their agents may receive written permission of the Town Manager or a designee to remove vegetation having a diameter of greater than four inches, at a point two feet above normal average grade that is located within a right-of-way abutting their property (see [Figure 18.10.3: Tree Removal in the Right-of-Way](#)).
- B.** As described in [Section 18.10.1, Dogwood Trees](#), this provision does not apply to Dogwood Trees.

18.10.3. OTHER VEGETATION

Brush, vines, trees, and other vegetation having a diameter of less than four inches at a point two feet above normal average grade may be removed within the right-of-way abutting their property without restriction, at the discretion and expense of the property owner (see [Figure 18.10.3: Tree Removal in the Right-of-Way](#)).

Figure 18.10.3: Tree Removal in the Right-of-Way

- A** Removal permitted in right-of-way abutting property without restriction
- B** Removal permissible in right-of-way abutting property with written permission of Town Manager
- C** Removal prohibited without written permission of Town Manager

²¹⁰ This section comes from the second part of Section 28-8 of the current Town code.

²¹¹ This section comes from Section 28-4 of the current code. Minor revisions have been made to the text.

CHAPTER 19.

[RESERVED]

CHAPTER 20. BUILDINGS AND BUILDING REGULATIONS

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GUIDANCE FROM CODE ASSESSMENT:

Chapter 6 of the current Town Code includes the building regulations. The current chapter is comprised of eight sections that address the statutory authority of the Town to enforce building regulations; establishes the planning and code enforcement department; adopts the state building code; empowers the inspections department to charge fees for service; establishes the building permit and certificate of compliance; requires inspections as part of construction; and requires temporary toilet facilities at construction sites.

This draft of the Town Code renumbers the Buildings and Building Regulations chapter to Chapter 20. The section establishing the statutory authority of the Town to enforce the building regulations has been relocated to new Chapter 36: Offenses and Enforcement. The section establishing the planning department is relocated to new Chapter 2: Administration, and the sections establishing the building permit and certificate of compliance have been relocated to the zoning chapter in Section 22.2, Procedures. The language in this chapter has been carried forward with few substantive changes.

Text shown in yellow highlight includes a cross reference to be filled in as part of the draft of the document proposed for public hearing.

The text includes footnotes that track the origin of proposed text.

20.1. APPLICABILITY ²¹²

The standards in this chapter shall apply to new development or redevelopment that takes place within the Town and its extraterritorial jurisdiction (ETJ).

20.2. STATE BUILDING CODE ADOPTED²¹³

The North Carolina State Building Code and all volumes, appendices and amendments, except the Fire Code, is hereby adopted and incorporated by reference in this chapter.

20.3. FEES²¹⁴

The Planning and Code Enforcement Department shall charge such fees for the issuance of permits and for the performance of inspections and other related services as may be set out from time to time in a regularly adopted fee ordinance.

20.4. INSPECTIONS²¹⁵

20.4.1. INSPECTIONS REQUIRED

- A.** The Town Manager or a designee shall make as many inspections as may be necessary to determine that work is being done according in accordance with Section 160A-412(b) of the North Carolina General Statutes²¹⁶, the North Carolina State Building Code, and the terms of the applicable permit or development approval.
- B.** In no instance shall development requiring an inspection be conducted without all required inspections. Failure to request, schedule, or comply with the results of an inspection shall be a violation of this Ordinance, subject to the provisions in Chapter 36, Offenses and Enforcement.
- C.** Current inspections procedures used by the Town are available upon request from the Planning and Code Enforcement Department.

20.4.2. INSPECTIONS PROCEDURE

- A.** Applicants shall notify the Planning and Code Enforcement Department at least 24 hours in advance of any inspection required by this Ordinance.
- B.** In the event any work inspected is unsatisfactory, a re-inspection shall be made at the convenience of the Town Manager (or a designee) upon notification of the correction of discrepancies.

²¹² This chapter does not have an authority section because the current authority information is enforcement-related, and has been relocated to new Chapter 36: Offenses and Enforcement, in the omnibus authority section.

²¹³ This section carries forward current Section 6-3. The exception of the Fire Code is the only change, and was added at the request of the Fire Marshal as detailed in the Code Assessment. The Fire Code is adopted by reference in the Fire Prevention and Protection chapter and is administered by the Fire Marshal, not Code Enforcement.

²¹⁴ This section carries forward current Section 6-4 with no substantive change; however, all instances of “building inspections department” or “building inspections” have been replaced with “Planning and Code Enforcement” for consistency.

²¹⁵ This section carries forward the standards in Section 6-6 of the current code with no substantive changes

²¹⁶ This specific N.C.G.S. citation replaces the current language which generally cites “state laws” at the request of Town staff, as detailed in the Code Assessment.

20.5. TEMPORARY TOILET FACILITIES²¹⁷

20.5.1. APPLICABILITY

- A.** The applicant for any building permit requiring a Dare County Department of Environmental Health septic tank sewage disposal improvement permit shall provide and maintain one or more temporary suitable toilet facilities on the construction site.
- B.** Construction sites with adjoining property lines may share toilet facilities, provided that the distance separating the facility and the nearest part of the structure under construction shall not exceed 200 feet.

20.5.2. STANDARDS

Temporary toilet facilities shall:

- A.** Comply with Section 311 of the North Carolina Plumbing Code;
- B.** Comply with all Dare County Environmental Health Department rules and regulations;
- C.** Be placed on-site prior to the start of construction; and
- D.** Remain on-site until a certificate of compliance is issued.

20.6. PROPERTY NUMBERING²¹⁸

20.6.1. PROPERTY NUMBERING MAP

- A.** The property numbering map entitled "Property Numbering Map, dated April 4, 1983, Southern Shores, North Carolina" as revised September 5, 2006, is hereby adopted as the Official Property Numbering Map of the Town.
- B.** All property numbers assigned to lots will be in accordance with the official numbering map, and no other property numbering system shall be used or displayed in the Town.
- C.** The Town Manager (or a designee) shall update the map whenever changes are required.
- D.** The Official Property Numbering Map shall be kept on file in the office of the Planning and Code Enforcement Department.

20.6.2. NUMBERING SYSTEM

A. CONVENTION

1. On the Official Property Numbering Map, State Highway No. 158 is hereby designated as the south base (00).
2. The Ocean Beach is designated as the east base (00).
3. All streets and public rights-of-way running generally north and south shall be numbered consecutively from the south base northward.
4. All streets and public rights-of-way generally running east and west shall be consecutively numbered from the east base westward.
5. One whole number shall be assigned every lot described on the property numbering map, whether improved property or vacant lot.
6. That part of the designated "business district" facing State Highway 158 shall have one whole number assigned for every 25 feet, whether improved property or vacant lot.
7. On the north-south streets, odd numbers shall be assigned to the west side of the street and even numbers to the east side of the street.
8. On the east-west streets, odd numbers shall be assigned to the south side of the street and even numbers to the north side of the street.

²¹⁷ This section carries forward current Section 6-8 with no substantive changes, but with formatting and reorganization to improve clarity.

²¹⁸ This section carries forward sections 24-58, 24-59, and 24-60 of the current Code with no substantive changes, but with formatting and reorganization to improve clarity.

B. ASSIGNMENT OF NUMBERS

1. The Town Manager (or designee) shall assign numbers which are generally in keeping with this convention.
2. Existing numbers which may be in conflict with this provision may be retained if considered in keeping with the public safety and welfare.

20.6.3. DISPLAY OF ADDRESS NUMBERS

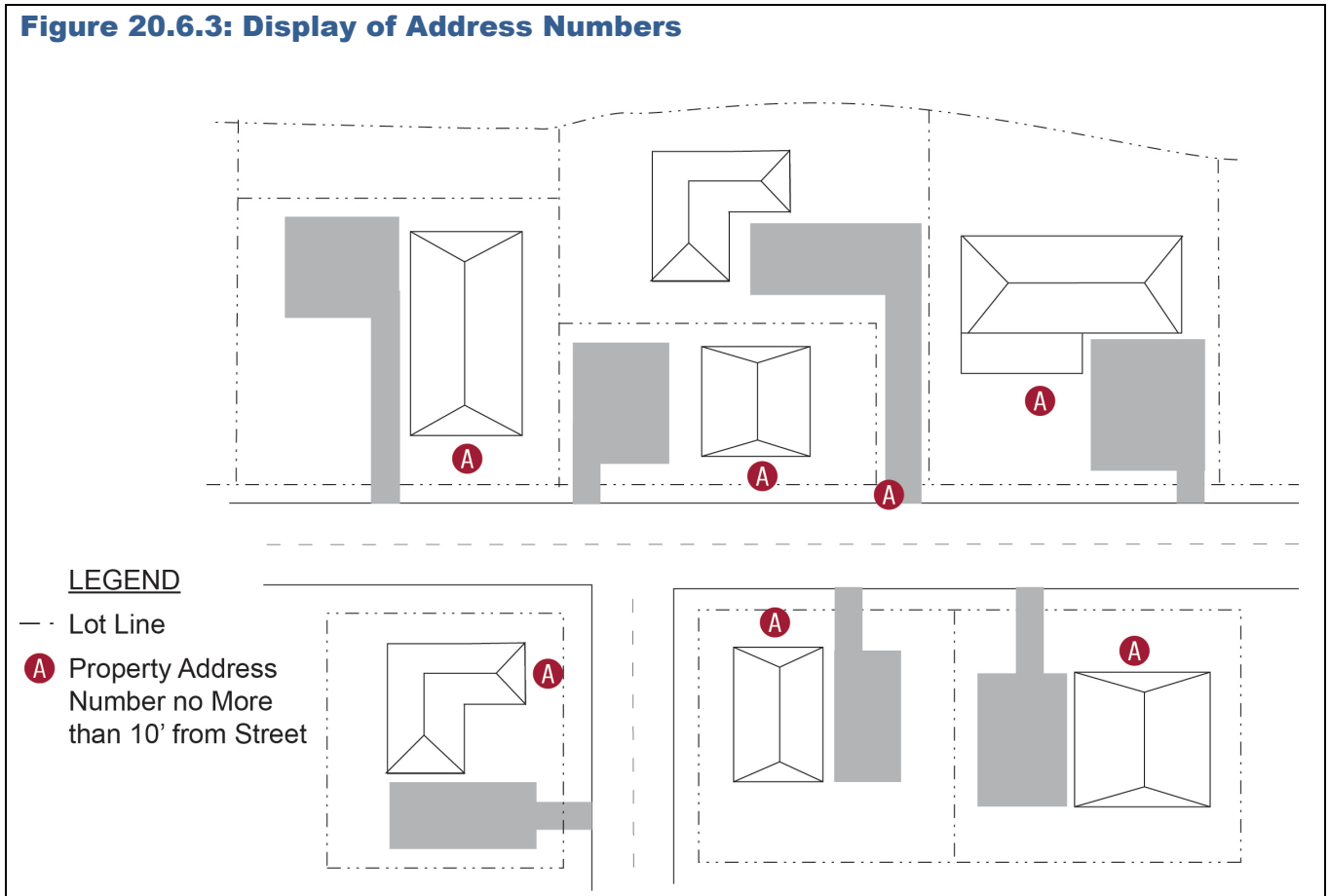
A. GENERALLY

1. Every owner of improved property shall display in front of each principal structure owned the number and letter under the uniform system as described in this chapter (see Figure 20.6.3: Display of Address Numbers).
2. The numbers and letters shall be conspicuously placed on both sides of a support structure directly in front of the principal structure, not more than ten feet from the street so the number is clearly visible, day or night, to the driver of a vehicle approaching from either direction.
3. The support standard with numbers shall be not less than two feet nor more than six feet above the ground.
4. Each number shall be at least three inches in height and contrast in color with its background.
5. The required numbers may be placed on both sides of a properly located mail box, unless the box is on the opposite side of the street from the structure.
6. Numbers shall not be posted in a manner that interferes with required sight distance triangles or driver visibility.

B. EXCEPTIONS

1. For an address that is on a one-way street, numbers are required only on the side visible from the direction of travel.
2. On a cul-de-sac or dead-end street less than 250 feet in length, numbers are required only to be visible from a vehicle entering the cul-de-sac or dead-end street.
3. Numbers on the last lot on either side of a dead-end street of any length are required only to be visible from the oncoming direction.
4. Planned unit developments or multifamily structures may have numbers at least four inches in height placed on each structure in a uniform manner as approved by the Town Manager (or designee).
5. If the principal building of a development is not located on a lot, parcel or tract which would permit the assignment of one number to each unit, a single number shall be assigned to the building and letters shall be used to identify the individual units, in which case arrows pointing to the structure are permitted to be used instead of a sign in front of the structure.

Figure 20.6.3: Display of Address Numbers



CHAPTER 21.

[RESERVED]

CHAPTER 22. ZONING

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GUIDANCE FROM CODE ASSESSMENT:

Chapter 36 of the current Town Code includes the zoning regulations. The current chapter is comprised of 16 articles that address zoning, uses, and development standards. This draft of the Town Code rennumbers the zoning provisions to Chapter 22, relocates the material on decision-making bodies to new Chapter 2, Administration, the definitions to new Chapter 4, and the enforcement-related material to new Chapter 36 of the updated Town Code. The language has been reviewed and revised for greater clarity in accordance with the input summaries in the Code Assessment and the section-by-section review in the Appendix of the Code Assessment.

Text shown in yellow highlight includes a cross reference to be filled in as part of the draft of the document proposed for public hearing.

The text includes numerous footnotes that track the origin of proposed text.

Proposed graphics are indicated in single-cell tables with yellow highlight. Additional graphics may be proposed by staff or the Town Manager.

22.1. INTRODUCTORY PROVISIONS

This chapter of the Town of Southern Shores Town Code sets out the provisions related to zoning and the Official Zoning Map.

22.1.1. TITLE²¹⁹

This chapter shall be officially known as the “Zoning Chapter of the Town of Southern Shores, North Carolina” and may be referred to as the “Zoning Chapter,” or “this chapter.”

22.1.2. AUTHORITY²²⁰

A. AUTHORITY TO REGULATE DEVELOPMENT

This Zoning Chapter is adopted in accordance with the following:

1. GENERAL ASSEMBLY

The authority granted to the Town of Southern Shores by the General Assembly of the State of North Carolina.

2. NORTH CAROLINA GENERAL STATUTES

The North Carolina General Statutes, including:

- a. Chapter 160A, Article 8 (Police Powers);
- b. Chapter 160A, Article 15 (Streets, Traffic, and Parking);
- c. Chapter 160A, Article 19 (Planning and Regulation of Development);
- d. Chapter 143, Article 21 (Water and Air Resources); and
- e. Chapter 113a, Article 4 (Sedimentation and Pollution Control).

3. TOWN CHARTER

The Town Charter of the Town of Southern Shores, as enacted by the General Assembly in 1979.

4. OTHER RELEVANT LAWS

- a. All other relevant laws of the State of North Carolina; and
- b. Any special legislation for the Town of Southern Shores enacted by the General Assembly.

B. EFFECTIVE DATE²²¹

This Zoning Chapter is effective on [insert the effective date of the Town Code], and repeals and replaces the Zoning Ordinance as originally enacted on July 7, 1981 and subsequently amended.

22.1.3. PURPOSE & INTENT²²²

This Zoning Chapter is adopted to promote the public health, safety, morals, and general welfare of the residents, landowners, and visitors to the Town of Southern Shores. More specifically, the intent of this chapter is to:

- A.** Implement the policies and objectives of the Town’s Land Use Plan;
- B.** Provide for the establishment of zoning districts within the Town and its extraterritorial jurisdiction (ETJ);
- C.** Regulate within the zoning districts the location, height, bulk, and size of buildings and other structures, the percentage of the lot that may be occupied by impervious surface, the required open space, the density of the population, and the uses of the land, buildings, and other structures;
- D.** Incorporate rules for the establishment of different uses of land and their allowable locations;

²¹⁹ This section replaces Section 36-2 and sets out the Official Zoning Map in Section 22.3.1, Official Zoning Map.

²²⁰ This section replaces Section 36-1 of the current code with additional details regarding authority, and relocates the purpose statements to the Purpose and Intent in Section 22.1.3.

²²¹ This section replaces Section 36-451(a) related to reenactment and repeal of the current regulations.

²²² This section replaces Section 36-3 and contains the relocated purpose statements from current Section 36-1. Purpose statements related to enforcement are removed as Chapter 36 of the updated code sets out all enforcement-related provisions.

- E.** Establish standards for the configuration of site features such as parking and landscaping, and the design of buildings and structures, where authorized by law;
- F.** Provide methods of administration of this Chapter; and
- G.** Supersede any ordinances in conflict herewith.

22.1.4. APPLICABILITY²²³

A. TERRITORIAL APPLICATION

The provisions of this chapter shall apply to all lands (including submerged lands), waters, structures, and uses thereon, within the zoning areas designated on the Official Zoning Map.

B. NO LAND DEVELOPED WITHOUT COMPLIANCE

1. No land shall be developed or modified except in conformity with this chapter and all other applicable Town, State, and federal regulations.
2. No building permit for a use requiring a water supply or sewage disposal unless the method of water supply or sewage disposal has been approved in writing by the appropriate authority.²²⁴

C. NO USE OR OCCUPANCY WITHOUT COMPLIANCE

No building, structure, or land shall be used or occupied except in conformity with this chapter and all other applicable Town, State, and federal regulations.

22.1.5. RELATIONSHIP TO OTHER LAWS & AGREEMENTS²²⁵

A. MINIMUM REQUIREMENTS

In the application of this chapter, all provisions shall be considered as minimum requirements and shall not be deemed to limit or repeal any other powers or authority granted to the Town under the North Carolina General Statutes.

B. REVIEW OF PRIVATE AGREEMENTS

The Town may review and approve private agreements, such as those related to the establishment and operation of a home or property owner’s association; maintenance and operation of shared parking or cross-access agreement; or access easement between landowners in favor of the general public; but the Town is not responsible for monitoring or enforcing private agreements, covenants, or deed restrictions.

C. EXISTING PRIVATE AGREEMENTS OR VESTED RIGHTS

Nothing in this chapter is intended to repeal, supersede, annul, impair, or interfere with any existing private agreements or vested rights, provided such agreements or vested rights are lawfully established and remain in effect.

22.1.6. CONFLICT²²⁶

- A.** This chapter is not intended to interfere with, abrogate, or annul any easements, covenants, or other agreements between parties. However, where this chapter imposes a greater restriction than is imposed or required by other easements, covenants, or agreements, the provisions of this chapter shall govern, to the extent allowed by law.
- B.** If a provision of this chapter is inconsistent with another provision of the Town Code, or with a provision found in other adopted ordinances of the Town, the provision providing the greatest protection to the environment, natural features, or public health and safety shall control.

²²³ This section is carried forward from Sections 36-88, 36-89, and 36-90 of the current code. The provisions indicating unlisted uses are prohibited have been removed as this is contrary to recent NC legal precedent.

²²⁴ This section carries forward the standards in Section 36-164 with no substantive changes.

²²⁵ This is a new section proposed for the Town’s consideration.

²²⁶ This section carries forward Section 36-449 of the current code with additional standards to address conflicts between different provisions of this chapter.

- C. In cases where the intent regarding two or more conflicting provisions in this or other Town regulations is not clear, then the more restrictive provision shall govern. The more restrictive provision is the one that imposes greater restrictions or burdens, or more stringent controls.

22.1.7. TRANSITIONAL PROVISIONS²²⁷

The following standards address pre-existing violations, nonconformities, and pending and approved applications under review at the time that this Zoning Chapter becomes effective.

A. PRIOR VIOLATIONS CONTINUE

Any prior violation of the previous ordinance shall continue to be a violation under this chapter, unless the development complies with this chapter and is no longer considered to be a violation or the violation is a zoning-related violation and the maximum time for enforcing the violation has expired in accordance with Section 22.2.4.B, Statute of Limitations. Violations of this chapter shall be subject to Chapter 36: Offenses and Enforcement.

B. EXISTING NONCONFORMITIES

If any use, structure, lot, sign, or site feature that legally existed on [insert the effective date of the Town Code], but that no longer fully complies with the standards of this chapter may only continue in accordance with the requirements in Section 22.6, Nonconformities.

C. PENDING APPLICATIONS

1. APPLICATION SUBMITTED

After [insert the effective date of the Town Code] an application for a development permit or approval shall not be considered as a submitted application until it is determined by the Town Manager (or a designee) to be a complete application.

2. COMPLETE APPLICATION²²⁸

- a. Any submitted development application accepted as complete before [insert the effective date of the Town Code], but still pending review or final action as of that date, shall be reviewed and decided in accordance with either the current regulations in this chapter, or the prior regulations in effect at the time the application was declared to be complete, at the discretion of the applicant.
- b. Complete applications shall be processed in good faith and shall comply with any time frames for review, approval, and completion as established in the regulations in effect at the time of the application is deemed by the Town Manager (or a designee) to be complete. If the application fails to comply with the required time frames, it shall expire and future development shall be subject to the requirements of this chapter.
- c. To the extent an application is approved and proposes development that does not comply with this chapter, the subsequent development, although permitted, shall be nonconforming and shall be subject to the provisions of Section 22.6, Nonconformities.
- d. An applicant may request review under this chapter (as opposed to prior regulations) by submitting a written request to the Town Manager (or a designee).

3. APPLICATION NOT COMPLETE

An applicant with a pending application that has been delivered to the Town but not determined to be complete before [insert the effective date of the Town Code] shall be reviewed in accordance with the standards in this chapter after it has been revised or supplemented as necessary to be determined complete.

D. APPROVED APPLICATIONS

²²⁷ This section builds on Section 36.448 of the current code by adding additional clarity about pre-existing violations, nonconformities, and development applications. The standard’s subsection “C” addresses new state requirements regarding permit choice for an applicant if the rules change after application submission but before a decision is reached. These standards include a new requirement that an application is not considered “submitted” until it is complete as a means of preventing potential applicants from submitting incomplete applications to protect themselves from pending rule changes.

²²⁸ This reflects changes in state law referring to “permit choice”.

1. BUILDING PERMIT VALID FOR SPECIFIED PERIOD²²⁹

Nothing in this section shall require any change in the plans, construction, size, or designated use of any development for which a building permit has been granted prior to [insert the effective date of the Town Code] provided the development is completed within 18 months of [insert the effective date of the Town Code]. Development completed more than 18 months after [insert the effective date of the Town Code] shall comply with the provisions of this chapter unless subject to a vested right determination in accordance with Section 22.2.3.M, Vested Right Determination.

2. EXPIRATION

If the prior approval expires or is revoked (e.g., for failure to comply with the terms and conditions of approval), any subsequent development of the site shall comply with this chapter.

3. NONCONFORMING DEVELOPMENT

To the extent a prior-approved application proposes development that does not comply with this chapter, the subsequent development, although permitted, shall be nonconforming and subject to the provisions of Section 22.6, Nonconformities.

22.1.8. RULES OF MEASUREMENT²³⁰

This rules of measurement section defines and explains terms that involve calculation and measurement. It groups terms together by subject area. Additional definitions of related terms are found in Chapter 4: Definitions, and additional standards pertaining to dimensional requirements are found in Section 22.3.5, General Dimensional Standards.

A. PURPOSE

The purpose of this section is to clarify the rules of measurement and exemptions that apply to all principal, accessory, and temporary uses allowed in this chapter. These standards may be further modified by other sections in this chapter.

B. MEASUREMENT, GENERALLY

1. STRAIGHT LINES

Unless otherwise stated in this Town Code, distances specified in this chapter are to be measured as the length of an imaginary straight line joining two points.

2. IRREGULAR SHAPES

In cases where an irregular shape complicates the application of standards in this chapter, the Town Manager (or a designee) shall determine the applicable dimensional or setback standard.

3. SEPARATION

a. Lot to Lot

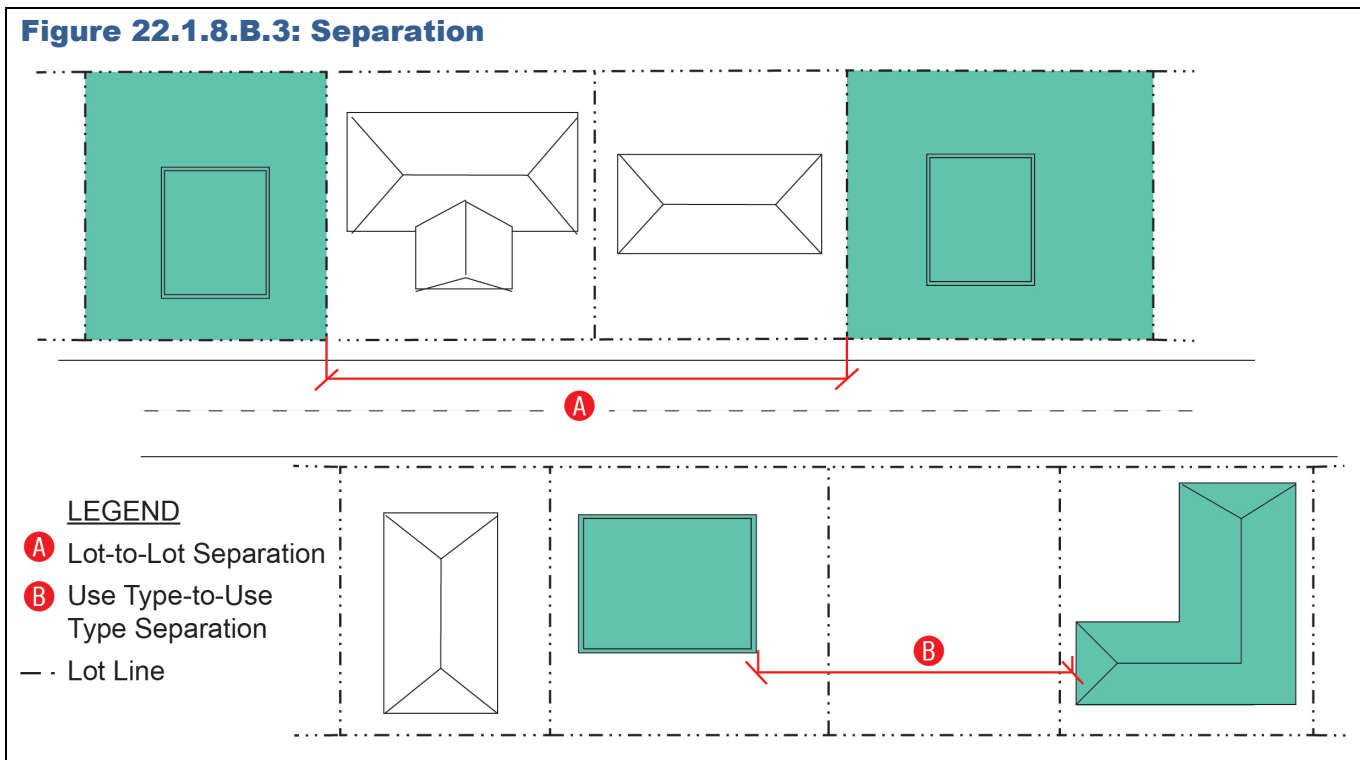
When the provisions of this chapter require separation between two or more lots, or a lot and another feature, separation shall be measured by drawing straight lines from the nearest point of one lot line to the nearest point of the lot line subject to the separation requirement (see Figure 22.1.8.B.3: Separation).

b. Use Type to Use Type

When the provisions of this chapter require one use type to be separated from another use type (such as when a commercial use abuts a residential use), separation shall be measured by drawing straight lines from the nearest point of the wall of the existing or proposed principal structure to the nearest point of the wall of the existing or proposed structure subject to the separation requirement (see Figure 22.1.8.B.3: Separation).

²²⁹ This section carries forward Section 36-448 from the current ordinance, and integrates the 18-month time period for completion from current Section 36-297.

²³⁰ This is a new section that consolidates various definitions and numerical rules of measurement from Chapter 36 of the current code. It identifies different lot line types, different lot types, and how lot-based dimensional standards are determined. It also uses the concept of a “required yard” instead of a setback. The section describes how density is calculated, how height is determined (for buildings and signs), how parking space computation operates, as well as other provisions related to development standards like lighting and fencing.



C. LOTS

1. LOT LINES

a. Front Lot Line²³¹

The front lot line is the boundary line of a lot that connects the two side lot lines along the edge of the street right-of-way that provides the lot’s street address or the lot line that opposes the front entrance of the building in cases where a street does not front the lot (see [Figure 22.1.8.C.1: Lot Lines](#)).

b. Side Lot Line²³²

The side lot line is the lot boundary connecting the front and rear lot lines regardless of whether it abuts a right-of-way or another lot line.

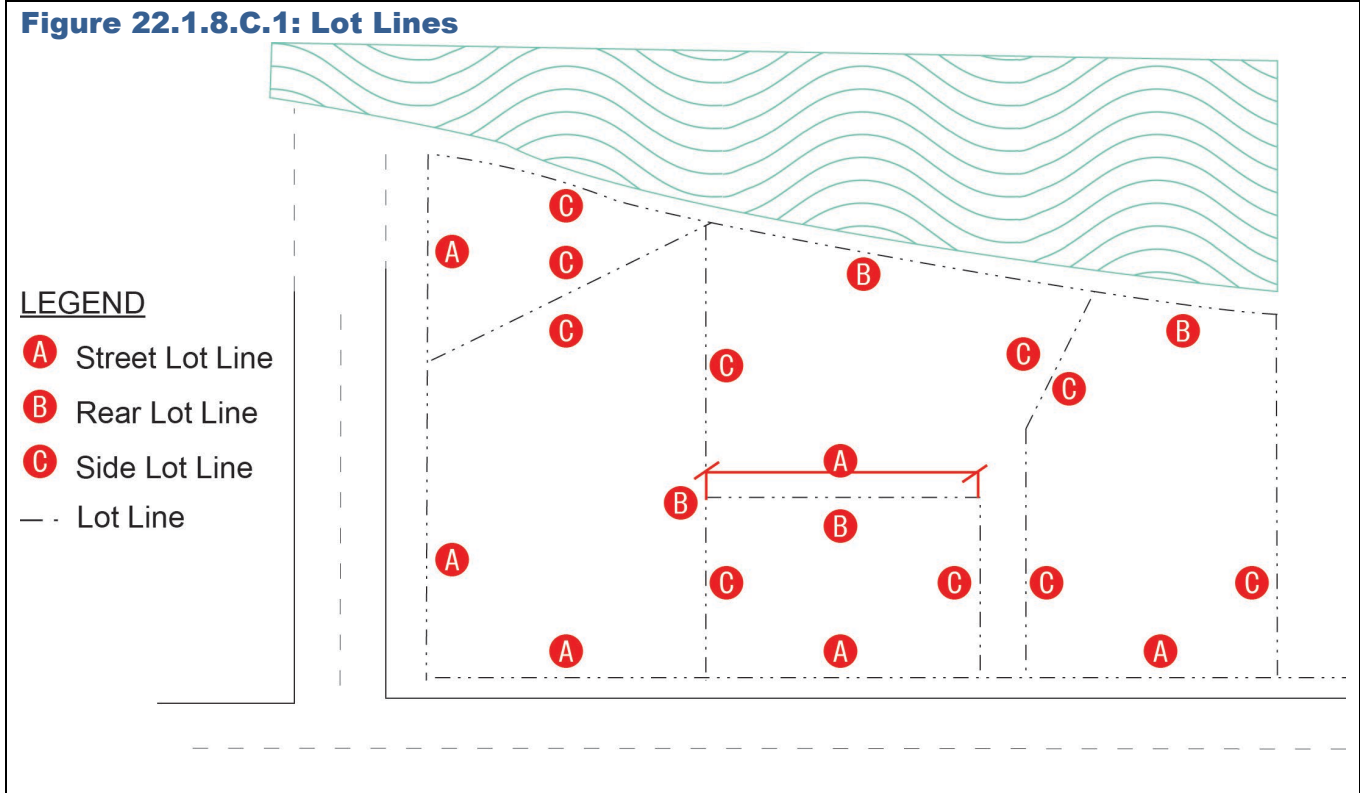
c. Rear Lot Line²³³

The rear lot line is the lot boundary opposite and most distant from the front lot line.

²³¹ This is a new definition. The current one is as follows: The line separating a lot from a street right-of-way that is designated as the front street on the building permit, certificate of occupancy, or subdivision plat.

²³² This is a new definition. The current one is as follows: The lot boundary line that is not a front lot line or rear lot line.

²³³ This carries forward the current rear lot line definition.



2. LOT TYPES²³⁴

a. Corner Lot²³⁵

A lot abutting two or more streets at their intersection.

b. Cul-de-Sac Lot

A lot located on the head or turnaround of a cul-de-sac with side lot lines on a tangent to the arc of the right-of-way.

c. Double Frontage Lot

A lot, other than a corner lot, with frontage on more than one street other than an alley.

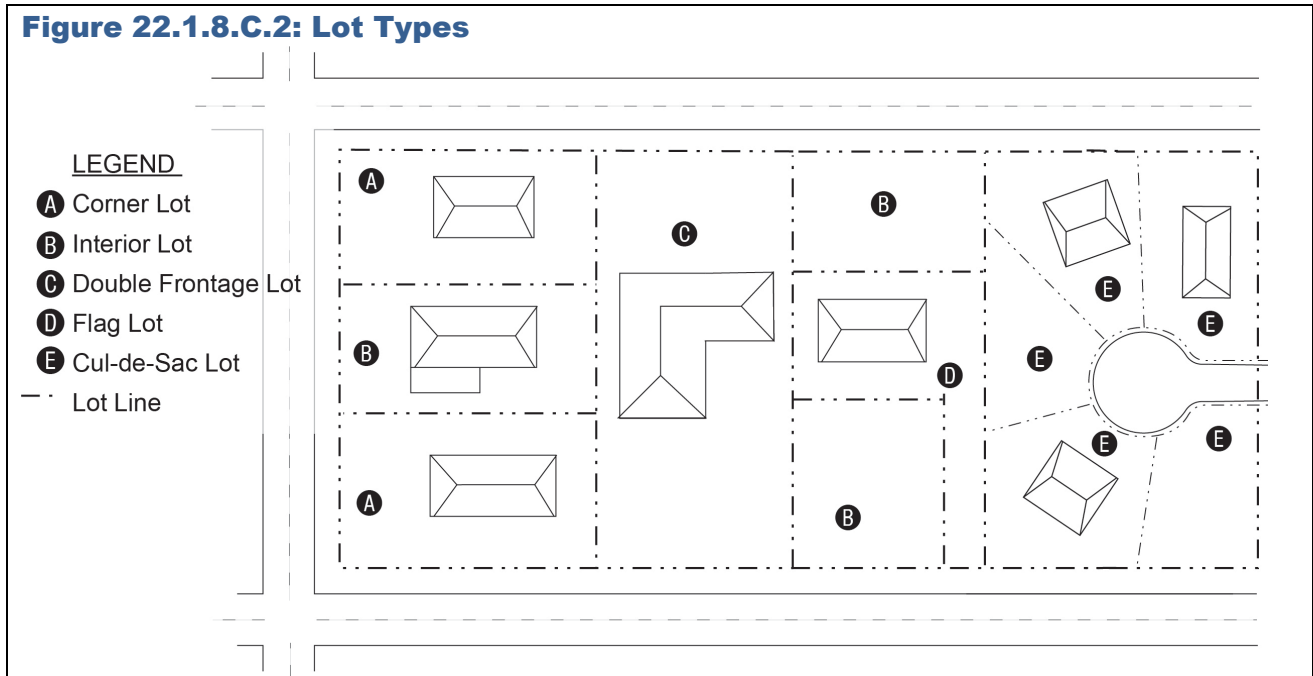
d. Flag Lot

A lot, created by a subdivision, with less lot width at the street right-of-way than is required for a conventional lot. It is composed of a narrow "flagpole" strip extending from the street and a much wider "flag" section lying immediately behind a lot or lots having the required street frontage for a conventional lot. In the case of a flag lot, the lot width is measured at the building setback line within the wider "flag" portion of the flag lot (see [Figure 22.1.8.C.2: Lot Types](#)).

²³⁴ This is a new section proposed for the Town's consideration. Most of these lot types are not identified in the current ordinance.

²³⁵ These standards replace the current corner lot definition, which is as follows: A lot which at least two adjoining sides abut for their full lengths on a street, provided that the interior angle at the intersection of two such sides is less than 135 degrees.

Figure 22.1.8.C.2: Lot Types



3. LOT MEASUREMENTS

a. Lot Area²³⁶

The amount of land area, measured horizontally, that is included within the lines of a lot. Lands located within any private easements shall be included within the lot area. The following features shall not be included in calculating minimum lot area:

- i. Public street rights-of-way; and
- ii. Land devoted to a private street right-of-way.

b. Lot Coverage²³⁷

Lot coverage is percentage of a lot that is occupied and obstructed by any above-ground impervious structure (see Figure 22.1.8.C.3.b: Lot Coverage). The following standards distinguish between the features counted as lot coverage by the type of zoning district.

i. In the RS-1 District

- 1) For the purposes of these standards, impervious structures include, but are not limited to: buildings, decks, pools, paved parking areas, accessways, paved private sidewalks, paved driveways, roadways, and any accessory use or structure.
- 2) For the purposes of these standards, the following features are not included as lot coverage:
 - a) Gravel walkways;

²³⁶ This is a new definition proposed for the Town to consider. The current one is as follows: The total surface areas included within the lot line measured on a horizontal plane.

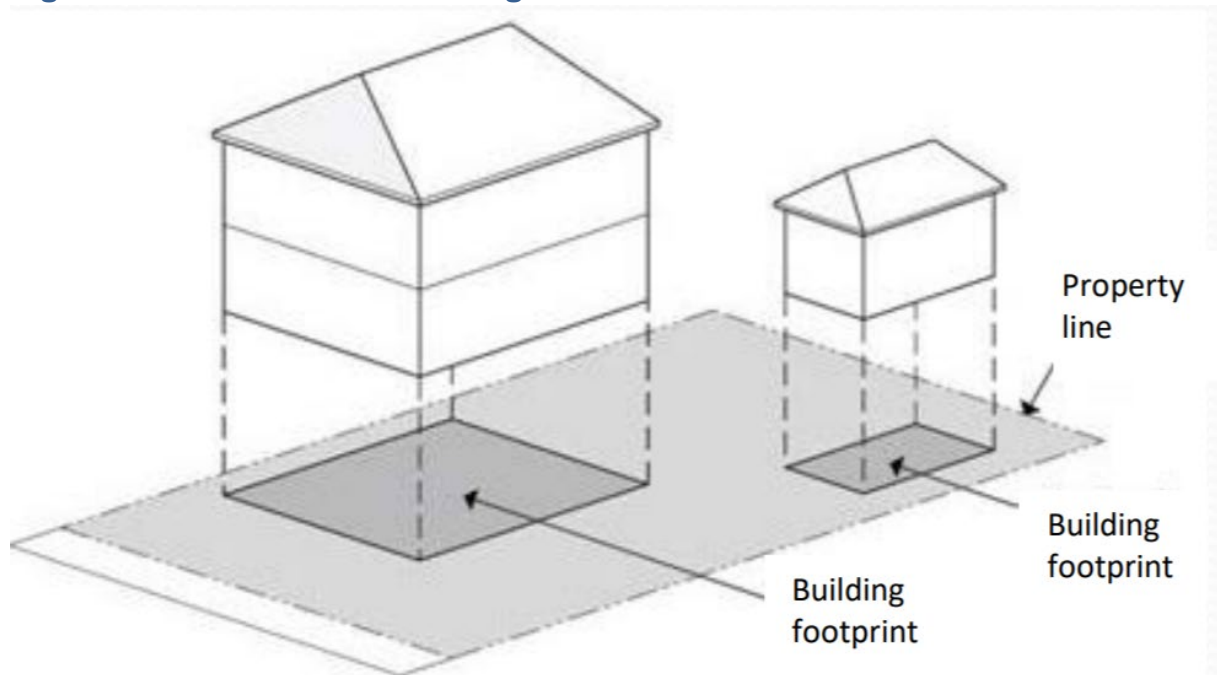
²³⁷ This language has been revised to include language from ZTA-18-04 which pertains only to RS-1 (no other zoning districts). The language in ZTA-18-04 is inconsistent with the comments on lot coverage provided by the Planning Board (see #14 on Town Code Update Module One Planning Board Comments). There are also differences between the Planning Board comments from 6-14-18 and those from 8-3-17 pertaining to a percentage of the surface water of a pool that is or is not included as impervious and whether or not easements or private streets should be counted as lot coverage. The lot coverage section needs redrafting as it is internally inconsistent and provides no rational basis as to why a material or site feature is considered pervious in one district but impervious in another.

- b) Open-slatted decks that allow water to penetrate through to pervious material underneath, provided the deck does not exceed 25 percent of the total footprint area of the single-family detached dwelling it serves;
- c) Government-owned and maintained sidewalks or multipurpose pathways located on private property; and
- d) The exemption of gravel walkways and open-slatted decks in accordance with subsections (a) and (b) above shall only be available to applicants seeking to construct single-family detached dwellings or slatted decks over pervious materials, and shall require presentation of a survey prepared in accordance with the requirements for a lot disturbance and stormwater management permit (see Section 22.2.3.B, Lot Disturbance and Stormwater Management Permit).

ii. In All Other Districts

- 1) For the purposes of these standards, impervious structures include, but are not limited to: buildings, decks, pools, paved parking areas, accessways, private paved sidewalks, wooden walkways, paved driveways, roadways, and any accessory use or structure.
- 2) The following features are not included as lot coverage:
 - a) Government-owned and maintained sidewalks;
 - b) Multipurpose pathways located on private property;
 - c) Gravel or grass driveways constructed with a pervious base;
 - d) Gravel walkways;
 - e) Up to 500 square feet of water surface associated with a pool; any water surface area exceeding 500 square feet is counted towards lot coverage;
 - f) The first four feet of building eaves or overhangs; portions of eaves or overhangs that extend beyond four feet from the building wall are counted as lot coverage; and
 - g) Up to 50 percent of driveways and parking areas comprised permeable pavers, permeable pavement, turfstone, grasscrete, or similar permeable material shall be excluded from lot coverage.

Figure 22.1.8.C.3.b: Lot Coverage



$$\frac{\text{footprints of all buildings}}{\text{total lot area}} = \text{lot coverage}(\%)$$

c. Lot Coverage on Oceanfront Lots

On oceanfront lots, only the area landward of the first line of stable natural vegetation as determined by the CAMA regulations shall be used for determining the maximum lot coverage (see [Figure 22.1.8.C.3.f: Lot Measurement](#)).

d. Lot Depth²³⁸

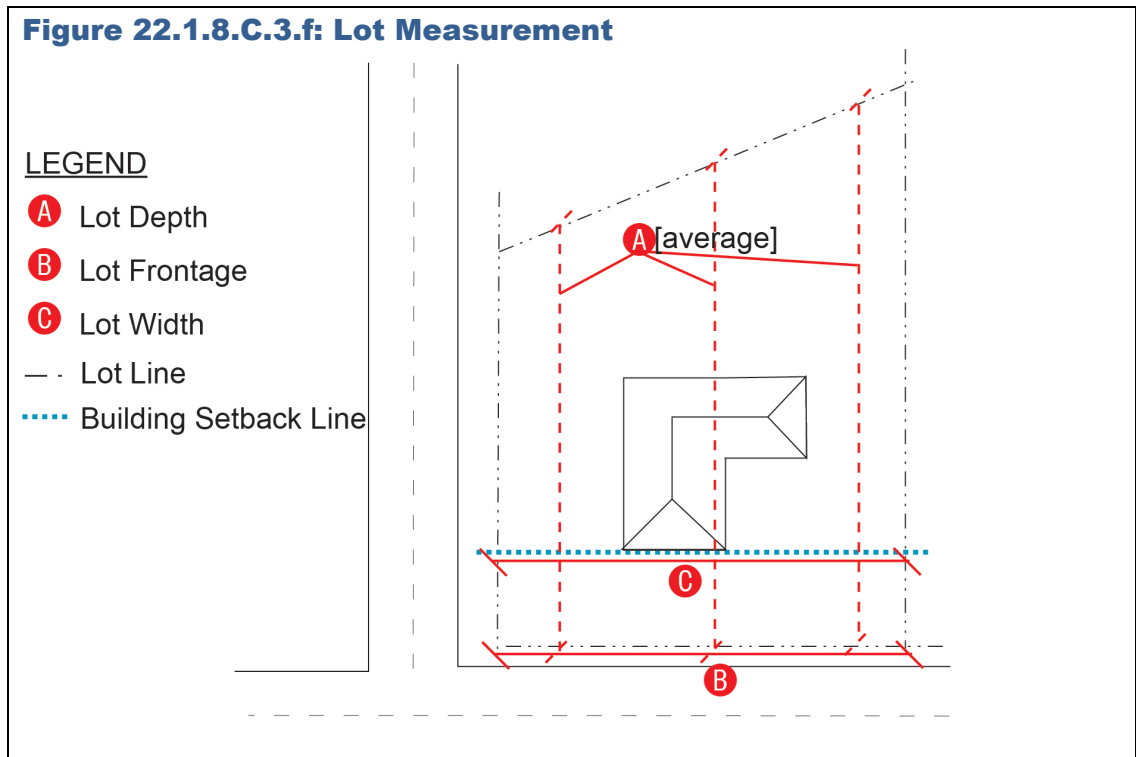
The average distance from the front lot line of the lot to its rear line measured in a general direction of the side lines of the lot (see [Figure 22.1.8.C.3.f: Lot Measurement](#)).

e. Lot Frontage²³⁹

The portion of a lot abutting a public or private street right-of-way or easement that provides access to the lot (see [Figure 22.1.8.C.3.f: Lot Measurement](#)).

f. Lot Width²⁴⁰

The distance between straight lines connecting front and rear lot lines at each side of the lot, measured at the building setback line (see [Figure 22.1.8.C.3.f: Lot Measurement](#)).



D. REQUIRED SETBACKS²⁴¹

Required setbacks are areas of open space between lot lines and the required distance a building or structure must set back, or minimum distance from a lot line required to be unencumbered by buildings and most kinds of structures for the preservation of light and air, emergency access, fire prevention, and utility location. Information on required setback distances is available in [Section 22.3, Zoning Districts](#).

1. BUILDING SETBACK LINE

²³⁸ This section carries forward the current definition.

²³⁹ This is a new term, but Section 36-95 of the current code sets out requirements for minimum lot frontage.

²⁴⁰ This is a new definition for the Town’s consideration. The current definition is as follows: The width of a lot at the required building setback line measured at right angles to the lot’s depth.

²⁴¹ This is a new section that introduces the idea of a “required yard” instead of a setback. The front, side, and rear yard standards are carried forward from the current definitions. The identification of a building setback line is new, as is the procedure for adjusting a required yard’s dimension following governmental acquisition of land (for aspect like streets or sidewalks).

The minimum linear distance from a lot line (front, side, rear) within which principal buildings and most accessory structures (except for fences and walls) are prohibited.

2. MINIMUM FRONT SETBACK

- a. An area extending between side lot lines across the front of a lot from the front lot line inwards to the building setback line.
- b. The depth of a minimum front setback shall be measured at right angles to a straight line joining the foremost points of the side lot lines.
- c. In the case of rounded property corners at street intersections, the foremost point of the side lot line shall be assumed to be the point at which the side and front lot lines would have met without rounded property corners (see [Figure 22.1.8.D: Required Setbacks](#)).

3. MINIMUM CORNER SIDE SETBACK

An area adjacent to a street or other right-of-way that extends along the side of the lot from the front lot line to the rear lot line (see [Figure 22.1.8.D: Required Setbacks](#)).

4. MINIMUM REAR SETBACK

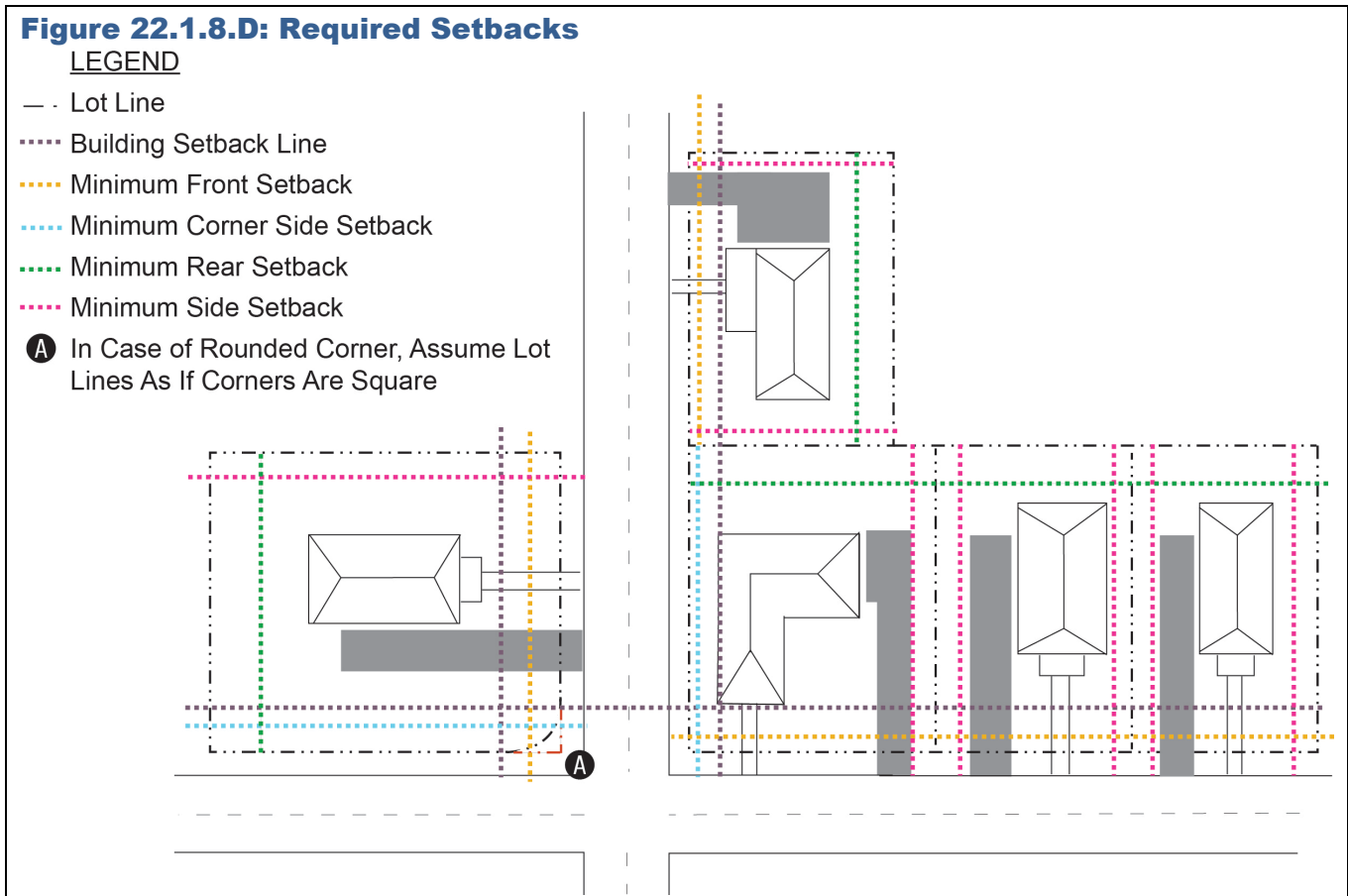
- a. An area extending across the rear of the lot between the side lot lines.
- b. The depth of a minimum rear setback shall be measured so as to create a strip of open land parallel to the rear lot line of the minimum width required by the zoning district where located (see [Figure 22.1.8.D: Required Setbacks](#)).

5. MINIMUM SIDE SETBACK

- a. An area extending from the rear line of the required front setback to the rear setback.
- b. The depth of a minimum side setback shall be measured so as to create a strip of open land parallel to the side lot line of the minimum width required by the zoning district where located (see [Figure 22.1.8.D: Required Setbacks](#)).

6. YARDS FOLLOWING GOVERNMENT ACQUISITION OF LAND

Where land acquisition for a public purpose reduces the distance between an existing legally-established building or structure and an adjacent lot line to an amount less than the minimum yard required by the zoning district where located, then the resulting distance shall be deemed the minimum yard for that lot (see [Figure 22.1.8.D: Required Setbacks](#)).



E. RESIDENTIAL DENSITY

1. MAXIMUM DENSITY

The maximum residential density is the maximum number of residential dwelling units permitted per acre of land area. Density is determined by dividing the number of dwelling units by the total amount of land area within a particular lot or tract.

2. ROUNDING

When computation of density results in a fraction, the fraction shall be rounded down to the next lowest whole number.

3. NET ACREAGE

Net acreage is the total area proposed for a development minus any area used for roads, off-street parking and loading facilities, common recreation areas such as playgrounds, club houses, tennis courts, swimming pools or other buildings or facilities intended for the use of the residents of the project, and any watercourses or other water areas or areas unusable for recreation or development.

F. BUILDING AND STRUCTURE HEIGHT

1. LIVING SPACE²⁴²

a. The enclosed area above the top plate of a structure is not intended as living space and shall not be used for any purpose other than storage of personal effects, equipment, or property.

²⁴² This section is carried forward from Section 36-101 of the current code as modified to be consistent with ZTA-17-05.

- b. For the purposes of this chapter, the area or space above the top plate of a habitable floor which is open, unrestricted, and unobstructed, such as used in an A-frame, cathedral ceiling, or opposed shed roof type construction, shall not be considered as living space.

2. HEIGHT DETERMINATION²⁴³

The following standards distinguish between how maximum height is determined by the type of zoning district (see [Figure 22.1.8.F.2: Height Determination](#)).

a. In the RS-1 Zoning District

Maximum building height for buildings in the RS-1 district shall be determined in the following ways.

i. Lots Outside a Flood Zone

For properties that are not in a flood zone (X Flood Zone), maximum building height shall be 35 feet measured from the average of the corners using original grade. In those cases where the average grade of the corners is higher than seven feet mean sea level (msl), the use of fill or redistribution of fill shall not exceed the average elevation. In those cases where the average grade of the corners is lower than seven feet mean sea level (msl), the use of fill or redistribution of fill may be permitted up to seven feet above mean sea level (msl) which is then used as the starting point for calculating the elevation.

ii. Lots in an AE Flood Zone

For properties that are in an AE flood zone, maximum building height shall be 35 feet measured from the average of the corners of original grade. The use of fill or redistribution of fill shall not exceed the average elevation. The use of fill or redistribution of fill may be permitted up to seven feet above mean sea level (msl) which is then used as the starting point for calculating the elevation.

iii. Lots in a VE Flood Zone

For properties that are in a VE zone, maximum building height shall be 35 feet measured from the average of the corners of original grade (fill is regulated by FEMA).

b. In All Other Zoning Districts²⁴⁴

Maximum building height for buildings in all zoning districts except the RS-1 district shall be determined in accordance with the following:

i. Top Plate Height

Top plate height is the distance, in feet, between the average ground elevation of the lot and the top of the highest top plate of the building.

ii. Maximum Height

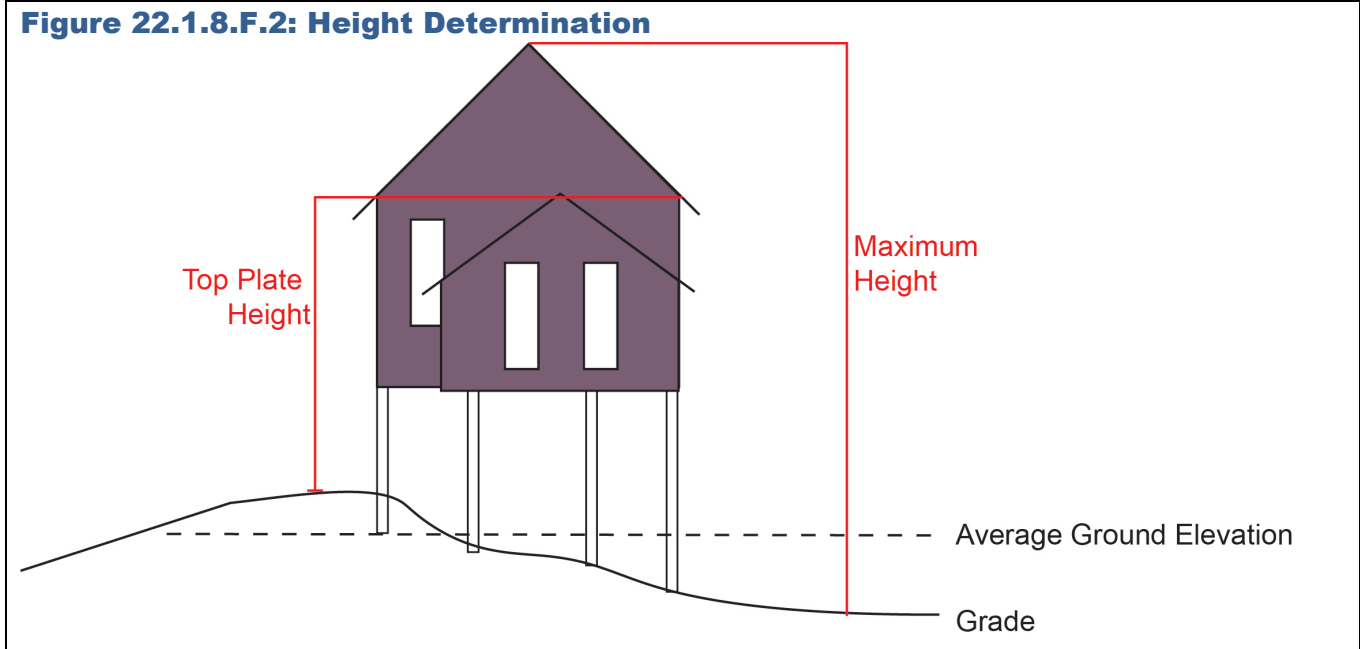
Maximum height is the distance, in feet, from the lowest ground elevation to the highest point of the building's uppermost roof surface.

iii. Conflict

In cases where conditions on a lot result in a maximum height with a lower elevation than an allowable top plate height, the maximum height standard shall control.

²⁴³ This language has been revised to address the language in ZTA-17-04. This language has been carried forward verbatim from the text amendment as directed. We urge the Town to revise these standards as they: treat the RS-1 zoning district differently without a stated justification, use terms that are not defined, include standards for fill that are in counter-intuitive ordinance locations, and measure height in ways that are unclear.

²⁴⁴ Planning Board comments from 8-3-17 and 6-4-18 mention removal of the top plate height provision, but this is inconsistent with the direction from ZTA-17-04 regarding height measurement in districts outside of RS-1, as we understood it. Top plate has been left in this standard and in the zoning district dimensional standards table in Chapter 3, but can be easily removed if this is the Town's intent.



3. STRUCTURES EXCLUDED FROM HEIGHT LIMITATIONS

Following structures shall be excluded from height limitations provided they are in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public's welfare.

- a. Church spires or belfries;
- b. Chimneys;
- c. Decorative cupolas that do not exceed five feet in width on any side or 25 square feet in cross section;
- d. Flagpoles;
- e. Communications masts; and
- f. Private television antennas and satellite dishes.

G. ELEVATION²⁴⁵

1. AVERAGE GROUND ELEVATION

A height above mean sea level derived from averaging the ground elevations at specific points on a lot corresponding to the locations of all building corners. Average ground elevation shall be determined in both the original grade and finished grade states. The lower average elevation figure (between original grade and finished grade conditions) shall be the average ground elevation for the purposes of this Ordinance.

2. FINISHED GRADE

The elevation, measured in feet above mean sea level, of the ground level at a specific point on a lot following filling, excavation, or construction activity. The finished grade of a lot may differ at different locations on a lot based upon the nature of filling, excavation, construction activity, or existing topographic relief.

3. LOWEST GROUND ELEVATION

The lowest height above mean sea level on a lot found at a specific point corresponding to the location of a building corner. The lowest ground elevation shall be determined in both the original grade and finished grade states. The lower ground elevation figure (between original grade and finished grade conditions) shall be the lowest ground elevation for the purposes of this Ordinance.

²⁴⁵ These standards are taken from the definitions in the current ordinance. These terms are not the same as those used for determining height in the RS-1 District.

4. ORIGINAL GRADE

The elevation, measured in feet above mean sea level, of the ground level at a specific point on a lot in its natural state prior to filling, excavation, or construction activity. The original grade of a lot may differ at different locations on a lot based upon the existing topographic relief.

H. PARKING SPACE COMPUTATION

1. MULTIPLE AND MIXED USES

Unless otherwise approved, development containing more than one principal use shall provide off-street parking in an amount equal to the total requirements of all individual uses, unless the Town Manager (or a designee) determines that a lower standard would be adequate because of differences in peak operating hours.

2. EMPLOYMENT BASED STANDARDS

Where the minimum number of off-street parking spaces is based on the number of employees, all computations shall be based on the maximum number of employees on the largest shift.

3. SEAT BASED STANDARDS

Where the minimum number of off-street parking spaces is based on the number of seats, all computations shall be based on the design capacity of the areas used for seating.

4. FLOOR-AREA BASED STANDARDS

Where the minimum number of off-street parking spaces is based on square feet of floor area, all computations shall be based on gross floor area. The square footage shall not include outdoor display or use area.

5. ON-STREET PARKING

Except as otherwise specifically permitted, on-street parking on public or private streets shall not be used to satisfy the off-street parking standards of this chapter.

6. DRIVEWAYS USED TO SATISFY REQUIREMENTS

Driveways may be used to satisfy minimum off-street parking standards for single-family detached and duplex dwellings, provided sufficient space is available to satisfy the standards of this chapter.

I. SIGNAGE²⁴⁶

1. NUMBER OF SIGNS

- a. For the purpose of determining number of signs, a sign shall be considered to be a single display surface or display device containing elements organized, related, and composed to form a unit (see Figure 22.1.8.I: Sign Face Area Measurement).
- b. Where matter is displayed in a random manner without organized relationship of elements, or where there is reasonable doubt about the relationship of elements, each element shall be considered to be a single sign.

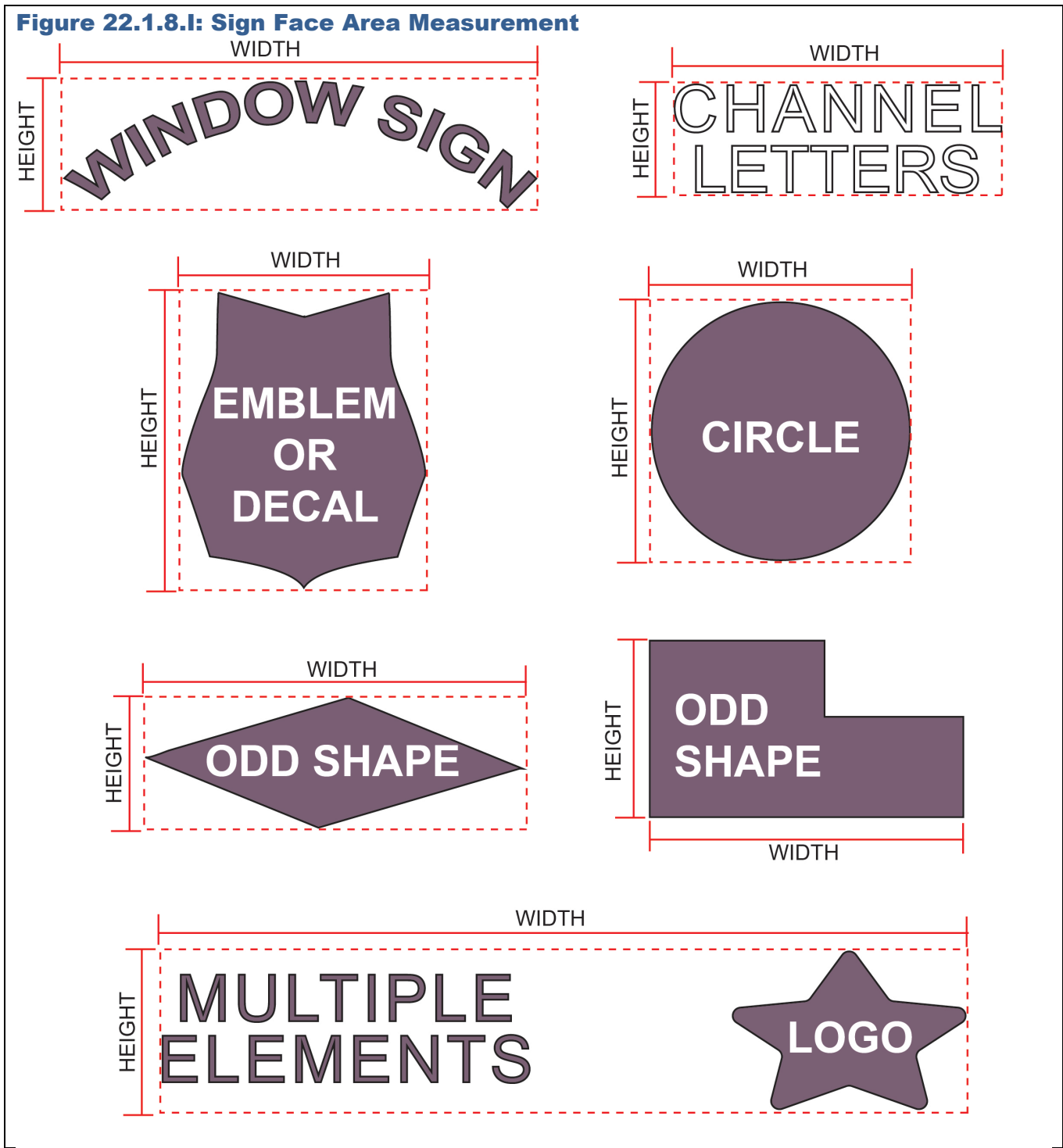
2. SIGN SURFACE AREA

The surface area of a sign shall be computed as including the entire area within a regular geometric form or combination of regular geometric forms comprising all of the display area of the sign and including frames and all of the elements of the matter displayed. The area of a double-faced sign shall be the area of one face of the sign, provided that the two faces are of the same size and are parallel to one another with no more than 24 inches between each sign face.

3. HEIGHT

Sign height shall be computed as the distance from the base of the sign at the finished grade or from the nearest adjacent street grade to which the sign is oriented and on which the lot has frontage, whichever is higher, to the top of the highest component of the sign. Finished grade shall be the grade after construction, exclusive of any filling, berming, mounding, or excavating solely for the purpose of locating the sign.

²⁴⁶ This section carries forward the sign measurement standards in Section 36-165(2) but adds additional provisions for measurement of sign height.



J. EXTERIOR LIGHTING²⁴⁷

1. Measurements of illumination shall be made in footcandles with a direct reading, portable light meter.
2. Unless otherwise specified, the light meter sensor shall be mounted not more than six inches above ground level in a horizontal position to measure horizontal illumination.

²⁴⁷ This section carries forward the standards in Section 36-166(f) with no substantive changes except the addition of an alternative measuring location when lot lines are not accessible.

- Vertical illumination shall be measured at a height of five feet with the sensor mounted not more than six inches from the wall surface and the meter sensor in the vertical position.
- Light level measurements shall be made at the lot line of the land upon which light to be measured is being generated. If measurement on private property is not possible or practical, light level measurements may be made at the boundary of the public street right-of-way that adjoins the land.

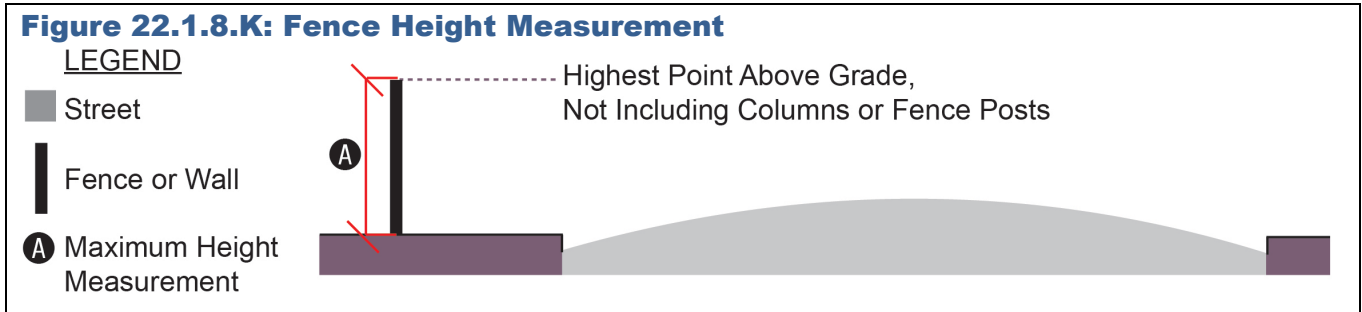
K. FENCES

1. MEASUREMENT LOCATION

Fence height shall be measured at the highest point above grade (not including columns or fence posts) on the portion of the fence nearest an abutting or adjacent lot or street right-of-way (see Figure 22.1.8.K: Fence Height Measurement).

2. WALL OR BERM BELOW FENCE

Any retaining wall or berm below a fence shall be included within the fence height.



L. LANDSCAPING

1. PLANT MATERIAL HEIGHT²⁴⁸

Height is measured from the proposed average ground surface elevation immediately adjacent to the buffer.

M. OCEAN ERODIBLE AREA²⁴⁹

1. OCEANSIDE EDGE

The seaward boundary of the ocean erodible area is the mean low water line, or as otherwise defined in the current regulations set forth by the Division of Coastal Management.

2. LANDWARD EDGE

The landward extent of this area is determined in accordance with the current regulations set forth by the Division of Coastal Management:

²⁴⁸ This standard is carried forward from Section 36-173(b)(2) with no substantive changes.

²⁴⁹ This section carries forward material from the definition of ocean Erodible Area from Section 36-471 of the current code. These provisions are relocated here since standards should not be embedded within definitions.

22.2. PROCEDURES

This section sets out the procedures for review of development applications under this chapter.

22.2.1. SUMMARY TABLE OF SPECIFIC REVIEW PROCEDURES²⁵⁰

Table 22.2.1: Summary Table of Specific Review Procedures, identifies the review authority for specific development applications reviewed under this chapter.

TABLE 22.2.1: SUMMARY TABLE OF SPECIFIC REVIEW PROCEDURES						
R = RECOMMENDATION D = DECISION A = APPEAL < > = PUBLIC HEARING REQUIRED						
REVIEW PROCEDURE	SECTION REFERENCE	REVIEW AUTHORITIES				
		TOWN MANAGER (OR A DESIGNEE)	HISTORIC LANDMARKS COMMISSION	PLANNING BOARD	TOWN COUNCIL	BOARD OF ADJUSTMENT
Amendment (Zoning Chapter or Official Zoning Map)	<u>22.2.3.A</u>	.	.	R	<D>	.
Lot Disturbance and Stormwater Management Permit	<u>22.2.3.B</u>	D	.	.	.	<A>
Planned Unit Development	<u>22.2.3.C</u>	.	.	R	<D>	.
Conditional Use Permit	<u>22.2.3.D</u>	.	.	R	<D>	.
Site Plan	<u>22.2.3.E</u>	.	.	R	D [1]	.
Building, Zoning, or Sign Permit	<u>22.2.3.F</u>	D	.	.	.	<A>
Floodplain Development Permit / Elevation Certificate / Variance to Flood Damage Prevention Standards	See <u>Chapter 28: Flood Damage Prevention</u>					
Certificate of Compliance/Occupancy	<u>22.2.3.H</u>	D	.	.	.	<A>
Certificate of Appropriateness	<u>22.2.3.J</u>	D [2]	<D>	.	.	<A>
Appeals	<u>22.2.3.K</u>	.	.	.	.	<D>
Variance	<u>22.2.3.L</u>	.	.	.	.	<D>
Vested Right Determination	<u>22.2.3.M</u>	.	.	R	<D>	.
NOTES:						
[1] Site plans for single-family detached and duplex dwellings shall be submitted with the application for a building or zoning permit and are not reviewed by the Planning Board or Town Council.						
[2] The Town Manager, or a designee, shall decide applications for a certificate of appropriateness for minor work.						

²⁵⁰ This is a new section proposed to increase user friendliness by indicating the application procedures and review process.

22.2.2. STANDARD REVIEW PROCEDURES²⁵¹

A. GENERAL

This section describes the standard procedural steps and rules generally applicable to all development applications reviewed under this chapter. Additional procedural steps and rules applicable to each of the specific development application procedures are found in Section 22.2.3, Specific Review Procedures.

B. PURPOSE AND INTENT

This standard review procedures section establishes the procedures used by the Town for the processing of development applications. It is the intent of this section to establish a uniform set of processes to foster greater efficiency and predictability for applicants, Town residents, Town staff, and elected and appointed officials during the review of development applications.

C. APPLICATION SUBMITTAL AND ACCEPTANCE

1. AUTHORITY TO FILE APPLICATIONS

Unless expressly stated otherwise in this chapter, development applications reviewed shall be submitted by the landowner, contract purchaser, or other person having a recognized property interest in the land on which development is proposed.

2. APPLICATION CONTENT

- a. The Town Manager (or a designee) is authorized to establish the application content and forms, which may be located in this chapter or a separate document.
- b. The Town Manager (or a designee) may alter the requirements for submission of certain information when, in the Town Manager’s opinion, such information is otherwise not available or is not necessary to review the application.

3. APPLICATION FEES

- a. The Town Council shall establish application fees, and may amend and update those fees as necessary.
- b. No application shall be processed until all required application fees are paid in full.

4. APPLICATION FEES SHALL BE IN ACCORDANCE WITH THE REGULARLY ADOPTED FEE SCHEDULE OF THE TOWN PLUS THE COST OF ANY REQUIRED LEGAL ADVERTISEMENT. APPLICATION SUBMITTAL

- a. Applications shall be submitted to the Town Manager (or a designee) in the form established by the Town Manager (or a designee), along with the appropriate application fee.
- b. Except for applications initiated by the Town Council, no development application requiring approval by the Town Council may be filed that includes land subject to a pending appeal being considered by the BOA or the courts.
- c. An application shall not be considered submitted until it has been determined to be complete in accordance with Section 22.2.2.C.7, Application Complete.

5. COMPLETENESS REVIEW

On receiving a development application, the Town Manager (or a designee) shall determine, within 14 days, whether the application is complete or incomplete. A complete application is one that:

- a. Contains all information and material established by the Town Manager (or a designee) as required for submittal of the particular type of application;
- b. Is in the form and number of copies required by the Town Manager (or a designee);
- c. Is legible and printed to scale (where appropriate);
- d. Is signed by the owner or other person authorized to file the application;

²⁵¹ This is a new section that sets out the portions of the development review process that are common or typical to ALL types of development application review procedures. This section lists these provisions once instead of repeating them with each of the specific development review procedures. This approach clarifies the process, cuts down on bulk, and helps to ensure consistency in how applications are reviewed and decided. This material is proposed to replace related or similar provisions in Articles 10 and 12 of the current zoning chapter, but does not replace specific provisions (like review criteria or methods of amendment) for each of the procedures listed in the summary table.

- e. Includes information in sufficient detail to evaluate whether or not the application complies with the applicable review standards in this chapter; and
- f. Includes material associated with a pre-application conference, if one was conducted.

6. APPLICATION INCOMPLETE

If the application is incomplete, the Town Manager (or a designee) shall notify the applicant of the deficiencies. The applicant may correct the deficiencies and resubmit the application for completeness determination.

7. APPLICATION COMPLETE

On determining that the application is complete, it shall be considered as submitted, and the Town Manager (or a designee) shall commence review in accordance with the procedures and standards of this Ordinance.

D. STAFF REVIEW AND ACTION

1. STAFF REVIEW

- a. Applications shall be reviewed during the review cycle in place when the application is determined to be complete.
- b. When an application is determined complete, it shall be distributed by the Town Manager (or a designee) to all appropriate staff and review agencies for review and comment, and the preparation of a staff report, if appropriate.
- c. In considering the application, the Town staff (as appropriate), shall review the application, relevant support material, and any comments or recommendations from other staff and review agencies to which the application was referred.
- d. If deficiencies in complying with applicable standards of this chapter are identified, the Town Manager (or a designee) shall notify the applicant of such deficiencies and provide the applicant a reasonable opportunity to discuss them and revise the application accordingly.

2. STAFF REPORT AND RECOMMENDATION

- a. The Town Manager (or a designee) shall prepare a written staff report for any application to be reviewed or decided by the Planning Board, Town Council, or Board of Adjustment.
- b. The staff report shall conclude whether the application complies with all applicable review standards of this chapter, and may recommend one of the decisions authorized for the particular type of application, based on the review standards applicable to the application type, in accordance with Section 22.2.3, Specific Review Procedures. The staff report may identify and recommend conditions of approval addressing how compliance deficiencies might be corrected and how adverse effects of the development application might be mitigated.
- c. A staff report is not required for an application decided by a Town staff member (such as the Town Manager or a designee), though one may be prepared.

3. DISTRIBUTION AND AVAILABILITY OF APPLICATION AND STAFF REPORT

In cases where a development application is reviewed or decided by the Planning Board, Town Council, or Board of Adjustment, the Town Manager (or a designee) shall take the following actions within a reasonable time period before the application is scheduled for review:

- a. Schedule and ensure any required notice of the application (if appropriate) is prepared in accordance with Section 22.2.2.E, Public Notification;
- b. Transmit the application, related materials, and staff report to the appropriate review authority;
- c. Transmit a copy of the staff report to the applicant; and
- d. Make the application, related materials, and staff report available for examination by the public in the Town Hall during normal business hours and by posting the information on the Town's website.

4. APPLICATIONS SUBJECT TO DECISION BY STAFF

a. Decision

In cases where a development application is decided by a Town staff member, the appropriate Town staff member shall approve, approve subject to conditions necessary to bring the application into compliance with this chapter, or disapprove the application, based on the review standards set forth in Section 22.2.3, Specific Review Procedures, for the particular type of application.

b. Conditions of Approval

Conditions of approval shall be limited to those deemed necessary to ensure compliance with the standards of this chapter. They shall be related in both type and amount to the anticipated impacts of the proposed development on the public and surrounding development. All conditions of approval shall be expressly set forth in the development permit or approval.

E. PUBLIC NOTIFICATION²⁵²

1. PUBLIC HEARING SCHEDULING

When a development application is subject to a public hearing, the Town Manager (or a designee) shall ensure that the public hearing is scheduled for a regular meeting or a meeting specially called for that purpose by the review body.

2. PUBLIC NOTIFICATION

All development applications subject to public notification shall comply with the provisions listed in Table 22.2.2.E.2.a: Public Notification Requirements, the provisions of this section, and other provisions in this Ordinance related to public notice.

a. Notification Requirements

The Town Manager (or a designee) shall ensure public notification is provided in accordance with the timing requirements in Table 22.2.2.E.2.a: Public Notification Requirements, for the type of application and the type of notice. In computing the required time periods, the day the notice is published, mailed, or posted shall not be included, but the day of the hearing shall be included.

TABLE 22.2.2.E.2.A: PUBLIC NOTIFICATION REQUIREMENTS				
APPLICATION	REVIEW BODY	TYPE OF REQUIRED NOTIFICATION x = required		
		PUBLISHED NOTICE	MAILED NOTICE [1]	POSTED NOTICE [2]
Amendment (text)	Planning Board	X	.	.
	Town Manager	X [3]	.	.
Amendment (Official Zoning Map)	Planning Board	X	X	X
	Town Manager	X [3]	X	X
Certificate of Appropriateness	Historic Landmarks Commission	.	X [4]	.
Conditional Use Permit (including Planned Development)	Planning Board	.	X	.
	Town Manager	.	X	.
Variance	Board of Adjustment	.	X	X
Appeal	Board of Adjustment	.	X	X
Vested Right Determination	Town Manager	X [3]	X	.
NOTES: [1] Mailed notice provided to affected owners and landowners abutting the land proposed for amendment between 10 and 25 days before the hearing. [2] Posted notice to be provided between 10 and 25 days before the hearing. [3] Published notice provided once a week for 2 successive calendar weeks, with the first notice between 10 and 25 days before the hearing. [4] Mailed notice shall be provided to all landowners within 100 feet of all sides of the subject property at least 7 days prior to the hearing.				

²⁵² This section is based on state law. The Town may be providing more public notice than that listed here. We suggest this section be limited solely to minimum legal requirements, and not list public notice conducted as a matter of policy. There is no requirement to change current public notification policy, but there is also no need to codify notice provision requirements beyond the state's minimum.

b. Published Notice Requirements

When the provisions of this Ordinance require that public notice be published, the Town Manager (or a designee) shall publish a notice in a newspaper that is regularly published at least one time per week and that has general circulation in the Town.

c. Mailed Notice Requirements

- i. Mailed notice specified in Table 22.2.2.E.2.a: Public Notification Requirements, shall be mailed to:
 - 1) All landowners subject to the application;
 - 2) The applicant, if different from the landowner; and
 - 3) All landowners entitled to receive notice (including landowners located outside the Town) whose address is known by reference to the latest county tax listing.
- ii. Notice shall be deemed mailed by its deposit in the United States mail, first class, properly addressed, postage paid. The content and form of the notice shall comply with Section 22.2.2.E.2.e, Notice Content, and the North Carolina General Statutes.
- iii. The Town Manager (or a designee) shall prepare an affidavit affirming that notice meeting these standards was mailed. The affidavit shall be conclusive that notice has been given in compliance with the terms of this subsection. The affidavit shall be included in the support materials of the application.
- iv. A copy of the mailed notice shall be maintained in the Town Hall for public inspection during normal business hours.

d. Posted Notice Requirements

Posted notice shall be made by the Town Manager (or a designee), and shall comply with the following:

- i. A sign shall be placed on the subject property in a conspicuous location so as to be clearly visible to the traveled portion of the respective street. Where the land subject to the notice does not have frontage on a public street, the sign shall be erected on the nearest street right-of-way with an attached notation generally indicating the direction and distance to the land subject to the application.
- ii. The content and form of the notice shall comply with Section 22.2.2.E.2.e, Notice Content, and the North Carolina General Statutes.

e. Notice Content

Unless expressly noted otherwise, all notices, whether done by mail, publication, or posting shall:

- i. Identify the date, time, and place of the public hearing;
- ii. Describe the land involved by street address or by its relationship to a fronting street and the nearest cross street (if applicable), and its size (except posted notice);
- iii. Describe the nature and scope of the proposed development or action;
- iv. Indicate that more restrictive changes in the proposal may be made following the public hearing (this requirement shall not be applied to posted notice); and
- v. Identify the means to contact a Town official for further information.

f. Constructive Notice

- i. Minor defects in any notice shall not impair the notice or invalidate proceedings if a bona fide attempt is made to comply with applicable notice requirements. Minor defects in notice may include, but are not limited to:
 - 1) Errors in a legal description;
 - 2) Errors or omissions in the county tax listing; or
 - 3) Typographical or grammatical errors that do not impede communication of the notice to affected parties.
- ii. Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a public hearing and the location of the subject property(ies) shall be strictly adhered to.

F. QUASI-JUDICIAL PUBLIC HEARING PROCEDURE

If the development application is subject to a quasi-judicial public hearing by a review authority, the review authority shall hold a quasi-judicial public hearing in accordance with the following procedures.

1. OPPORTUNITY TO PRESENT TESTIMONY AND EVIDENCE

Any party with standing shall be afforded a reasonable opportunity to present testimony and evidence in support of or in opposition to the application, and to ask questions of the applicant, the applicant's representatives, Town staff, and the Town staff's representatives.

2. LIMITATION ON EVIDENCE

The Chair or other presiding officer may limit or exclude incompetent evidence, immaterial evidence, repetitive evidence, and ad hominem attacks.

3. CONFLICTS OF INTEREST

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

4. EX PARTE COMMUNICATION

Ex parte communications between an applicant or an affected party and a member of the decision-making body is prohibited. If it occurs, it shall be disclosed during the quasi-judicial public hearing.

G. REVIEW BY PLANNING BOARD

If an application requires review and a recommendation by the Planning Board, it shall review the application in accordance with the following procedures:

1. GENERAL

The Planning Board shall consider the application, relevant support materials, staff report, and any public comments. One of the decisions authorized for the particular type of application shall be recommended, based on the review standards applicable to the application type, as set forth in Section 22.2.3, Specific Review Procedures.

2. CLEARLY STATE FACTORS FOR RECOMMENDATION

The recommendation shall clearly state the factors considered in making the recommendation and the basis or rationale for the recommendation.

3. VOTE

- a. A decision to recommend approval shall be decided by a simple majority of the members present, a quorum being present.
- b. A tie vote by members of the commission shall be forwarded without a recommendation.

4. TIMING

Unless an application is deferred or continued in accordance with Section 22.2.2.L, Deferral and Continuance, a recommendation on an application shall be made within 60 days from the date of the initial meeting where it is considered.

5. FAILURE TO RECOMMEND

If the Planning Board fails to make a recommendation in the time allotted for an application to be reviewed and decided by the Town Council, the application shall be forwarded to the Town Council without a recommendation from the Planning Board.

H. REVIEW AND ACTION BY DECISION-MAKING BODY

If an application is subject to a decision by the Town Council or BOA, or other decision-making body, it shall review and decide the application in accordance with the following procedures:

1. GENERAL

The decision-making body shall conduct any required public hearing(s) and consider the application, relevant support materials, staff report, any advisory body recommendations, and public comments. After the conclusion of the public hearing, it shall make one of the decisions authorized for the particular type of application based on the review standards applicable to the application type, as set forth in Section 22.2.3, Specific Review Procedures.

2. QUASI-JUDICIAL PROCEDURES

Required quasi-judicial public hearings (see Table 22.2.1: Summary Table of Specific Review Procedures) shall be conducted in accordance with Section 22.2.2.F, Quasi-Judicial Public Hearing Procedure, Quasi-Judicial Public Hearing Procedures.

3. REMAND

The decision-making body may remand the application to Town staff or Planning Board for further consideration of new information or specified issues or concerns, if appropriate.

4. CLEARLY STATE FACTORS FOR DECISION

Unless stated otherwise in this chapter, the decision shall clearly state the factors considered in making the decision and the basis or rationale for the decision.

5. APPLICATION REVISION

The decision-making body may revise an application to apply more restrictive requirements, or to ensure the application better serves the purpose and intent of this chapter. In cases where an application is revised by a decision-making body in this manner, additional public notification or public hearings are not required.

6. VOTE

a. Quasi-Judicial Hearing

Members of a decision-making body making a quasi-judicial decision shall not participate in or vote in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to: a member having a fixed opinion prior to hearing the matter that is not susceptible to change; undisclosed ex-parte communications; a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

b. Legislative Public Hearing

A board member shall recuse themselves from voting on an application where the outcome of the matter being considered is reasonably likely to have a direct, substantial, or readily identifiable financial impact on them or a member of their immediate family.

7. TIMING

The decision-making body shall take action on the application as promptly as reasonably possible in consideration of the public interest.

I. CONDITIONS OF APPROVAL

1. Unless expressly authorized in the specific procedures in Section 22.2.3, Specific Review Procedures, conditions of approval related to quasi-judicial decisions shall be limited to those deemed necessary to ensure compliance with the review standards for the particular type of application, or to prevent or minimize adverse effects from the proposed development on surrounding lands.
2. Unless expressly authorized in the specific procedures in Section 22.2.3, Specific Review Procedures, conditions of approval related to legislative decisions shall be limited to those deemed necessary to ensure compliance with the review standards. They shall be related in both type and amount to the anticipated impacts of the proposed development on the public and surrounding development. All conditions of approval shall be expressly set forth in the notice of decision or development permit approval.

J. NOTIFICATION OF DECISION OR ACTION

1. TIMING

Except where otherwise stated in this Ordinance, the Town Manager (or a designee) shall provide the applicant written notification of a decision or action within 30 business days after a final decision on a development application.

2. COPY OF DECISION

In addition, the Town Manager (or a designee) shall make a copy of the decision available to the public in the Town Hall, during normal business hours.

K. EFFECT OF DEVELOPMENT APPROVAL

1. APPROVAL LIMITED

Approval of a development application in accordance with this chapter authorizes only the particular use, plan for development, or other specific activity approved.

2. PERMIT PREREQUISITE

In the event a permit or development approval is a prerequisite to another permit or development approval (e.g., variance approval prior to a site plan approval), development may not take place until all prerequisite approvals are obtained. Approval of one development application does not guarantee approval of any subsequent development application.

L. DEFERRAL AND CONTINUANCE

1. PRIOR TO PUBLIC HEARING, IF CONDUCTED

- a. An applicant may request that a review authority's consideration of a development application at public hearing be deferred or continued by submitting a written request for deferral to the Town Manager, or a designee, prior to consideration by the review authority.
- b. The Town Manager, or a designee, may grant the request for good cause shown.

2. DURING PUBLIC HEARING, IF CONDUCTED

- a. An applicant may request that a review authority defer or continue a public hearing on an application by making a request during the public hearing.
- b. The Chair of the review authority may grant the request for good cause shown.
- c. The Chair may defer ruling on such a request to allow for the decision to be made by the review authority.

3. GOOD CAUSE

Good cause for a continuance includes, but is not limited to:

- a. The official issuing the decision is unavailable;
- b. The applicant needs additional time to prepare requested materials;
- c. There is insufficient membership of the review authority seated and present to hear a matter; or
- d. If any party or the Town would be unduly prejudiced by the presentation of matters.

4. RENOTIFICATION FEES

If public notification of a hearing have already been issued, the party granted a continuance is responsible for the administrative costs of noticing an additional hearing, if such costs are incurred.

M. WITHDRAWAL

1. An applicant may withdraw an application at any time.
2. If an applicant withdraws an application for the same land after public notification two times within a single calendar year, the same application may not be resubmitted for a period of one year from the date of the second withdrawal.

N. LIMITATION ON SUBSEQUENT SIMILAR APPLICATIONS

1. If a development application requiring a public hearing is denied, no application proposing the same or similar development on all or part of the same land shall be submitted within one year after the date of denial unless the review authority waives this time limit in accordance with subsection (2) below.
2. The owner of land subject to this subsection, or the owner's authorized agent, may submit a written request for waiver of the time limit, along with a fee to defray the cost of processing the request, to the Town Manager (or a designee) who shall transmit the request to the review authority. The review authority may grant a waiver of the time limit only on a finding by two-thirds of its membership that the owner or agent has demonstrated that:
 - a. There is a substantial change in circumstances relevant to the issues or facts considered during review of the prior application that might reasonably affect the review authority's application of the relevant review standards to the development proposed in the new application; or
 - b. New or additional information is available that was not available at the time of review of the prior application and that might reasonably affect the review authority's application of the relevant review standards to the development proposed in the new application; or
 - c. The new application proposed to be submitted is materially different from the prior application; or
 - d. The final decision on the prior application was based on a material mistake of fact.

O. EXPIRATION OF PERMIT OR DEVELOPMENT APPROVAL

1. GENERAL

- a. Development approvals granted in accordance with this chapter shall expire as provided in Section 22.2.3, Specific Review Procedures, for the particular type of development permit or approval.
- b. If no expiration period is provided in Section 22.2.3, Specific Review Procedures, then the development approval does not expire.
- c. A change in ownership of the land shall not affect the established expiration time period. The filing of an appeal shall delay the established expiration period until final resolution of the appeal.

2. EXTENSION OF EXPIRATION TIME PERIOD

Except as otherwise provided in Section 22.2.3, Specific Review Procedures, for the particular type of development permit or approval, the Town Manager (or a designee) may, on receipt a written request for extension before the expiration date and on a showing of good cause, grant one or more extensions of the expiration time period for up to a cumulative total of one year.

22.2.3. SPECIFIC REVIEW PROCEDURES²⁵³

This section sets out procedures, standards, and related information for each of the specific review procedures subject to review authority decision, as identified in Table 22.2.1: Summary Table of Specific Review Procedures. They apply in addition to, or instead of, the standard procedures set forth in Section 22.2.2, Standard Review Procedures.

A. AMENDMENT²⁵⁴

1. PURPOSE AND INTENT

This section provides a uniform means for amending the text of this chapter or the Official Zoning Map whenever the public necessity, changed conditions, convenience, general welfare, or appropriate land use practices justify or require doing so.

2. PROCEDURE

a. Planning Board Action

- i. Every proposed amendment, supplement, change, modification, or repeal to this chapter or the Official Zoning Map shall be referred to the Planning Board for its recommendation and report.
- ii. All petitions for a change in the Official Zoning Map shall include a legal description for the property involved, the names and addresses of current abutting property owners, and a copy of all or a portion of the applicable tax or zoning map with the applicable property outlined.
- iii. No proposal shall be considered by the Planning Board within 30 days from the filing of the proposal with the Town.

²⁵³ NOTE: This section consolidates the development review procedures in the zoning chapter and uses mostly existing language, with minor modifications for clarity. Generally speaking, this portion of the current ordinance is difficult to follow and appears to be missing many important elements. Nowhere in the current ordinance do the standards discuss staff review prior to consideration by the Planning Board or the Town Council. Few procedures include any review criteria. The sequencing of permits is unclear and the CAMA-related portion of the review process is not described. This section attempts to clarify and add some missing pieces but wholesale revision of the development review procedure section in its entirety would be a better approach.

²⁵⁴ NOTE: This section carries forward the standards in Section 36-414 through 416 of the current ordinance but removes the provisions for protest petitions as these are no longer permitted by state law. As with many of the other provisions in the current text, these procedures have been carried forward, but are supplemented with additional standards, like intent statements, approval criteria, or additional guidance on the procedure. Generally speaking, all procedures in this chapter do not go into much detail on the role of staff review prior to consideration of an application. This has not been revised in this draft, but the text would likely benefit from a more detailed discussion of the steps in the application process prior to consideration by a review body. This amendment procedure includes a new purpose and intent section and includes new review criteria for text and map amendments. Further, the current text is light on the required Land Use Plan consistency statements, but this has not been changed as we have been careful to avoid significant substantive change that involved re-drafting of current provisions.

- iv. The Planning Board shall advise and comment on whether the proposed amendment is consistent with the Town's Land Use Plan and any other officially Town adopted policy guidance that is applicable.
- v. The Planning Board shall provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Town's Land Use Plan shall not preclude consideration or approval of the proposal by the Town Council.
- vi. The Planning Board shall have 30 days within which to submit its recommendation to the Town Council.

b. Town Council Action

- i. The Town Council may, on its own motion or upon petition by any person within any zoning jurisdiction of the Town, after public notice and hearing, amend, supplement, change, modify, or repeal the regulations herein established or the Official Zoning Map which is a part of this chapter, subject to the rules prescribed in this chapter.
- ii. No regulation or map shall be amended, supplemented, changed, modified, or repealed until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard.
- iii. Prior to adopting or rejecting any zoning amendment, the Town Council shall adopt a statement describing whether its action is consistent with the adopted Land Use Plan and explaining why the Town Council considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.
- iv. If no written report is received from the Planning Board within 30 days of referral of the amendment to the Planning Board, the Town Council may proceed in its consideration of the amendment without the Planning Board report. The Town Council is not bound by the recommendations of the Planning Board.

3. STANDARDS²⁵⁵

This section includes the review criteria for use by the Town Council in deciding amendments to the Official Zoning Map or the text of this chapter.

a. Official Zoning Map Amendments

The advisability of an amendment to the Official Zoning Map is a matter committed to the legislative discretion of the Town Council and is not controlled by any one factor. In determining whether to adopt or deny a proposed zoning map amendment, the Town Council may weigh the relevance of and consider the following:

- i. Whether and the extent to which the proposed zoning map amendment is appropriate for its proposed location, and is consistent with the purposes, goals, objectives, and policies of the Town's adopted policy guidance, including but not limited to the Land Use Plan.
- ii. Whether an approval of the zoning map amendment is reasonable and in the public interest.
- iii. Whether the amendment would result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, and the natural functioning of the environment.

b. Text Amendments

The advisability of amending the text of this chapter is a matter committed to the legislative discretion of the Town Council and is not controlled by any one factor. In determining whether to adopt or deny the proposed text amendment, the Town Council may weigh the relevance of and consider whether and the extent to which the proposed text amendment:

- i. Is consistent with the Town's adopted policy guidance;
- ii. Is not in conflict with any provision of this chapter or the Town Code;
- iii. Is required by changed conditions;
- iv. Addresses a demonstrated community need;
- v. Addresses an unforeseen matter not present when the chapter was adopted;
- vi. Is consistent with the purpose and intent of the zoning districts in this chapter, or would improve compatibility among uses and ensure efficient development within the Town;

²⁵⁵ NOTE: These are new review criteria proposed for the Town's consideration.

- vii. Would result in a logical and orderly development pattern; and
- viii. Would not result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, and the natural functioning of the environment.

B. LOT DISTURBANCE AND STORMWATER MANAGEMENT PERMIT²⁵⁶

1. GENERAL REQUIREMENTS

Any of the following shall require issuance of a lot disturbance and stormwater management permit in accordance with this chapter prior to taking place:

- a. Grading, filling, or other alteration of the topography or elevation of any unimproved lot;
- b. Demolition and clearing of improved property; or
- c. Any manmade change to any improved lot resulting in the discharge of stormwater onto adjacent property and requiring a building permit.

2. APPLICATION REQUIREMENTS

a. Professionally Prepared

All applications for a lot disturbance and stormwater management permit shall be accompanied by a survey and site plan of the proposed improvements prepared by a State-licensed professional surveyor, engineer, architect, or other person duly authorized by the State to prepare such plans.

b. Application Contents

- i. The survey or site plan shall indicate the actual dimensions and shape of the lot, and the surveyed pre-disturbance ground elevation at the corners of the proposed structure referenced to mean sea level.
- ii. The application shall also describe the disturbance or development activity which is proposed for the lot.
- iii. The application and accompanying survey shall be sufficiently detailed for the Town Manager (or a designee) to confirm that following construction of the proposed improvements will comply with the minimum stormwater management standards in this Ordinance.
- iv. When required by the Town Manager, or a designee, the survey or site plan shall include a certification attesting to compliance with all applicable stormwater requirements in this Ordinance, which shall be executed by the person duly authorized by the State of North Carolina to prepare such plans.
- v. The Town Manager (or a designee) may request reasonable additional information to make a decision on the application.

3. INSPECTION

- a. Following receipt of an application, the Town Manager, or a designee, shall inspect the site subject to the application and confirm that the survey detail submitted conforms generally to the pre-disturbance condition of the lot with respect to its elevations, and that the proposed disturbance activity will not create any hazards or disturb land or lots other than that owned by the applicant or his agent.
- b. The Town Manager, or a designee, shall make any notation or comments on the permit as needed to further establish the pre-disturbance topography and elevation of the lot for later use in determining the permitted height of any structures subsequently constructed on the lot.

4. REVIEW CRITERIA

A lot disturbance or stormwater management permit shall be approved, provided it complies with the following:

- a. The standards in Section 22.5.9, Stormwater Management;
- b. All other applicable standards in this Town Code;
- c. All applicable State or federal requirements; and
- d. Any applicable conditions or prior development approvals.

5. CONDITIONS OF APPROVAL

²⁵⁶ This section has been updated to include language from ZTA-17-06 pertaining to lot disturbance and stormwater management.

The Town Manager, or a designee, is hereby authorized to include conditions of approval in the permit which minimize the disturbance or damage of any adjacent lots or land, including any reasonable conditions meeting current best management practices necessary for ensuring the proposed development will maintain compliance with the standards in Section 22.5.9, Stormwater Management.

6. MODIFICATIONS AUTHORIZED

The Town Manager, or a designee, may modify an existing lot disturbance and stormwater management permit requirement during the construction process as necessary to ensure that the development does not result create any hazards or disturb land not owned by the applicant.

C. PLANNED UNIT DEVELOPMENT²⁵⁷

1. PURPOSE AND INTENT

These planned unit development (PUD) standards are intended allow for and promote unified master-planned development in order to accomplish the purposes of zoning and other applicable regulations to the same degree as in districts in which regulations are intended to control development, on a lot-by-lot rather than a unified basis, in order to:

- a. Promote economical and efficient land use;
- b. Foster a higher level of amenities;
- c. Establish an appropriate and harmonious variety in physical development;
- d. Encourage creative design; and
- e. Contribute to an improved living and working environment.

2. RELATIONSHIP TO OTHER STANDARDS

Where there are conflicts between the standards of this section and the general zoning, subdivision, or related requirements, these standards shall control within planned unit developments, unless the Town Council determines:

- a. That these provisions do not serve public purposes to a degree at least equivalent to general zoning, subdivision, or other regulations or requirements; or
- b. That the development proposed by the applicant does not satisfy public purposes to at least an equivalent degree.

3. APPLICATION REQUIREMENTS

Applications for PUD approval shall be submitted in accordance with Section 22.2.2.C, Application Submittal and Acceptance, and shall include a development plan depicting all the following:

- a. A map showing the proposed development in relation to its surrounding area and defining the relative size and location of streets, utilities, schools, and commercial facilities expected to serve the area.
- b. A survey report covering soil condition, drainage, topography, location, and character of surface water, flora and fauna, and other such information as may be required, to determine if the site is suitable for planned unit development without hazards to occupants or adjoining properties.
- c. An overall preliminary development plan which shall show:
 - i. Proposed major vehicular and pedestrian circulation systems;
 - ii. Proposed land uses including residential densities and nonresidential uses;
 - iii. Proposed plans and regulations for major reservations of land for parks, playgrounds, and other public uses or facilities; and
 - iv. Relationship to existing land uses in the surrounding areas.
- d. Common area, which is an area designated as such on the site development plan of a PUD, and on the subdivision plan as an area to be held in separate ownership for the use and benefit of residents occupying specified lots shown on such subdivision plan, provided that it meets the following requirements:
 - i. It shall be conveniently accessible to all residents of the development.
 - ii. It shall be made available in its improved state, as set forth on the site development plan, in accordance with an approved time schedule.

²⁵⁷ NOTE: This section carries forward the standards in Section 36-263 through 266 with no substantive changes but with significant re-structuring and simplification of the current language. The current language is very difficult to follow, and there appears to be significant repetition and inconsistency.

- iii. It shall be maintained in accordance with an approved maintenance plan specifying what such maintenance shall consist of, whose responsibility it shall be, and ensuring satisfactory execution of maintenance.
- iv. Provisions to ensure its continuing availability shall be included in the deed to each parcel to be served by such common area.
- v. Such other information as may be required by the Planning Board or Town Council to determine the impact of the proposed development on the Town.

4. REVIEW PROCEDURE

Planned unit development applications shall require review and approval of a conditional use permit application in accordance with Section 22.2.3.D, Conditional Use Permit, as well as review and approval of a site plan in accordance with the following:

a. Optional Pre-application Conference and Sketch Plan

- i. The purpose of the pre-application conference is to assist in bringing the proposed development as nearly as possible into conformity with this Town Code, to identify necessary variations from the regulations, and to determine if the identified variations can be justified in view of the purposes of these PUD provisions.
- ii. Upon request by an applicant, members of the Town Staff and Planning Board shall meet with applicant to review the proposed planned unit development. An applicant may choose to prepare a sketch plan illustrate the proposed development.
- iii. Any recommendations for change to the proposed development from the Town staff or members of the Planning Board shall be recorded, in writing, and shall become part of the record for the application. Recommendations shall be supported by stated reasons for the proposal for change.
- iv. Applicants may, in writing, indicate their agreement or disagreement with any recommendations. In the case of disagreement, applicants shall provide their reasons. Responses by applicants shall also be included in the record for the application.
- v. All sketch plans, if provided, shall be drawn to appropriate scale and shall show the locations of all lots, streets, drives, off-street parking areas and other pertinent features, together with building locations, if appropriate. Sketch plans may be drawn in such a manner as to minimize initial expense and encourage sufficient design flexibility to accommodate required changes, without undue hardship to the developer.
- vi. An applicant may submit a preliminary plat (prepared in accordance with Section 26.6.2, Preliminary Plat) in lieu of a sketch plan.

b. Consideration and Recommendation by the Planning Board

- i. The Town staff, when appropriate, shall seek the advice of the Dare County Environmental Health Department, NCDOT, and other agencies, as necessary, to accomplish a complete review of any development plans.
- ii. When the Planning Board determines that the proposed development should be modified to protect the public interest, it may recommend reasonable modifications to any essential elements of the development plan.
- iii. The Planning Board shall make a recommendation for approval or denial of the application.
- iv. The Planning Board shall forward its recommendations to the Town Council in accordance with Section 22.2.2.G, Review by Planning Board.

c. Approval by the Town Council

The Town Council shall review and decide a PUD development application in accordance with the standards in this section, and may also take any of the following actions:

- 1) Grant specific modifications of the PUD and applicable general regulations;
- 2) Return the application to the Planning Board for further consideration of specific suggested changes; or
- 3) Deny the application.

d. Public Hearings

- i. Duly noticed public hearings are not mandatory in connection with review and decision on a PUD site plan, but the Planning Board and Town Council may choose to conduct public hearings in accordance with the standards in Section 22.2.2, Standard Review Procedures.

- ii. Decisions on PUD final plans or changes in approved plans are administrative, and do not require public notice or a public hearing.

e. Issuance of Building Permits

Building permits shall be issued by the Town Manager (or a designee) only for improvements and developments on a planned unit development site which conform to the approved final detailed development plan or subdivision plat.

5. REVIEW CRITERIA

- a. Approval of an application for a PUD shall only be made after finding the proposed development complies with all applicable standards and requirements in Section 22.2.3.C.6, Standards.
- b. No structure or use other than as indicated in approved site plans and reports shall be permitted.

6. STANDARDS

All planned unit developments shall conform to the following standards and requirements:

a. Where Permitted

- i. Planned unit development may only be permitted within the multifamily zoning districts on tracts suitable in location and character for the uses and structures proposed.
- ii. PUDs shall be appropriately located with respect to intended functions, to the pattern and timing of development existing or proposed in the Land Use Plan, and to public and private facilities, existing or clearly to be available, by the time development reaches the state where they will be needed.

b. Minimum Size

A planned unit development site shall not be less than five acres in size.

c. Maximum Density

The maximum residential density in any PUD shall not exceed the density, per net acre, of the zoning district in which it is located.

d. Allowable Uses

Uses permitted in a planned unit development shall be limited to residential uses.

e. Number of Buildings

More than one principal building may be permitted on a lot in a planned unit development, provided each principal building is designed and arranged to conform to the development plan approved by the Planning Board and the Town Council.

f. Minimum Buffer Required

- i. No structure, parking area, or other use, except open spaces for recreational or decorative purposes, shall be erected or established within a distance of 35 feet from any planned unit development project's exterior boundary line. This restriction shall not apply to any interior development line or "phase line," or to any exterior boundary line which abuts a nonresidential zoning district boundary line.
- ii. A setback minimum of ten feet is required when a parcel used for residential purposes abuts a parcel with a nonresidential use in a residential area.

g. Off-street Parking and Loading Facilities

All off-street parking and loading facilities established as a part of a planned unit development shall conform to the requirements and standards in Section 22.5.2, Off-Street Parking Standards.

h. Preservation of Noteworthy Features

- i. Efforts shall be made to preserve historic sites, scenic points, large trees, and other desirable natural growths, watercourses and other water areas, and other features worthy of preservation, to the maximum extent practicable, either as portions of public sites and open spaces, or provided as an amenity to the neighborhood.
- ii. Large trees or other desirable natural growth, located in public or private rights-of-way or public or private easements, shall not be removed unless such removal is necessary for the installation of utilities or drainage structures or for other purposes in the public interest. Removal may be prohibited if the amenity of adjacent property, or the amenity of the general neighborhood, is adversely affected.

7. AMENDMENT TO APPROVED SITE PLANS

- a. Following review of an application by the Planning Board, the Town Council may permit changes when requested by the developer, but only on a finding that such changes are in accord with all regulations in effect at the time the site development plan or plat was approved, and in accord with the general interest and purpose of the Land Use Plan in effect at such time, provided that the applicant may elect to proceed in accord with the regulations and Land Use Plan currently in effect.
 - b. Changes other than as indicated in this subsection shall be made only by a new PUD application.
- 8. EXPIRATION OF PUD APPROVAL**
- a. If actions required in the PUD are not taken within the time limits set, the Planning Board shall review the circumstances and recommend to the Town Council that:
 - i. PUD approval for the entire area be continued with revised time limits;
 - ii. PUD approval to be continued for part of the area with revised time limits, and the remainder returned to conventional zoning control; or
 - iii. PUD approval be removed from the entire project.
 - b. Recommendations shall include proposals for appropriate action with respect to any legal instruments, dedications, contributions, or other financial guarantees.

D. CONDITIONAL USE PERMIT²⁵⁸

1. GENERALLY

- a. The Town Council may approve permits for conditional uses in the zoning districts where such conditional uses are specified in Table 22.4.2: Principal Use Table.
- b. Applications for permits for planned unit development, shall be processed in accordance with this section and Section 22.2.3.C, Planned Unit Development.
- c. The Town Council may impose such reasonable and appropriate conditions and safeguards on a conditional use permit to ensure that the spirit and intent of this chapter is preserved.

2. APPLICATIONS

- a. Written application for a conditional use permit shall be submitted in accordance with Section 22.2.2, Standard Review Procedures, no later than 30 days prior to the Planning Board meeting at which the plan is to be reviewed.
- b. The application shall indicate the section of this chapter under which a permit is being sought, and shall contain the information required to ensure compliance with this chapter.
- c. The application shall include a list of the names and addresses of all abutting property owners and the owners of property immediately across the street from the property affected by the conditional use application according to the most recent county tax listing abstract.

3. REVIEW PROCEDURE

- a. Prior to the public hearing conducted by the Planning Board, public notice shall be provided in accordance with Section 22.2.2.E, Public Notification.
- b. The Planning Board shall review the application for a conditional use permit and shall submit its recommendation as to approval or disapproval along with such conditions as it may deem necessary to the Town Council.
- c. Prior to the public hearing conducted by the Town Council, public notice shall be provided in accordance with Section 22.2.2.E, Public Notification.
- d. The Town Council shall hold a public hearing and any party may appear in person, or by agent or attorney. After the public hearing, the Town Council shall decide the application in accordance with Section 22.2.3.D.4, Approval Criteria.
- e. In instances where a property owner seeks to obtain a vested right in accordance with Section 22.2.3.M, Vested Right Determination, a public hearing shall be held by the Town Council. The public hearing to consider vested rights may be conducted at the same time or at a subsequent time as the public hearing to consider the conditional use permit application.

4. APPROVAL CRITERIA

Before granting any conditional use permit or vested right, the Town Council shall make affirmative findings that:

²⁵⁸ This section carries forward Section 36-300 of the current code with no substantive changes.

- a. The applicant has met the requirements of the applicable provisions of this Town Code pertaining to zoning, subdivision, and all other applicable provisions.
- b. That the use as proposed will conform with the Town's Land Use Plan, and will be compatible with the area in which it is to be located, if developed in accordance with the conditions specified in this chapter and as additionally required by the Town Council.
- c. That the use will not materially endanger the public health and safety if located where proposed and developed according to the plan submitted.
- d. That the use as proposed will not overburden the Town volunteer fire department fire-fighting capabilities and the County water supply capacity to the Town that will exist on the date the conditional use is occupied.

5. CONDITIONS OF APPROVAL

In granting any conditional use permit, the Town Council may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the conditional use permit is granted, shall be deemed a violation of this chapter and punishable under Chapter 36: Offenses and Enforcement.

6. EFFECT

- a. If the conditional use permit is approved by the Town Council, the applicant may file an application for a site plan.
- b. Upon final approval of a site plan by the Town Council, the applicant may file an application for a building permit.
- c. The Town Manager (or a designee) shall issue a building permit within 180 days from the date of building permit approval, provided that all other requirements are met.

7. EXPIRATION

- a. If a building permit is not applied for and issued within 180 days from the date of final approval of the site plan, the site plan expires and the applicant shall be required to submit a new site plan, conforming to the then current provisions of this zoning chapter and all other applicable ordinances.
- b. If any of the conditions of approval or any part of them should be held invalid or void, the entire conditional use permit shall be void immediately.

E. SITE PLAN²⁵⁹

1. APPLICABILITY

The standards in this section shall apply to all forms of development except for the construction, redevelopment, or expansion of single-family detached or duplex dwellings.

2. SUBMITTAL REQUIREMENTS

- a. Applications for site plan approval shall require 12 copies of the proposed site plan shall be submitted no later than 30 days prior to the Planning Board meeting at which the plan is to be reviewed.
- b. All plans shall be prepared, stamped, and endorsed by a professional engineer, land surveyor, architect, or other person duly authorized by the State to prepare site plans.
- c. All site plans shall contain at least the following information:
 - i. **Property and Ownership Information**
 - 1) Present recorded owner and the map book reference of the site property.
 - 2) Owners, lot numbers or map book and page reference of all adjacent properties.
 - 3) Boundary of the entire lot by course and distance.
 - 4) Width of the existing rights-of-way.
 - 5) Nature or purpose, location and size of existing easements.

²⁵⁹ NOTE: The current ordinance groups together the procedural information related to zoning permits, building permits, and site plans in Sections 36-297 through 299. This is not particularly helpful as some uses that require zoning or building permits do not require site plan review. Further, the procedures for site plan review are substantially different than those for zoning or building permit review. As a result, we have pulled these differing permit procedures apart and placed them into their own sections.

- 6) Iron pins three-eighths of one inch in diameter and 36 inches in length, or concrete monuments shall be shown and installed at all lot corners, points of tangents, and any angle point along a given course of the lot.
 - 7) Plan drawn to at least one inch: 100-foot scale showing north arrow.
 - 8) Zoning district of the site and all adjacent properties.
 - 9) Lot area by upland; by swamp, marsh and wetland; and the total area.
- ii. **Existing Features Information**
- 1) Streets showing the type and width of pavement, curbs and sidewalks.
 - 2) Topographic features of the lot and existing grades for the lot, streets, storm drainage, etc.
 - 3) All underground utilities and facilities.
 - 4) All existing buildings and structures.
 - 5) Wetlands as certified by the U.S. Army Corps of Engineers or their authorized agent.
 - 6) Flood zone, base flood elevation, and map reference, as determined by the latest FEMA flood insurance rate map, with the notation "flood zones subject to change by FEMA."
- iii. **Site Improvements**
- 1) Anticipated final appearance of the sides and rooflines of proposed structures shown on the site plan, plus a rendering showing the anticipated front appearance of the structure relative to landscaping. Final appearance of all structures shall be determined at time of building permit application.
 - 2) Proposed building type and material (i.e., steel, brick, concrete or wood frame), number of floors and dimensions.
 - 3) Proposed lowest floor elevation.
 - 4) Location and type of all sidewalks and curbs with the site.
 - 5) Proposed method for treating wastewater, location of all wastewater collection and treatment facilities (including any applicable property to be reserved for possible future wastewater use), name of any regulatory agency that must approve wastewater system, name of and written approval for connection from any organization that will collect or dispose of wastewater.
 - 6) Layout and number of parking stalls, driveway connections, and internal traffic plans.
 - 7) Finished grades.
 - 8) A tabulation of the total number of dwelling units of various types in the project and the overall project density in dwelling units per acre.
 - 9) Rights-of-way improvements in accordance with the policy of the Town Manager.
 - 10) Storm drainage in accordance with the policy of the Town Manager.
 - 11) A tabulation of lot coverage by type of cover and overall project coverage and percent coverage.
 - 12) Limits of land disturbing activity and the calculated area of land disturbance.
 - 13) Proposed use(s).
 - 14) Parking requirements and spaces provided.
 - 15) Proposed signage and calculations.
 - 16) Proposed water supply.
 - 17) Proposed outdoor lighting.
 - 18) Required and provided buffers and landscaping.
 - 19) Location of solid waste container, plus location of separate recycling container.
- d. All items on the site plan and all pertinent provisions of this chapter shall be addressed by the applicant before the site plan is presented for review by the Planning Board.
- e. Dimensional requirements and development standards shall be in accordance with the district in which the development is to be located.
3. **WATER AND WASTEWATER SERVICE**
- a. No proposed site plan application shall be accepted by the Town without written tentative approval of the proposed sewage treatment and disposal facilities by the appropriate department or agency having jurisdiction.

- b. No proposed site plan application shall be accepted by the Town without written tentative approval of the proposed water distribution facilities by the appropriate department or agency having jurisdiction.
- 4. PROCEDURE²⁶⁰**
- a. Following submittal of a site plan application, Town staff shall review the application and make a recommendation. Town staff shall then schedule the application to be heard by the Planning Board.
 - b. The Planning Board shall review the application and shall recommend approval, conditional approval, or denial of the proposed site plan application
 - c. Upon completion of review, the Planning Board will transmit their recommendations to the Town Council.
 - d. The Town Council, following review, shall approve, approve with conditions, or disapprove a site plan application.
 - e. Approval of a site plan authorizes an applicant to apply for a building permit.
 - f. A denied site plan may be resubmitted, in accordance with Section 22.2.2, Standard Review Procedures, when redrafted to meet the specifications of this chapter.
- 5. AMENDMENT²⁶¹**
- a. Minor changes or amendments to an approved site plan may be approved by the Town Manager (or a designee) if the amended site plan will continue to meet the requirements for approval.
 - b. Changes or amendments to an approved site plan shall be considered minor if, in the discretion of the Town Manager (or a designee), they have no substantial impact on neighboring properties or the general public, and are consistent with the spirit and intent of a condition of approval or the requirements of this chapter.
 - c. If a proposed change or amendment exceeds the threshold of a minor change, or if the Town Manager (or a designee) cannot clearly determine whether a proposed change or amendment qualifies as minor, the changes or amendments to a site plan shall be considered by the Town Council after review by the Planning Board in the same manner required for the initial review of a site plan.
- 6. EXPIRATION²⁶²**
- a. **Time Limit to Obtain Zoning or Building Permit Approval**
 - i. Upon final approval of a site plan by the Town Council, the applicant shall secure building permit and zoning permit approval within 180 days.
 - ii. If a building permit and zoning permit are not issued within 180 days from the date of approval of the site plan, the site plan shall expire.
 - iii. Review of an expired site plan shall be treated the same as an application for a new site plan.
 - b. **Time Limit to Commence Construction**
 - i. If the start of construction has not commenced within 180 days from the date of issuance of a building permit, the building permit, zoning permit, and site plan approval shall expire.
 - ii. If, after commencement, the work is discontinued for a period of 12 months, the building permit, zoning permit, and site plan shall immediately expire.
 - iii. No work authorized by any permit or site plan that has expired shall be performed until a new site plan has been approved and a new building permit and zoning permit have been issued and all applicable fees paid.
 - c. **Time Limit to Complete Construction**
 - i. Except for single-family dwellings, the following shall apply:
 - 1) If the work authorized by any building permit, issued in accordance with an approved site plan, is started but not completed within 18 months of the date of issuance of the building permit, any related site plan approvals shall expire and the building permit and zoning permit shall be revoked.

²⁶⁰ NOTE: This section carries forward the language in Section 36-299(b)(4) of the current ordinance, but is silent on staff review, if a pre-application conference may be conducted, if the application may be submitted simultaneously with other related applications (like a variance), and if a staff report is prepared.

²⁶¹ This section carries forward the standards in Section 36-299(b)(5) with no substantive changes.

²⁶² This section carries forward the standards in Section 36-297(a)(2-4) and (b) with no substantive changes.

- 2) At the time of expiration, all work shall cease, and shall be allowed to continue only after a new site plan has been reviewed and approved by the Planning Board and Town Council, and a new building permit and zoning permit issued and all applicable fees paid.
 - 3) The new site plan shall depict work in accordance with the then current provisions of the Town zoning chapter and any further construction or use shall be in conformity with those regulations.
- ii. For single-family dwellings, there is no time limit for completion, provided that work starts within 180 days of permit issuance and at least one inspection occurs every 12 months.
- d. Extension**
- i. As an alternative to the other expiration provisions, an applicant may, no sooner than 60 days and no later than 30 days prior to the date of expiration of a site plan, petition the Town Council for an extension.
 - ii. If the Town Council finds that the delay in construction is due to circumstances beyond the control of the applicant, and that an extension will not be detrimental to the health, safety, and general public welfare, and will be in harmony with the spirit and intent of this zoning chapter, the Town Council may extend the approval of the site plan for up to 90 days.
 - iii. In the event the Town Council grants an extension to a site plan and the time limitation for the building permit and zoning permit have expired pursuant to Sections 160A-418 and 160A-382 of the North Carolina General Statutes, the applicant shall reapply for a building permit and zoning permit.
 - iv. If a site plan expires or the Town Council does not grant an extension, the applicant must submit a new site plan conforming to the then current provisions of the zoning chapter and pay the applicable fees.

F. BUILDING, ZONING, OR SIGN PERMIT²⁶³

1. PURPOSE AND INTENT

This section sets out the procedure for review and approval of applications for a zoning permit, sign permit, and a building permit.

2. PERMITS DISTINGUISHED

- a. A zoning permit is required as part of the review and approval of all development subject to this chapter and shall be issued prior to issuance of a building permit. Development not subject to the requirement to obtain a building permit shall still obtain zoning permit approval in accordance with this section.
- b. A sign permit is the permit required for placement or modification to signage in accordance with the standards in Section 22.5.4, Signage Standards. Erection of new signs, significant modifications to existing signs, and provision of electrical service to a sign shall also require a building permit. Some signs in Section 22.5.4.F, Signs not Requiring a Sign Permit, are not required to obtain a sign permit, but may be required to obtain a building permit if the sign has electrical service or is the subject of substantive mechanical alteration.
- c. Except as exempted by the North Carolina State Building Code, a building permit is required for all forms of development in the Town (including construction of a pool or bulkhead). It ensures the work will be properly inspected for compliance with the North Carolina State Building Code, the applicable fire code, and all other relevant Town and State requirements.

3. BUILDING PERMIT REQUIRED²⁶⁴

²⁶³ NOTE: This section splits apart the procedural information for building and zoning permits from the site plan procedure (Section 36-297 through 299). This subsection includes sign permits as well (the sign permit is identified only in passing in Section 36-165(3) of the current code). The current standards do not set out the procedure for review and issuance of a sign permit. This draft subsection proposes a single procedure for review of all three of these application types, but this may be inappropriate. Additional discussion is required about the distinctions between the zoning and building permit and the current protocol for issuance of sign permits before this procedure can be completed.

²⁶⁴ This section carries forward the standards in Section 6-5 of the current code with no substantive changes except that fences have been removed from the requirement to obtain a building permit in accordance with staff comments.

- a. Except where exempted by law, any person proposing to erect, construct, or build any building or structure, including walls, or proposing to make structural additions, repairs or alterations to existing structures, or proposing to make changes in the case of existing structures, shall make application for a building permit to the Town in accordance with this section.
- b. Structures with dimensions of less than 12 linear feet in any direction shall be exempted from the requirement to obtain a building permit.
- c. The building permit application shall be on a form provided by the Town and shall and contain the information necessary to enable the Town to review and decide the application.

4. SUBMITTAL REQUIREMENTS²⁶⁵

a. Building Permits

i. Application Submittal Requirements

The application shall include such other information as lawfully may be required, including:

- 1) Existing or proposed building or alteration;
- 2) Existing or proposed uses of the building and land;
- 3) The number of families, housekeeping units, or rental units the building is designed to accommodate (if applicable);
- 4) Conditions existing on the lot;
- 5) Elevations of finished floors;
- 6) A survey of the lot by a professional land surveyor or design professional showing the proposed location of the structure and the elevation of the building site for flood purposes;
- 7) The estimated cost of construction;
- 8) Proof of a water tap and a valid septic tank or other sewage treatment permit issued by the Dare County Environmental Health Department, where applicable.
- 9) A surety bond in the amount of \$5,000.00 payable to the Town, conditioned upon the completion of construction in accordance with the building code and all applicable statutes and ordinances, and the repair of any public facilities, including streets, water lines and utilities, which are damaged during the course of construction, where applicable; and
- 10) Any other matters as may be necessary to determine conformance with and provide for the enforcement of this chapter.

ii. Site Plan Requirements

- 1) Applications for building permits and zoning permits shall be accompanied by two or more sets of duplicate site and/or building plans as required by the Planning and Code Enforcement Department. Plans shall include the following:
 - a) Site plans and surveys shall bear the seal of a state licensed professional land surveyor, engineer, architect or other person duly authorized by the State to prepare such plans.
 - b) An accurate depiction of the work proposed drawn to scale, showing the actual dimensions and shape of the lot to be built upon;
 - c) The exact sizes and locations on the lot of buildings already existing, if any;
 - d) The location, dimensions, and square footage of the proposed building or alteration (including all porches, decks, garages, stairways;
 - e) The present owner's name;
 - f) Present and proposed lot coverage in square feet and as a percentage;
 - g) The lot, block, and section number of the parcel, and flood zone per FEMA;
 - h) The required setback lines;
 - i) The applicable coastal development area of environmental concern (AEC) regulatory features and lines; and
 - j) Applications for principal dwellings or accessory garages with associated driveways shall show the driveway as it extends from the front lot line through the public or private right-of-way to the edge of the improved roadway.

²⁶⁵ NOTE: This section carries forward the standards in Section 36-299(a) and Section 6-5 of the current code, but these standards are somewhat confusing. The section talks about zoning permits, building permits and site plans, but deals primarily with standards related to site plans (either for single-family and duplex dwellings, or site plans for all other uses).

- 2) Permits issued pursuant to State requirements for work limited in scope to electrical, plumbing, gas, mechanical, or fire protection shall not require the submission of site plans for activity within or attached to an existing structure.

b. Sign Permits

Applications for sign permits shall include the following;

- i. Owner and tenant, if applicable, name and contact information;
- ii. Location of proposed sign including address and positioning on property;
- iii. Name of contractor and contact information;
- iv. Cost of project;
- v. Description of proposed sign; and
- vi. A drawing of the sign and sign supporting structure annotated with all dimensions.

c. Zoning Permits

The application for a zoning permit shall include information as lawfully may be required, including:

- i. Existing or proposed building or alteration;
- ii. Existing or proposed uses of the building and land;
- iii. The number of families, housekeeping units, or rental units the building is designed to accommodate (if applicable);
- iv. Conditions existing on the lot and on nearby lots;
- v. Elevations of finished floors;
- vi. A survey of the lot by a professional land surveyor or design professional showing the proposed location of the structure and the elevation of the building site for flood purposes;
- vii. The estimated cost of construction;
- viii. Proof of a water tap and a valid septic tank or other sewage treatment permit issued by the Dare County Environmental Health Department, where applicable.
- ix. A surety bond in the amount of \$5,000.00 payable to the Town, conditioned upon the completion of construction in accordance with the building code and all applicable statutes and ordinances, and the repair of any public facilities, including streets, water lines and utilities, which are damaged during the course of construction, where applicable; and
- x. Any other matters as may be necessary to determine conformance with and provide for the enforcement of this chapter.

5. PROCEDURE²⁶⁶

- a. In cases where a use requires a zoning permit or a sign permit in addition to a building permit, the zoning or sign permit shall be issued prior to the building permit.
- b. Following approval of a building permit, zoning permit, or sign permit accompanied by plans, one copy of the plans shall be returned to the applicant by the Town Manager (or a designee), marked "Reviewed for Code Compliance."

6. HEALTH DEPARTMENT APPROVAL REQUIRED²⁶⁷

The Town Manager (or a designee) shall not approve a building permit for any building for which Dare County Environmental Health Department approval is required, until such approval has been given.

7. PROOF OF STATE OR FEDERAL APPROVAL REQUIRED²⁶⁸

Prior to issuance of a building permit or zoning permit, evidence shall be presented to the Town showing satisfaction of all appropriate State and federal permits, including but not limited to:

- a. U.S. Army Corps of Engineers wetlands permit;
- b. NCDOT driveway permit and/or encroachment application for work in a state right-of-way;
- c. State soil erosion and sedimentation control plan approval;
- d. State stormwater plan approval;
- e. State or Town CAMA permit;

²⁶⁶ NOTE: The current code is silent on the procedure for submittal, review, and decision on a zoning, sign, or building permit.

²⁶⁷ This section carries forward the standards in Section 36-298 of the current code with no substantive changes.

²⁶⁸ This section carries forward the standards in Section 36-299(6) of the current code with no substantive changes.

- f. Receipts for payment of water connection fee from the county regional water system; and
 - g. Septic tank or other wastewater treatment approval by appropriate permitting agencies.
8. **INSPECTION**²⁶⁹
Inspections of sites involving public rights-of-way and inspections of any on-site construction shall be made by the Town.

G. FLOODPLAIN DEVELOPMENT PERMIT

See Chapter 28: Flood Damage Prevention.

H. CERTIFICATE OF COMPLIANCE/OCCUPANCY²⁷⁰

1. **APPLICABILITY**

- a. No new building, or an addition to a building, shall be occupied, and no change in use of a building or part of a building shall be made, and no existing building that has been altered or moved may be occupied, until a certificate of compliance/occupancy has been issued in accordance with Section 160A-423 of the North Carolina General Statutes, and this section.
- b. A certificate of compliance/occupancy shall be required upon renewal, change, or extension a nonconforming use.
- c. A record of all certificates of compliance/occupancy shall be kept on file in Town Hall.

2. **WHEN REQUIRED**

A certificate of compliance/occupancy shall be issued at the conclusion of all work done and after a final inspection, provided that the Town Manager (or a designee) finds that the completed work complies with all applicable state and local laws, the terms of the permit, and the state building code.

3. **REVIEW CRITERIA**

The certificate of compliance/occupancy shall be issued after the Town Manager (or a designee) determines the following:

- a. The location of the structure complies with all applicable laws and ordinances, including this chapter;
- b. The building site is clean and all building debris has been removed;
- c. Any damage to roads, utilities, or public facilities shall have been repaired, and such repairs approved by the appropriate department, agency, or utility provider.

I. HISTORIC LANDMARK DESIGNATION²⁷¹

1. **GENERALLY**

- a. Upon complying with the designation procedures in this section the Town Council may adopt, and from time to time amend or repeal, an ordinance designating one or more historic landmarks.
- b. No property shall be recommended for designation as a landmark unless it is deemed and found by the Historic Landmarks Commission to be of special significance in terms of its historic, prehistoric, design, setting, workmanship, materials, feeling, or association.
- c. No property shall be proposed for designation as a landmark, nor shall any ordinance be adopted designating a property as a landmark, unless a written application is received from the owner(s) of record of the property requesting such designation.

2. **ORDINANCE CONTENTS**

The ordinance establishing a historic landmark shall describe all of the following:

- a. Each property designated for inclusion;
- b. The land area of each property included;
- c. The name(s) of owners of each property included;

²⁶⁹ NOTE: This section carries forward the standards in Section 36-299(b)(7) with no substantive changes, but the current standards do not describe the purpose of the inspection, the timing of the inspection, what happens after the inspection, and what steps are taken if the inspection fails.

²⁷⁰ NOTE: This section carries forward the provisions in Section 36-301 of the current ordinance. However, there are no approval criteria and no discussion of expiration.

²⁷¹ This section carries forward a portion of the standards from text amendment 2016-10-01 with organizational changes only.

- d. The elements or features of each property that are integral to its historic, architectural, or prehistoric value; and
- e. Any other information the Town Council deems necessary.

3. EFFECT OF DESIGNATION

- a. For each building, structure, site, area, or object designated as a landmark, the ordinance shall require that the waiting period set forth in the ordinance or the applicable standards of this Ordinance are observed prior to its demolition.
- b. A suitable sign for each property designated as a landmark may be placed on the property at the owner's consent; otherwise, the sign may be placed on a nearby public right-of-way.
- c. Upon adoption of an ordinance designating a landmark, the Historic Landmarks Commission shall provide notice of the designation to the Dare County Tax Supervisor. The Tax Supervisor, in appraising the property for tax purposes, shall consider the designation and any recorded restrictions upon the property limiting its use for preservation purposes.

4. PROCESS FOR DESIGNATION

No property shall be designated as a landmark until after the Historic Landmarks Commission has prepared an inventory of properties of historical, architectural, prehistoric, and cultural significance in the Town, and all the following steps have been taken:

- a. The Historic Landmarks Commission shall make or cause to be made an investigation and report on the historic, architectural, prehistoric, educational, or cultural significance of each building, structure, site, area, or object proposed for designation, and shall forward this report to the Division of Archives and History of the NC Department of Cultural Resources.
- b. The Department of Cultural Resources, acting through the State Historic Officer, or a designee, shall either upon request of the Department or at the initiative of the Historic Landmarks Commission be given an opportunity to review and comment, in writing, upon the substance and effect of the designation or any landmark. If the Department of Cultural Resources does not submit its comments to the Historic Landmarks Commission within 30 days following receipt of the report, the Historic Landmarks Commission and Town Council are relieved any responsibility to consider the Department of Cultural Resource's comments.
- c. The Historic Landmarks Commission and the Town Council shall conduct a joint public hearing or separate public hearings, on the proposed ordinance. Reasonable public notice of the time and place of the hearing shall be given.
- d. Following the public hearing(s), the Town Council may adopt the ordinance as proposed, adopt the ordinance as amended, or deny the proposed ordinance.
- e. Upon adoption of the ordinance, the owners and occupants of each property designated as a landmark shall be given written notification of the designation, insofar as reasonable diligence permits. One copy of the ordinance along with any amendments shall be filed in the office of the Register of Deeds for Dare County by the Historic Landmarks Commission. Each landmark shall be indexed according to the name of the owner of the property in the grantor and grantee indexes in the Register of Deeds office.
- f. A second copy of the ordinance along with any amendments shall be kept on file in the office of the Town Clerk, and shall be made available for public inspection.
- g. A third copy of the ordinance along with any amendments shall be maintained in the offices of the Planning and Inspections Department.
- h. The fact that a building, structure, site, area, or object has been designated as a landmark shall be clearly indicated on all tax maps maintained by Dare County for the duration of the time the designation remains in effect.

J. CERTIFICATE OF APPROPRIATENESS²⁷²

1. PURPOSE AND INTENT

²⁷² This section is intended to carry forward the certificate or appropriateness application procedure included in text amendment 2016-10-01. One aspect of the current standards that seems confusing is the provision in Section 17-4.4 indicating the Historic Landmarks Commission may hold a public hearing – this is confusing because the standards require public notice of the application.

It is the purpose of these regulations to ensure that construction, reconstruction, alteration, restoration, moving, demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features of landmarks shall be congruous with the special character of the landmark.

2. APPLICABILITY

- a. From and after the designation of a landmark, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps, pavement, or other appurtenant fixtures), nor any above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished on such landmark until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the Historic Landmarks Commission in accordance with this section.
- b. A certificate of appropriateness is required to be issued by the Historic Landmarks Commission prior to the issuance of a building permit or other permit granted for the purposes of construction, altering, moving, or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this section.
- c. A certificate of appropriateness shall be required whether or not a building or other permit is required.
- d. The State of North Carolina (including its agencies, political subdivisions and instrumentalities), the Town, and all public utilities shall be required to obtain a certificate of appropriateness in accordance with this section for construction, alteration, moving, or demolition of designated landmarks.

3. EXEMPTIONS

- a. The Historic Landmarks Commission shall have no jurisdiction over any interior design, arrangement, or materials.
- b. A certificate of appropriateness shall not be required for any of the following actions:
 - i. The ordinary maintenance or repair of any exterior architectural feature of a landmark that does not involve a change in design, material, or outer appearance;
 - ii. The ordinary maintenance or repair of streets, sidewalks, pavement markings, street signs, or traffic signs;
 - iii. The construction, reconstruction, alteration, restoration, or demolition of any features which the building inspector certifies as required for public safety because of an unsafe or dangerous condition; or
 - iv. The maintenance or immediate restoration of any existing above ground utility structure in the event of emergency.

4. APPLICATION PROCESS

a. Generally

- i. Applications for a certificate of appropriateness shall be obtained from the Planning and Code Enforcement Department and when completed, filed with the Town Manager, or a designee.
- ii. The application shall be filed at least two weeks prior to the next regularly scheduled meeting of the Historic Landmarks Commission.
- iii. Each application shall be accompanied by:
 - 1) Sketches, drawings, photographs, specifications, descriptions and other information of sufficient detail to clearly show the proposed exterior alterations, additions, changes, or new construction; and
 - 2) The names and mailing addresses of property owners filing or subject to the application and the address of property within 100 feet of all sides of the property that is the subject of the application.
- iv. Applications missing the required information shall not be accepted.

b. Applications Proposing New Construction or Significant Alteration

- i. In cases where an application involves new construction or extensive additions or alterations to an existing structure, a subcommittee of the Historic Landmarks Commission shall be available to meet, informally, with the applicant or others involved in the application to advise them about the Historic Landmarks Committee's guidelines, the nature of the area subject to the application, and any other relevant factors.
- ii. Advice or opinions given by a subcommittee member shall not be considered official or binding upon the Historic Landmarks Commission.

- iii. Discussions or indications of approval or disapproval of the proposed application shall not be discussed during meetings with the subcommittee.

c. Minor Works

- i. The Town Manager, or a designee, may review and approve an application for a certificate of appropriateness for minor works, as defined in this Ordinance, in accordance with Section 22.2.2.D, Staff Review and Action.
- ii. The Town Manager, or a designee, may in their sole discretion, determine that a particular application for a certificate of appropriateness for minor works must be heard and decided by the Historic Landmarks Commission.
- iii. No application for a certificate of appropriateness for minor works may be denied without formal action by the Historic Landmarks Commission. In the event The Town Manager, or a designee, denies an application for a certificate of appropriateness for minor works, the application shall be forwarded to the Historic Landmarks Commission for consideration as a standard application for a certificate of appropriateness.
- iv. Notification of all approvals of applications for certificates or appropriateness for minor works approved by the Town Manager, or a designee, shall be forwarded to the Historic Landmarks Commission, who may appeal the decision to the BOA in accordance with Section 22.2.3.K, Appeals, on the grounds that the Town Manager did not have the authority to consider the application as one requesting approval of minor works.

5. ACTION ON APPLICATION

- a. Not less than one week prior to when the certificate of appropriateness application is to be heard, the Town Manager, or a designee, shall provide public notice in accordance with Section 22.2.2.E, Public Notification.
- b. The Historic Landmarks Commission may visit the site prior to consideration of the application.
- c. Prior to issuance or denial of a certificate of appropriateness, the applicant or other property owner likely to be materially affected by the application shall be given the opportunity to be heard during a public hearing.
- d. Following the public hearing, the Historic Landmarks Commission shall consider the application and render one of the following decisions on the application:
 - i. Approval of the application;
 - ii. Approval of the application with conditions; or
 - iii. Denial of the application.
- e. The decision of the Historic Landmarks Commission shall be based on the standards in Section 22.2.3.J.6, Review Criteria, and shall be supported by specific findings of fact that indicate the extent to which the application is or is not congruous with the special character of the landmark.
- f. Applications for a certificate of appropriateness shall be decided by the Historic Landmarks Commission within 90 days of the filing of the application, or the application shall be deemed approved. Extensions of time beyond the 90-day maximum may be granted by mutual consent of the Historic Landmarks Commission and the applicant.

6. REVIEW CRITERIA

- a. Approval of a certificate of appropriateness application shall only be granted if the Historic Landmarks Commission finds that it complies with the Commission's adopted principles and Design Guidelines document.
- b. In the case of an application for a certificate of appropriateness by the State of North Carolina, the Historic Landmarks Commission shall rely solely upon the Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" in deciding the application.
- c. In no instance shall color be considered as a feature or an element of design subject to review by the Historic Landmarks Commission.

7. DESIGN GUIDELINE CONTENTS

The Design Guidelines document adopted by the Historic Landmarks Commission shall, at a minimum, address all the following features and elements:

- a. Lot coverage;
- b. Setbacks;
- c. Building height;
- d. Spacing of buildings, defined as the distances between adjacent buildings;

- e. Proportion, shape, positioning, location, pattern, sizes, and style of all elements of fenestration and entry doors;
- f. Surface materials and textures;
- g. Roof shapes, forms, and materials;
- h. Use of regional or local architectural traditions;
- i. General form and proportion of buildings and structures, and the relationship of additions to the main structure;
- j. Expression of architectural detailing;
- k. Orientation of the building to the street;
- l. Scale, determined by the size of units of construction and architectural details in relation to the human scale and also by the relationship of the building, as to adjoining open space and nearby buildings and structures;
- m. Maintenance of pedestrian scale;
- n. Proportion of width to height of the total building façade;
- o. Archaeological sites and resources associated with standing structures;
- p. Effect of trees and other landscape elements;
- q. Major proposed landscaping which would impact archaeological sites;
- r. Style, material, size, and location of all outdoor advertising signs;
- s. Appurtenant features and fixtures, such as lighting;
- t. Structural condition and soundness;
- u. Physical ingredients or material of screening walls, such as brick, stone, or wood, wrought iron fences, evergreen landscape masses, or a combination of these;
- v. Ground cover or paving; and
- w. Significant existing landscaping, archeological, and natural features.

8. APPEAL

- a. Any action either granting or denying a certificate of appropriateness by the Historic Landmarks Commission may be appealed to the BOA by an aggrieved party in accordance with Section 22.2.3.K, Appeals.
- b. The Historic Landmarks Commission may also appeal a decision by the Town Manager, or a designee, regarding approval of an application for a certificate of appropriateness for minor works.
- c. The State of North Carolina may appeal a decision of the Historic Landmarks Commission to the North Carolina Historical Commission, which shall render its decision within 30 days from the date that the notice of appeal by the State is received by the North Carolina Historical Commission. The decision of the North Carolina Historical Commission shall be final and be binding upon both the State and the Historic Landmarks Commission.

9. DEMOLITION OF LANDMARKS

a. Generally

- i. In case a building, structure, site, area, or object designated as a landmark is about to be demolished, whether as a result of deliberate neglect or otherwise, removed, or destroyed except in compliance with these standards, the Town Council may, on its own accord, or at the request of the Historic Landmarks Commission, or other aggrieved party, institute an action or proceeding to prevent unlawful activity.
- ii. An application for a certificate of appropriateness authorizing the demolition of a building, structure, site, area, or object determined by the State Historic Preservation Officer as having statewide significance, as defined in the criteria of the National Register of Historic Places, may be denied except where the Historic Landmarks Commission finds the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

b. Delay in Demolition

- i. An application for a certificate of appropriateness authorizing the demolition, removal, or destruction of a designated landmark may not be denied except as provided in this subsection. Nothing shall limit the effective date of such certificate of appropriateness from being delayed for up to 365 days from the date of approval. The period of delay may be reduced by the Historic Landmarks Commission in cases where the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such property by virtue of the delay.

- ii. In the event the Historic Landmarks Commission has voted to recommend the designation of a landmark, but the Town Council has not yet made a final determination, the demolition or destruction of any potentially-designated building, structure, site, area, or object may be delayed by up to 180 days or until the Town Council takes final action on the designation, whatever occurs first.
- iii. During the delay period, the Historic Landmarks Commission shall negotiate with the owner in an effort to find a means of preserving the building, structure, site, area, or object.
- iv. The Town Council may enact an ordinance to prevent the demolition by neglect of any designated landmark. The ordinance shall provide appropriate safeguards to protect property owners from undue hardship.

K. APPEALS²⁷³

1. ADMINISTRATIVE DECISIONS

- a. An appealable "administrative decision" is any final and binding order, requirement, or determination issued in writing by a Town official charged with administering or enforcing this chapter.
- b. Administrative decisions include, but are not limited to:
 - i. Permit issuance or denial;
 - ii. Issuance of a notice of violation, warning citation, or civil citation; or
 - iii. Issuance of a formal interpretation of a provision of this chapter.

2. FORMAL INTERPRETATION²⁷⁴

a. Generally

- i. Only formal interpretations issued in accordance with this subsection are subject to being appealed as an administrative decision.
- ii. Any written or oral interpretations that do not meet the strict requirements of this subsection are merely advisory and represent only the view, opinion or belief of the administrative official issuing them.
- iii. Advisory interpretations have no binding force or effect and there is no right to appeal advisory interpretations to the BOA.

b. Request

- i. Any person may request a formal interpretation of any provision of this chapter or of the location of zoning district boundary unassociated with a permit application or enforcement action. Such request shall:
 - 1) Relate to a specific parcel of property;
 - 2) Be made in writing;
 - 3) State all of the necessary facts to make the determination; and
 - 4) Specifically state the ordinance provisions subject to the interpretation request.
- ii. If the applicant for the formal interpretation is not the owner of the property, the applicant must certify that a copy of the request has been provided to the property owner.

c. Response

- i. Only the Town Manager (or a designee) is authorized to issue a formal interpretation under this subsection.
- ii. The Town Manager (or a designee) may in their discretion decide whether or not to respond to a request for a formal interpretation.²⁷⁵

²⁷³ This section carries forward the language in Section 36-366, as directed by staff. It incorporates the provisions in Section 36-368 as the appeals procedure. We note that neither Sections 36-366 or 36-368 of the current code include any review criteria. We have included them here and strongly suggest these or other criteria be retained in this procedure.

²⁷⁴ This process appears to inject an extra step into an appeal process. A potential applicant for an appeal must first request a formal interpretation in order to file an appeal.

²⁷⁵ If an applicant cannot file an appeal without a formal interpretation, and a Town official may choose not to prepare a formal interpretation after an application is made, then the ability to appeal is blocked – violating due process. We are not comfortable with this language and suggest it be revised.

iii. A response to a request is not a formal interpretation unless it is made in writing and includes a notation on its face that states "This is a Formal Zoning Ordinance Interpretation."

d. Notice

- i. Formal interpretations are not appealable under this subsection unless they include a certificate of service certifying that a copy of the formal interpretation has been provided to the Town Manager and the owner of the land subject to the interpretation if the applicant for the interpretation was not the owner of the land.
- ii. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

e. Notice of Decisions

- i. 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.
- ii. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- iii. Landowners or applicants for a decision may provide for actual or constructive notice to persons who have standing to appeal the decision by acting in accordance with Section 22.2.3.K.3.c, Time to Appeal.

3. APPEALS OF ADMINISTRATIVE DECISIONS

The BOA shall hear and decide appeals of administrative decisions of administrative officials charged with enforcement of this chapter and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

a. Who may Appeal

- i. Any person who has standing under Section 160A-393(d) of the North Carolina General Statutes, or the Town may appeal an administrative decision to the BOA.
- ii. Any other party who has such standing may also intervene in an existing appeal by filing a written request to do so with the Town Clerk prior to the expiration of that party's time to appeal under Section 22.2.3.K.3.c, Time to Appeal.

b. Form of Appeal

- i. An appeal is taken by filing a notice of appeal with the Town Clerk.
- ii. The notice of appeal shall state the grounds for the appeal.
- iii. Each notice of appeal shall include a listing of the names and addresses of all of the following persons:
 - 1) The person or entity whose appeal, application, or request is the subject of the hearing;
 - 2) The owner of the property that is the subject of the hearing if the owner did not initiate the hearing;
 - 3) The owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and
 - 4) Any other persons entitled to receive notice as provided by this chapter.
- iv. The list shall be supplied by the appellant and shall be current according to the most recent tax listing abstract as filed in the office of the Dare County tax supervisor.

c. Time to Appeal

- i. The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal.
- ii. 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.
- iii. 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 ten 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.²⁷⁶

²⁷⁶ NOTE: Posting a sign is not a requirement under the statutes. We suggest it not be included here.

d. Duties of Town Manager

- i. No less than one week before an appeal is to be heard, the Town Manager or a designee shall transmit to the BOA all documents and exhibits constituting the record upon which the action appealed from is taken.
- ii. The Town Manager or a designee 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.
- iii. The official who made the decision being appealed shall be present at the hearing as a witness.

e. Stay Pending Appeal

- i. 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 BOA after notice of appeal has been filed that because of the facts stated in an affidavit:
 - 1) A stay would cause imminent peril to life or property; or
 - 2) Because the violation is transitory in nature, a stay would seriously interfere with enforcement of this chapter. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court.
- ii. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after such a request is filed.
- iii. Appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the chapter 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 BOA may grant, a stay of a final decision of permit applications or building permits affected by the issue being appealed.

f. Timing of Hearing

Subject to the provisions of Section 22.2.3.K.3.e, Stay Pending Appeal, the BOA shall hear and decide the appeal within a reasonable time.

g. Appeals in the Nature of Certiorari

When hearing an appeal from a chapter provision that requires the appeal be heard in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in Section 160A-393(k) of the North Carolina General Statutes.

h. Alternative Dispute Resolution

The Town and other parties to an appeal may agree to mediation in accordance with the applicable rules for mediated settlement conferences in superior court. If the parties agree to mediation, a hearing on the merits of the matter will be delayed until the regular BOA meeting following the mediation.

i. Authority of the BOA

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 BOA shall have all the powers of the official who made the decision.

j. Hearing on Appeal

- i. The appellant shall not be limited at the hearing to matters stated in the notice of appeal.
- ii. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the BOA shall continue the hearing.

4. PROCEDURE

a. Decisions of the Board

The BOA shall determine contested facts and make its decision within a reasonable time.

i. Basis for Decision

Every quasi-judicial decision of the BOA shall be based upon competent, material, and substantial evidence in the record.

ii. Review Criteria

- 1) The BOA is limited to the following determinations in considering the appeal, which shall be based on clear and substantial evidence in the record:

- a) The decision-maker did not make an error or correctly applied the standards of this chapter in making the decision or interpretation;
 - b) The decision-maker made an error in determining whether a standard was met. The record must indicate that an error in judgment occurred or facts, plans, or regulations were misread in determining whether the particular standard was or was not met;
 - c) The decision-maker made an error because the decision was based on a standard not contained in this chapter or other appropriate Town ordinances, regulations, or State law, or that a standard more strict or broad than the standard established in this chapter was applied; or
 - d) The decision-maker made an error in applying a standard or measuring a standard.
- 2) Where conflicting evidence exists, the appeal is limited to determining what evidence or testimony bears the greatest credibility in terms of documentation and qualifications of those making the determination.
 - 3) The BOA shall not hear any evidence or make any decision based on hardships or special conditions (such matters may only be considered in the context of an application for a variance).
- iii. Form of Decision**
- 1) Each quasi-judicial decision shall be reduced to writing and reflect the BOA's determination of contested facts and their application to the applicable standards.
 - 2) The written decision shall be signed by the chair or other duly authorized member of the BOA.
 - 3) In absence of specific Board direction, the written decision will be prepared by the Town via the Clerk to the BOA after review by the Town's attorney and BOA attorney and will be presented to the chair for execution if the Chair deems it appropriate. The Chair, in their discretion, may seek the approval of the Board for all or any portion of a decision so prepared. Otherwise, the BOA may at the time of its oral decision direct any party to prepare a proposed written decision and may consider the written decision at its next regular meeting.
- iv. Reasonable Time**
- 1) The BOA shall endeavor to reach a decision and file its written final decision as soon as practicable and shall not withhold a decision without a reasonable basis.
 - 2) However, the determination of whether the BOA's decision has been made within a reasonable time shall take into consideration all of the surrounding circumstances including, but not limited to, additional meetings necessary to consider evidence or findings of fact and continuance requests by the applicant or appellant.
 - 3) The BOA's decision shall not be considered to be made greater than a reasonable time if a vote on the matter is taken within 45 days following the completion of the public hearing and a final written decision is filed within 45 days following the vote of the BOA.
 - 4) If the circumstances warrant, additional time may be reasonable to take a vote or make a final decision.
- v. When Effective**
- A Board decision is effective upon filing the written decision with the Clerk to the Board. The Board decision is filed the later of the date it is received by the Clerk to the Board or the date it is served by the Clerk to the Board.
- vi. How Served**
- 1) The decision of the BOA shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.
 - 2) The person required to provide notice shall certify that proper notice has been made.
- b. Appeal to Superior Court**
- 1) Every quasi-judicial decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to Section 160A-393 of the General Statutes of the State of North Carolina.
 - 2) A petition for review shall be filed with the Dare County Clerk of Superior Court by the later of 30 days after the decision is effective or after a written copy thereof is given in

accordance with Subsection 22.2.3.K.4.a.v, When Effective. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

L. VARIANCE²⁷⁷

1. STANDARDS FOR GRANTING A VARIANCE

When unnecessary hardships would result from carrying out the strict letter of this chapter, the BOA shall vary any of the provisions of this chapter upon a showing of all of the following:

- a. Unnecessary hardship would result from the strict application of the chapter. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- c. 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.
- d. 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.

2. USES NOT PERMISSIBLE

Under no circumstances shall the BOA grant a variance to allow a use either expressly or by implication not permissible under the terms of this chapter in the district involved.

3. CONDITIONS

Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Violation of such conditions shall be deemed a violation of this chapter and punishable under Chapter 36: Offenses and Enforcement.

4. RELATIONSHIP TO OTHER ORDINANCES

Any other ordinance that regulates land use or development may specifically provide for variances consistent with the provisions of this subsection.

5. MINIMUM VARIANCE

A variance that is granted shall be the minimum variance that will resolve the unnecessary hardship resulting from the strict application of this chapter to the land, building or structure.

6. SITUATIONS NOT CONSIDERED GROUNDS FOR VARIANCE

No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

7. APPLICATION REQUIREMENTS

- a. Each application for a variance must be in writing, accompanied by any associated administrative fee and shall include all of the following information:
 - i. A listing of the specific section(s) and subsection(s) of this chapter that the applicant is seeking to vary.
 - ii. For each provision the applicant is requesting to vary, a listing of how the provision applies to the property without the requested variance and how the applicant proposes the provision should be varied.
 - iii. A description of how the property can be used without the requested variance compared with how it could be used with the requested variance.
 - iv. A description of the unnecessary hardship which results from the strict application of this chapter.
 - v. A description of the conditions that are peculiar to the property, such as location, size, or topography which cause the unnecessary hardship.

²⁷⁷ NOTE: This section carries forward the standards for a variance in Section 36-367 of the current ordinance as directed by staff.

- vi. A certification that the hardship did not result from actions taken by the applicant or the property owner other than the act of purchasing property with knowledge that circumstances exist requiring a variance.
 - vii. A narrative explaining how the requested variance is consistent with the spirit, purpose, and intent of this chapter, such that public safety is secured, and substantial justice is achieved.
 - viii. A certification that the requested variance, if granted, will not allow an increase or extension of an existing nonconforming structure or use of land.
 - ix. A certification that the requested variance, if granted, will not allow a use of the land otherwise prohibited in the applicable zoning district to occur on the property.
 - x. A listing of the names and addresses of all of the persons listed in Section 22.2.2.E, Public Notification, who are entitled to receive notice. The list shall be supplied by the applicant and shall be current according to the most recent tax listing abstract as filed in the office of the Dare County tax supervisor.
- b. In addition to the foregoing requirements, when considering a variance from Chapter 28: Flood Damage Prevention, the BOA shall follow the additional provisions of such chapter.

8. AMENDMENTS

- a. The owner of land which has been granted a variance may apply for an amendment to the previously granted variance. All of the standards for granting a variance shall apply to the consideration of an amendment to an existing variance. An amendment may only be granted if:
- i. The circumstances on the property have substantially changed since the time of the granting of the prior variance in such a way that the use of the property in accordance with prior variance is itself an unnecessary hardship; or
 - ii. The amendment requested will be equal to or less of a variance than the previously granted variance.

M. VESTED RIGHT DETERMINATION²⁷⁸

1. GENERALLY

- a. A vested right shall be deemed established with respect to any property upon the valid approval or conditional approval of a site specific development plan, following notice and public hearing by the Town Council, in accordance with this section.
- b. Establishment of a vested right shall confer upon the landowner the right to undertake and complete the development under the terms and conditions of the site specific development plan.
- c. The Town Council may approve a site specific development plan with terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare.
- d. Landowners seeking vested rights shall fully comply with all provisions in Section 160A-385.1 of the North Carolina General Statutes, as amended, as well as this section.

2. ESTABLISHMENT

- a. Any applicant wishing to establish vested rights shall make indicate this writing in the application materials submitted with the site specific development plan.
- b. In the event the application does not include a written request for the establishment of vested rights, the application shall be processed in accordance with the appropriate procedure in Section 22.2.3, Specific Review Procedures, and shall not include a vested rights determination.

²⁷⁸ This section carries forward the standards in Section 36-304 without substantive change. We would like to note that processing applications seeking to establish vested rights in accordance with the conditional use permit procedure seems troubling. Conditional use permits are reserved for uses that require special consideration, but approval of a site plan does not – seeking to vest a site plan does not trigger the need for the same special consideration as would be required for a special use permit. Typically, the only thing required to establish vested rights is a request from an applicant and a noticed public hearing. If we understand the current site plan procedure correctly, site plans are already going to Town Manager for approval. Perhaps this process could be simplified by noticing site plan applications seeking vested rights instead of subjecting them to the conditional use permit procedure. This change is a substantive change and would require discussion and consent from the Town Manager.

- c. Applications including a written request for a vested rights determination shall be reviewed in accordance with the standards and requirements for the approval of a conditional use permit in Section 22.2.3.D, Conditional Use Permit.
- d. If approved, the vested rights determination shall be incorporated into and made a part of the conditional use permit.
- e. A vested right may be established only for uses that are currently permitted by right or with a conditional use permit in the appropriate zoning district.

3. DURATION AND TERMINATION

- a. A right which has been vested as provided for in this section shall remain vested for a period of two years from the date of Town Council approval of the site specific development plan. This vesting shall not be extended by any amendments or modifications to a site specific development.
- b. The Town Council may rescind the approval of a site specific development plan for failure to comply with applicable terms and conditions of the approval or this chapter.
- c. Upon issuance of a building permit, the provisions of Sections 160A-418 and 160A-422 of the North Carolina General Statutes shall apply, except that a permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding.
- d. A right which has been vested as provided in this section shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

4. SUBSEQUENT CHANGES PROHIBITED; EXCEPTIONS

- a. A vested right, once established as provided for in this section, precludes any zoning action by the Town which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site specific development plan, except:
 - i. With the written consent of the affected landowner;
 - ii. Upon findings at a public hearing by the Town Council 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;
 - iii. To the extent that the affected landowner received 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 thereon at the legal rate until paid. Compensation shall not include any diminution in value of the property which is caused by such action;
 - iv. Upon findings at a public hearing by the Town Council 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 site-specific development plan; or
 - v. Upon the enactment or promulgation of a State or federal law or regulation which precludes development as contemplated in the site-specific development plan, in which case the Town may modify the affected provisions, upon a finding at a public hearing by the Town Council that the change in state or federal law has a fundamental effect on the plan.
- b. Nothing in this section shall prevent the Town from amending this chapter, or the Official Zoning Map in a way that a development project for which a vested right has been established is rendered nonconforming in any way.
- c. The establishment of a vested right shall not preclude the application of an overlay zoning district, 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 applicable to all property, subject to land use regulations by the Town 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 plan upon the expiration or termination of the vesting rights period provided for in this section.
- d. The establishment of a vested right shall not preclude, change, or impair the authority of the Town to adopt and enforce zoning provisions governing nonconforming situations or uses.

5. ADDITIONAL PROVISIONS

- a. A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable land. After approval of a site-specific development plan, all successors to the original landowner shall be entitled to exercise such rights.

- b. Each site specific development plan, which obtains a vested right under this section, shall contain the following notation: "Approval of this plan establishes a vested right under G.S. 160A-385.1. Unless terminated at an earlier date, the vested right shall be valid until [insert the termination date]."
- c. In the event that Section 160A-385.1 of the North Carolina General Statutes is repealed, this section shall be deemed repealed and the provisions hereof no longer effective.

22.2.4. VIOLATIONS AND ENFORCEMENT²⁷⁹

A. ENFORCEMENT GENERALLY

- 1. As provided by Section 160A-389, of the North Carolina General Statutes, as amended, if any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of this chapter, the Town, in addition to other remedies, may institute appropriate action or proceedings in accordance with Chapter 36: Offenses and Enforcement.
- 2. The Town shall have the power to impose fines and penalties for violation of this chapter, and may secure injunctions and abatement orders to further ensure compliance with this chapter as provided in Sections 160A-175(a), (c)—(g) and 160A-389, of the North Carolina General Statutes, as amended and Chapter 36: Offenses and Enforcement, of this Town Code.

B. STATUTE OF LIMITATIONS²⁸⁰

Enforcement of violations of this Ordinance shall be in accordance with Section 1-49(3) and Section 1-51(5) of the North Carolina General Statutes.

C. PROCEDURE FOR ENFORCEMENT

- 1. In the event the Town Manager (or a designee) finds that any of the provisions of this chapter are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation, and ordering the action necessary to correct it.
- 2. The actions that may be taken by the Town in response to a violation of this chapter include, but are not limited to the following:
 - a. Discontinuance of illegal use of land, buildings, or structures;
 - b. Removal of illegal buildings or structures or of additions, alterations, or structural changes thereto;
 - c. Discontinuance of any illegal work being done; or
 - d. Any other action authorized by this chapter or Chapter 36: Offenses and Enforcement, to ensure compliance with or to prevent violations of its provisions.

D. PENALTIES FOR VIOLATION

Any violation of this chapter shall subject the offender to remedies prescribed in Chapter 36: Offenses and Enforcement.

22.3. ZONING DISTRICTS

This section sets out the provisions for the base and overlay zoning districts as well as the Official Zoning Map.

22.3.1. OFFICIAL ZONING MAP²⁸¹

A. ZONING MAP ESTABLISHED

The Official Zoning Map of the Town of Southern Shores divides the Town and its ETJ into a series of different zoning districts, and designates the location and boundaries of the various zoning districts. The map, together with all explanatory matter upon it, is hereby incorporated by reference and made a part of this Ordinance. It shall be known as the "Official Zoning Map" or the "zoning map".

²⁷⁹ This section carries forward the standards in Section 36-302 and 36-305 of the current code with no substantive changes except to reference the new consolidated enforcement chapter of the Town Code.

²⁸⁰ This is a new section based on 2-17 Session Laws adopted by the General Assembly.

²⁸¹ This section carries forward Section 36-25 of the current code with minor text editing for clarity.

B. LOCATION

The certified copy of the Official Zoning Map shall be kept on file in the Town offices and is available for inspection during normal business hours.

C. CERTIFICATION

The Official Zoning Map shall be attested by the Town Clerk and shall bear the seal of the Town under the following words:

"This is to certify that this is the Official Zoning Map referred to zoning chapter of the Town of Southern Shores, North Carolina, Town Code of Ordinances" together with the date of the adoption of Town Code."

D. AMENDMENT

If, in accordance with Section 22.2.3.A.3.a, Official Zoning Map Amendments, of this chapter, changes are made in district boundaries or other matter portrayed on the Official Zoning Map, those changes shall be promptly entered on the Official Zoning Map after the amendment has been approved by the Town Council.

E. INTERPRETATION OF BOUNDARIES

Where uncertainty exists with respect to the boundaries of any of the districts as shown on the Official Zoning Map, the Town Manager (or a designee) shall use the following rules to determine the district boundaries:

1. Boundaries indicated as approximately following the centerlines of streets, highways, or alleys shall be construed to follow such centerlines;
2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
3. Boundaries indicated as approximately following Town limits shall be construed as following such Town limits;
4. Boundaries indicated as following ocean and estuarine shore lines shall be construed to follow such shore lines and, in the event of change in the shore line, shall be construed as moving with the actual shore line;
5. Boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such centerlines;
6. Boundaries indicated as parallel to or extensions of features indicated in subsections (1) through (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;
7. Where physical or cultural features existing on the ground and are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by subsections (1) through (5) of this section, the Town Manager or a designee shall interpret the district boundaries;
8. Where a district boundary line divides a lot which was in single ownership at the time of passage of this chapter, the Town Council may permit, as a conditional use, the extension of the regulations for either portion of the lot, not to exceed 50 feet beyond the district line, into the remaining portion of the lot; and
9. Where zoning boundaries have been defined by legal description and adopted by the Town, such metes and bounds description shall control on the ground as depicted on the zoning map.

22.3.2. RESIDENTIAL DISTRICTS

This section sets out the purpose statements and dimensional standards for the residential zoning districts.

A. RS-1 SINGLE-FAMILY RESIDENTIAL DISTRICT

1. PURPOSE

The Single-Family Residential (RS-1) district is established to provide for the low-density development of single-family detached dwellings in an environment which preserves sand dunes, coastal forests, wetlands, and other unique natural features of the coastal area. The district is intended to promote stable, permanent neighborhoods characterized by low vehicular traffic flows, abundant open space, and low impact of development on the natural environment and adjacent land uses.

2. DIMENSIONAL STANDARDS

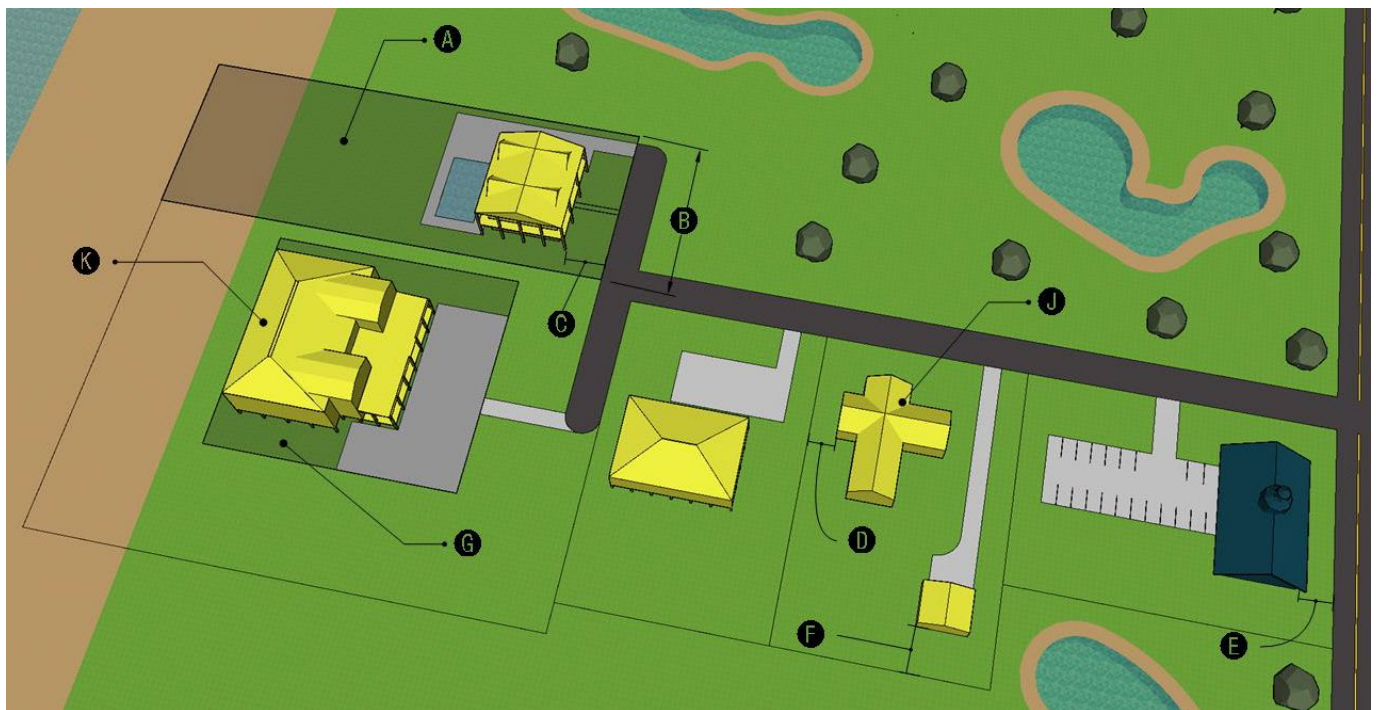
REF #	STANDARD	REQUIREMENT	REF #	STANDARD	REQUIREMENT
A	Minimum Lot Size (square feet)	20,000	G	Maximum Lot Coverage (percent)	30 [1]
B	Minimum Lot Width (feet)	100	H	Maximum Height (feet)	35 [2]
C	Minimum Front Setback (feet)	25	I	Minimum Living Space (square feet)	1,000
D	Minimum Side Setback (feet)	15	J	Maximum Size of Single-family Dwelling (square feet)	6,000
E	Minimum Corner Side Setback (feet)	20			
F	Minimum Rear Setback (feet)	25			

NOTES:

[1] The maximum lot coverage for Town-owned facilities and fire stations is 85 percent. See [Section 22.1.8.C.3.b, Lot Coverage](#), for additional standards regarding what is considered impervious surface.

[2] See [Section 22.1.8.F.2, Height Determination](#), for additional standards regarding how maximum height is determined.

3. ILLUSTRATION



B. RS-8 MULTIFAMILY RESIDENTIAL DISTRICT

1. PURPOSE

The Multifamily Residential (RS-8) district is established as an area in which the principal use of the land is for high-density residential purposes not to exceed eight dwelling units per net acre. This district also provides for the development of less intensive residential uses as well as for compatible supporting uses.

2. DIMENSIONAL STANDARDS

REF #	STANDARD	REQUIREMENT	REF #	STANDARD	REQUIREMENT
A	Minimum Lot Size (square feet)	20,000 [1] [2]	G	Maximum Lot Coverage (percent)	30
B	Minimum Lot Width (feet)	75	H	Maximum Height, Top Plate (feet)	26 [3]
C	Minimum Front Setback (feet)	25	I	Maximum Height (feet)	35
D	Minimum Side Setback (feet)	15	J	Minimum Living Space (square feet)	1,000
E	Minimum Corner Side Setback (feet)	20	K	Maximum Size of Single-family Dwelling (square feet)	6,000
F	Minimum Rear Setback (feet)	20		Maximum Residential Density (dwelling units per net acre)	8

NOTES:

[1] The 20,000 square foot standard applies to single-family detached dwellings and duplexes.

[2] For multifamily dwellings, the minimum lot size must be served by an approved public or community sewage system, and shall be at a minimum 7,500 square feet for the first dwelling unit and 5,151 square feet for each additional dwelling unit.

[3] For multifamily dwellings, the maximum top plate height is 28 feet.

3. ILLUSTRATION



4. DISTRICT SPECIFIC STANDARDS

- a. No building or other facility (such as playgrounds, tennis courts, swimming pools, parking areas, incinerators, trash collection areas, etc.) shall be located nearer than 50 feet to boundaries of RS-8 districts.
- b. The width of a public road and its right-of-way along such boundary may be included as part, or all, of the 50-foot separation zone.

C. RS-10 RESIDENTIAL DISTRICT

1. PURPOSE

The Residential (RS-10) district is established as an area in which the principal use of the land is for high-density residential purposes not to exceed ten dwelling units per net acre. The district also provides for the development of less intensive residential uses as well as for compatible supporting uses.

2. DIMENSIONAL STANDARDS

REF #	STANDARD	REQUIREMENT	REF #	STANDARD	REQUIREMENT
TRADITIONAL DEVELOPMENT			GROUP DEVELOPMENT – RESIDENTIAL		
A	Minimum Lot Size (square feet)	20,000	L	Minimum Lot Size (square feet)	3,000 [1]
B	Minimum Lot Width (feet)	75	M	Minimum Lot Width (feet)	10
C	Minimum Front Setback (feet)	25	N	Minimum Front Setback (feet)	0
D	Minimum Side Setback (feet)	15	O	Minimum Side Setback (feet)	0
E	Minimum Corner Side Setback (feet)	20	P	Minimum Corner Side Setback (feet)	0
F	Minimum Rear Setback (feet)	25	Q	Minimum Rear Setback (feet)	0
G	Maximum Lot Coverage (percent)	30	R	Maximum Lot Coverage (percent)	100
H	Maximum Height, Top Plate (feet)	26	S	Maximum Height, Top Plate (feet)	26
I	Maximum Height (feet)	35	T	Maximum Height (feet)	35
J	Minimum Living Space (square feet)	1,000	U	Minimum Living Space (square feet)	1,000
K	Maximum Size of Single-family Dwelling (square feet)	6,000 [2]	V	Minimum Common Area/Open Space (square feet per platted lot)	9,000
	Maximum Residential Density (dwelling units per acre)	10		Maximum Residential Density (dwelling units per acre)	10

NOTES:

[1] Applies to Townhouse dwellings as well as single-family detached dwellings as part of a group development.

[2] Applies to single-family detached dwellings in traditional and group development.

3. ILLUSTRATION



4. DISTRICT SPECIFIC STANDARDS

- a. No building or other facility (such as playgrounds, tennis courts, swimming pools, parking areas, incinerators, trash collection areas, etc.) shall be located nearer than 50 feet to boundaries of RS-10 districts.
- b. The width of a public road and its right-of-way along such boundary may be included as part, or all, of the 50-foot separation zone.

D. R-1 LOW DENSITY RESIDENTIAL DISTRICT

1. PURPOSE

The Low Density Residential (R-1) district is intended to encourage the development of permanent low-density residential neighborhoods and community facilities necessary for the health and safety and general welfare of the community.

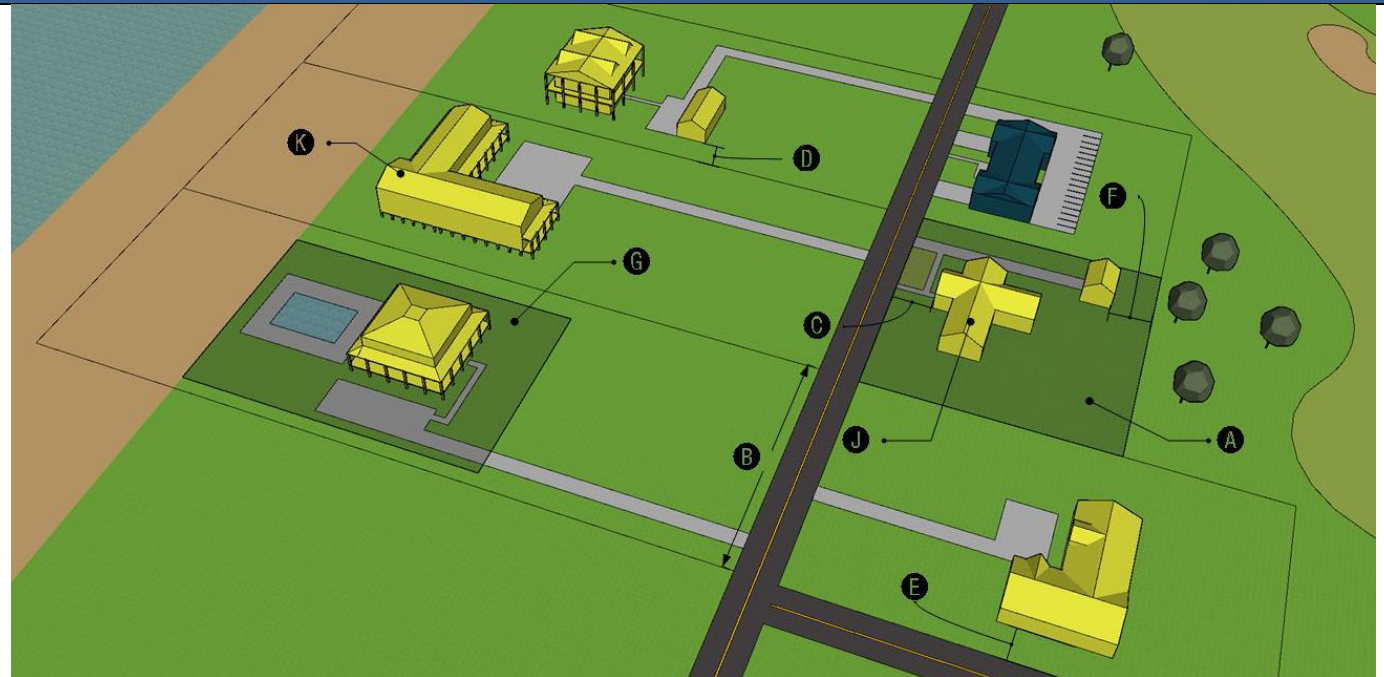
2. DIMENSIONAL STANDARDS

REF #	STANDARD	REQUIREMENT	REF #	STANDARD	REQUIREMENT
A	Minimum Lot Size (square feet)	20,000 [1]	G	Maximum Lot Coverage (percent)	30 [4]
B	Minimum Lot Width (feet)	100	H	Maximum Height, Top Plate (feet)	26 [5]
C	Minimum Front Setback (feet)	25	I	Maximum Height (feet)	35 [6]
D	Minimum Side Setback (feet)	15 [2]	J	Minimum Living Space for Residential Uses (square feet)	1,000
E	Minimum Corner Side Setback (feet)	20	K	Maximum Size of Single-family Dwelling (square feet)	6,000
F	Minimum Rear Setback (feet)	25 [3]			

NOTES:

- [1] For clubs, public or private (including country clubs), the minimum lot size shall be 150 acres.
- [2] For fire stations adjacent to other Town-owned property or Town right-of-way, the side setback shall be 10 feet.
- [3] For fire stations abutting Town-owned property, no rear setback is required.
- [4] For Town-owned facilities and fire stations, the maximum lot coverage shall be 85 percent. For school facilities, the maximum lot coverage shall be 40 percent.
- [5] For the principal building of clubs and churches, the maximum top plate height shall be 56 feet. For school facilities, the maximum top plate height shall be 45 feet.
- [6] For the principal building of clubs and churches, the maximum height shall be 65 feet. For school facilities, the maximum height shall be 55 feet.

3. ILLUSTRATION



4. DISTRICT SPECIFIC STANDARDS

- a. Developments may have multiple principal buildings provided these buildings are connected by covered breezeways or walkways.

22.3.3. NONRESIDENTIAL DISTRICTS

This section sets out the purpose statements and dimensional standards for the nonresidential zoning districts.

A. G&I GOVERNMENT AND INSTITUTIONAL DISTRICT

1. PURPOSE

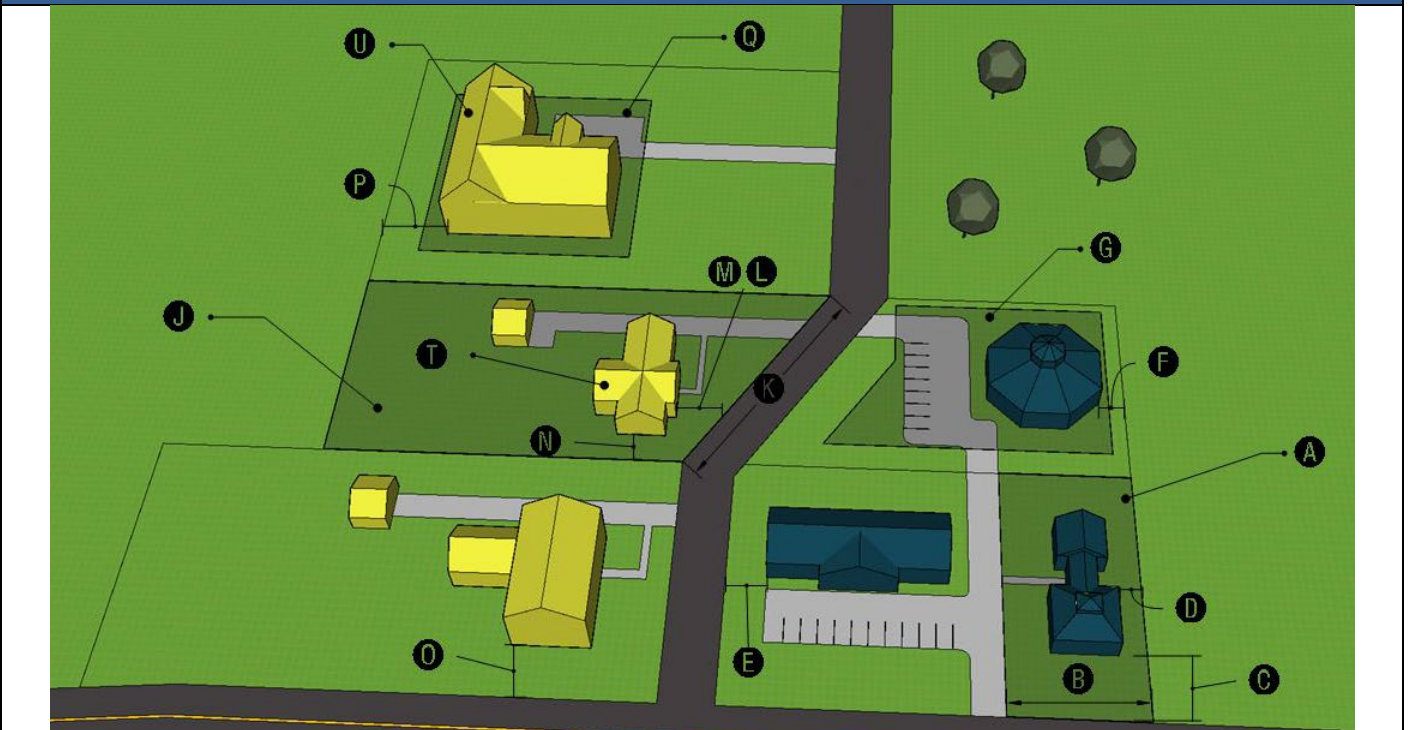
The Government and Institutional (G&I) district is established to create a proper location and setting for government and institutional operations and structures necessary to provide services operated by government and institutional operations and structures necessary to provide public services operated by governmental entities and nonprofit entities.

2. DIMENSIONAL STANDARDS

REF #	STANDARD	REQUIREMENT	REF #	STANDARD	REQUIREMENT
NONRESIDENTIAL DEVELOPMENT			RESIDENTIAL DEVELOPMENT		
A	Minimum Lot Size (square feet)	10,000	J	Minimum Lot Size (square feet)	20,000
B	Minimum Lot Width (feet)	50	K	Minimum Lot Width (feet)	100
C	Minimum Front Setback (feet)	25	M	Minimum Front Setback (feet)	25
D	Minimum Side Setback (feet)	10	L	Minimum Front Setback (feet)	25
E	Minimum Corner Side Setback (feet)	15	N	Minimum Side Setback (feet)	15
F	Minimum Rear Setback (feet)	25	O	Minimum Corner Side Setback (feet)	20
G	Maximum Lot Coverage (percent)	30 [1]	P	Minimum Rear Setback (feet)	25
H	Maximum Height, Top Plate (feet)	26	Q	Maximum Lot Coverage (percent)	30
I	Maximum Height (feet)	35	R	Maximum Height, Top Plate (feet)	26
			S	Maximum Height (feet)	35
			T	Minimum Living Space (square feet)	1,000
			U	Maximum Size of Single-family Dwelling (square feet)	6,000

NOTES:
 [1] Maximum lot coverage for Town-owned facilities and fire stations is 85 percent.

3. ILLUSTRATION



B. C GENERAL COMMERCIAL DISTRICT

1. PURPOSE

The General Commercial (C) district is established to provide for the proper grouping and development of commercial facilities to serve permanent and seasonal residents.

2. DIMENSIONAL STANDARDS

REF #	STANDARD	REQUIREMENT	REF #	STANDARD	REQUIREMENT
NONRESIDENTIAL DEVELOPMENT			RESIDENTIAL DEVELOPMENT		
A	Minimum Lot Size (square feet)	[1]	I	Minimum Lot Size (square feet)	20,000 [5] [6]
B	Minimum Front Setback (feet)	25	J	Minimum Lot Width (feet)	75
C	Minimum Side Setback (feet)	10 [2]	K	Minimum Front Setback (feet)	25
D	Minimum Corner Side Setback (feet)	15	L	Minimum Side Setback (feet)	15
E	Minimum Rear Setback (feet)	20	M	Minimum Corner Side Setback (feet)	20
F	Maximum Lot Coverage (percent)	60 [3]	N	Minimum Rear Setback (feet)	20
G	Maximum Height, Top Plate (feet)	26	O	Maximum Lot Coverage (percent)	30 [7] [8]
H	Maximum Height (feet)	35 [4]	P	Maximum Height, Top Plate (feet)	26 [9]
			Q	Maximum Height (feet)	35
			R	Minimum Living Space (square feet)	1,000
			S	Maximum Size of Single-family Dwelling (square feet)	6,000

NOTES:

[1] Lots shall be of sufficient size to meet requirements of the Dare County Environmental Health Department, to provide adequate siting for structures, and to provide parking, loading, and maneuvering space for vehicles as required by Section 22.5.2, Off-Street Parking Standards.

[2] No side setback is required for a commercial building constructed with a common wall.

[3] Commercial lots shall be allowed the use of permeable pavement as defined by the NCDENR Stormwater BMP Manual. Employment of this permeable solution shall be granted the Built Upon Area (BUA) Credit as specified in the Manual.

[4] Banks may have a single decorative cupola or ornamental watch tower that extends up to 15 feet above the roofline of the building, provided that it does not exceed 12 feet in width on any side or 144 square feet in cross section, is purely decorative in nature, and cannot be used for storage or occupancy.

[5] The 20,000 square feet standard applies to single-family detached dwellings, duplexes, and large homes.

[6] For multifamily dwellings, the minimum lot size must be served by an approved public or community sewage system, and shall be at a minimum 7,500 square feet for the first dwelling unit and 5,151 square feet for each additional dwelling unit.

[7] Group developments which incorporate the use of permeable pavement as defined by the NCDEQ Stormwater BMP Manual in excess of five percent of the total lot coverage shall be allowed a maximum allowable lot coverage by principal use and all accessory structures of no greater than 67 percent.

[8] For multifamily dwellings, the maximum lot coverage is 40 percent.

[9] For multifamily dwellings, the maximum top plate height is 28 feet.

3. ILLUSTRATION



4. DISTRICT SPECIFIC STANDARDS

a. Separation from Residential Districts

- i. Except for large home dwellings, no building or other facility (such as playgrounds, tennis courts, swimming pools, parking areas, incinerators, trash collection areas, etc.) shall be located nearer than 50 feet to boundaries of any residential district.
- ii. The width of a public road and its right-of-way along such boundary may be included as part, or all, of the 50-foot separation zone.
- iii. Large home dwellings must comply with setback standards as described in this section.

b. Buffers

- i. Where a commercial use or zone abuts a residential zone, a buffer of dense vegetative planting or natural vegetation is required.
- ii. The buffer area shall have a minimum width of 20 feet with two rows of planting material placed ten feet on center that are a minimum of five feet in height when installed that expect to achieve a height of eight feet within three years.
- iii. Suitable plant types shall be those recommended for the coastal area by the U.S. Department of Agriculture which can be expected to reach a mature growth of eight to ten feet.
- iv. Vegetation plan to be approved by the Town Council.

c. Commercial Facility Location

All uses and improvements for commercial facilities including, but not limited to parking areas, vehicular access ways, active and repair septic areas and required open spaces shall be contained entirely within the general commercial zoning district, except as provided in Section 22.2.3.K.2, Formal Interpretation.

22.3.4. SPECIAL DISTRICTS

A. OSW OCEAN AND SOUND WATERS DISTRICT

1. PURPOSE

The Ocean and Sound Waters (OSW) district is established to provide for the proper use of the ocean and sound waters, including islands and creeks that adjoin the Town and waters adjacent to Martins Point, to ensure the continued scenic, conservation, and recreational value that these waters provide to the Town, its residents, visitors, and the surrounding area. Nothing contained within this section shall be deemed to prohibit or regulate commercial fishing and navigation.

2. DIMENSIONAL STANDARDS

No dimensional standards apply, as development in the OSW district is limited to piers, docks, and other water-based uses.

22.3.5. GENERAL DIMENSIONAL STANDARDS

The following general dimensional standards shall apply to all development in the Town.

A. MAINTAIN REQUIRED HEIGHT, BULK, DENSITY, LOT COVERAGE, SETBACKS, AND OPEN SPACE²⁸²

No building or other structure shall be erected or altered to:

1. Exceed the height or bulk requirements of this chapter;
2. Accommodate a greater number of families than allowed by this chapter;
3. Maintain a narrower or smaller front, side, corner side, or rear setback, or other open space other than as required by this chapter; or
4. Be used in any other manner that is contrary to the provisions of this chapter.

B. SHARING OF REQUIRED AREAS PROHIBITED²⁸³

No part of a yard resulting from a setback requirement, open space, or off-street parking or loading space required on a lot or development site shall be included as part of a yard, open space, or off-street parking or loading space for a different lot or development site, except as specifically allowed by this chapter.

C. MINIMUM LOT SIZE MAINTAINED²⁸⁴

1. All lots created after [insert the effective date of the Town Code] shall maintain the minimum square footage required for that zoning district or the particular use type, whichever is greater.
2. No yard or lot existing on or after July 7, 1981, shall be reduced in dimension or area below the minimum requirements set forth herein.
3. In no instance shall a lot be bifurcated or transected by a right-of-way or body of water in a manner that creates a separate area that does not meet the minimum required lot area for the zoning district or use type.

D. ONE PRINCIPAL BUILDING PER LOT²⁸⁵

Except for government offices in the G&I district, or where otherwise authorized by this chapter, only one principal building, along with any customary accessory structures, shall be erected on any single lot.

²⁸² This section carries forward the standards in Section 36-90 of the current code.

²⁸³ This section carries forward Section 36-91(a) of the current code.

²⁸⁴ This section carries forward current Section 36-92 along with a portion of section 36-91. The portion of current Section 36-91(b) has been simplified.

²⁸⁵ This section carries forward Section 36-94 of the current code.

22.3.6. ENCROACHMENTS²⁸⁶

Table 22.3.6: Allowable Encroachments into Setbacks, sets out the kinds of features that are permitted to encroach within a required setback, provided they do not obstruct visibility for motorists at any intersections.

TABLE 22.3.6: ALLOWABLE ENCROACHMENTS INTO SETBACKS	
FEATURE [1] [2]	ALLOWABLE ENCROACHMENT
Uncovered porches, uncovered steps, building eaves, and gutters	May encroach into a required setback up to three feet
Swimming pools	Shall be subject to the setbacks applied to principal structures
Fences, walls, flagpoles, mailbox, lamp and address posts	May be located in any required setback
Handicap ramps	May encroach into a required setback up to five feet
Signs	May encroach into or be located within any required setback subject to applicable standards in <u>Section 22.5.4, Signage Standards</u>
Vegetation and landscaping features	May be located in any required setback
Underground structures except pools	May be located in any required setback
Patios and terraces less than 30 inches above grade	May not encroach into a front or corner side setback
Covered porches, patios more than 30 inches above grade, and, walkways	Shall be subject to the setbacks applied to principal structures
Waste receptacle enclosure serving a single-family or duplex use	May encroach into any required setback, but must be at least three feet from the lot line
NOTES: [1] Accessory structures shall be subject to the standards in <u>Section 22.4.5, Accessory Uses and Structures</u> . [2] Ocean dune platforms, walkways, and associated steps are addressed in <u>Section 22.4.5.E, Standards for Specific Accessory Uses</u> .	

²⁸⁶ This section carries forward the encroachments for buildings found in the building setback line definition in section 36-57 of the current code. We have suggested additional encroachment provisions for the Town’s consideration.

22.4. USE STANDARDS

This section sets out the range of allowable uses by zoning district, and the use-specific standards for principal, accessory, and temporary use types.

22.4.1. USE TABLE STRUCTURE²⁸⁷

A. GENERALLY

1. Table 22.4.2: Principal Use Table, lists principal use types and indicates for each zoning district whether the principal use type is permitted by-right, as a conditional use, or prohibited. It also includes a reference to any applicable specific standards that may apply to a particular use type.
2. Use types are organized by one of three different use classifications (residential, institutional, or commercial).
3. Within each use classification, use types are further organized by use category. See Chapter 4: Definitions for definitions of each use type.

B. USES PERMITTED BY-RIGHT

A “P” in a cell of the principal use table indicates that the specific use type is permitted by-right in the corresponding zoning district, subject to compliance with any additional standards referenced in the principal use table.

C. USES REQUIRING CONDITIONAL USE REVIEW

A “C” in a cell of the principal use table indicates that the specific use type is permitted in the corresponding zoning district only upon approval of a conditional use permit in accordance with Section 22.2.3.D, Conditional Use Permit, and any additional standards referenced in the principal use table.

D. PROHIBITED USES²⁸⁸

1. A “.” in the principal use table indicates that the specific use type is prohibited in the corresponding zoning district.
2. The following principal uses are prohibited throughout the Town’s zoning jurisdiction in all zoning districts:
 - a. Accessory dwelling units in detached structures.
 - b. Concentrated animal feeding operations;
 - c. Crematorium, whether for people or animals;
 - d. Explosives, ammunition, fireworks, or gunpowder manufacture;
 - e. Fat rendering, or production of fats and oils from animal or vegetable products by boiling or distillation;
 - f. Funeral home;
 - g. Garbage, offal, or animal reduction and processing;
 - h. Hazardous materials handling or storage;
 - i. Landfills
 - j. Nitrogenous tankage, fish meal or manufacture, of any fertilizer materials carrying an objectionable odor;
 - k. Nursing homes;
 - l. Outdoor advertising or billboards except where prohibition is preempted by State or federal law;
 - m. Outdoor shooting ranges;
 - n. Package treatment plant wastewater disposal systems that discharge to surface waters;
 - o. Sexually oriented businesses;
 - p. Slaughterhouses;
 - q. Storage or processing of radioactive or infectious waste;

²⁸⁷ This section contains new prefatory information which explains how to read and interpret the principal use table.

²⁸⁸ This section addresses recent NC Court of Appeals rulings regarding the need to identify prohibited uses. There may be other uses (including accessory uses) the Town wishes to prohibit.

Chapter 22 Zoning

22.4 Use Standards

- r. Use of a boat, houseboat, or other floating structure as a temporary or permanent residence (this shall not prevent the overnight occupancy of a vessel temporarily moored while in transit on navigable waters); or
- s. Use of a travel trailer as a permanent or temporary residence.

E. ADDITIONAL STANDARDS

1. When a specific use type is permitted in a zoning district, there may be additional standards that are applicable. Such additional standards are referenced in the principal use table column titled "Additional Standards." These standards shall apply to a specific use type regardless of the zoning district, unless otherwise specified.
2. In addition, use types are also subject to any district standards listed in the applicable zoning district in Section 22.3, Zoning Districts.

22.4.2. PRINCIPAL USE TABLE²⁸⁹

TABLE 22.4.2: PRINCIPAL USE TABLE								
P = Permitted Uses C = Conditional Uses · = Prohibited Use [1]								
USE TYPE	ZONING DISTRICT							ADDITIONAL STANDARDS ²⁹⁰
	RS-1	RS-8	RS-10	R-1	G&I	C	OSW	
RESIDENTIAL								
Duplex	·	P	·	·	·	P	·	
Floating home ²⁹¹	·	·	·	·	·	·	·	
Home Occupation/Home-based Business	See <u>Section 22.4.5, Accessory Uses and Structures</u> .							
Large home dwelling	·	·	·	·	·	·	·	
Manufactured home ²⁹²	·	·	·	P	·	P	·	<u>22.4.4.A.1</u>
Multifamily dwellings	·	P	·	·	·	P	·	
Planned unit development	·	·	·	·	·	P	·	<u>22.4.4.A.2</u>
Single-family detached dwelling	P	P	P	P	P	P	·	<u>22.4.4.A.3</u>
Residential group development	·	·	C	·	·	·	·	
Townhouse dwelling	·	·	C	·	·	·	·	<u>22.4.4.A.4</u>
INSTITUTIONAL²⁹³								
Church or place of worship	·	C	C	C	·	·	·	
Clinic (medical and dental)	·	·	·	·	C	C	·	
Community Beach Access	P	·	·	·	·	·	·	<u>22.4.4.B.1</u>
Community recreation facility	C	C	C	C	C	·	·	<u>22.4.4.B.2</u>
Club, public or private (including country club)	·	·	·	C	·	·	·	

²⁸⁹ NOTE: This table includes several use types not listed as permitted or conditional uses in the district standards, but present in the parking standards. For example, Townhouses, clinic, club, substation, and theatre from the parking standards. These uses are shown in yellow highlighted rows. Additional discussion is necessary about what to do with these uses. Text amendment ZTA-16-01 includes numerous uses not listed in the current regulations, for example: hotels, motels, large home dwellings, nursing homes,

²⁹⁰ This column contains placeholders for what will be links to any additional use standards for each use.

²⁹¹ This use is prohibited throughout the Town's planning jurisdiction.

²⁹² This is a new use type that needs to be included for consistency with the Fair Housing Act.

²⁹³ NOTE: We have dropped "Group Development of Town-Owned or Leased Facilities" from the list of uses. It is shown as kind of use type subject to a conditional use in the C district. We have also removed the "Town-Owned or Leased Facilities" from the list of uses. These are ownership forms, not use types.

Chapter 22 Zoning

22.4 Use Standards

TABLE 22.4.2: PRINCIPAL USE TABLE

P = Permitted Uses C = Conditional Uses · = Prohibited Use [1]								
USE TYPE	ZONING DISTRICT							ADDITIONAL STANDARDS ²⁹⁰
	RS-1	RS-8	RS-10	R-1	G&I	C	OSW	
Fire station	C	C	·	C	·	·	·	
Governmental office	·	·	·	·	P	·	·	22.4.4.B.3
Medical evacuation facilities	C	·	·	·	·	·	·	
Nonprofit entity office	·	·	·	·	P	·	·	22.4.4.B.4
Parking lot	·	·	·	·	P	·	·	
Police station	·	·	·	·	P	·	·	
Schools and other public buildings	·	C	·	C	·	·	·	
Sewage system effluent disposal subsurface drainfields and repair areas	·	·	·	·	·	C	·	
Small Wireless Facility	P	P	P	P	P	P	P	22.4.4.B.5
Substation (telephone or electric)	P	P	P	P	P	P	·	
Wind generation facility	C	C	C	C	C	C	·	
COMMERCIAL								
Child day care center	·	·	·	·	·	C	·	22.4.4.C.1
Crematorium	·	·	·	·	·	·	·	
Drive-through facility, small	·	·	·	·	·	C	·	22.4.4.C.2
Event facility	·	·	·	·	·	P	·	22.4.4.C.3
Funeral home	·	·	·	·	·	·	·	
Garden center/nursery	·	·	·	·	·	C	·	22.4.4.C.4
Group development of commercial buildings	·	·	·	·	·	C	·	22.4.4.C.5
Hotel or motel	·	·	·	·	·	C	·	
Nursing home	·	·	·	·	·	·	·	
Office	·	·	·	·	·	P	·	
Restaurant	·	·	·	·	·	C	·	22.4.4.C.6; 22.4.4.C.7
Retail store	·	·	·	·	·	P	·	
Service establishment	·	·	·	·	·	P	·	
Sexually oriented business	·	·	·	·	·	·	·	22.4.4.C.8
Theatre	·	·	·	·	·	C	·	
Veterinary clinic	·	·	·	·	·	C	·	22.4.4.C.9
NOTES:								
[1] Uses associated with an application subject to Section 22.2.3.M, Vested Right Determination , shall be subject to the conditional use permit standards in Section 22.2.3.D, Conditional Use Permit regardless of how permitted in this table.								

22.4.3. UNLISTED USES

- A.** For use types not listed in [Table 22.4.2: Principal Use Table](#), and not listed as a prohibited use in [Section 22.4.1.D, Prohibited Uses](#), the Town Manager (or designee) shall determine which use type is most similar to the proposed use, in accordance with the following standards:
1. The function, product, or physical characteristics of the use;
 2. The impact on adjacent lands created by the use;

3. The type, size, and nature of buildings and structures associated with the use;
 4. The type of sales (retail, wholesale), and the size and type of items sold and displayed on the premises;
 5. The types of items stored (such as vehicles, inventory, merchandise, chemicals, construction materials, scrap and junk, and raw materials including liquids and powders);
 6. The volume and type of vehicle traffic generated by the use, and the parking demands of the use;
 7. Any processing associated with the use, including assembly, manufacturing, warehousing, shipping, distribution, and whether it occurs inside or outside a building;
 8. Any dangerous, hazardous, toxic, or explosive materials associated with the use;
 9. The amount and nature of any nuisances generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation, and fumes; and
 10. Any prior determinations made by the Town Manager (or a designee) or decisions made by the BOA.
- B.** Upon determining which listed use type is most similar to a proposed unlisted use, the Town Manager (or a designee) shall indicate the listed use type and apply the relevant standards of this chapter to any applications to establish an unlisted use.
- C.** Nothing in this section shall require preparation of a written formal interpretation as part of determining an unlisted use type.

22.4.4. USE-SPECIFIC STANDARDS

A. RESIDENTIAL USES

1. MANUFACTURED HOMES

a. Generally²⁹⁴

A manufactured home on an individual lot shall comply with the following standards:

- i. It shall be occupied only as a single-family dwelling;
- ii. It shall not be used solely for the purposes of storage;
- iii. It shall be set up in accordance with the standards established by the North Carolina Department of Insurance and the most current version of the State of North Carolina Regulations for Manufactured/Mobile Homes;
- iv. It shall maintain a minimum width of 16 feet;
- v. It shall be oriented with the longest axis parallel to the lot frontage, to the maximum extent practicable;
- vi. Towing apparatus, wheels, axles, and transporting lights shall be removed;
- vii. It shall include a continuous, permanent masonry foundation or masonry curtain wall of solid brick or brick veneer, unpierced except for required ventilation and access, installed under the perimeter;
- viii. It shall include stairs, porches, entrance platforms, ramps, and other means of entrance and exit that are installed or constructed in accordance with the standards set by the North Carolina State Building Code. They shall be attached firmly to the primary structure and anchored securely to the ground;
- ix. It shall maintain exterior siding comparable in composition, appearance, and durability to the exterior siding commonly used in standard residential construction, which consists of one or more of the following:
 - 1) Vinyl or aluminum lap siding (whose reflectivity does not exceed that of flat white paint);
 - 2) Cedar or other wood siding;
 - 3) Stucco siding;
 - 4) Brick or stone siding.
- x. It shall maintain a roof pitch with a minimum vertical rise of at least three feet for each 12 feet of horizontal run;
- xi. It shall include a roof finished with a Class C or better roofing material that is commonly used in standard residential construction; and
- xii. It shall provide an eave projection of no less than six inches, which may include a gutter.

b. Manufactured Homes within a Flood Hazard Area

²⁹⁴ This is a new set of standards that apply to manufactured homes that are built on their own lot.

In addition the standards applicable for all manufactured homes, manufactured homes located within a flood hazard area shall also comply with the standards in Section 28.5.2.C, Manufactured Home Standards.

2. PLANNED UNIT DEVELOPMENTS²⁹⁵

Development proposed as part of or located within a planned unit development shall comply with the standards in Section 22.2.3.C, Planned Unit Development.

3. SINGLE-FAMILY DWELLING

In no instance shall a single-family dwelling exceed the maximum allowable size for the district where located in Section 22.3.2, Residential Districts.

4. TOWNHOUSE DWELLING

No more than six dwelling units shall be attached in a single building.

B. INSTITUTIONAL USES

1. COMMUNITY BEACH ACCESS

- a. Community beach access structures may be up to six feet in width.
- b. All community beach access structures must be permitted by all applicable local, State, and federal agencies having jurisdiction.

2. COMMUNITY RECREATION FACILITIES

It shall be prohibited for commercial activity to take place at a community recreation facility.

3. GOVERNMENTAL OFFICES

Governmental offices located in the G&I District are exempt from the requirements of Section 22.3.5.D, One Principal Building per Lot.

4. NONPROFIT ENTITY OFFICE

- a. Nonprofit entity offices must be occupied by a qualified nonprofit entity under Section 501(c)(3) of the Internal Revenue Code.
- b. Handicapped accessibility shall be provided.

5. SMALL WIRELESS FACILITIES²⁹⁶

The collocation and use of small wireless facilities, including micro wireless facilities, by wireless service providers shall be governed by this section.

a. Applications and Permits

Applicants shall obtain a permit to collocate a small wireless facility in accordance with the standards in this section.

i. Application Requirements

The application must affirmatively show that the proposed small wireless facilities meet:

- 1) The Town's applicable codes;
- 2) The Town Code of Ordinance provisions or regulations that concern public safety, objective design standards for decorative utility poles, city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including screening or landscaping for ground mounted equipment;
- 3) Public safety and reasonable spacing requirements concerning the location of ground mounted equipment in a right-of-way; or
- 4) The historic preservation requirements in Section 160A 400.52(i) of the North Carolina General Statutes.

ii. Attestation Requirement

An application must include an attestation that the small wireless facilities shall be collocated on a utility pole, Town utility pole, or wireless support structure and that the small wireless facilities

²⁹⁵ NOTE: We recommend that PUDs not be dealt with in the use section. This language is included here, and in the summary use table.

²⁹⁶ This section includes language from ZTA-18-02 and ZTA-18-06. Definitions have been relocated to Chapter 4, Definitions.

shall be activated for use by a wireless services provider to provide service no later than one year from the permit issuance date, unless the Town and the wireless provider agree to extend this period, or a delay is caused by a lack of commercial power at the site.

iii. Completeness of Application

A permit application shall be deemed complete unless the Town provides notice otherwise in writing to the applicant within 30 days of submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.

iv. Procedure for Processing

The permit application shall be processed on a nondiscriminatory basis and shall be deemed approved if the Town fails to approve or deny the application within 45 days from the time the application is deemed complete or a mutually agreed upon time frame between the Town and the applicant.

v. Permit Denials and Resubmissions

- 1) An application may only be denied for failure to meet the requirements of this section.
- 2) If an application is denied, the Town must:
 - a) Document the basis for a denial, including the specific code provisions on which the denial was based; and
 - b) Send the documentation to the applicant on or before the day the Town denies an application.
 - c) The applicant may cure the deficiencies identified by the Town and resubmit the application within 30 days of the denial without paying an additional application fee. The Town shall approve or deny the revised application within 30 days of the date on which the application was resubmitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial.

vi. Consolidated Applications

- 1) An applicant seeking to collocate small wireless facilities at multiple locations within the Town shall be allowed, at the applicant's discretion, to file a consolidated application for no more than 25 separate facilities and receive a permit for the collocation of all 25 small wireless facilities meeting the requirements of this section.
- 2) The Town may remove small wireless facility collocations from a consolidated application and treat separately small wireless facility collocations:
 - a) For which incomplete information has been provided; or
 - b) Applications that are denied.
- 3) The Town may issue a separate permit for each collocation that is approved.

vii. Time for Commencement and Activation

The permit may specify that collocation of the small wireless facility shall commence within six months of approval and shall be activated for use no later than one year from the permit issuance date, unless the Town and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

viii. Application Fees

- 1) The Town may charge an application fee that shall not exceed the lesser of:
 - a) The actual, direct, and reasonable costs to process and review applications for collocated small wireless facilities;
 - b) The amount charged by the Town for permitting of any similar activity; or
 - c) One hundred dollars (\$100.00) per facility for the first five small wireless facilities addressed in an application, plus fifty dollars (\$50.00) for each additional small wireless facility addressed in the application.
- 2) In any dispute concerning the appropriateness of a fee, the Town has the burden of proving that the fee meets the requirements of this subsection.

ix. Technical Consulting Fees

- 1) The Town may impose a technical consulting fee for each application, not to exceed five hundred dollars (\$500.00), to offset the cost of reviewing and processing applications required by this section.
- 2) The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of an application.
- 3) The Town may engage an outside consultant for technical consultation and the review of an application.
- 4) The fee imposed by the Town for the review of the application shall not be used for either of the following:
 - a) Travel expenses incurred in the review of a collocation application by an outside consultant or other third party; or
 - b) Direct payment or reimbursement for an outside consultant or other third party based on a contingent fee basis or results based arrangement.
- 5) In any dispute concerning the appropriateness of a fee, the Town has the burden of proving that the fee meets the requirements of this subsection.

x. Removal of Abandoned Facilities

- 1) A wireless services provider shall remove an abandoned small wireless facility within 180 days of abandonment.
- 2) Should the small wireless services provider fail to timely remove the abandoned small wireless facility, the Town may cause it to be removed and may recover the actual cost of such removal, including legal fees, if any, from the wireless services provider.
- 3) For purposes of this subsection, a small wireless facility shall be deemed abandoned at the earlier of the date that the wireless services provider indicates that it is abandoning such facility or the date that is 180 days after the date that the small wireless facility ceases to transmit a signal, unless the wireless services provider gives the Town reasonable evidence that it is diligently working to place the wireless facility back in service.

xi. Routine Maintenance and Replacement

No application, permit, or fees are required for:

- 1) Routine maintenance;
- 2) The replacement of small wireless facilities with small wireless facilities that are the same size or smaller; or
- 3) Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles or Town utility poles in compliance with applicable codes by or for a communications service provider authorized to occupy the Town rights-of-way and who is remitting taxes under Sections 105 164.4(a)(4c) or 105 164.4(a)(6) of the North Carolina General Statutes.
- 4) The Town may require production of sufficient information to make the determination that no application, permit or fees are required under this section.

xii. Other Permits not Precluded

Nothing in this section shall prevent the Town from requiring other Town permits for work that involves excavation, affects traffic patterns, or obstructs vehicular traffic in the Town rights-of-way.

b. Use of Rights-of-Way

Wireless providers may use Town rights-of-ways in accordance with this section. Wireless providers may use NC Department of Transportation rights-of-way pursuant to lawful authorization from the NC Department of Transportation.

i. Collocation of Small Wireless Facilities

Subject to the requirements of Section 22.4.4.B.5, Small Wireless Facilities, a wireless provider may collocate small wireless facilities along, across, upon, or under any town rights-of-way.

ii. Utilities and Poles Within Rights-of-Way

A wireless provider may place, maintain, modify, operate, or replace associated utility poles, Town utility poles, conduit, cable, or related appurtenances and facilities along, across, upon, and under any Town rights-of-way. The placement, maintenance, modification, operation, or replacement of utility poles and Town utility poles associated with the collocation of small wireless facilities, along, across, upon, or under any Town rights-of-way shall be subject only to

review or approval under Section 22.4.4.B.5.a, Applications and Permits, if the wireless provider meets all the following requirements:

- 1) Each new utility pole and each modified or replacement utility pole or Town utility pole installed in the rights-of-way shall not exceed 50 feet above ground level.
- 2) Each new small wireless facility in the right-of-way shall not extend more than 10 feet above the utility pole, Town utility pole, or wireless support structure on which it is collocated.

iii. Application Required to Place or Modify Utility Poles in Rights-of-Way

- 1) A wireless provider shall apply to place utility poles in the Town rights-of-way, or to replace or modify utility poles or Town utility poles in the public rights-of-way, to support the collocation of small wireless facilities.
- 2) The Town shall accept and process the application in accordance with the provisions of this section, applicable codes, and other local codes governing the placement of utility poles or Town utility poles in the Town rights-of-way, including provisions or regulations that concern public safety, objective design standards for decorative utility poles or Town utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including those relating to screening or landscaping, or public safety and reasonable spacing requirements.
- 3) The application may be submitted in conjunction with the associated small wireless facility application.

iv. Installation of New Poles in Residential Zoning Districts

Installation of new poles in residential zoning districts shall comply with the following requirements:

- 1) No new utility pole may be installed for the principal use of small wireless facilities if a pole exists within 20 feet of a desired location.
- 2) The minimum distance of a new pole from any residential structure shall be at least 150 percent of the pole height and shall not be located directly in front of any residential structure or vacant lot located in a residential zoning district.
- 3) Along streets and within subdivisions where there are no existing utility poles (all underground utilities), wireless facilities may be attached to street lights in the public right-of-way.
- 4) New poles may not be erected in a residential area solely for small wireless communication equipment attachment unless the applicant has demonstrated it cannot reasonably provide service by:
 - a) Installing poles outside of the residential area;
 - b) Attaching equipment to existing poles within the right-of-way; or
 - c) Installing poles in rights-of-way not contiguous to parcels used for single family residential purposes.

v. Rights-of-Way Use Must Comply

- 1) Applicants for use of a Town right-of-way shall comply with the undergrounding requirements in Chapter 18: Streets, Sidewalks, and Other Public Property, prohibiting the installation of above ground structures in the Town's rights-of-way without prior approval.
- 2) In no instance in an area zoned single family residential where the existing utilities are installed underground may a utility pole, Town utility pole, or wireless support structure exceed 40 feet above ground level, unless the Town grants a variance (see Section 22.2.3.L, Variance) approving a taller utility pole, Town utility pole, or wireless support structure.

vi. Rights-of-Way Charges

- 1) The Town may assess a rights-of-way charge for use or occupation of the rights-of-way by a wireless provider, subject to the restrictions in Section 160A-296(a)(6) of the North Carolina General Statutes. In addition, charges authorized by this section shall meet all of the following requirements:
 - a) The rights-of-way charge shall not exceed the direct and actual cost of managing the Town rights-of-way and shall not be based on the wireless provider's revenue or customer counts.
 - b) The rights-of-way charge shall not exceed that imposed on other users of the rights-of-way, including publicly, cooperatively, or municipally owned utilities.
 - c) The rights-of-way charge shall be reasonable and nondiscriminatory.

- 2) The Town may provide free access to Town rights-of-way on a nondiscriminatory basis in order to facilitate the public benefits of the deployment of wireless services.

vii. Consent Required for Use of Private Property

No person may place, maintain, modify, operate, or replace a privately owned utility pole or wireless support structure or to collocate small wireless facilities on a privately owned utility pole, a privately owned wireless support structure, or other private property without the consent of the property owner.

viii. Damages to Rights-of-Way

- 1) Wireless providers shall repair all damage to a Town right-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support structures, Town utility poles, or utility poles and to return the right-of-way to its functional equivalence before the damage.
- 2) If the wireless provider fails to make the repairs required by the Town within a reasonable time after written notice, the Town may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs. The Town may maintain an action to recover the costs of the repairs.

ix. Approval Under Section Relates Only to Small Wireless Facility

The approval of the installation, placement, maintenance, or operation of a small wireless facility does not authorize the provision of any communications services or the installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in the rights-of-way.

C. COMMERCIAL USES

1. CHILD DAY CARE CENTER

- a. The facility shall adhere to the minimum requirements of and be licensed by the NC State Department of Human Resources.
- b. Pickup and drop-off areas shall be provided separate from the drive aisle.
- c. The pickup and drop-off areas shall be designed so that no child is required to cross the parking lot or any other traffic areas.

2. DRIVE-THROUGH FACILITY, SMALL²⁹⁷

- a. A small drive-through facility shall not exceed 2,500 square feet of floor area.
- b. The location of the drive-through facility is a minimum of 100 feet from any residentially-zoned property.
- c. The drive-through facility allows for stacking a minimum of six automobiles.
- d. The lot containing a drive-through facility shall have frontage along US Highway 158.

3. EVENT FACILITIES²⁹⁸

Event facilities shall be operated in accordance with the following standards:

a. Maximum Number of Guests

A septic permit must be obtained from the Dare County Environmental Health Department to accommodate the maximum number of attendees permitted.

b. Setbacks

Outdoor activity areas shall be set back from lot lines shared with a residential use by an amount at least twice the minimum rear setback for the district where the use is located.

²⁹⁷ This section includes language from ZTA-18-05.

²⁹⁸ In response to citizen concerns about the effect of event venues on the character of the Town, the subsections on setbacks, parking, hours of operation, lighting, trash, outdoor activity, and emergency access are suggested new standards to supplement the existing standards for event facilities. These supplementary standards are ones we have used in other coastal communities to improve compatibility between event facilities and nearby residential uses. The current standards on maximum number of guests, food and beverages, and noise are carried forward. The current standards contain a parking calculation, which has been relocated to the summary parking table in Section 22.7.2.

- c. Parking**
 - i. In cases where off-site parking is employed, the event venue maintain an agreement with the owner of land where vehicles are parked.
 - ii. The venue shall ensure guests may access the venue safely from off-site parking areas.
 - iii. In no instance shall vehicles be parked along streets in ways that block driveways, sight triangles, or emergency access.
 - d. Hours of Operation**

Outdoor activities shall not take place between the hours of midnight and 7:00 AM.
 - e. Lighting**

Exterior lighting shall not project into adjoining residential lots. Use of stadium-style or other pole-mounted lighting is prohibited. Lighting of accessible paths may be provided, if necessary.
 - f. Food and Beverages**
 - i. In the event food and beverages are to be sold on-site, the event facility shall obtain approval of a conditional use permit in accordance with the standards in Section 22.2.3.D, Conditional Use Permit.
 - ii. Food preparation shall meet all local and state requirements.
 - iii. All events in which alcohol is to be served shall not be held until an approved state ABC permit has been issued.
 - g. Noise**

All events shall be in compliance with Section 36.6.5, Noise.
 - h. Trash and Debris**

The event venue shall provide sufficient on-site trash receptacles, and shall ensure that windblown trash or other debris does not accumulate anywhere on the site.
 - i. Outdoor Activity**

Event venue uses shall demarcate the boundaries of the event venue site for guests and shall include fences, walls, or other techniques such as landscaping to ensure guests to do not inadvertently trespass on adjacent lots.
 - j. Emergency Access**

Event venues shall ensure adequate ingress and egress from all buildings and structures to accommodate emergencies.
- 4. GARDEN CENTER/NURSERY**
- a. A ten-foot high solid fence must surround all storage areas for business vehicles, equipment and bulk storage.
 - b. All principal and accessory structures must conform to the building code (e.g., greenhouses) with no agricultural exceptions.
 - c. Outdoor plant displays (retail/nursery areas) access walks shall comply with site accessibility requirements of the building code (e.g., wheelchairs and motorized carts).
 - d. Required parking spaces and drive aisles shall be asphalt or concrete. Business vehicle and equipment parking and drive area shall be gravel/crush and run.
 - e. Customer parking requirements for outdoor retail display areas shall be one space for every 500 square feet of retail space.
- 5. GROUP DEVELOPMENT OF COMMERCIAL BUILDINGS**
- A group development of commercial buildings shall include or be designed to include two or more establishments with combined floor area of at least 20,000 square feet on a single or contiguous lot or parcel, and shall be subject to the following standards:
- a. The minimum size of any building shall be 2,500 square feet.
 - b. All buildings constructed within 35 feet of another building within the development are to be connected by a breezeway or covered walkway.
- 6. RESTAURANTS**
- To qualify as a restaurant, an establishment shall have all of the following features:
- a. A food preparation area occupying at least 20 percent of the gross square footage of the establishment;

- b. At least 75 percent of all customer seats designated for either fast casual or full-service, full-menu, dining; and
- c. No more than 15 percent of the total square footage of the establishment devoted to the following permitted accessory entertainment uses, including and limited to;
 - i. Dance floor; and
 - ii. Stage, live performance, and disc jockey areas.
- d. Accessory entertainment uses shall be permitted in a restaurant, provided these uses are clearly subordinate in area, extent, hours of operation, and purpose to areas designated for food preparation, service, and consumption.

7. RESTAURANTS WITH A DRIVE-THROUGH FACILITY

- a. Restaurants with a drive-through facility shall not exceed 2,500 square feet.
- b. The location of the drive-through facility shall be a minimum of 100 feet from any residentially zoned property.
- c. The drive-through shall allow for stacking of a minimum of six cars.

8. SEXUALLY ORIENTED BUSINESSES²⁹⁹

a. Findings

Based on evidence concerning the adverse secondary effects of adult uses on the community, and on the findings incorporated in the cases *City of Renton v. Playtime Theaters, Inc.*, 475 US 41 (1986); *Young v. American Mini Theaters*, US 50 (1976); and *Barnes v. Glenn Theater, Inc.*, 501 US 560 (1991); and on studies in other communities including, but not limited to, Phoenix, Arizona; Tucson, Arizona; Saint Paul, Minnesota; Houston, Texas; Austin, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; and also on findings from the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), a Report on the Regulation of Adult Establishments in North Carolina (May 22, 1996), and findings from the 1997 Town of Southern Shores Land Use Plan questionnaire dealing with sexually oriented businesses, the Town Council finds:

- i. According to the studies referenced above, sexually oriented businesses tend to lend themselves to ancillary unlawful and unhealthy activities that are uncontrolled by the operators of the establishments. Further, without a reasonable regulation there is no mechanism to make owners of these establishments responsible for the activities that occur on their premises.
- ii. Sexually oriented businesses provide a potential focus for illicit and undesirable activities by providing a place of contact for numerous potential customers for prostitution, pandering, and other activities.
- iii. In combination with on-site or nearby alcoholic beverage service or other sexually oriented businesses, the concentration of uses increases the quantity of undesirable activities. There is a snowball effect of undesirable activities that feed upon and support each other.
- iv. Facilitation of illicit behavior results in the exposure of children and youth, in adjacent neighborhoods or nearby educational or religious institutions, to inappropriate models of behavior which they are unprepared to understand or respond to effectively. Where criminal activity is involved, children, women and the elderly are especially prone to victimization.
- v. The very existence of a sexually oriented business opens to question the presence of pedestrians within that area. This unsolicited attention is intimidating to children, women alone and the elderly.
- vi. There is a strong tendency for inappropriate activities to seek nearby venues. Prostitution and other illicit activities will find lightly used and under used nearby parks, parking lots, garages, alleyways and other spaces for their activities. A sexually oriented business does not necessarily create the activity but provides a facilitating setting for supporting these activities. It provides a legitimizing reason for the presence of individuals who have illicit intent.
- vii. Sexually oriented businesses have a negative impact upon both residential and commercial property values within three blocks of the location. The preponderance of research suggests that the presence of sexually oriented businesses is considered by real estate appraisers and lenders to be evidence of community decline and decay. Other research indicates that areas with sexually oriented businesses experience lower rates of appreciation in property values

²⁹⁹ This section carries forward the standards in Section 36-172 with no changes.

and/or higher turnover in properties in comparison to comparable areas without sexually oriented businesses. Crime rates are significantly higher in areas with one or more sexually oriented businesses than in comparable areas without these businesses within the same municipality. (See American Center for Law and Justice on the Secondary Impacts of Sexually Oriented Businesses.)

- viii.** Certain employees of sexually oriented businesses, defined as adult theaters and adult cabarets, may engage in a higher incidence of certain types of illicit sexual behavior than employees of other commercial establishments.
- ix.** Sexual acts, including masturbation and oral and anal sex, occur at sexually oriented businesses, especially those that provide private or semiprivate booths or cubicles for viewing films, videos, or live sex shows.
- x.** Persons frequent such adult theaters, adult cabarets and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
- xi.** At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses including, but not limited to: syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and shigella infections.
- xii.** Sanitary conditions in some sexually oriented businesses are unhealthy because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.
- xiii.** The 1997 Southern Shores Land Use Plan Update included a series of questions posed to Town residents and property owners regarding their perception of Town attributes and services and the direction of the Town's development. A specific question dealt with aspects of adult entertainment establishments, and the sketch land use plan update concluded:
- xiv.** "Respondents strongly agreed that the presence of adult entertainment establishments would adversely affect residential property values (84.3 percent of the 92.4 percent responding) and adversely affect nearby commercial establishments and businesses (77.6 percent of the 91.3 percent responding). Respondents also strongly agreed that adult entertainment establishments would negatively influence their decision to buy a home or vacation in Southern Shores (76.3 percent of the 91.7 percent responding). The respondents strongly disagreed with the statement that adult entertainment establishments would enhance the vacation resort attraction of Southern Shores for vacationing families (71 percent of the 91.8 percent responding)." (See Southern Shores Planning Board Report of June 4, 1999.)
- xv.** The Town's total land area is one mile wide by four miles long with only 2.9 percent of the land area zoned for commercial use. The rest of the Town is encumbered by restrictive covenants. The only commercial district runs along the Town's southern border on Route 158, the major access route to the Outer Banks for tourists and residents.
- xvi.** In September 1999, the Town reported a population of 1,923 fulltime residents. The majority of these are retired persons and this trend is expected to continue into future populations. According to the 1997 CAMA sketch land use plan update, almost one-quarter of the population of the county in 1995 was 55 years of age or older.
- xvii.** The Town was first conceived and designed as a planned residential community, and that concept was supported further in 1979 when the Town was incorporated. Throughout its 52-year history, it has valued its family residential character. In its most recent referendum, a liquor by the drink proposal was defeated by the electorate, preferring instead its family residential goals to increased commercialism.
- xviii.** The Town never has been, and never is expected to be, a self-sufficient community. Residents of the Town consistently and on a daily basis leave the Town to procure goods and services and to conduct routine business. (Refer to Southern Shores Planning Board Report of June 4, 1999.) Residents must travel to other communities for automotive sales and service, bars and grills, bookstores and libraries, boat and marina sales and supplies, business supplies and equipment, home furnishings and decorating supplies or services, building supplies, hardware stores, electronic equipment sales and services, employment agencies, home appliances and repairs, liquor stores, specialty foods, sports and recreational equipment and services, comprehensive health care, hospitals, and funeral services, among others.
- xix.** Any First Amendment rights of citizens or visitors to the Town to sexually oriented entertainment can readily be met in nearby communities. Provision for the establishment of sexually oriented businesses has been made approximately eight miles south of Southern Shores by the Towns

of Kill Devil Hills and Nags Head. An adult entertainment business currently operates in Currituck County about 3¼ miles from the Town's western border.

xx. A public hearing was held jointly by the Town Council and Planning Board on Monday, August 16, 1999, to allow the general public an opportunity to express opinions on sexually oriented businesses. The consensus held that sexually oriented businesses would negatively impact life styles and moral values if permitted in the Town.

b. Sexually Oriented Business Prohibited

Based upon the input from the public hearings, studies recited in the findings, and the findings in subsection (a), all sexually oriented businesses, are prohibited.

9. VETERINARY CLINIC

All boarding runs and kennels shall be in an enclosed, heated, and air conditioned building.

22.4.5. ACCESSORY USES AND STRUCTURES

A. PURPOSE

This section authorizes the establishment of accessory uses and structures that are incidental and subordinate to principal uses. The purpose of this section is to allow a range of accessory uses and structures, provided they comply with the standards set forth in this section in order to reduce potentially adverse impacts on surrounding lands.

B. PROCEDURE FOR ESTABLISHMENT

1. Accessory uses or structures may be approved in conjunction with the approval of the principal use or subsequently following the establishment of the principal use.
2. No accessory use or structure shall be approved, established, or constructed before the principal use is approved in accordance with this Code.
3. Establishment of an accessory use or structure shall require approval of a zoning permit in accordance with the standards in Section 22.2.3.F.4.c, Zoning Permits, and the standards in this section.
4. A lawfully-established nonconforming use or structure may be supplemented with an accessory use or structure provided the accessory does not increase the nonconformity.

C. ACCESSORY USE TABLE STRUCTURE³⁰⁰

1. TABLE AS GUIDE

Table 22.4.5.C.4: Accessory Use Table, is established as a guide to identify the appropriateness of the more common accessory uses in each zoning district.

2. LISTED ACCESSORY USES

- a. Table 22.4.5.C.4: Accessory Use Table, lists the types of accessory uses, structures, and activities allowed in each of the zoning districts.
- b. If a specific accessory use is allowed by-right, the cell underneath the zoning district is marked with a "P".
- c. If a specific accessory use requires a conditional use permit in accordance with the standards in Section 22.2.3.D, Conditional Use Permit, the cell underneath the zoning district is marked with a "C".
- d. If the accessory use or structure is not allowed in a zoning district, the cell is marked with a ".".
- e. If there is a reference contained in the column entitled "Additional Standards," refer to the cited section for additional standards that apply to the specific accessory use.

3. UNIDENTIFIED ACCESSORY USES

- a. The Town Manager (or designee) shall evaluate potential accessory uses that are not identified in Table 22.4.5.C.4: Accessory Use Table, on a case-by-case basis, in accordance with the procedure in Section 22.4.3, Unlisted Uses.
- b. In determining the appropriate classification for an unlisted accessory use or structure, the Town Manager (or designee) shall apply the following standards:
 - i. The definition of "accessory use" (see Chapter 4: Definitions), and the general accessory use standards established in Section 22.4.5.D, General Standards for Accessory Uses;
 - ii. The additional regulations for specific accessory uses established in Section 22.4.5.E, Standards for Specific Accessory Uses.
 - iii. The purpose and intent of the zoning district in which the accessory use is located (see Section 22.3, Zoning Districts). Any potential adverse impacts the accessory use may have on other lands in the area, compared with other accessory uses permitted in the zoning district.
 - iv. The compatibility of the accessory use, including the structure in which it is housed, with other principal and accessory uses permitted in the zoning district.

4. ACCESSORY USE TABLE

Table 22.4.5.C.4: Accessory Use Table, specifies common types of accessory use types and the zoning districts where each type shall be permitted.

³⁰⁰ These prefatory sections are new material that introduce the structure and method of reading the accessory use table and direct code users to the interpretation procedure for unlisted uses.

TABLE 22.4.5.C.4: ACCESSORY USE TABLE ³⁰¹								
P = PERMITTED USES		C = CONDITIONAL USES			· = PROHIBITED USE			
USE TYPE	ZONING DISTRICT							ADDITIONAL STANDARDS ³⁰²
	RS-1	RS-8	RS-10	R-1	G&I	C	OSW	
Beach access walks, ramps, and steps ³⁰³	P	P	·	P	·	·	·	22.4.5.E.1
Boathouse ³⁰⁴	P	·	·	·	·	·	·	
Boat lift	P	P	P	P	·	·	P	22.4.5.E.2
Boat ramp	P	P	P	P	·	·	P	22.4.5.E.3
Child day care	·	·	·	C	P	P	·	22.4.5.E.4
Child day care, residential	C	·	·	C	·	·	·	22.4.5.E.5
Drive-through facility	·	·	·	·	·	C	·	22.4.5.E.6
Estuarine bulkhead	P	P	P	P	·	P	P ³⁰⁵	22.4.5.E.7
Garage	P	P	·	P	P	P	·	
Home occupations and home based businesses	P	P	P	P	·	·	·	22.4.5.E.9
Ice vending structure	·	·	·	·	·	C	·	
Ocean dune platform	P	P	·	P	·	·	·	22.4.5.E.10
Piers and docks	P	P	P	P	·	·	P	22.4.5.E.11
Sewage treatment drainfields	·	·	·	·	·	P	·	22.4.5.E.13
Storage of heavy trucks, trailers, semitrailers, and prefabricated cargo shipping containers	·	·	·	·	·	·	·	22.4.5.E.15
Swimming lessons	C	·	·	·	·	·	·	22.4.5.E.14
Swimming pool	P	P	·	P	·	·	·	
Tennis court	P	P	·	P	·	·	·	
Wind energy conversion facilities ³⁰⁶	C	C	C	C	C	C	·	22.4.5.E.16
Wireless telecommunications site	C	·	·	C	C	C	·	22.4.5.E.17

³⁰¹ This table is a new way to organize the existing accessory use standards that are relocated from the current zoning district standards. The two rows in yellow are suggested new accessory uses.

³⁰² As in the Permitted Uses Table, the right-most column will contain links to any additional use standards for each accessory use.

³⁰³ Swimming pools, tennis courts, garages, beach access walks, ramps, and steps, and ocean dune platforms are all named in current Section 36-202(b)(2) as “customary accessory uses. We suggest listing these separately to add clarity.

³⁰⁴ NOTE: Section 34-30 of the current code indicates that boathouses must be located in accordance with the zoning standards, but there are no specifics on this use type. Additional discussion is needed

³⁰⁵ NOTE: Current Section 36-208(b)(3) lists as a permitted use “Customary accessory uses and structures, including estuarine bulkheads...” Guidance needed on what other “customary” accessory uses are permitted in this district.

³⁰⁶ Section 36-176(b)(1)a lists the districts in which a wind generation facility may be established as a conditional use. Section 36-176 contains conflicting terms for wind facilities: “wind energy facilities” is in the title of the section, but the section text and definitions refer to “wind generation facilities.” We suggest an updated term, “wind energy conversion facilities,” be used instead of either of these.

TABLE 22.4.5.C.4: ACCESSORY USE TABLE ³⁰¹

USE TYPE	P = PERMITTED USES		C = CONDITIONAL USES				· = PROHIBITED USE		ADDITIONAL STANDARDS ³⁰²
	RS-1	RS-8	RS-10	R-1	G&I	C	OSW		
Wireless telecommunications site collocation	P	·	·	P ³⁰⁷	P	P	·	22.4.5.E.18	

D. GENERAL STANDARDS FOR ACCESSORY USES³⁰⁸**1. PERMITTED ACCESSORY USES AND STRUCTURES**

Permitted accessory uses and structures include those listed in this section and those that the Town Manager (or designee) determines meet the following:

- Are clearly incidental to an allowed principal use or structure;
- Are subordinate to and serving an allowed principal use or structure;
- Are subordinate in area, extent, and purpose to the principal use or structure;
- Contribute to the comfort, convenience, or needs of occupants, business or industry associated with the principal use or structure;
- Are located on the same lot as the principal building or the principal use served; and
- Are not sexually oriented businesses or sexually oriented business activities.

2. LIVING SPACE

- An accessory structure may contain living space, but may not constitute a dwelling unit that includes sleeping quarters and a stove or oven.
- Living space within an accessory structure shall be located outside the regulatory flood protection elevation.

3. LOCATED ON SAME LOT AS A PRINCIPAL USE

All accessory uses and structures shall be located on the same lot as the principal use or structure and not located within any street right-of-way, except as allowed by this Code for specific accessory uses and structures.

4. COMPLIANCE WITH ORDINANCE REQUIREMENTS

Accessory uses and structures shall conform to the applicable requirements of this Code, including this section, the district standards in Section 22.3, Zoning Districts, or the development standards in Section **Error! Reference source not found., Error! Reference source not found.**

5. DIMENSIONAL STANDARDS

Accessory structures, which include accessory buildings, shall meet the applicable zoning district dimensional standards and district standards, except as provided in Section 22.3.6, Encroachments.

6. EASEMENTS

Accessory structures may not be located in an easement unless the easement or easement holder expressly states the allowance in writing.

7. CONFLICT WITH DISTRICT OR USE-SPECIFIC STANDARDS

In the event the standards in this section conflict with district-specific standards in Section 22.3, Zoning Districts, or use-specific standards for a principal use in Section 22.4.4, Use-Specific Standards, the zoning or use-specific standards shall control.

8. ACCESSORY USES OR STRUCTURES IN A FLOOD HAZARD AREA

In addition to the general standards for all accessory uses in this section and any applicable standards for specific accessory uses in Section 22.4.5.E, Standards for Specific Accessory Uses, accessory uses

³⁰⁷ NOTE: The R-1 District standards specifically name “wireless facilities on publicly owned water towers” (current Section 36-205(c)(6)) as a conditional use. We suggest this instance be treated as a collocation.

³⁰⁸ This is a suggested new section that sets out general requirements for all accessory uses. The prohibition of living space is found in current Section 36-202(b)(2) and repeated in other sections of the current code, and is carried forward here as a general prohibition.

or structures located within a flood hazard area shall also comply with the standards in Section 28.5.2.H, Accessory Structures.

E. STANDARDS FOR SPECIFIC ACCESSORY USES

1. BEACH ACCESS WALKS, RAMPS, AND STEPS

Beach access walks, ramps, and steps shall not exceed four feet in width.

2. BOAT LIFTS

Boat lifts shall be subject to an approved CAMA permit.

3. BOAT RAMPS

Boat ramps shall comply with the following standards:

- a. All boat ramps shall be confined to shoreline of manmade canals, channels, and basins with little or no native vegetation and shall be located in the least vegetated area of the shoreline.
- b. The width of boat ramps, including side slopes, shall be limited to 35 feet.
- c. Dredging and filling shall be limited to the minimum amount necessary to construct the boat ramp surface, side slopes, walls, and moorings or dock pilings.
- d. All such projects shall require prior approval by the NC Division of Coastal Management.

4. CHILD DAY CARE

Child day care uses are permitted as an accessory use only in accordance with these standards, the maximum number of children served and the allowable age ranges described in Chapter 4: Definitions, and all applicable State requirements.

5. CHILD DAY CARE, RESIDENTIAL

- a. Residential child day care uses are permitted as an accessory use only in accordance with these standards, the maximum number of children served and the allowable age ranges described in Chapter 4: Definitions, and all applicable State requirements.
- b. A residential child day care use is not treated as a home occupation.

6. DRIVE-THROUGH FACILITY

Drive-through facilities shall be located on a lot of at least 2.5 acres in area and shall be located within or attached to the principal structure.

7. ESTUARINE BULKHEADS

Estuarine bulkheads must be permitted by all applicable local, state, and federal agencies having jurisdiction.

8. FENCES AND WALLS

Fences and walls shall comply with the following standards:

a. Setbacks

Fences and walls may be located within any required setback or yard.

b. Maximum Height

- i. No wall or fence shall exceed six feet in height within or abutting any residential district.
- ii. No fence shall exceed ten feet in height within any commercial district, or wireless telecommunications facility.

9. HOME OCCUPATION / HOME BASED BUSINESS³⁰⁹

a. Purpose and Intent

The Town adopts these standards and regulations to regulate the conduct of a business within residences to provide residents with an opportunity to use their homes to engage in small-scale business activities, and to establish standards to ensure that such home occupations/home based businesses are conducted as lawful uses, subordinate to the residential use of the property right to quiet enjoyment by neighbors.

b. Standards

³⁰⁹ This section carries forward the standards in Section 36-239 of the current code with no substantive changes.

Home occupations/home-based businesses are permitted in any residential dwelling unit subject to the following provisions:

- i. The use of the dwelling unit for the home occupation or home-based business shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and shall under no circumstances change the residential character of the structure or the property.
- ii. The business inside the dwelling unit shall not exceed 25 percent of habitable space of the primary residential structure.
- iii. 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 or home-based business.
- iv. No business storage or warehousing of material, supplies, or equipment shall be permitted outside of the primary dwelling unit.
- v. No toxic, explosive, flammable, combustible, corrosive, etiologic, radioactive, or other restricted materials shall be used or stored on the site in quantities greater than is reasonable and customary for any residential unit.
- vi. No display of products shall be visible from the street.
- vii. Home occupation or home-based business activities shall not impact or detract from the residential character of the neighborhood.
- viii. A home occupation or home-based business shall be subject to all applicable licenses, permits, and business taxes.

c. Prohibited Characteristics

No home occupation or home-based business shall be permitted that:

- i. Requires internal or external alterations inconsistent with the residential use of the building or the land;
- ii. Requires additional parking over and above that of residential use;
- iii. Is a nuisance, or creates a hazard to persons or property.

10. OCEAN DUNE PLATFORMS

Regulation of ocean dune platforms and their accompanying walkways and steps is intended to preserve the natural appearance and integrity of the frontal dune and provide minimal interference with the natural accretion of sand and growth of vegetation.

a. Generally

Ocean dune platforms shall comply with the following standards:

- i. Ocean dune platforms shall not exceed 200 square feet in area.
- ii. No supporting posts shall be placed within four feet of the east side of the frontal dune.
- iii. At the time of construction, ocean dune platforms shall be at least 18 inches and no more than 24 inches above the highest natural grade within the footprint of the proposed platform.
- iv. No part of the platform structure, except a flagpole, shall extend more than three feet above the deck.
- v. Permanently attached seating and areas incorporating permanently attached seating are not considered part of such ocean dune platforms.

b. Walkways and Steps

- i. One walkway and/or steps are permitted across the dunes provided that the walkway and/or steps are constructed in a manner which entails negligible alterations to any dune.
- ii. Walkways and steps shall not exceed four feet in width.
- iii. Walkways and steps constructed on the frontal dune will reasonably follow the contour of the dune and will be placed at least 18 inches and not more than 24 inches above natural grade.

c. Exceptions

Community recreation facilities may erect:

- i. Dune platforms not to exceed 500 square feet.
- ii. A sunshade on the dune platform provided:
 - 1) The footprint of the sunshade does not exceed 180 square feet;
 - 2) The sides are not enclosed;
 - 3) The height from the deck does not exceed 11 feet; and
 - 4) It is set back 25 feet from side property lines.
- iii. No platform containing a structure extending more than three feet above the platform deck shall be constructed within 1,000 feet of a like structure.

11. PIERS AND DOCKS

a. Generally

- i. Piers and docks must be permitted by the NC Division of Coastal Management or the U.S. Army Corps of Engineers, or U.S. Coast Guard, whichever is applicable.
- ii. The activity associated with the pier or dock must be permitted by the zoning district where the pier or dock is anchored.
- iii. No such permitted dock or pier shall extend into adjacent waters more than 75 feet from an estuarine bulkhead, mean high waterline, or a line connecting the outermost limits of the coastal wetlands on either side of the proposed structure, whichever is nearest the channel.
- iv. Only one pier or dock is permitted per building site.

b. Docks within a Town Canal

- i. No dock or piling shall protrude into the water more than four feet, measured perpendicular to the shore line. If a situation prevails where a narrow canal exists or an existing dock is opposite the proposed dock, both of which would affect the navigability of the adjacent waterway, then the Town Manager or a designee will determine the distance that a dock/bulkhead may protrude in the water.
- ii. Docks will be constructed parallel to the banks of the lagoon.
- iii. No dock, piling, or moored boat shall protrude into any area within 15 feet of the centerline of the waterway.
- iv. Dock and bulkhead designs shall meet the standards and Code requirements in existence at the time of granting of the permit.
- v. Continuous bulkheading of banks between the dock and the shore will be required extending eight feet from one end of the dock to eight feet beyond the other end, providing that if the bulkhead is to be used as a dock, a minimum of 32 feet of bulkhead must be installed.

12. RECREATIONAL VEHICLES

- a. Recreational vehicles located in a flood hazard area shall comply with the standards in Section 28.5.2.F, Recreational Vehicles.
- b. Recreational equipment parked or stored in any location shall not be used for living, sleeping, or housekeeping purposes.

13. SEWAGE TREATMENT DRAINFIELDS

- a. The lot shall be in existence and recorded at the time of adoption of this provision.
- b. The drainfield shall not exceed a total area of 14,400 square feet.
- c. There shall be no sewage treatment facilities other than the disposal drainfields.
- d. There shall be no aboveground appurtenances.
- e. A buffer strip shall be planted between the drainfield and/or repair area and any adjacent right-of-way, in accordance with the technical requirements of Section 22.5.3, Landscaping Standards, and maintained.
- f. Maintenance and operation of the drainfields, in compliance with State, County and Town laws, rules and regulations, shall be a continuing condition of approval; failure to do so shall result in revocation of approval of the development by the Town, and the owner and/or operator of the drainfield shall cease all use of the drainfield until such use is authorized by the Town.

14. SWIMMING LESSONS

- a. Swimming lessons shall subject to all applicable State and local regulations including training, experience, and licensing requirements for swimming pools, swimming lessons, lifeguards and swimming instructors.
- b. No swimming lesson shall be conducted earlier than 8:00 a.m. nor later than 6:00 p.m.
- c. Any need for additional parking generated by the conduct of swimming lessons shall be met by off-street parking.

15. TRUCKS, TRAILERS, SEMITRAILERS, AND PREFABRICATED CARGO SHIPPING CONTAINERS

- a. Trucks, trailers, semitrailers, (self-propelled or detached) and prefabricated cargo shipping containers or similar containers shall not be used as a storage or other type of accessory structure in any zoning district.
- b. Nothing in this section shall apply to any vehicle stored in compliance with applicable Town codes. This regulation shall not be interpreted to prohibit the timely unloading and loading of commercial trailers in any district.

- c. Recreational equipment parked or stored in any location shall not be used for living, sleeping, or housekeeping purposes.

16. WIND ENERGY CONVERSION FACILITIES³¹⁰

a. Permit

i. Conditional Use Permits Required

- 1) No wind energy conversion facility shall be constructed unless a permit has been issued to the facility owner that approves construction of the facility under this chapter.
- 2) Any physical modification to an existing and permitted wind energy conversion facility that materially alters the size and/or type of wind turbine or other equipment shall require a permit modification under this chapter.
- 3) Like-kind replacements shall not require a permit modification.

ii. Expiration

A conditional use permit issued pursuant to this section shall expire if the improvements permitted are not completely constructed within 24 months of the date of the approval of a building permit.

b. Development Standards

i. Location

- 1) No more than one free standing wind energy conversion facility shall be permitted as an accessory use to a structure.
- 2) No more than one attached wind energy conversion facility shall be permitted as an accessory use to a structure.
- 3) For properties that are divided by a street or canal and are under the same ownership, the wind energy conversion facility shall be located on the same side of the street or canal which the structure receiving power from the wind energy conversion facility is located.

ii. Design

- 1) Free standing wind energy conversion facilities shall conform to applicable industry standards, including those of the American National Standards Institute.
- 2) All structural, electrical, and mechanical components of the wind energy conversion facility shall conform to relevant and applicable local, state, and national codes including the North Carolina State Building Code and National Electric Code.
- 3) All wind energy conversion facilities shall be constructed to withstand sustained winds of at least 130 miles per hour.
- 4) All wind energy conversion facilities shall be equipped with a braking device and power disconnect to keep the rotor stationary while the turbine is being inspected and/or maintained. The braking device shall also be used for winds exceeding optimal speeds as defined by the manufacturer.
- 5) All wind energy conversion facilities shall be constructed according to the local electric service provider's standards for power disconnect and grid connections.
- 6) Wind energy conversion facilities shall be finished with a neutral color (not white).

iii. Lighting

Wind energy conversion facilities shall not be artificially lighted.

iv. Signage

- 1) Wind energy conversion facilities shall not display signage (including flags, streamers or decorative items).
- 2) One safety sign may be attached to the wind generation facility and shall not exceed one square foot in total area at a height not to exceed six feet.³¹¹

³¹⁰ Section 36-176 is carried forward here with minor text edits and formatting revisions for clarity, but no substantive change. As noted in a previous footnote, Section 36-176 contains conflicting terms for wind facilities: “wind energy facilities” is in the title of the section, but the section text and definitions refer to “wind generation facilities.” We suggest an updated term, “wind energy conversion facilities,” be used instead of either of these.

v. Noise and Vibration

- 1) Wind energy conversion facilities shall comply with the standards established in Section 36.6.5, Noise, of this Town Code.
- 2) No vibration shall be detectable at adjacent property lines.

c. Dimensional Standards

i. Height

Wind energy conversion facilities shall observe a maximum height of 45 feet measured from the lowest adjacent grade to the highest point of the facility, including any attachments, such as a turbine rotor, or tip of the turbine blade when it reaches its highest elevation.

ii. Setbacks

- 1) The base of all wind energy conversion facilities shall be located at least one foot from the nearest property line for every one foot of proposed height.
- 2) For rear setback requirements for oceanfront properties, the base of the wind energy conversion facility shall be located at least one foot from the vegetation line for every one foot of proposed height.

d. Review of Applications

i. Determination of Completeness

An application shall not be deemed complete until all of the following required items have been submitted:

- 1) A narrative describing the proposed wind energy conversion facility, including an overview of the project;
- 2) The proposed total rated capacity of the wind energy conversion facility;
- 3) Documentation signed and sealed by a North Carolina professional engineer that the wind energy conversion facility can withstand sustained winds of at least 130 miles per hour;
- 4) The proposed representative type and height of the wind turbine to be constructed; including its generating capacity, dimensions, and respective manufacturers, and a description of ancillary facilities;
- 5) A site plan showing the location of all structures and properties, demonstrating compliance with the applicable setback requirements;
- 6) Certification of compliance with applicable local, State, and federal regulations;
- 7) Other relevant information as may be reasonably requested by the Town of Southern Shores to ensure compliance with the requirements of this section; and
- 8) Signature of the applicant.

ii. Changes to Applications

- 1) Throughout the permit process, the applicant shall promptly notify the Town of any proposed changes to the information contained in the permit application that would alter the project.
- 2) Changes to the approved application that do not materially alter the initial site plan may be approved administratively.

iii. Conditions

The Town Council may place reasonable conditions on the issuance of a conditional use permit pursuant to this section regarding public safety, land use, or zoning issues, including, but not limited to, aesthetics, landscaping, land-use based location priorities, structural design, and setbacks.

17. WIRELESS TELECOMMUNICATIONS SITE ³¹²

³¹¹ This subsection has been revised to be Reed compliant. References to sign content (“advertising”) have been removed to withstand strict scrutiny.

³¹² Current Section 36-175 (except components which refer to collocation and eligible facilities requests) has been carried forward here with minor text edits and formatting revisions for clarity, but no substantive change. The definitions are relocated to Chapter 4, Definitions. The language is also amended to address changes associated with ZTA-18-02. The language pertaining to collocation, eligible facilities, and small wireless facility

All wireless telecommunications sites, including collocations on existing towers that constitute a substantial modification to an existing tower shall comply with the requirements in this section:

a. Applicable Requirements

All development subject to the standards in this section shall also comply with all applicable federal, State and local laws, including:

- i. Federal Communications Commission standards, rules, and regulations;
- ii. Federal Aviation Administration standards, rules and regulations;
- iii. Section 160-400.50 of the North Carolina General Statutes et seq.;
- iv. The NC State Building Code; and
- v. Accepted industry standards for wind loading, base stabilization, and other critical engineering characteristics as defined by American National Standards Institute (ANSI), Telecommunications Industry Association (TIA), and Electronic Industry Alliance (EIA) 222-G, or its successors.

b. Where Permitted

Wireless telecommunication sites may only be permitted as an accessory use to an existing principal use other than a residential dwelling unit.

c. Collocation Required

- i. Collocation of new antennas, wireless facilities, and other equipment on an existing telecommunications site within the applicant's search ring shall be required (instead of establishing a new wireless telecommunications site) whenever reasonably feasible.
- ii. Collocation shall not be considered as reasonably feasible if:
 - 1) An applicant can show it is technically or commercially impractical for the applicant to collocate, or
 - 2) If the owners of all wireless telecommunication sites within the applicant's search ring where collocation would be technically practical are unwilling to enter into a contract for such use at fair market value.

d. Development Standards

i. Location

1) Short Telecommunications Towers and Stealth Structures

Short telecommunications towers and stealth structures incorporated within another structure shall not be located within 250 feet of any other wireless support structure located within the expected geographic antenna coverage area of the proposed wireless support structure unless the applicant can show that locating the structure within the prescribed distance is necessary to insure adequate coverage and capacity. In the case of a stealth structure incorporated within another structure, the TownCouncil may reduce or disregard the distance requirement stated herein.

2) Tall Telecommunications Towers

Tall telecommunications towers shall not be located within one-half mile of any other tall telecommunications tower or within 250 feet of any other wireless support structure located within the expected geographic antenna coverage area of the proposed telecommunication tower.

ii. Design

1) Structure Type

- a) Stand-alone wireless support structures and pole-like stealth structures shall be monopoles.
- b) Stealth structures designed to look like other structures or naturally occurring things, i.e. a tree, or that are incorporated within or upon any existing or permitted structure are allowed if otherwise consistent with this Ordinance.

requests is located in the section immediately following this one and has also been modified to include language from ZTA-18-02.

- c) Wireless support structures using other designs, including, but not limited to guyed towers and lattice type towers shall not be permitted.

2) Height

The height of a wireless support structure includes any attached or proposed to be attached wireless facilities and shall be measured vertically from the pre-disturbance ground level at the center of the structure. The height shall not include emergency communications antennas or lightning rod(s) attached to the structure. Wireless support structure height shall comply with the following standards:

- a) In no case shall a wireless support structure of any kind or any attached wireless facilities exceed 195 feet in height.
- b) The height of tall telecommunications towers shall not exceed 195 feet.
- c) The height of short telecommunications towers shall not exceed 70 feet.
- d) The height of stealth structures incorporated within or upon an otherwise permitted structure shall not exceed the height allowed for the structure.
- e) The height of stealth structures designed to look like another structure or naturally occurring thing, i.e. a tree, shall not unreasonably exceed the height allowed for the type of structure or the typical thing they are designed to look like. The reasonableness of excess height shall be considered on an application-by-application basis and shall take into account the totality of the circumstances including specifically, the height needed to provide communications services and the wireless support structure's visual consistency with the area in which it will be located.

3) Tower Configuration

a) Short Telecommunications Towers

Short telecommunications towers including the structure and fenced compound shall be designed to accommodate the wireless facilities of at least one provider plus space for emergency communication antennas used by the Town's police and fire service provider.

b) Tall Telecommunications Towers

Tall telecommunications towers including the structure and fenced compound shall be designed to accommodate collocation of the wireless facilities of at least three providers plus space for emergency communication antennas used by the Town's police and fire service provider.

4) Setbacks

- a) Unless otherwise provided by this Ordinance, the dimensions of the entire lot shall be used to determine if a wireless telecommunications site meets the dimensional and setback requirements of this section. An existing use or structure on the same lot shall not preclude locating a wireless telecommunications site on a lot so long as compliance with Section 22.4.5.E.17.a, Applicable Requirements, is maintained.
- b) The base of a wireless support structure shall be located at least one foot from the nearest property line for every one foot of proposed height.
- c) In the case of stand-alone stealth structures only, the Town Council may, in its discretion, consider publicly-maintained roadways as providing additional property for calculation of setbacks and/or reduce the setback requirement from this 1:1 setback ratio to a setback of one-third of the height of the proposed structure.
- d) The 1:1 setback requirement may only be reduced for stand-alone stealth structures to one-third of the height of the proposed structure when a North Carolina registered professional engineer certifies that the wireless support structure's fall zone is equal to or less than the setback requested and that the structure is designed to collapse within the setback requested provided no dwelling unit is located or can be constructed within the fall zone of the wireless support structure, or where a dwelling unit is located or can be constructed within the fall zone of the wireless support structure, all property owners within the fall zone have agreed in writing or through sworn testimony that they are willing to accept the risks of the reduced setback.
- e) When stealth structures are incorporated within or upon an existing or otherwise permitted structure, the setbacks associated with the structure shall apply.

- f) Telecommunications accessory equipment structures, any equipment compounds and any other structures shall be set back a minimum of 50 feet from all property lines and rights-of-way. Where visual impact and public safety concerns will not be affected, the Town Manager may reduce the setback to no less than 15 feet.
- 5) Aesthetics**
- a) Telecommunication towers, wireless facilities, accessory equipment structures and equipment compounds shall be constructed and maintained to minimize visual obtrusiveness in color and finish.
 - b) Stealth structures shall be consistent with the overall appearance of the Town and of the area of Town in which they are located.
 - c) Accessory equipment structures, equipment compounds and related structures at telecommunication tower sites shall be of such design, materials and colors to blend with surrounding structures.
 - d) Electrical and telephone lines serving a wireless telecommunication site shall be installed underground from the point of existing service.
- iii. Fencing**
- 1) All telecommunication towers, their accessory equipment structures and equipment compounds shall be enclosed by chain link fencing and/or wall, not less than six feet nor more than ten feet in height.
 - 2) Fences may be equipped with anti-climbing devices.
 - 3) The gate into the fenced area shall be located so that it is not easily visible from a street or adjacent property.
- iv. Screening**
- 1) The base of a wireless support structure, to a minimum height of ten feet above average grade at the tower base, shall not be visible from any publicly owned or maintained roadway.
 - 2) Screening is required along all exterior sides of the fence described in Section 22.4.5.E.17.d.iii. Fencing, excluding the gate.
 - 3) Screening shall be a minimum width of ten feet with two staggered rows of planting material placed ten feet on center, that are a minimum of five feet in height when planted, and that are expected to reach a height of eight feet within three years.
 - 4) Suitable plant types shall be those recommended by the U.S. Department of Agriculture to achieve a mature growth height of eight to ten feet in the coastal area.
 - 5) The Town Manager may waive or modify these requirements where existing trees, vegetation and/or structures provide suitable screening and buffering.
- v. Lighting**
- 1) Telecommunication towers shall be lighted only if specifically required by the Federal Aviation Administration, in which case Federal Aviation Administration minimum lighting requirements shall be applied.
 - 2) When lighting is required by the Federal Aviation Administration, strobe lights shall be avoided unless specified by Federal Aviation Administration. When strobe lights are required on telecommunication towers, a dual lighting system of white strobes for daytime lighting and a red flashing light atop the tower for nighttime lighting shall be used unless other lighting is specifically required by the Federal Aviation Administration, the U.S. Fish and Wildlife Service or any state or federal agency having regulatory authority over the applicant.
 - 3) Except as described in subsection 2) above, all lighting at a wireless telecommunications site shall be shielded and shall comply with the provisions of Section 22.5.5, Exterior Lighting.
- vi. Signage**

- 1) Wireless telecommunication sites shall not display signage, logos, symbols or any messages except for safety signs erected or required by governmental bodies, public utilities or civic associations with the approval of Town Council.³¹³
- 2) A safety sign, not visible from a public right-of-way or adjacent residences, shall be posted on the fence gate identifying the current owner of the tower, emergency contact person or agency, and applicable contact numbers.
- 3) This provision shall not preclude the applicant from posting any additional signage required by federal or State law.

vii. Noise

- 1) Sound emissions, such as alarm bells, buzzers and the like, shall not be permitted.
- 2) Nothing contained in this section shall prohibit the reasonable use of emergency generators at wireless telecommunications sites.

viii. Outdoor Storage

Outdoor storage of equipment or related items shall be prohibited at all wireless telecommunication sites.

e. Review of Applications³¹⁴

i. Review Criteria

The Town will use the following criteria in its review of an application for any wireless telecommunication site, telecommunication tower, wireless facility, antennae or accessory structure.

- 1) The proposed application meets or exceeds the standards of this section.
- 2) The use will not materially endanger the public health, safety or welfare if located where proposed and developed according to the plan submitted.
- 3) The required conditions, specifications, and actions described in this chapter have been met.
- 4) The location and character of the facility will be in harmony with the area in which it is to be located.

ii. Fees

- 1) The Town may fix and charge an application fee, consulting fee, or other fee associated with the submission, review, processing, and approval of an application to site new wireless support structures or to substantially modify wireless support structures or wireless facilities that is based on the costs of the services provided and does not exceed what is usual and customary for such services. Any charges or fees assessed by the Town on account of an outside consultant shall be fixed in advance and incorporated into a permit or application fee and shall be based on the reasonable costs to be incurred by the Town in connection with the regulatory review authorized under this section. The Town may incorporate such fees into its generally adopted fee schedule.
- 2) The Town may impose additional reasonable and cost based fees for costs incurred should an applicant amend its application.
- 3) On request, the amount of the consultant charges incorporated into the permit or application fee shall be separately identified and disclosed to the applicant.
- 4) The fee imposed by the Town for review of the application may not be used for either of the following:
 - a) Travel time or expenses, meals, or overnight accommodations incurred in the review of an application by a consultant or other third party; or
 - b) Reimbursements for a consultant or other third party based on a contingent fee basis or a results-based arrangement.

iii. Conditions

³¹³ This subsection has been revised to be *Reed* compliant. References to commercial- and non-commercial signage have been removed to withstand strict scrutiny.

³¹⁴ Current Section 36-175(f), Annual Review, has been removed as suggested by staff and reflected in the Code Assessment Input Summary Matrix, Item #36.28.

- 1) The Town Manager may place reasonable conditions on the issuance of a conditional use permit pursuant to this section regarding public safety, land use, or zoning issues, including, but not limited to, aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.
- 2) The Town may condition approval of an application for a new wireless support structure on the provision of documentation prior to the issuance of a building permit establishing the existence of one or more parties, including the owner of the wireless support structure, who intend to locate wireless facilities on the wireless support structure.
- 3) The Town shall not deny an initial land-use or zoning permit based on such documentation.

iv. Decisions

The Town shall issue a written decision approving or denying an application under this section within a reasonable period of time consistent with the issuance of other land-use permits in the case of other applications, each as measured from the time the application is deemed complete.

v. Expiration of Permits

A conditional use permit or zoning permit issued pursuant to this section shall expire if the improvements permitted are not completely constructed within 24 months of the date of the approval of a building permit.

vi. Waiver or Modification of Requirements

If upon the review of any application submitted pursuant to this section, the Town Manager determines that denial of a permit based on any requirement or requirements of this section as applied to the application before the Town Manager may be contrary to federal or state law, the Town Manager may in its sole discretion vary, modify or disregard any such requirement in a manner which complies with the relevant law. The Town Manager may continue any public hearing on a permit application for a reasonable time to consider such a determination and its actions thereon.

f. Application Requirements

i. Requirements for All Wireless Telecommunications Applications

Any person that proposes to construct or substantially modify a wireless telecommunications site (including construction of wireless support structures or substantial modifications of wireless support structures) or who proposes to collocate or make an eligible facilities request as provided in Section 22.4.5.E.18, Wireless Telecommunications Site Collocation, shall submit a completed application with the necessary copies to the Town Planning Department. An application shall not be deemed complete until all of the following items required have been submitted:

- 1) A scaled site plan, scaled elevation view, and supporting drawings, calculations and other documentation, prepared and sealed by appropriate licensed professionals, showing the location and dimensions of all improvements for the wireless telecommunications site including topography, wireless support structure height requirements, setbacks, access driveways or easements, parking, fencing, landscaping, adjacent uses and any other information necessary to assess compliance with this chapter and compatibility with surrounding uses.
- 2) Documentation, prepared and sealed by a professional engineer registered in North Carolina, that the proposed wireless support structure and any attached wireless facilities and antennae meet or exceed accepted industry standards for wind loading, base stabilization and other critical engineering characteristics required by this Ordinance, the North Carolina Building Code and the accepted industry standards for wind loading, base stabilization and other critical engineering characteristics as defined by American National Standards Institute (ANSI), Telecommunications Industry Association (TIA) and Electronic Industry Alliance (EIA) 222-G or its successors.
- 3) Documentation, prepared and sealed by a professional engineer registered in North Carolina, that the proposed wireless support structure and any attached wireless facilities and antennas do not exceed the minimum height necessary to accomplish the purpose for which they are constructed.
- 4) Documentation, prepared and sealed by a professional engineer registered in the state, to demonstrate that the wireless support structure has sufficient structural integrity for its

intended uses. Documentation shall include a certification that all wireless support structures and attached wireless facilities shall be capable of withstanding sustained winds of at least 135 miles per hour whether or not all of the collocations the structure has been designed to accommodate have been attached to the structure.

- 5) A copy of the lease agreement with the property owner along with copies of any easement agreements necessary for ingress, egress and use of the property.
- 6) Documentation consisting of a certificate of insurance verifying the existence of general liability insurance coverage of at least \$5,000,000.00 at no cost to the Town. The certificate shall contain a requirement that the insurance company notify the Town 30 days prior to the cancellation, modification, or failure to renew the insurance coverage required.
- 7) Any other documentation necessary to ensure compliance with this section as well as applicable federal and state laws.

ii. **Additional Application Requirements for Wireless Telecommunications Sites**

In addition to the requirements listed above, applications proposing to construct or substantially modify a wireless telecommunications site (including construction of wireless support structures or substantial modifications of wireless support structures) shall include the following:

- 1) Documentation showing the reasonable feasibility of collocating new antennas, wireless facilities and equipment on an existing structure or structures within the applicant's search ring.
 - a) If an applicant contends that collocation on an existing structure is not reasonably feasible he shall submit documentation that collocation is technically or commercially impractical or that the owner of the telecommunication tower is unwilling to enter into a contract for such use at fair market value.
 - b) At a minimum, technical documentation shall include a map of the search ring displaying all potential collocation sites and stating why each is suitable or unsuitable.
 - c) Where an applicant contends that the owner or an existing wireless support structure or other feasible structure will not contract for its use for fair market value, the applicant must submit, in writing (1) a declaration from owners of all technically feasible collocation sites stating the price at which they are willing to negotiate space; (2) evidence that the applicant has tried in good faith to negotiate market value terms for the collocation at each site and (3) a licensed appraiser's certified opinion on the market value of collocation at each technically feasible collocation site.
- 2) Documentation that Federal Aviation Administration's minimum lighting standards have been met for the wireless telecommunications site.
- 3) Documentation that the proposed wireless telecommunications site will comply with all applicable FCC rules and regulations.
- 4) Documentation, prepared and sealed by a professional engineer registered in the state, stating the number of collocations that the proposed wireless support structure is designed to accommodate once constructed.
- 5) A copy of the approved National Environmental Policy Act of 1969 (NEPA) compliance report for all wireless support structures, antennas, wireless facilities, accessory structures or equipment proposed for the site, if such report is required to be produced pursuant to federal or state law.
- 6) Documentation from the Town's police and fire service providers regarding the number and type of emergency communication antennas which are necessary for the wireless telecommunications site to support such communications along with a certification from a professional engineer registered in the state stating that the wireless telecommunications site is designed to support the attachment of the necessary emergency communication antennas.
- 7) A memorandum of understanding regarding removal of abandoned structures and equipment located at the proposed wireless telecommunication site.
 - a) Any wireless telecommunications site that is not operated for 180 continuous days in a 12-month period shall be considered abandoned.
 - b) The owner of an abandoned wireless telecommunications site shall be responsible for the removal of all structures and equipment on the site within 90 days of receipt of such notification by the Town.
 - c) Failure to remove abandoned equipment will result in its removal by the Town at the owner's expense.

- d) In its discretion, the Town may condition approval of a permit for building of the proposed wireless support structure on the applicant providing a bond or letter of credit sufficient to allow the Town to remove the proposed structure if it is abandoned and not removed within the allowed time period by the applicant.

18. WIRELESS TELECOMMUNICATIONS SITE COLLOCATION³¹⁵

Collocation of new antennas, wireless facilities and other equipment on an existing wireless support structure or structures within the applicant's search ring shall be required whenever reasonably feasible. Collocation is not reasonably feasible if an applicant can show it is technically or commercially impractical for the applicant to collocate or if the owners of all of the telecommunication towers within the applicant's search ring where collocation would be technically practical are unwilling to enter into a contract for such use at fair market value.

a. Application Requirements

- i. For all collocations and eligible facilities requests, an application is required.
- ii. Section 22.4.5.E.17.f.i, Requirements for All Wireless Telecommunications Applications, shall apply to applications for collocation or eligible facilities requests.
- iii. No application or approval is required for routine maintenance and this section shall not be construed to limit the performance of routine maintenance on wireless support structures and facilities, including in-kind replacement of wireless facilities. Routine maintenance includes activities associated with regular and general upkeep of transmission equipment, including the replacement of existing wireless facilities with facilities of the same size.

b. Review of Applications

i. Determination of Completeness

- 1) A collocation or eligible facilities request application is deemed complete unless the Town provides notice that the application is incomplete in writing to the applicant within 45 days of submission or within some other mutually agreed upon time frame.
- 2) The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The Town may deem an application incomplete if there is insufficient evidence provided to show that the proposed collocation or eligible facilities request will comply with federal, state, and local safety requirements.
- 3) The Town may not deem an application incomplete for any issue not directly related to the actual content of the application and subject matter of the collocation or eligible facilities request.
- 4) An application is deemed complete on resubmission if the additional materials cure the deficiencies indicated.

ii. Decision

1) Eligible Facilities Request

- a) The Town may not deny and shall approve any eligible facilities request as provided in this section.
- b) The Town shall issue a written decision approving an eligible facilities request application within 45 days of such application being deemed complete.

2) Collocation

For a collocation application that is not an eligible facilities request, the Town shall issue its written decision to approve or deny the application within 45 days of the application being deemed complete.

iii. Fees

- 1) The Town may impose a fee not to exceed \$1,000.00 for technical consultation and the review of a collocation or eligible facilities request application.
- 2) The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of a collocation application.

³¹⁵ The components of current Section 36-175 which refer to collocation and eligible facilities requests have been carried forward here with minor text edits and formatting revisions for clarity, but no substantive change.

- 3) The Town may engage a third-party consultant for technical consultation and the review of a collocation application. The Town may incorporate such fees into its generally adopted fee schedule.
- 4) The fee imposed by the Town for the review of the application shall not be used for travel expenses incurred in a third-party's review of a collocation application or for reimbursement for a consultant or other third party based on a contingent fee basis or results-based arrangement.

22.4.6. TEMPORARY USES³¹⁶

A. PURPOSE

This section allows for the establishment of specific temporary uses of limited duration, provided that such uses do not negatively affect adjacent land, and provided that such temporary uses are discontinued upon the expiration of a set time period. Temporary uses shall not involve the construction or alteration of any permanent building or structure.

B. APPLICABILITY

The standards in this section apply to non-permanent uses that take place on a temporary basis whether on the same site or in different locations in the jurisdiction. The activities listed in this section require the issuance of a temporary use permit.

C. GENERAL STANDARDS FOR TEMPORARY USES

All temporary uses shall comply with the following general standards, unless otherwise specified in this Ordinance:

1. GENERAL STANDARDS

- a. Secure written permission from the landowner;
- b. Obtain the appropriate permits and licenses from the Town and other agencies;
- c. Comply with the requirements for temporary signs in Section 22.5.4, Signage Standards;
- d. Meet public utility and Town requirements for proper connection to water, sewer, electrical and other utility service connections, as applicable;
- e. Not violate the applicable conditions of approval that apply to a site or use on the site;
- f. Not result in a situation where the principal use, if present, fails to comply with the standards of this Ordinance;
- g. Contain sufficient land area for the temporary use and for the parking and traffic movement associated with the temporary use, without impacting environmentally sensitive lands;
- h. Not remain in place for more than 90 days if located within a special flood hazard area;
- i. Provide adequate on-site restroom facilities; and
- j. Cease all outdoor activities within 500 feet of a residential use by 10:00 pm.

2. GENERAL CONDITIONS

In approving a temporary use permit, the Town Manager (or a designee) is authorized to impose any of the following general conditions upon the premises benefited by the permit as may be necessary to reduce or minimize any potential adverse impacts upon other property in the area, as long as the condition relates to a situation created or aggravated by the proposed temporary use. The Town Manager (or a designee) is authorized, where appropriate, to require:

- a. Provision of temporary parking facilities, including vehicular access and egress;
- b. Control of nuisance factors, such as but not limited to, the prevention of glare or direct illumination of adjacent properties, noise, vibrations, smoke, dust, dirt, odors, gases, and heat;
- c. Regulation of placement, height and size, location of equipment and open spaces, including buffer areas and other yards;
- d. Provision of sanitary and medical facilities;
- e. Provision of solid waste collection and disposal;
- f. Provision of security and safety measures;

³¹⁶ This section replaces Section 36-168 of the current code with more details on the range of commercial uses, references to a temporary use permit, and standards for temporary healthcare structures, which must be accommodated in accordance with the General Statutes.

- g. Use of an alternate location or date;
- h. Modification or elimination of certain proposed activities;
- i. Regulation of operating hours and days, including limitation of the duration to a shorter time period than requested or specified in this subsection; and
- j. Submission of a financial guarantee to ensure that any temporary use will be removed from the lot or site within a reasonable time and the lot or site will be restored to its former condition.

3. TEMPORARY USES OR STRUCTURES IN A FLOOD HAZARD AREA

In addition to the general standards for all temporary uses in this section and any applicable standards for specific temporary uses in Section 22.4.6.D, Standards for Specific Temporary Uses, temporary uses or structures located within a flood hazard area shall also comply with the standards in Section 28.5.2.G, Temporary Structures.

D. STANDARDS FOR SPECIFIC TEMPORARY USES

1. TEMPORARY CONSTRUCTION OFFICES

- a. Temporary construction offices may be permitted in any district to provide on-site offices for the management and security of construction projects only.
- b. A temporary construction office must be terminated no more than 30 days from the date that construction is completed.

2. TEMPORARY HEALTH CARE STRUCTURE

One temporary health care structure is permitted on a lot with a single-family detached dwelling, subject to the following standards:

a. Structure

A temporary health care structure is one that:

- i. Is transportable and primarily assembled at a location other than the site of installation;
- ii. Is located on a lot with an existing single-family detached dwelling;
- iii. Is limited to one occupant who is a mentally or physically impaired person related to the caregiver;
- iv. Is used by a caregiver or legal guardian in providing care for one mentally or physically impaired person on property owned or occupied as the caregiver's or guardian's residence;
- v. Has no more than 300 square feet of gross floor area;
- vi. Is connected with water, sewer and electricity by branching service from the single-family detached dwelling;
- vii. Has the same street address and mailbox as the existing single-family detached dwelling;
- viii. Uses the same driveway as the existing single-family dwelling, unless the structure is accessed from a right-of-way not used by the dwelling (e.g., a rear alley or separate street access on a corner or through lot);
- ix. Meets the dimensional standards of the zoning district for a single-family detached dwelling; and
- x. Meets the applicable provisions in the NC State Building Code; however, is not located on a permanent foundation.

b. Need and Relationship

- i. The occupant of the structure must be a mentally or physically impaired person that is a resident of the State who requires assistance with two or more activities of daily living (bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting, and eating) as certified in writing by a physician licensed to practice in this State.
- ii. The caregiver must be an individual 18 years of age or older who provides care for the mentally or physically impaired person and is a first or second degree relative of the impaired person. A first or second degree relative is a spouse, lineal ascendant, lineal descendant, sibling, uncle, aunt, nephew or niece, including half, step, and in-law relationships.

c. Permit Conditions

- i. Once the applicant provides sufficient proof that the temporary health care structure meets all standards, then the temporary structure shall be permitted for a period of 12 months.
- ii. The applicant may renew the zoning permit for a 12-month period and continue to renew it provided the applicant provides evidence of continued need and compliance with these standards.
- iii. The Town may make permit renewal and periodic inspections of the temporary structure at reasonable times convenient to the applicant.
- iv. No signage shall be permitted on the exterior of the temporary structure or on the lot that identifies or promotes the existence of the structure.
- v. The temporary structure shall not be subdivided or otherwise separated in ownership from the single-family detached dwelling.
- vi. The temporary structure shall be removed within 60 days if the impaired occupant is no longer receiving or in need of assistance.
- vii. The temporary use permit may be revoked or other enforcement actions taken if these standards are violated.

3. TEMPORARY REAL ESTATE OFFICES

- a. Temporary real estate sales offices may be permitted in any residential district for on-site sales of land or residences located only within the subdivision where the office is located.
 - b. A temporary real estate office must be terminated no more than 30 days from the date that 80 percent of the lots or residences within the subdivision are sold.
- 4. TEMPORARY STORAGE UNITS**
- a. Temporary storage units, which are enclosed on all sides and can be securely locked for the purpose of inhibiting theft or unauthorized entry, may be permitted in conjunction with a construction, renovation or rehabilitation (but not demolition) project where a building permit issued is for the construction, renovation or rehabilitation of not less than 20,000 square feet of floor space.
 - b. No advertising signage is permitted on such storage units.
 - c. The location and number of temporary storage units shall be shown on the site plan and all temporary storage units shall be removed before any certificate of occupancy is issued.
- 5. TOWN FACILITIES**
- Within any zoning district, the use of land by the Town or its agents to support the construction, repair, replacement, renovation, remodel, rehabilitation and maintenance of Town owned, leased, operated or maintained facilities, which include, but are not limited to buildings, streets, utilities, beach accesses, multi-use paths and canals, for a temporary period which reasonably corresponds to the duration of the project.

22.5. DEVELOPMENT STANDARDS

This section sets out the development and design standards for new development and redevelopment in the Town.

22.5.1. ACCESS STANDARDS

A. ACCESS TO MAIN THOROUGHFARES³¹⁷

- 1. Due to the limited amount of land available for major thoroughfare rights-of-way and the traffic hazard involved in frequent entrances and exits from a major thoroughfare, driveways and street intersections along main thoroughfares shall be kept to the minimum absolutely necessary.
- 2. Any corner lot abutting a major thoroughfare (i.e., U.S. Highway 158, NC 12, or Dogwood Trail (east and north-south)) that also abuts any other dedicated public right-of-way, shall be accessed only by the lower order right-of-way rather than the major thoroughfare, unless an access cannot be established due to topography, waterways, nonnegotiable grades or other unavoidable conflicts.

B. DRIVEWAYS SERVING MULTI-FAMILY AND NONRESIDENTIAL USES

The following standards as well as the applicable standards in Section 22.5.2.C.3, Vehicular Accessways, apply to parking lots and lot accessways serving multi-family and non-residential uses.

- 1. On all corner lots, no vehicular openings shall be located at closer than 15 feet from the point of intersection of the established street right-of-way lines.
- 2. No entrance or exit, whether on a corner lot or not, shall exceed 30 feet in width at the property line, or 40 feet at the curbline.
- 3. There shall be a minimum distance between one-way driveways of 50 feet measured along the curbline.³¹⁸
- 4. Where a driveway meets the paved street within the public right-of-way, there may not be more than two flares or aprons constructed, and the sum of the two flares shall not exceed the driveway width by more than five feet.
- 5. In no instance shall the sum of all driveway-related construction within the Town right-of-way associated with a single lot exceed twenty feet.
- 6.

C. DRIVEWAYS SERVING SINGLE-FAMILY RESIDENTIAL USES

³¹⁷ This section carries forward the standards in Section 36-169 with no substantive changes.

³¹⁸ Carries forward the standards in Section 36-163(2)(c) with no substantive changes.

The following standards as well as the applicable standards in Section 22.5.2.C.3, Vehicular Accessways, apply to lot accessways serving single-family, duplex, and townhouse uses.

1. Single-family residential home sites and site plans shall include a driveway with a minimum width of eight feet extending from the front property line to the principal structure, as well as required external parking spaces. Where a driveway is not shown on a proposed site plan, a line that is the shortest distance from the building to the front property line shall be drawn and a second, parallel line, eight feet wide to scale, shall be drawn, demarking the required driveway to calculate contribution of the driveway toward lot coverage.
2. Home sites and site plans shall not require vehicles to back into the public right-of-way. Home sites and site plans shall include a minimum ten-foot by ten-foot area adjacent to the required driveway to allow for vehicle turnaround.

D. LOT FRONTAGE³¹⁹

Development requiring issuance of a building permit shall not take place on a lot with less than 30 feet of frontage on a public street, a private street, or an access easement approved in accordance with this chapter and Chapter 26: Subdivisions, and subsequent recorded with the Dare County Register of Deeds.

E. SIGHT DISTANCE TRIANGLES³²⁰

Corner lots shall include sight distance triangles, configured in accordance with the following standards and Figure 22.5.1.E: Sight Distance Triangles:

1. STATE AND TOWN-MAINTAINED ROADWAYS

The sight distance triangle shall be formed by extending lines from the intersection of two streets to points 25 feet from the corner of the rights-of-way of the intersecting streets and then connecting the two points.

2. OTHER STREETS AND DRIVEWAYS

- a. For all other streets and driveways, a sight distance triangle measuring ten feet from the back of curb (or edge of the pavement) and extending 70 feet from the edge of each side of the street right-of-way or driveway shall be required.
- b. Alternative sight distance triangles may be approved by the Town Manager (or a designee) if designed and sealed by a professional engineer licensed by the State.

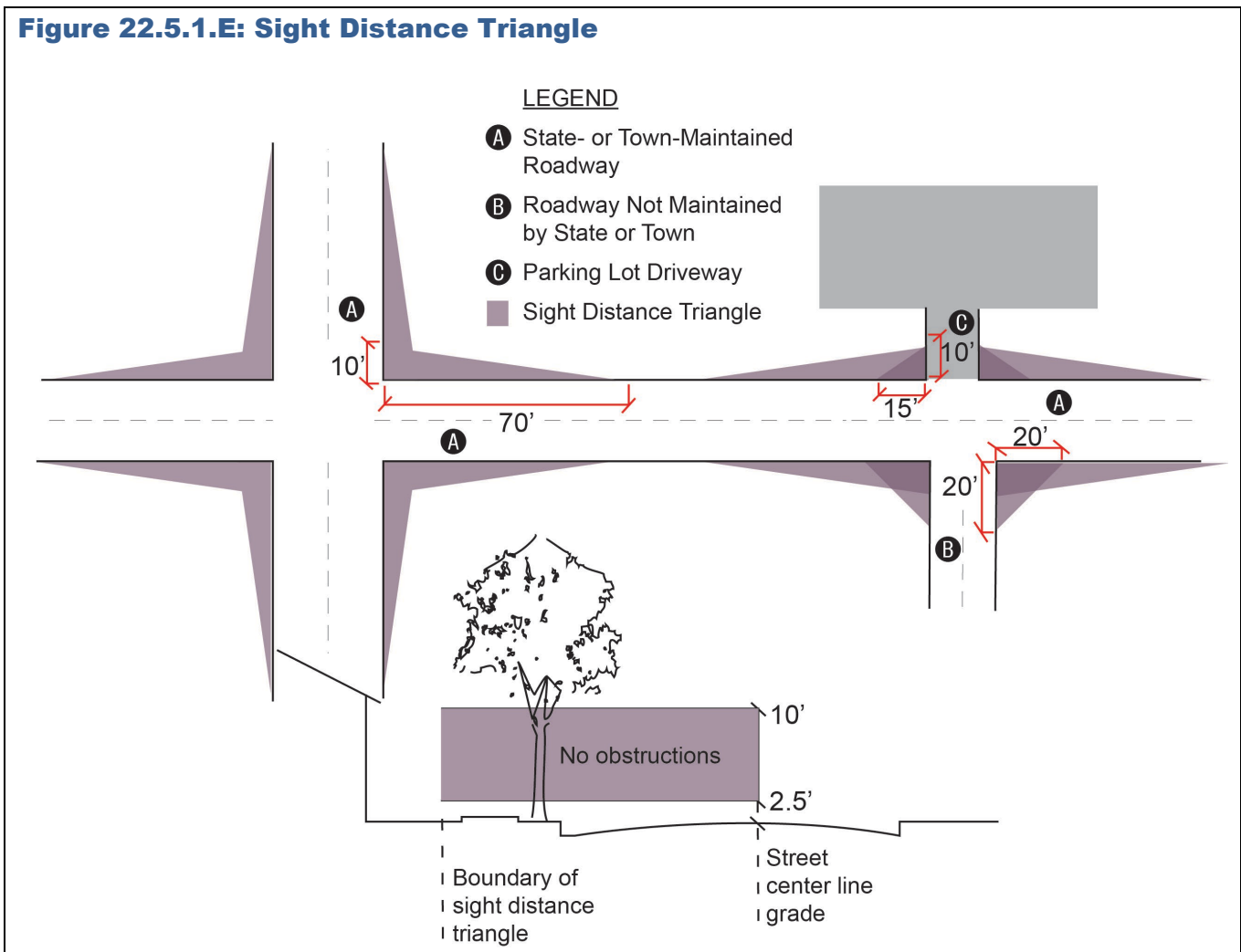
3. LIMIT ON OBSTRUCTIONS

No planting, structure, fence, wall, or other obstruction to vision more between the heights of three feet and ten feet above grade shall be located within a required sight distance triangle.

³¹⁹ This section carries forward the standards in forward Section 36-95(a) of the current code, but allows a development to obtain a building permit without direct access to a public or private street.

³²⁰ This section replaces the standards in Section 36-96 of the current code. The standards for state and Town maintained streets remain the same, but the new standards apply an additional standard for other streets and allow an alternative configuration to be proposed by an engineer.

Figure 22.5.1.E: Sight Distance Triangle



22.5.2. OFF-STREET PARKING STANDARDS³²¹

A. APPLICABILITY

At the time of erection of any building or structure, or at the time any principal building or structure is enlarged or increased in capacity by adding dwelling units, guest rooms, seats or floor area, or before conversion from one use type or occupancy to another, permanent off-street parking spaces shall be provided according to the amounts and specifications provided by this section.

B. PARKING CONFIGURATION MUST BE ILLUSTRATED

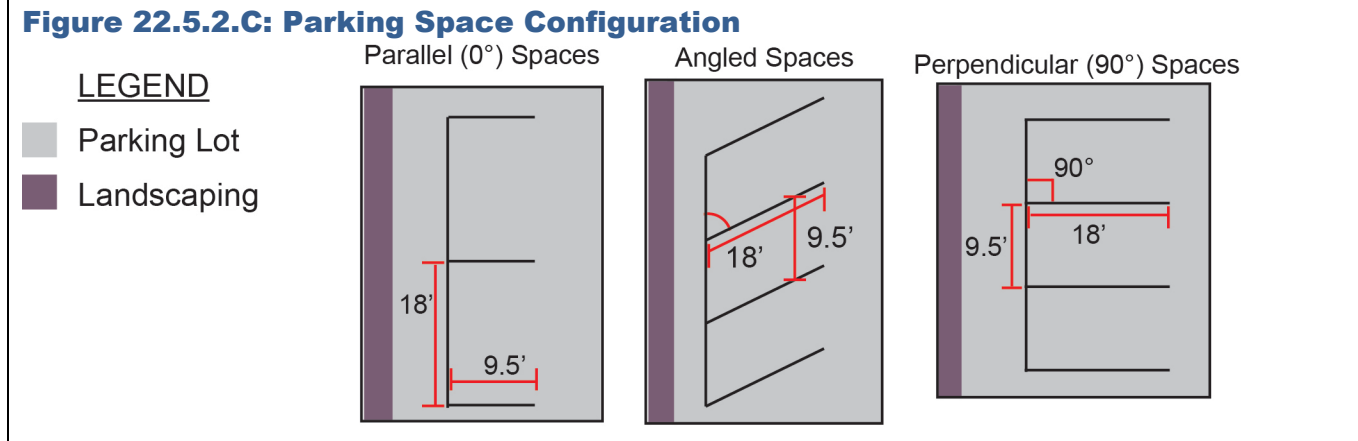
1. Each application for a zoning permit submitted to the Town Manager (or a designee) shall include information as to the location and dimensions of off-street parking and loading space and the means of ingress and egress to such space. This information shall be in sufficient detail to enable the Town Manager (or a designee) to determine whether or not the requirements of this section are met.
2. All required off-street parking, vehicular accessways, and internal vehicular circulation shall be shown on the site plan application.

C. PARKING LOT CONFIGURATION³²²

³²¹ This section carries forward the current standards, but relocates parking lot landscaping provisions to the landscaping section, relocates access and driveway provisions to the section on access standards, and incorporates a new summary table of parking requirements. These standards are supplemented with the provisions from text amendment # ZTA-16-01.

1. MINIMUM SPACE SIZE

- a. Each parking space, for use types other than large home dwellings, single-family detached, duplex, and townhouse dwellings, shall have a minimum length of 18 feet and a minimum width of nine and one-half feet (see [Figure 22.5.2.C: Parking Space Configuration](#)).
- b. Parking spaces serving single-family detached, duplex, and townhouse dwellings shall have a minimum of length of 18 feet and minimum width of eight feet.
- c. Large home dwellings shall have a minimum length of 18 feet and a minimum width of ten feet.
- d. Parking spaces along the perimeter of a lot shall be configured to accommodate a two-foot overhang within the parking space so that no part of any car will encroach into a required yard.

**2. COMPACT PARKING SPACES**

- a. Identified compact parking spaces may be allowed within group development parking lots for up to ten percent of the total number of provided parking spaces.
- b. Each compact parking space shall have a minimum length of 15 feet and a minimum width of eight feet.

3. VEHICULAR ACCESSWAYS³²³

- a. Except for large home dwellings, single-family detached, duplex, and townhouse dwellings, drive aisles serving shared off-street parking areas shall be at least 22 feet wide.
- b. Drive aisles serving individual off-street parking areas associated with single-family detached, duplex, and townhouse dwellings shall be at least eight feet wide.
- c. Drive aisles serving large home dwellings shall be at least ten feet wide, and be separate from any required off-street parking spaces.
- d. All drive aisles shall have vehicular access to a publicly dedicated, or Town-approved private street, and be located outside of any dedicated right-of-way.
- e. Sufficient vehicular maneuvering space of at least ten feet by ten feet shall be provided so that no vehicle will be required to back into the public right-of-way.
- f. On lots occupied by single-family detached, duplex, and townhouse dwellings, one required off-street parking space may be located behind each parking space in an under house parking area or enclosed garage, or lined up outside in such a manner that it is located in the drive aisle.

4. SURFACING

- a. Except for large home dwellings, single-family detached, and duplex dwellings, required parking spaces and driveways shall be graded, improved with concrete, 1-2 asphalt, or pavers, and maintained in a manner which will provide a surface permitting safe and convenient use in all weather conditions.

³²² This section carries forward and integrates the standards in Sections 36-163(1)&(2) from the current code with no substantive changes except that the standards pertaining to the maximum number of two driveway flares in Section 36-163(1)(m) has not been carried forward in accordance with staff recommendations.

³²³ These standards have been supplemented with the standards related to residential parking requirements in Section 36-163(3)(a) of the current code.

- b. Single-family detached and duplex dwellings may employ concrete, asphalt, pavers, gravel, sand, or grass for required parking spaces and driveways.
- c. Large home dwellings shall ensure that at least half of the required parking spaces as well as all of the drive aisle is paved with an improved surface of concrete or asphalt. The remaining off-street spaces may be paved with gravel, perforated paving blocks, or polymer open-cell soil stabilization systems.
- d. Porous or pervious parking surfaces shall not be counted towards impervious surface requirements in accordance with Section 22.1.8.C.3.b, Lot Coverage.

5. EDGING

- a. All parking spaces which abut an open space or a landscaping buffer shall have a fixed wheel stop of concrete, plastic, or chemically-treated wood of at least six inches in height above grade.
- b. In off-street parking lots with five or more spaces, required front and side yards shall be separated from the parking area by a fixed curb of not less than six inches or more than two feet in height, as approved by the Town Manager (or a designee).

6. DRAINAGE

- a. When a parking space abuts an open space, the two feet at the end of the parking space shall be left unpaved to allow for drainage, and a bumper or wheel stop shall be installed.
- b. Parking lots of five or more spaces shall not drain onto or across public sidewalks, roadways, or into adjacent property, except where a drainage easement has been provided or obtained.

7. EXTERIOR LIGHTING

Any exterior lighting provided in a parking lot shall comply with the standards in Section 22.5.5, Exterior Lighting, and shall be arranged so as to direct light and glare away from streets and adjacent lots.

8. MARKINGS

Each parking space shall be marked off and maintained so as to be distinguishable.

9. LOCATION³²⁴

- a. Off-street parking spaces required by this section shall be provided on the same lot with the principal use, or in combination with adjacent lots, provided the applicant has secured a shared parking agreement in accordance with Section 22.5.2.D.2, Shared Parking, and conditional use permit in accordance with Section 22.2.3.D, Conditional Use Permit.
- b. Required off-street parking for fire stations that cannot be provided on-site may be located on other Town-owned land or within the Town-owned right-of-way.
- c. Off-street parking spaces provided in conjunction with commercial uses in other districts shall not be permitted in a residential district.
- d. The required off-street spaces for more than one use type may be located on a single lot, provided the required parking spaces assigned to one use type are not assigned to any other uses except as allowed in accordance with Section 22.5.2.D.2, Shared Parking.
- e. No off-street parking spaces serving a residential use, except for single-family detached and duplex dwellings, may be located in the required front yard (setback).
- f. No off-street parking lot shall be located closer than five feet to a public right-of-way.

10. USES ALLOWED

Required off-street parking spaces are permanent site features and shall not be used for any purpose other than the temporary storage of operable vehicles.

³²⁴ This section has been amended with language from ZTA-18-03.

D. MINIMUM OFF-STREET PARKING REQUIREMENTS³²⁵

The number of off-street parking spaces required by this section shall be the absolute minimum and nothing shall prohibit the placement of additional off-street parking spaces provided the development complies with all applicable requirements of this chapter.

1. SUMMARY TABLE OF PARKING REQUIREMENTS³²⁶

Table 22.5.2.D.1: Minimum Parking Requirements, sets out the minimum number of required off-street parking spaces by use type.

TABLE 22.5.2.D.1: MINIMUM PARKING REQUIREMENTS		
USE TYPE	OFF-STREET PARKING SPACES REQUIRED [1] [2]	NOTES
RESIDENTIAL USES		
Duplex	3 spaces + 0.375 spaces per person of septic capacity; minimum of 3 spaces	Septic capacity is determined by the Dare County Health and Human Services Department
Manufactured home ³²⁷		
Large home dwelling	1 per bedroom	Bedrooms and useable sleeping areas shall be determined by the Dare County Health and Human Services Department
Multifamily dwellings	2.5 spaces per unit	
Planned unit development	In accordance with the master plan	
Single-family detached dwelling	3 spaces per unit + 1 space for each additional two bedrooms in excess of four	Septic capacity is determined by the Dare County Health and Human Services Department
Townhouse dwelling		
INSTITUTIONAL USES		
Church or place of worship	1 space for every 3 seats in the sanctuary	
Clinic (medical and dental)	5 spaces per doctor plus 1 per employee	Use must maintain at least 10 spaces
Clubs, public or private (including country club)	1 per every 200 square feet of floor area	
Community recreation facility	1 space for every 1,000 square feet of outdoor area + 1 space for every 500 square feet of indoor area	
Fire station	1 per employee + 1 per every 4 seats in the training room	May be located off-site on other Town-owned

³²⁵ This section replaces Section 36-163(3) from the current code. It includes a new summary table of standards (instead of the current text). The uses identified in the table are largely the same ones listed in the Principal Use Table in Section 22.6 of these draft provisions, except that uses that do not include parking or are identified as “group developments” are not included (since the parking standards for these uses would be the same regardless of whether they were in a group development or not). Several of these uses did not include off-street parking spaces in Section 36-163(3). In these instances, we have provided a standard for the Town’s consideration and identified it as a new standard in the table.

³²⁶ NOTE: These standards have been supplemented with additional standards included in ZTA-16-01 for hotels and motels, large home dwellings, nursing homes, and funeral homes.

³²⁷ This is a new use type that needs to be included for consistency with the Fair Housing Act.

TABLE 22.5.2.D.1: MINIMUM PARKING REQUIREMENTS

USE TYPE	OFF-STREET PARKING SPACES REQUIRED [1] [2]	NOTES
		property
Governmental office	1 space for every 200 square feet + 1 space per every two seats in an assembly area	
Medical evacuation facilities	1 per employee + 2 spaces (new)	
Nursing home	1 space for every 5 beds + 1 space for every 3 employees	
Nonprofit entity office	3 spaces	
Schools and other public buildings	1 space per classroom + 1 space per office	
Substation (electric or telephone)	1 space per employee	
Wireless telecommunications site (including collocations)	None required	
COMMERCIAL USES		
Child day care center	1 space for every 400 square feet of gross floor area (new)	
Drive-through facility, small	1 space per 3 seats + 1 space per employee	
Event facility	1 space for every 150 square feet of floor area	
Funeral home	1 space for every 4 seats in the public gathering area	
Garden center/nursery	1 space per every 500 square feet of retail display area	
Hotel or motel	1.5 spaces per sleeping room + 1 per employee	
Office	1 space for every 300 square feet of floor area + 1 space for every 2 employees	
Restaurant	1 space for every three seats + 1 space per employee	
Retail store	1 space for every 300 square feet of floor area	Grocery and appliance stores are required to maintain one space for every 500 square feet of floor area
Service establishment	1 space for every 300 square feet of floor area (new)	
Theatres	1 space for every 3 seats	
Veterinary clinic	5 spaces per veterinarian + 1 per employee	Use must maintain at least 16 spaces
<p>NOTES:</p> <p>[1] Parking requirements based upon employment shall be computed based on the number of employees on the largest shift or during the time of peak use.</p> <p>[2] In cases where the parking requirement results in a fractional amount of parking spaces to be provided, fractions shall be rounded upwards to ensure a full parking space is provided.</p>		

2. SHARED PARKING³²⁸

a. Generally

³²⁸ This section has been revised to include language from ZTA-18-01.

- i. A portion of the off-street parking spaces required for one use type may be used to meet the off-street parking requirements of another use type on the same, or on contiguous commercial, parcel(s) using these shared parking standards when the peak hours of operation and parking demands of the use types occur at different times of day.
- ii. In the event that the peak hours of operation or parking demands of either site(s) change(s) such that the peak hours of operation are no longer different or the number of parking spaces required for either site increases, each site shall be brought into compliance with the off-street parking requirements of this chapter.

b. Conditional Use Permit Required

Utilization of these shared parking standards shall require approval of a conditional use permit in accordance with Section 22.2.3.D, Conditional Use Permit. Nothing shall limit the Town Council from applying conditions of approval to an application for shared parking.

c. Shared Parking Agreement Required

- i. Prior to final approval of the shared parking proposal, a shared parking agreement, in recordable form and executed by the property owners sharing parking, shall be submitted to the Town for review and approval.
- ii. The shared parking agreement shall contain terms consistent with the provisions of the shared parking requirements set forth herein, and shall contain terms prohibiting its revocation or modification without the Town’s prior notification.
- iii. Upon final approval of the site plan, the shared parking agreement shall be recorded in the office of the Dare County Register of Deeds by the applicant. Failure to record the shared parking agreement in a timely fashion is a violation of this Ordinance and shall render the shared parking agreement null and void.
- iv. Shared parking agreements between adjacent lots require adequate and safe pedestrian access to and from the shared parking areas.

3. REDUCTION FOR PROVISION OF BICYCLE PARKING³²⁹

Commercial or institutional development providing more than 50 spaces may reduce the total off-street parking requirement by one parking space for every bicycle rack holding at least four bicycles provided. In no instance shall the total reduction in the number of parking spaces exceed three spaces.

E. OFF-STREET LOADING SPACE REQUIREMENTS³³⁰

1. NUMBER OF SPACES PROVIDED

One or more loading spaces shall be provided for standing, loading and unloading operations, either inside or outside a building in accordance with the requirements in Table 22.5.2.E: Off-Street Loading Space Requirements.

TABLE 22.5.2.E: OFF-STREET LOADING SPACE REQUIREMENTS	
USE TYPE	REQUIRED LOADING SPACE(S)
Retail operations, and all first floor non-residential uses, with a gross floor area of less than 20,000 square feet	A loading space (not necessarily a full berth) configured in accordance with this section
Retail operations, including restaurant and office buildings with a gross floor area of 20,000 square feet or more	One loading berth for every 20,000 square feet, or fraction thereof, of floor area
Office building with a gross floor area of 100,000 square feet or more	One loading berth for every 100,000 square feet of floor area

2. LOADING BERTH AND LOADING SPACE CONFIGURATION

Loading and berth spaces shall be configured in accordance with the following requirements.

³²⁹ This standard is carried forward from Section 36-163(3)(e) of the current standards. We have removed the reference to the term “group development” since any use providing more than 50 spaces should be able to take advantage of this provision regardless of whether it is configured as a group development or not.

³³⁰ This section carries forward the standards in Section 36-163(2)(g) with no substantive changes.

- a. A loading berth shall have minimum plan dimensions of 12 feet by 60 feet and a 14-foot overhead clearance.
- b. A loading space need not be a full berth but shall be of sufficient size to allow normal loading and unloading operations of a kind and magnitude appropriate to the property served thereby.
- c. The Town Manager (or a designee) shall determine if a proposed loading space is sufficient in terms of its size or capacity.
- d. In no instance shall the use of a loading space hinder the free movement of vehicles and pedestrians over a street, sidewalk, parking lot, or alley.
- e. Loading spaces shall be located at least 50 feet from any street right-of-way and shall be paved with asphalt, concrete, porous paving, or an open-face paving block over sand and filter-cloth base, provided the open-face paving block is equivalent to turfstone in terms of compressive strength, density, absorption, and durability.

F. SOLID WASTE AND RECYCLING CONTAINERS

- a. Sufficient space shall be provided on the premises of all nonresidential and multi-family uses for the placement of a solid waste container.
- b. A solid waste container may be located within a parking lot, but may not occupy a required off-street parking space or be located in a manner that blocks safe vehicular circulation.

22.5.3. LANDSCAPING STANDARDS³³¹

A. PURPOSE AND INTENT³³²

The intent of this section is to provide adequate separation and buffering between incompatible land uses, enhance the visual image of the Town, and promote public health, welfare, and safety by:

- 1. Reducing noise pollution, air pollution, and glare from exterior lighting within the Town;
- 2. Providing cooling shade, oxygen, and filtering of the Town's air;
- 3. Providing for the conservation of water resources through the efficient use of water, appropriate use of plant materials, and regular maintenance of landscaped areas;
- 4. Preserving the positive visual character of the Town by enhancing well-designed structures; and
- 5. Increasing compatibility between abutting land uses and public rights-of-way by providing landscaping screening and buffers.

B. APPLICABILITY³³³

- 1. The standards in this section shall apply to the following forms of development:
 - a. Conditional uses;
 - b. Edge areas where commercial and residential zones border one another;
 - c. Parking lots;
 - d. Screening of service and loading areas; and
 - e. Redevelopment.
- 2. The standards in this section shall not apply to single-family detached and duplex dwellings.

C. LANDSCAPE BUFFERS

Landscape buffers are required as a means of addressing noise, exterior lighting, aesthetics, and other impacts between adjacent incompatible forms of development, or between a development and any adjacent streets (public and private). Landscape buffers shall be configured in accordance with the standards in this section.

1. BUFFERS DISTINGUISHED³³⁴

³³¹ This section replaces the landscaping standards in Section 36-173 of the current code. The 'definitions' are more akin to standards, and have been incorporated into the provisions. This section carries forward the screening provisions in Section 36-174 along with new screening provisions for refuse collection and service areas. It includes the parking lot landscaping standards from Section 36-163 of the current code, and clarifies the kinds of structures that may be located within required landscaping areas.

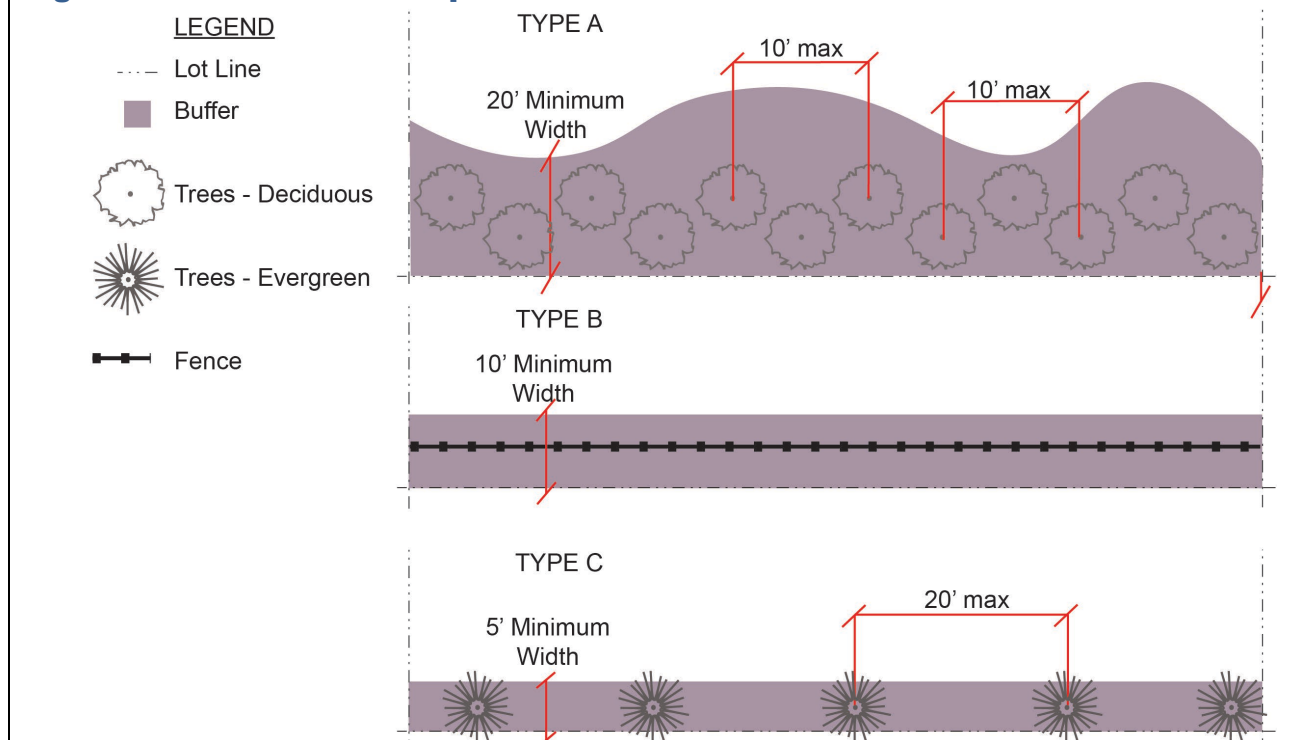
³³² This section carries forward the standards in Section 36-173 of the current code with no substantive changes.

³³³ This is a new section based on the final paragraph in Section 36-173, but also adds screening provisions.

Table 22.5.3.C.1: Landscape Buffers Distinguished, sets out the three differing types of landscape buffers and their configurations (see Figure 22.5.3.C.1: Landscape Buffers). These are minimum standards, and nothing shall prohibit the installation of a buffer that exceeds these minimum requirements.

TABLE 22.5.3.C.1: LANDSCAPE BUFFERS DISTINGUISHED				
BUFFER TYPE	MINIMUM BUFFER WIDTH (FEET)	MINIMUM HEIGHT OF PLANTINGS (3 YEARS AFTER PLANTING)	MINIMUM OPACITY [1]	ADDITIONAL REQUIREMENTS [2]
A	20	6	100%	1. May include a vegetated berm for up to 50% of the required height. 2. Buffer shall be configured as two staggered rows of plantings, located no more than 10 feet on-center.
B	10	6	50% [3]	1. This buffer type shall include an opaque fence of at least 6 feet in height. 2. May include a vegetated berm for up to 50% of the required height.
C	5	6 [4]	50%	1. May include a vegetated berm for up to 100% of the required height. 2. Buffer shall include evergreen trees planted no more than 20 feet on-center.
<p>NOTES:</p> <p>[1] The bottom foot of the buffer may allow visual contact between uses.</p> <p>[2] Berms shall be comprised of clean, suitable, native, or borrowed soil material with finished slopes not exceeding 1:3 (rise:run).</p> <p>[3] The vegetation may be 50% opaque, but the buffer requires a fully-opaque fence.</p> <p>[4] Evergreen plantings shall reach a minimum height of six feet three years after plating, all other required vegetation shall reach a height of three feet within two years of planting.</p>				

³³⁴ NOTE: This section is proposed to replace the standards in Section 36-173(c). There are numerous inconsistencies in the width and planting requirements. We have attempted to address these issues.

Figure 22.5.3.C.1: Landscape Buffers**2. WHERE REQUIRED³³⁵**

Landscape buffers configured in accordance with these standards shall be required in the following instances:

- a. A Type C buffer is required along lot lines abutting public or private streets (single-family detached and duplex uses are exempted from these landscaping requirements); and
- b. Either a Type A or a Type B buffer (at the applicant's option) shall be provided along all lot lines where:
 - i. A lot containing a conditional use borders another lot; or
 - ii. A commercial use or zoning district abuts a residential district or other zoning district.

3. BUFFER COMPOSITION

- a. Landscape buffers shall consist of vegetation, berms, fencing, or a combination of these features.
- b. The opaque portion of a buffer shall be opaque year-round.
- c. Plant materials shall be drought-tolerant and salt-tolerant. Use of plant materials that are not drought tolerant shall require inclusion of an irrigation system.

4. SIGHT DISTANCE TRIANGLES

Landscape buffers shall remain outside required sight distance triangles.

5. DEVELOPMENT ALLOWED IN A LANDSCAPE BUFFER

- a. The following forms of development may be located within a required landscape buffer:
 - i. Public utilities and easements;

³³⁵ NOTE: The current buffer applicability standards are unclear (with the exception of Type C). We assume that a commercial use or a lot in a commercial zone abutting a lot in a residential or other zone may use either the Type A or Type B buffer, but this is not clear. The current approach of allowing case-by-case buffering standards for conditional uses is potentially dangerous as it could create conditions where similar uses or situations are treated differently since there are no standards. We suggest the ambiguity related to conditional uses be removed by simply applying the same standards to conditional uses as are applied to commercial uses/lots.

- ii. Public and private streets; and
- iii. Driveways.
- b. The following forms of development shall not be located within a required landscape buffer:
 - i. Refuse collection devices and their required screening;
 - ii. Sidewalks and pedestrian walkways;
 - iii. Sheds and other accessory structures (including canopies);
 - iv. Off-street parking or loading areas;
 - v. Ground-based mechanical equipment; and
 - vi. Signs.

D. PARKING LOT LANDSCAPING³³⁶

All parking lots serving multi-family and nonresidential developments that include five or more off-street parking spaces shall comply with the following parking lot landscaping standards:

1. SHADE TREES

All parking lots shall include shade trees to reduce the heat island effect and soften the appearance of the parking lot, in accordance with the following standards:

- a. Parking lot landscaping shall include at least one canopy tree for every 12 parking spaces.
- b. Required canopy trees shall be placed such that no parking space is more than 80 feet from the trunk of a canopy tree for new or redeveloped nonresidential parking areas, and 50 feet for new or redeveloped residential parking areas.
- c. Required canopy trees shall be distributed throughout parking areas and may be located in landscape islands, landscape divider medians, between rows of parking, in driveway medians, and within ten feet of the perimeter of the parking lot.

2. INTERIOR PLANTINGS

a. Area to be Landscaped

For the purposes of this section, the interior of a parking lot shall be all of the area within the outer boundary of the parking lot including interior and corner landscape islands intended to fulfill the interior parking lot landscaping requirements, but not including perimeter landscaping.

b. Landscaping Islands and Strips

A parking aisle with more than 12 spaces in a single row shall provide and maintain landscaping islands or strips in accordance with the following standards (see [Figure 22.5.3.D.2, Interior Parking Lot Landscaping](#)).

- i. Islands for planting canopy trees shall have a minimum dimension of nine feet and a minimum area of 162 square feet, including the curb (if curbing is provided).
- ii. Landscape islands that do not contain canopy trees may contain understory trees and shall contain three or more shrubs. Landscape islands that do not contain canopy trees shall have minimum dimension of five feet, including the curb (if curbing is provided).
- iii. Landscape strips between adjoining rows of parking spaces or serving as driveway medians shall have a minimum dimension of seven feet, including the curb (if provided), if canopy trees are included and five feet in all other cases, including the curb (if provided). Landscape strips that do not have canopy trees shall include shrubs planted no more than 10 feet on center.

c. Separation of Light Poles and Trees

In order to prevent the need to excessively trim trees within landscape areas and to maintain the effectiveness of parking area lighting, light poles shall be spaced at least ten linear feet from a canopy tree trunk, to the maximum extent practicable.

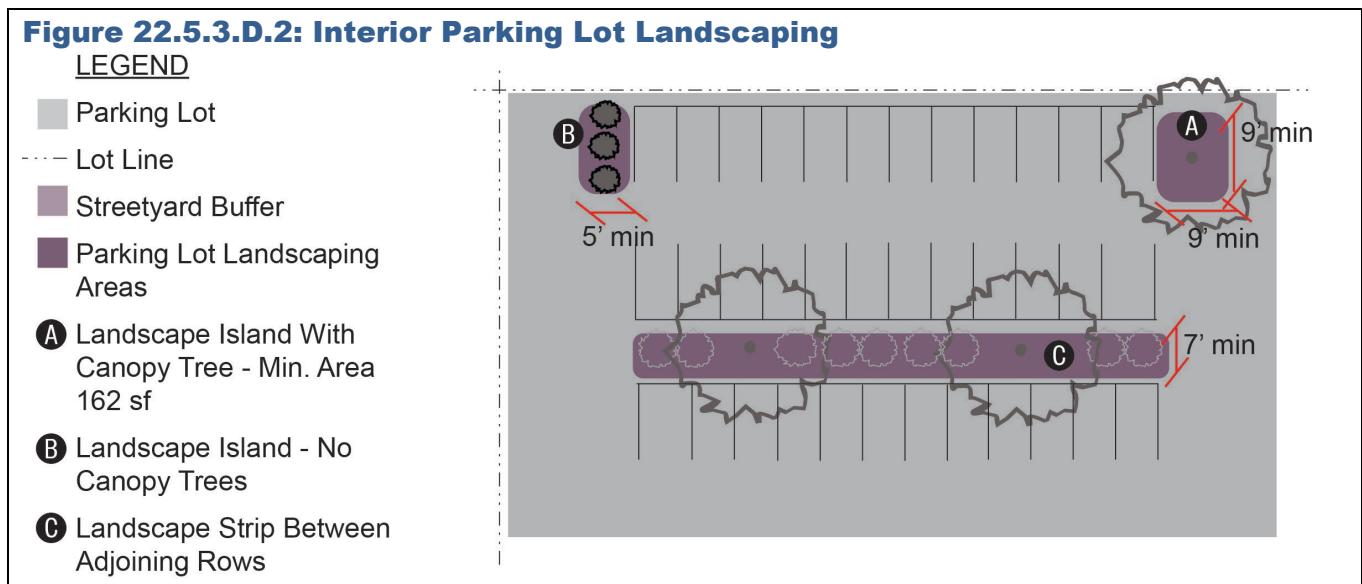
d. Protection of Landscape Islands

Landscape islands shall be protected from vehicle damage by the installation of curbing, wheel stops or other comparable methods. The placement of plant material within landscape islands shall allow for a two-foot vehicle overhang from the face of the curb or wheel stop.

³³⁶ This section expands on the parking lot planting requirements in Section 36-163 of the current code, but replaces the flat 15% parking lot area planting requirement with more deliberate standards that seek to screen the perimeter of the parking lot and ensure planted islands within the parking lot.

e. Stormwater Management

A landscape island may be designed to function as a stormwater management device provided its landscaping performance function is maintained.

**3. PERIMETER PLANTINGS****a. Intent**

Parking lot perimeter landscaping shall be designed to soften the view of the parking lot from an abutting street or development and to filter spillover light from vehicle headlights. Required plant material shall be planted in such a way as to best achieve this intent.

b. Location

- i. Required plant material shall be placed adjacent to the perimeter of the parking area (see [Figure 22.5.3.D.3: Parking Lot Perimeter Landscaping](#)).
- ii. Depending upon the geometric relationship of the parking lot to the property lines or to topographic conditions, plant material may be placed away from the edge of the parking area, if necessary, to best achieve the intent of this section.

c. Planting Rate

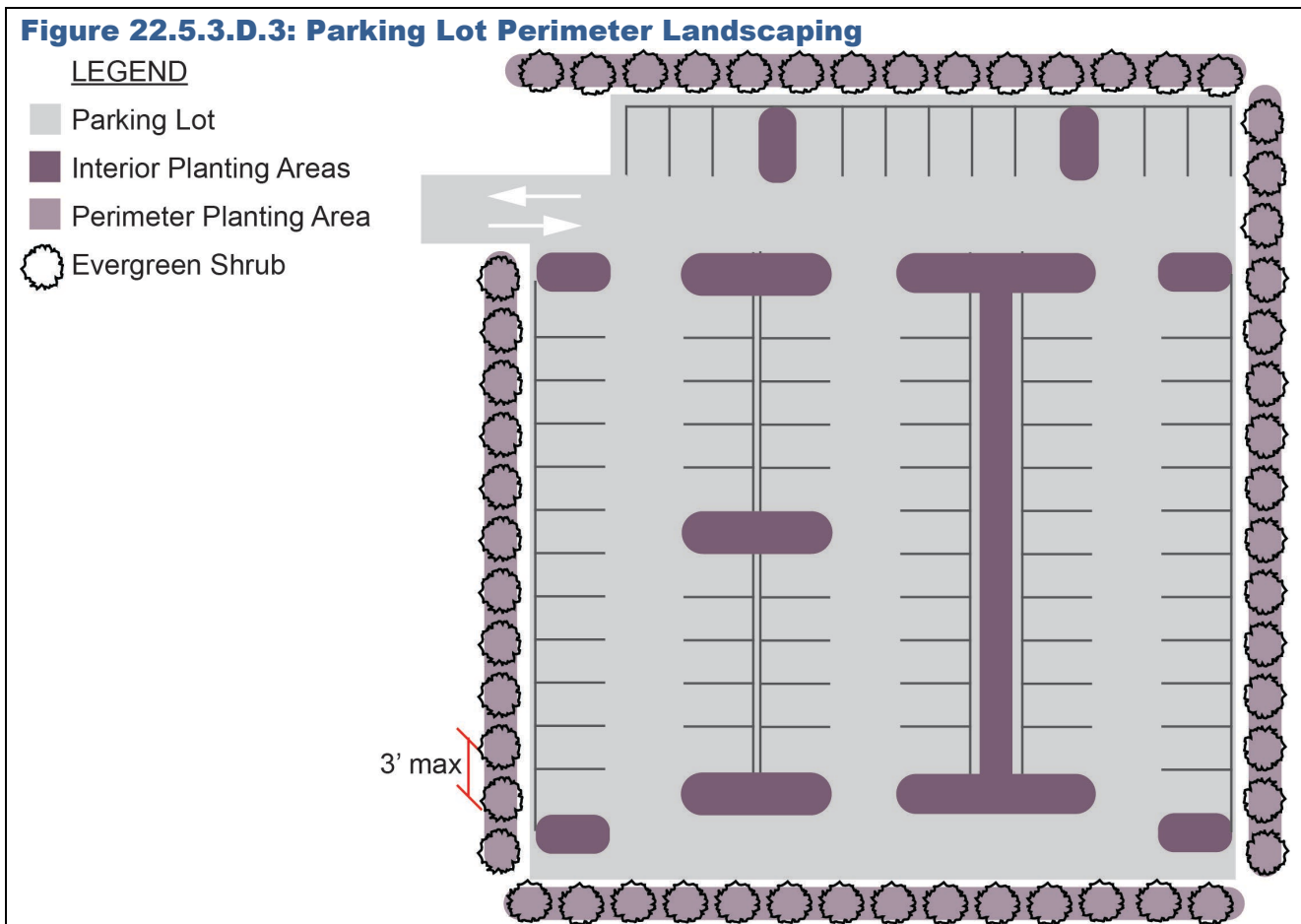
- i. Parking lot perimeter landscaping shall consist of a single continuous row of evergreen shrubs planted no greater than three feet on-center.
- ii. Applicants may propose alternative plant species (such as native grasses) provided the proposed plant material provides a fully opaque screen throughout the year.

d. Size of Plant Material

Evergreen shrubs used for parking lot perimeter landscaping shall be of a minimum size necessary to achieve a height of three feet above grade within two years of planting.

e. Exemption

Where off-street parking lots are adjacent to one another, but on different lots, a perimeter landscape yard is not required along the common boundary of the parking lots.



E. SCREENING³³⁷

1. PURPOSE AND INTENT

These screening standards are required as a means of screening site features like refuse collection areas, service and loading facilities, ground-based utility equipment (such as natural gas facilities), or similar site features from view of adjacent land and streets.

2. GENERAL REQUIREMENTS

In addition to the other forms of required landscaping, screening shall be required to conceal specific areas of high visual or auditory impact or hazardous areas from both on-site and off-site views. Such areas shall be screened at all times, unless otherwise specified, regardless of adjacent uses, districts, or other proximate landscaping material.

3. ITEMS TO BE SCREENED

The following areas shall be screened from off-site views in accordance with this section:

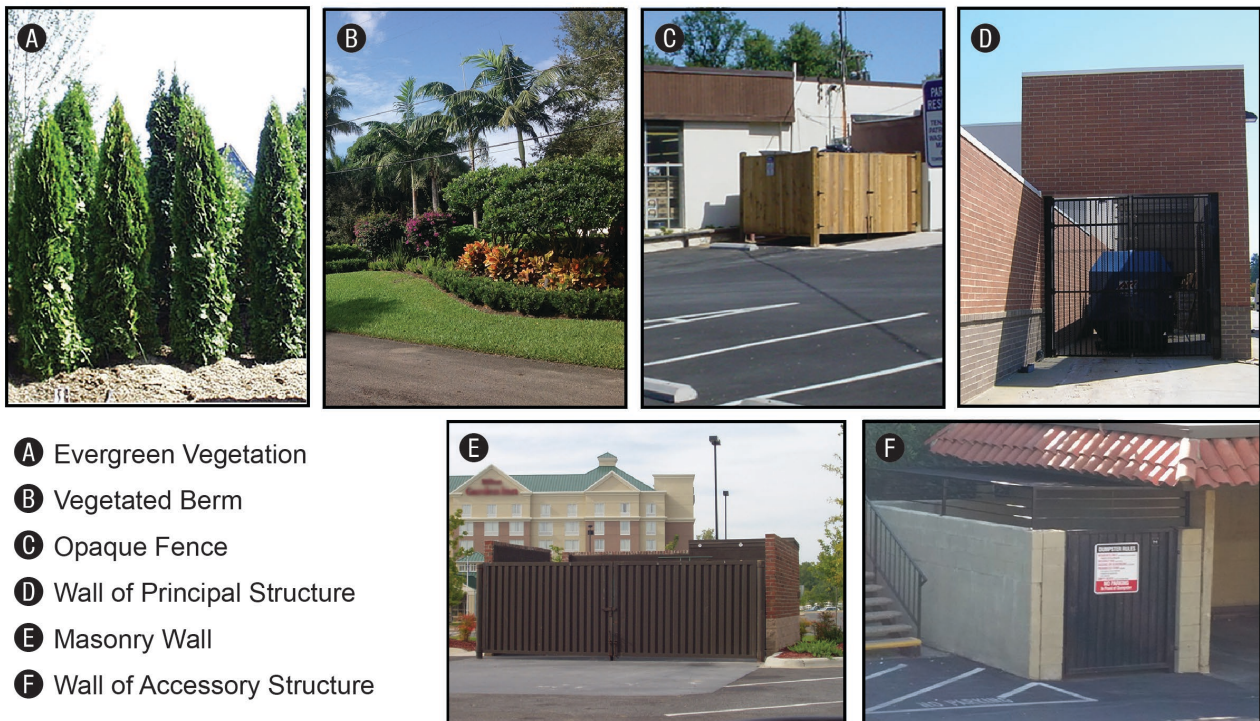
- a. Large waste receptacles (dumpsters) and refuse collection points (including cardboard recycling containers);
- b. Loading docks or bays;
- c. Outdoor storage areas;
- d. To the extent feasible given access requirements, ground-based utility equipment in excess of 12 cubic feet; and
- e. Ground level mechanical units, from public streets only.

4. SCREENING METHODS

³³⁷ This section replaces Section 36-174 in the current code which pertains to screening of natural gas facilities.

- a. The following items are permitted for use as screening materials (see Figure 22.5.3.E.4: Screening Methods). Alternative screening materials that are not listed may be used if the Town Manager (or a designee) determines they are comparable to these screening materials.
 - i. Vegetative materials that meet the minimum vegetative screening requirements for the perimeter of a parking lot except that the minimum height at maturity shall be at least eight feet above grade;
 - ii. An earthen berm that is at least two feet in height, covered with grass, and planted in accordance with subsection (a) above;
 - iii. An opaque fence constructed of treated or rot-resistant wood (such as cypress or redwood), or a plastic or vinyl fence designed to look like an opaque wooden fence, of a minimum height necessary to fully-screen the object being screened; or
 - iv. A masonry wall that is the minimum height necessary to fully-screen the object being screened, and that is constructed of brick, textured concrete masonry units, or stuccoed block.
- b. Use of chain link fencing with wooden or plastic slats shall be limited to access gates only.

Figure 22.5.3.E.4, Screening Methods



- A Evergreen Vegetation
- B Vegetated Berm
- C Opaque Fence
- D Wall of Principal Structure
- E Masonry Wall
- F Wall of Accessory Structure

F. LANDSCAPING PLAN

- a. A landscaping plan shall be submitted as part of an application for land use entitlement, for new development, and for the significant expansion or redevelopment of an existing use.

G. MAINTENANCE³³⁸

- 1. All required landscaping areas (including ground cover) shall be maintained to meet the criteria of this section. Maintenance of required landscaping is a continuing condition of the site plan approval and occupation of a site or use.
- 2. Landscaped areas shall be maintained in a healthful and sound condition at all times. Irrigation systems and their components shall be maintained in a fully functional manner consistent with the originally approved design and the provisions of this section.

³³⁸ This section carries forward Section 36-173(e) of the current code with no substantive changes except to broaden the requirements to all forms of landscaping, not just required buffers.

3. Regular maintenance shall include checking, adjusting and repairing irrigation equipment; resetting automatic controllers; aerating and dethatching turf areas; adding/replenishing mulch, fertilizer and soil amendments; pruning; and weeding all landscaped areas.

22.5.4. SIGNAGE STANDARDS³³⁹

A. PURPOSE AND INTENT³⁴⁰

The erection of signs is controlled and regulated in order to promote the health, safety, welfare, convenience, and enjoyment of travel on streets. The provisions of this section are more specifically intended to:

1. Promote traffic safety;
2. Ensure residents and visitors can locate desired goods, services, and destinations;
3. Reflect the aesthetics desired by residents; and
4. Provide only the minimum interference with individual property rights necessary to ensure public health, safety, and welfare.

B. APPLICABILITY³⁴¹

1. Except for the sign types exempted from these standards identified in Section 22.5.4.C, Exclusion, signs may only be erected, affixed, placed, painted, or otherwise established in the Town in accordance with the standards in this section.
2. All signs shall be constructed and designed, according to generally accepted engineering practices, to withstand wind pressures and load distribution as specified in the current building code.

C. EXCLUSION³⁴²

The following shall not be subject to these standards, but may be subject to other standards in this Town Code, including the requirement to obtain a building permit:

1. Fence-wrap signs affixed to fences surrounding a construction site, and used to indicate the construction firms actively working on a development site;
2. Flags and insignia of any government;

³³⁹ This section is proposed to replace Section 36-165 of the current code. As mentioned in the Code Assessment, federal laws with respect to the regulation of signs have changed dramatically based on the US Supreme Court's ruling in the *Town of Reed vs. Gilbert* case. Essentially, the holding from this case is that sign standards that require the regulator to read the sign's message to determine which kind of sign standards to apply are not content-neutral. Court precedent has indicated that sign standards must be content neutral (to pass muster under the 1st Amendment to the Constitution), or must withstand the strict scrutiny doctrine. To withstand strict scrutiny, standards must be developed with a compelling governmental interest and must be narrowly tailored to achieve that specific interest. In practice, most sign standards are focused on aesthetics, and thus will NOT pass the test of strict scrutiny. As a result, local governments across the country are now revising their sign standards in two or three key ways: First, sign standards may not be structured in ways that require the sign to be read to determine which set of standards to apply (in other words, no longer may a community apply differential sign standards based on sign type – you may not have special standards for “for rent” signs versus “directional signs”). Second, sign standards may not distinguish between “commercial” signs versus “noncommercial” signs (since doing so requires reading the sign's message). Third, the Court has ruled that speaker-based standards (sign standards that relate to a particular kind of use, like signs for a restaurant or a sign for a vacation rental) are not content neutral, and must also pass strict scrutiny. One of the best ways to address this new court precedent is to maintain the time, place, and manner provisions for signs that most communities (including Southern Shores) already have, and revise any specific sign-type standards into a set of generic time, place, and manner sign standards that differ by type of zoning district. Fortunately, the Town's current sign standards are already organized in this fashion, and will only require some moderate adjustment to avoid the strict scrutiny doctrine.

³⁴⁰ Carries forward the prefatory standards in Section 36-165 with only minor revision to emphasize protection of public safety.

³⁴¹ This section carries forward the standards in Section 36-165(4) with additional provisions to introduce exempt signs.

³⁴² This section carries forward the standards in Section 36-165(1) with no substantive changes.

3. Legal notices required by governmental bodies, fire stations, public utilities, or civic associations with the approval of Town Manager;
4. Integral decorative or architectural features of buildings, except moving parts or moving lights;
5. Signs directing and guiding traffic on private property;³⁴³
6. Temporary signs of less than one day duration.

D. PROHIBITED SIGNS³⁴⁴

The following signs, sign construction, and displays are prohibited:

1. Any sign erected or maintained which is a copy or imitation of an official highway sign and carrying the words "STOP" or "DANGER" except such signs installed to regulate bicycle traffic on Town-owned multipurpose pathways;
2. Any sign that obstructs corner visibility or visibility within a required sight distance triangle;
3. A sign attached to any traffic sign, utility pole or structure, or tree;
4. Any sign that obstructs ingress and egress to any window, door, fire escape, stairway, ladder or opening intended to provide light, air, ingress or egress for any room or building as required by law;
5. Any sign that violates any provision of any law of the State relative to outdoor advertising;
6. Any off-site signs;³⁴⁵
7. Any sign which contains, employs, or utilizes lights or lighting which rotates, flashes, moves, or alternates;
8. Any sign located within a public or private right-of-way except for election signs placed and maintained in accordance with Section 136-32 of the North Carolina General Statutes;
9. Any signs painted on or affixed to a roof surface;
10. Any signs painted on or affixed to a vehicle; and
11. Signs supported in whole or in part by water, air, or gas.

E. SIGN PERMIT REQUIRED³⁴⁶

Except for signs exempted from the requirement to obtain a sign permit in accordance with Section 22.5.4.F. Signs not Requiring a Sign Permit, no allowable sign shall hereafter be erected or attached to, suspended from, or supported on a building or structure, nor shall any existing sign or outdoor advertising structure be structurally altered, remodeled, or relocated, until a sign permit for same has been issued by the Town Manager (or a designee).

F. SIGNS NOT REQUIRING A SIGN PERMIT³⁴⁷

1. No sign permit shall be required for any of the following signs:
 - a. Signs located in a residential zoning district;
 - b. Temporary signs;
 - c. Signs not exceeding three square feet in sign surface area.
2. Signs not requiring a sign permit shall still be subject to all applicable sign standards in this section.

G. ANNUAL INSPECTION REQUIRED³⁴⁸

Each sign or outdoor advertising structure subject to these standards may be subject to an annual inspection by the Town Manager (or a designee) for the purpose of ensuring that the structure is maintained in a safe condition. The fee for the annual inspection shall be in accordance with a regularly adopted fee schedule of the Town.

H. STRUCTURALLY UNSAFE SIGNS TO BE REMOVED³⁴⁹

³⁴³ This pushes the limit on content neutrality, but is important for public safety – we suggest it be retained.

³⁴⁴ This section carries forward the standards in Section 36-165(7), but deletes “tourist-oriented” directional signs as these are not *Reed*-compliant.

³⁴⁵ This pushes the limit on content neutrality as it requires the sign to be read, but we suggest it be carried forward.

³⁴⁶ This section carries forward the standards in Section 36-165(3) with no substantive changes.

³⁴⁷ This section carries forward the standards in Section 36-165(3) pertaining to signs exempted from a sign permit.

³⁴⁸ This section carries forward the standards in Section 36-165(5) with no substantive changes.

³⁴⁹ This section carries forward the standards in Section 36-165(5) pertaining to removal of unsafe signage.

When a sign becomes structurally unsafe, the Town Manager (or a designee) shall give written notice to the owner of the sign or outdoor advertising structure that the sign or outdoor advertising structure shall be made safe or removed within ten days of receipt of such notice.

I. ILLUMINATED SIGNS³⁵⁰

1. All signs or outdoor advertising structures in which electrical wiring and connections are to be used shall require a permit and shall comply with the electrical code of the state and be approved by the Town Manager (or a designee).
2. The light source shall not be visible from the road right-of-way or from an adjacent property.

J. MEASUREMENT

Sign surface area and sign height are determined in accordance with Section 22.1.8.I, Signage.

K. PERMANENT SIGNS PERMITTED IN RESIDENTIAL DISTRICTS³⁵¹

Each lot in a residential district may have one or more permanent signs, configured in accordance with Table 22.5.4.K: Permanent Signage in a Residential District.

TABLE 22.5.4.K: PERMANENT SIGNAGE IN A RESIDENTIAL DISTRICT						
Use Type	Maximum Number of Signs per Lot (#)	Cumulative Sign Area per lot (sq. ft.)	Maximum Surface Area for a Single Sign (sq. ft.)	Maximum Height (feet above grade)	Type of Signs Allowed	Additional Standards
Single-family and Duplex Uses	2	16	8	3	Wall Sign; Freestanding Sign	1. Signs shall be placed outside the street right-of-way and at least 5 feet from all lot lines 2. Signs shall be located outside of sight distance triangles
Multifamily Uses	2	32	16	4	Wall Sign; Freestanding Sign	
Institutional Uses Only	1	64	32 per side	9 excluding support structure	Wall Sign; Freestanding Sign; Canopy Sign	1. Sign may not be internally illuminated 2. Signs shall be at least 15 feet from a lot line

L. PERMANENT SIGNS PERMITTED IN THE COMMERCIAL (C) DISTRICT³⁵²

Each lot in the commercial district may have one or more permanent signs, configured in accordance with Table 22.5.4.L: Permanent Signage in the Commercial District.

TABLE 22.5.4.L: PERMANENT SIGNAGE IN THE COMMERCIAL DISTRICT					
Sign Type	Maximum Number of Signs per Lot (#)	Cumulative Sign Area per lot (sq. ft.)	Maximum Surface Area for a Single Sign (sq. ft.)	Maximum Height (feet above grade)	Additional Standards

³⁵⁰ This section carries forward the standards in Section 36-165(6) with no substantive changes.

³⁵¹ NOTE: This section is proposed to replace Sections 36-165(8) & (10). This table removes references to individual sign types and allowable signage for specific types of uses (like churches or country clubs).

³⁵² NOTE: This section carries forward the standards in Section 36-165(9) with no substantive change. However, the standards include provisions for ice vending structures, which are a specific use type and therefore not *Reed*-compliant.

TABLE 22.5.4.L: PERMANENT SIGNAGE IN THE COMMERCIAL DISTRICT					
Sign Type	Maximum Number of Signs per Lot (#)	Cumulative Sign Area per lot (sq. ft.)	Maximum Surface Area for a Single Sign (sq. ft.)	Maximum Height (feet above grade)	Additional Standards
Retail Shopping Center					
Wall Sign	1 per business	1 per every linear foot of store frontage Corner units may include footage from building side		Top of the wall	1. Must be placed on the exterior wall of the store it advertises 2. Sign shall not extend more than 15 inches beyond building wall surface
Freestanding Sign	1	64 per face; maximum of 2 faces		12	1. Sign structure shall not exceed the sign surface area by more than 1.5 times 2. No messages shall be displayed on sign structure
Canopy Sign	1 per business	4		Under canopy of roof	Sign shall not create a hazardous situation for pedestrians
All Other Commercial Uses					
Wall Sign	No limit	1 per every 2 linear feet of lot frontage; maximum of 64	20% of the exposed wall surface (including openings)	Top of the wall	Sign shall not extend more than 6 inches beyond building wall surface
Freestanding Sign	1		32	12	
Window Sign	No limit		75% of the glass pane where displayed	N/A	

M. SIGNS PERMITTED IN THE GOVERNMENT AND INSTITUTIONAL (G/I) DISTRICT³⁵³

Each lot in the G/I district may have one or more permanent signs, configured in accordance with [Table 22.5.4.M: Permanent Signage in the Government/Institutional District](#).

TABLE 22.5.4.M: PERMANENT SIGNAGE IN THE GOVERNMENT/INSTITUTIONAL DISTRICT				
Use Type	Maximum Number of Signs per Lot (#)	Cumulative Sign Area per lot (sq. ft.)	Maximum Height (feet above grade)	Type of Signs Allowed Additional Standards

³⁵³ This section carries forward the standards in Section 36-165(13) with no substantive changes except removal of the directional sign provisions as references to directional signs are not *Reed*-compliant.

TABLE 22.5.4.M: PERMANENT SIGNAGE IN THE GOVERNMENT/INSTITUTIONAL DISTRICT				
Use Type	Maximum Number of Signs per Lot (#)	Cumulative Sign Area per lot (sq. ft.)	Maximum Height (feet above grade)	Type of Signs Allowed Additional Standards
Town-Owned Uses				
Freestanding Sign	1	48 (including frame)	4	1. Signs shall be placed outside the street right-of-way and at least 5 feet from all lot lines 2. Signs shall be located outside of sight distance triangles
Wall Sign	1	24 (including frame)	Top of Wall	Sign shall not extend more than 15 inches beyond building wall surface
501(c)(3) Uses				
Freestanding Sign	1 per establishment	4 (including frame)	3	1. Signs shall be placed outside the street right-of-way and at least 5 feet from all lot lines 2. Signs shall be located outside of sight distance triangles
Wall Sign			Top of Wall	

N. TEMPORARY SIGNS PERMITTED IN ALL DISTRICTS³⁵⁴

In addition to the other forms of allowable signage, lots in the Town may also include temporary signage, configured in accordance with Table 22.5.4.N: Temporary Signage.

TABLE 22.5.4.N: TEMPORARY SIGNAGE					
Maximum Number of Signs per Lot (#)	Cumulative Sign Area per lot (sq. ft.)	Maximum Surface Area for a Single Sign (sq. ft.)	Maximum Height (feet above grade)	Maximum Duration Per Calendar Year (# of days)	Additional Standards
Residential Districts [1]					
3	21	6	Freestanding: 5; Wall Sign: Under roof	30	1. Temporary signs shall not be illuminated or painted with light-reflecting paint 2. Temporary signs shall be placed outside the right-of-way and at least 5 feet from all lot lines 3. Signs placed for events shall be removed within 3 days after the event 4. Temporary signs must have the lot owner's permission

³⁵⁴ This section consolidates the standards in Sections 36-165(8)(c)(d)&(g) and 36-165(12) without substantive changes.

TABLE 22.5.4.N: TEMPORARY SIGNAGE					
Maximum Number of Signs per Lot (#)	Cumulative Sign Area per lot (sq. ft.)	Maximum Surface Area for a Single Sign (sq. ft.)	Maximum Height (feet above grade)	Maximum Duration Per Calendar Year (# of days)	Additional Standards
All Other Districts					
1	32	32	Freestanding: 12; Wall Sign: Under roof; Window: Top of pane	90	1. Temporary signs shall not be illuminated or painted with light-reflecting paint 2. Temporary signs shall be placed outside the right-of-way and at least 5 feet from all lot lines 3. Signs placed for events shall be removed within 3 days after the event 4. Temporary signs must have the lot owner's permission
<p>NOTES:</p> <p>[1] Townhouse and multi-family developments shall be subject to the standards applied to All Other Districts.</p>					

22.5.5. EXTERIOR LIGHTING³⁵⁵

All exterior lighting shall be planned, erected, altered and maintained in accordance with the following provisions.

A. PURPOSE AND INTENT

1. These exterior lighting standards are established to provide desirable levels of lighting for adequate visibility, safety and security without unreasonably interfering with the use and enjoyment of neighboring properties.
2. The standards in this section are designed to provide uniform distribution of light that minimizes light trespass and controls glare on and off the site providing exterior lighting.

B. PROHIBITED LIGHTING

The following forms of exterior lighting are prohibited:

1. Lighting that imitates an official highway or traffic control light or sign;
2. Lighting in the direct line of vision with any traffic control light or sign;
3. Lighting with a flashing or intermittent pattern of illumination;
4. Privately-owned light fixtures located in the public right-of-way;
5. Searchlights, except as required by a federal, state, or local authority;
6. Light fixtures that violate any law of the State;
7. Floodlights for illuminating sports, except permitted outdoor recreational uses;
8. Illumination of the public beach and estuarine waters from uses that are not water dependent;
9. Lighting of windsocks, fountains, or governmental flags; and
10. Light fixtures directed overhead.

C. GENERAL STANDARDS

Exterior lighting shall comply with the following requirements:

³⁵⁵ This section carries forward the standards from Section 36-166 of the current code with no substantive changes except that measurement standards are relocated to the rules of measurement, and there are new standards for limiting glare on ocean beaches.

1. MAXIMUM ILLUMINATION

Development with exterior lighting shall be configured so that the maximum illumination levels (forward or backlighting) do not exceed one footcandle, measured at six inches above grade at the lot line.

2. ALLOWABLE RANGE OF ILLUMINATION³⁵⁶

Principal buildings employing exterior illumination shall maintain intensities at no greater than those permitted in the Table 22.5.5.C.2: Range of Illumination:

TABLE 22.5.5.C.2: RANGE OF ILLUMINATION	
TYPE OF USE OR ACTIVITY	ALLOWABLE RANGE OF ILLUMINATION FROM OUTDOOR LIGHTING (MINIMUM/MAXIMUM FOOTCANDLES) [1]
Parking Areas	
Parking Lot Serving a Commercial Use	4.0/7
Industrial Use	0.5/1
Building Exteriors	
Loading Berths, Spaces, and Platforms	10
Entrances to a Commercial Building	5
Architectural Lighting	1
Security Lighting	
Commercial Uses	1/1
Industrial Uses	1/1
Walkways & Vehicular Access	1/1
Recreational Uses	
Baseball / Football / Soccer Field	25
Tennis / Handball / Volleyball Court	20
Basketball Court	10
Swimming Pool	10
Playground	5

3. FLOODLIGHT ILLUMINATION

Floodlights, when provided, shall not exceed 500 watts.

4. MAXIMUM HEIGHT

- a. Freestanding light fixtures within commercial parking lots shall not exceed 35 feet in height, measured from ground level, or lowest surrounding ground elevation.
- b. Freestanding light fixtures in all other areas shall not exceed 18 feet in height, measured from ground level.
- c. For purposes of this section, "ground level" shall mean the original site elevation before any site work or fill material is added.

5. WIND LOADING

Lighting fixtures shall be designed to withstand a minimum wind velocity of 130 miles per hour for a three second gust.

6. WIRING UNDERGROUND

All wiring for outdoor lighting not located on a building shall be placed underground.

³⁵⁶ NOTE: The language introducing the table in Section 36-166(c)(7) says the uses in the table are exempt from the lighting standards, yet the table sets out maximum lighting standards. Further, the table sets out minimum and maximum ranges of lighting, but many of the cells have only one number.

D. LIGHTING PLAN REQUIRED

1. Except for single-family detached and duplex dwellings, all uses shall provide an exterior lighting plan for review during the site plan review process. Exterior lighting plans shall provide the following:
 - a. The rationale for the proposed lighting plan;
 - b. Evidence that a lower lighting level than that requested would not provide sufficient illumination;
 - c. The manufacturer’s technical specification sheets describing the fixtures to be used;
 - d. Rationale for why the selected option was chosen for the particular site; and
 - e. The stamp/seal, license number and signature of the design professional responsible for the plan.
2. The design professional shall be a professional engineer, architect, or landscape architect licensed to practice in the State.

E. MEASUREMENT

Exterior illumination measurements are determined in accordance with Section 22.1.8.J, Exterior Lighting.

F. INSPECTION

1. All outdoor lighting fixtures may be subject to annual inspection by the Town Manager (or a designee) to ensure compliance with the provisions of this chapter.
2. When a fixture fails to comply, the Town Manager (or a designee) shall give written notice to the owner of the property on which the fixture is located stating that the fixture shall be brought into compliance, or removed at the owner’s expense, within 30 days of receipt of the notice.

22.5.6. ELECTRICAL AND COMMUNICATION SERVICE³⁵⁷

1. All electrical, telephone, and TV distribution lines and all conduits used for the distribution of such signals, located within the Town, shall be placed underground from the point of separation from the transmission or trunk line to the structure of the ultimate user.
2. Existing distribution lines that are in place overhead on the effective date of this regulation may be extended only if placed underground.
3. Transformers and enclosures containing switches, meters, capacitors, etc., may be pad-mounted as an exception to the aforementioned.

22.5.7. COMMERCIAL DESIGN STANDARDS³⁵⁸

A. PURPOSE AND INTENT

These design standards are intended to identify the Town’s goals and expectations for commercial development quality as a means of establishing higher quality development that is more compatible with residential development. More specifically, the purposes of this section are to:

1. Encourage establishment of a strong sense of place with vibrant commercial development in key areas of the Town;
2. Encourage a more pedestrian-friendly environment through attention to human-scale design and site features;
3. Foster greater compatibility between adjacent residential and nonresidential development;
4. Limit the impacts of automobile-oriented development in commercial areas; and
5. Enhance the appearance of development along major streets.

B. APPLICABILITY

The standards in this section shall apply to:

1. New commercial development as identified in Table 22.4.2: Principal Use Table, located in the General Commercial (C) District; and
2. Existing commercial development located in the General Commercial (C) District that is subject to expansion, addition, or alteration in an amount exceeding 50 percent of the structure’s assessed value for improvements at the time of construction.

³⁵⁷ This section carries forward the standards in Section 36-170 of the current code without substantive changes.

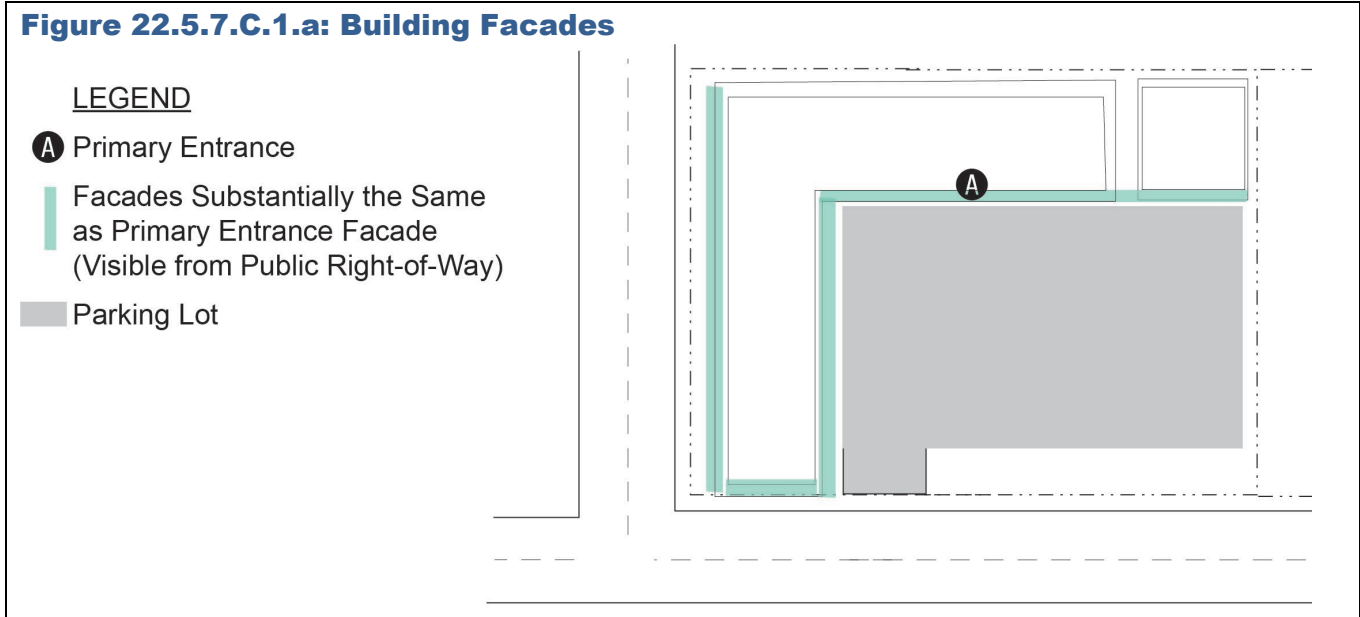
³⁵⁸ This is a new section that is suggested for addition in response to direction from the Citizen Survey and Town Manager Input that we should add design standards for new or updated commercial development.

C. COMMERCIAL DESIGN STANDARDS

1. BUILDING PLACEMENT

a. Fronting Streets

- i. The façade of all buildings in view from a public right-of-way shall contain substantially the same building articulation, features and elements that are used on the façade which comprises the primary entrance to the building (see [Figure 22.5.7.C.1.a: Building Facades](#)).

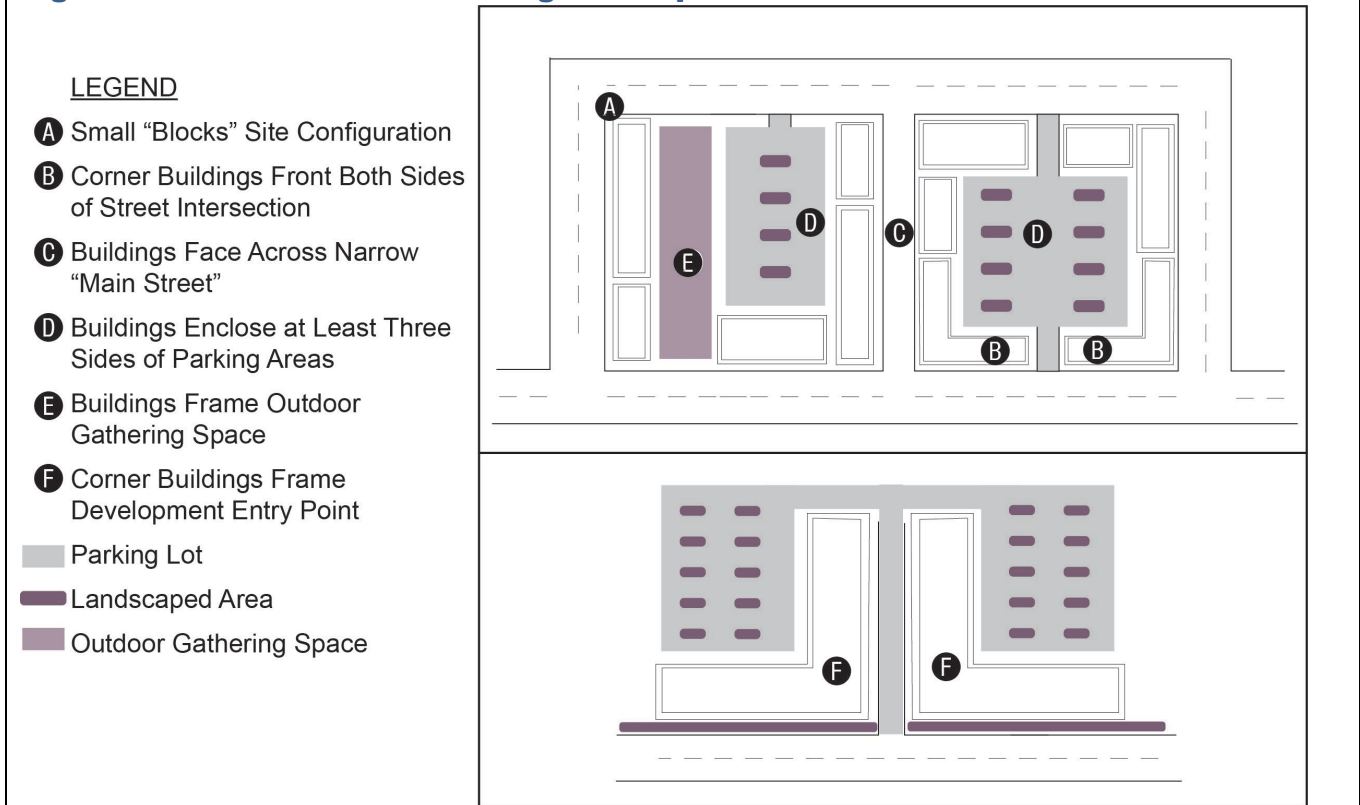


- ii. In addition, service facilities and operations shall be oriented away from public view or screened to the extent practicable.

b. Multi-Building Development

- i. Development comprised of multiple buildings shall be configured with two or more of the following design elements (see [Figure 22.5.7.C.1.b: Multi-building Development](#)):
 - 1) Site configuration as a series of smaller “blocks” defined by buildings fronting on-site streets and internal vehicle access ways, utilizing pedestrian oriented design such as walkways, or other circulation routes and multi-modal transportation access/waiting areas when appropriate;
 - 2) Corner buildings designed to front both sides of an adjacent street intersection or entry point to the development in an “L” configuration;
 - 3) Buildings facing each other across a relatively narrow vehicular access area with pedestrian amenities in a “main street” character;
 - 4) Buildings framing and enclosing at least three sides of parking areas, public spaces, or other site amenities; or
 - 5) Buildings framing and enclosing outdoor dining or gathering spaces for pedestrians between buildings.
- ii. The primary entrances of buildings shall be oriented towards a street along the perimeter of a development, towards streets interior to the development, or towards open space areas.

Figure 22.5.7.C.1.b: Multi-building Development



2. BUILDING DESIGN

a. Design Features

Front building facades shall provide a minimum of three of the following six design features (see [Figure 22.5.7.C.2.a: Design Features](#)):

- i. Facades of 60 feet in width or wider shall incorporate wall offsets of at least one-foot in depth a minimum of every 40 feet. Each offset shall have a minimum width of ten feet;
- ii. Façade color changes following the same dimensional standards as the offset standards in (a) above;
- iii. A series of four or more pilasters having a minimum depth of eight inches, a minimum width of eight inches, and a minimum height of 80 percent of the façade’s height;
- iv. Roofline changes, coupled with correspondingly aligned wall offset facade material changes, including changes in the roof planes or changes in the height of a parapet wall (such as extending the top of pilasters above the top of the parapet wall);
- v. A covered front porch occupying at least 25 percent of the front façade (counted as two features); or
- vi. Glazing of at least 30 percent of the width of street level frontage with visibly permeable windows or doorways.

Figure 22.5.7.C.2.a: Design Features

LEGEND

- Ⓐ Wall Offsets
- Ⓑ Color Changes
- Ⓒ Pilasters
- Ⓓ Roofline Changes
- Ⓔ Covered Porch
- Ⓕ Glazing



b. Outbuildings

Outbuildings located in front of other buildings within the same development shall include a consistent level of architectural detail on all four sides of the building as well as exterior materials and colors that are compatible with the primary building in the development.

c. Roofs

- i. Structures with a flat roof shall include parapet walls with a decorative three-dimensional cornice
- ii. All rooftop equipment shall be screened from view from all streets (see [Figure 22.5.7.C.2.c: Roof Form](#)).

Figure 22.5.7.C.2.c: Roof Form

LEGEND

- Ⓐ Parapet Wall with Three-Dimensional Cornice
- Ⓑ All Rooftop Equipment Screened from View



d. Prohibited Materials

Metal siding shall not be used on building facades facing streets.

3. SITE FEATURES

a. Loading, Storage, and Service Areas

- i. Loading, service, and equipment areas shall be located in a manner that minimizes their visibility from off-site areas, to the maximum extent practicable.
- ii. Loading, service, and equipment areas that are associated with an outparcel building shall be screened through the use of structural elements and similar materials attached to and integrated with the building.

22.5.8. OCEAN HAZARD AREA STANDARDS³⁵⁹

A. PURPOSE AND INTENT

The purpose of this section shall be to further the goals set out in Section 113A-102(b) of the North Carolina General Statutes, with particular attention to minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development.

B. APPLICABILITY

The ocean hazard area consists of the ocean erodible area and the high hazard flood area (See Chapter 4: Definitions).

C. GENERAL STANDARDS FOR OCEAN HAZARD AREAS

All uses allowed in an ocean hazard area shall comply with:

- 1. The standards in Section 15A NCAC 07H .0308 of the North Carolina Administrative Code; and
- 2. The current regulations fort ocean hazard areas from the NC Division of Coastal Management.

D. SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

The following use types or activities shall be subject to both the general use standards in Section 15A NCAC 07H .0308 as well as the specific use standards for ocean hazard areas in Section 15A NCAC 07H .0308 of the North Carolina Administrative Code:

- 1. Ocean shoreline erosion control activities;
- 2. Dune establishment and stabilization;
- 3. Accessways; and
- 4. Building construction.

E. EXCEPTIONS

The following use types or activities are allowed seaward of the oceanfront setback requirements in Sections 15A NCAC 07H .0306 and 15A NCAC 07H .0308 of the North Carolina Administrative Code under the conditions contained in Section 15A NCAC 07H .0309 of the North Carolina Administrative Code:

- 1. Temporary or uninhabitable developments as listed in Section 15A NCAC 07H .0309(a) of the North Carolina Administrative Code;
- 2. In situations where application of the oceanfront setback requirements of Section 15A NCAC 07H .0306(a) of the North Carolina Administrative Code would preclude placement of permanent substantial structures on lots existing as of June 1, 1979;
- 3. Reconfiguration and development of lots and projects that have a grandfather status under Section 15A NCAC 07H .0309(b) of the North Carolina Administrative Code;
- 4. Certain types of water dependent development as defined in Section 15A NCAC 07H .0309(d) of the North Carolina Administrative Code;
- 5. Replacement or construction of a pier house associated with an ocean pier;

³⁵⁹ This section replaces current Sections 36-473 and 36-474. Per staff direction recorded in the Code Assessment, the current sections were outdated, having been last updated in 1988. Rather than restate the current rules word for word, these new sections reference the current CAMA rules in the North Carolina Administrative Code, so that as the State rules are updated, the Town Code will not become outdated again.

6. Small scale, non-essential development that does not induce further growth in the Ocean Hazard Area, such as the construction of single family piers and small scale erosion control measures; and
7. Transmission lines necessary to transmit electricity from an offshore energy-producing facility.

22.5.9. STORMWATER MANAGEMENT³⁶⁰

A. PERMIT REQUIRED

No grading, filling, or other alteration of the topography or elevation of any unimproved lot, or demolition and clearing of improved property, nor any manmade change to any improved real estate resulting in the discharge of stormwater onto adjacent property and requiring a building permit, shall be undertaken prior to the issuance of a lot disturbance and stormwater management permit in accordance with the standards in Section 22.2.3.B, Lot Disturbance and Stormwater Management Permit.

B. MINIMUM STANDARDS

1. New development shall be configured to ensure the development will retain all stormwater generated by a 1.5-inch rain event and will not adversely affect any stormwater management system previously constructed by the Town or on adjacent properties under separate ownership.
2. No fill material may be placed on a lot in a required side setback area unless the final horizontal-to-vertical slope of the fill material is equal to or less than 3:1.
3. The burden shall be on the applicant to demonstrate the proposed stormwater management improvements will meet Town requirements.
4. All required stormwater improvements shall be maintained in a manner that ensures they will continue to satisfy all applicable requirements in the lot disturbance and stormwater management permit.

C. INSPECTION

1. Upon inspection, the Town Manager (or a designee) shall confirm that the survey detail submitted conforms generally to the pre-disturbance condition of the lot with respect to its elevations, and that the proposed disturbance activity will not create any hazards or disturb land or lots other than that owned by the applicant or his agent.
2. The Town Manager (or a designee) shall make such notation or comments on the permit as needed to further establish the pre-disturbance topography and elevation of the lot for later use in determining the permitted height of any structures subsequently constructed on the lot.

³⁶⁰ This section carries forward the standards in Section 36-171 and includes language associated with ZTA-17-06.

22.6. NONCONFORMITIES

This section sets out the provisions for addressing nonconforming uses of land, nonconforming lots, and nonconforming structures.

22.6.1. GENERAL APPLICABILITY

There are existing uses of land, structures, lots of record, and signs that were lawfully established before the effective date of this Ordinance or a subsequent amendment thereto, that now do not conform to standards and requirements of this Town Code. Such uses, structures, lots, and signs are collectively referred to as “nonconformities.”

A. PURPOSE AND INTENT³⁶¹

1. The purpose and intent of this section is to allow nonconformities to continue to exist and be maintained for the sake of public safety, but to regulate and limit their continued existence and expansion so as to bring them into conformity to the extent that is reasonably practicable.
2. It is further the intent of this section that nonconformities not be enlarged upon, expanded, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

B. COMPLETION AUTHORIZED³⁶²

1. To avoid creation of undue hardship on developments rendered nonconforming, nothing in this section shall require a change in the plans, construction, or designated use of any building upon which actual construction was lawfully begun prior to the effective date of this chapter, provided actual construction has been carried on diligently.
2. For the purposes of this subsection, “actual construction” is defined to include the placing of construction materials in a permanent position and fastening in a permanent manner. Excavation or demolition or removal of an existing building that has begun in preparation for rebuilding, such excavation, demolition, or removal shall also be considered actual construction.

C. REPLACEMENT

Any nonconforming situation which is replaced by a conforming structure, use, or combination thereof shall thereafter conform to the requirements of this chapter, and the nonconforming situation shall not be resumed.

22.6.2. MAINTENANCE AND CONTINUATION

A. MAINTENANCE ALLOWED³⁶³

Nonconformities are allowed to continue in accordance with the requirements of this chapter, and are allowed and encouraged to receive minor repairs and routine maintenance (including repair or replacement of nonbearing walls, fixtures, wiring, or plumbing) that are necessary to maintain the nonconformity and its surroundings in a safe condition and to protect against health hazards. In no instance shall maintenance or repair result in enlargement or expansion of a nonconformity.

B. STRENGTHENING ALLOWED³⁶⁴

Nothing in this chapter shall prevent the strengthening or restoration to a safe or lawful condition of any part of any building or structure declared unsafe or unlawful by a duly authorized Town official.

C. CONTINUATION³⁶⁵

³⁶¹ This section builds on and clarifies the language in Section 36-131(a) of the current code.

³⁶² This section carries forward Section 36-131(b) of the current code.

³⁶³ This section replaces the language in Section 36-131(e) of the current code by removing the 12-month time period and the 10% of replacement cost threshold. These changes are made in recognition that maintenance is important for public safety and maintenance should not be limited by time period or value.

³⁶⁴ This is new language proposed to replace the contradiction in the existing language between Section 36-131(e)(2) and (e)(3) related to whether or not strengthening of a dangerous nonconforming situation is allowed ((e)(2) says it isn't, and (e)(3) says it is allowed). We suggest such strengthening be allowed.

³⁶⁵ This section includes the language from ZTA-17-01.

Residential accessory structures existing as of January 1, 2017 which were otherwise lawful and duly permitted at the time of their construction or modification and which are nonconforming due solely to the inclusion of living space within the accessory structure shall be considered legally nonconforming under this chapter. Such accessory structures may be modified in conformance with this chapter and the nonconforming living space within them may continue so long as the nonconformity is not expanded.

22.6.3. NONCONFORMING USES³⁶⁶

A. REPLACEMENT VALUE LESS THAN \$1,000

1. Lawfully established uses that become nonconforming following adoption of this chapter (or a subsequent amendment) that include no single structure with a replacement value of less than \$1,000 may be continued, provided:
 - a. The nonconforming use is not enlarged, increased, or extended to occupy a greater area of land than existed on the effective date of this chapter.
 - b. The nonconforming use is not moved in whole or in part to any other portion of the lot or parcel.
 - c. No additional nonconformities are established in connection with such nonconforming use of land.
2. If a nonconforming use of land subject to this subsection ceases for any reason for a period of more than 30 days, any subsequent use of such land shall conform to the requirements of the district where located.

B. REPLACEMENT VALUE OF \$1,000 OR MORE

1. Lawfully established uses that become nonconforming following adoption of this chapter (or a subsequent amendment) that include one or more structures with a replacement value of \$1,000 or more may be continued, provided:
 - a. No structure containing a nonconforming use is enlarged, extended, constructed, reconstructed, moved, or structurally altered, except as a part of changing the use to a permitted use.
 - b. The nonconforming use is not extended beyond any portion of the structure originally arranged or designed for it.
 - c. The nonconforming use is not extended to occupy land outside the building.
2. No mobile home or trailer existing as a nonconforming use may be returned or replaced after removal.

C. DISCONTINUANCE

When a nonconforming use, or structure and premises in combination, is discontinued or abandoned for ten consecutive months or more (except when government action impedes access to the premises), the structure, or structure and premises in combination, shall not thereafter be used, except in conformity with requirements for district where it is located.

D. REPLACEMENT FOLLOWING CASUALTY DAMAGE

1. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.
2. Destruction for the purpose of this subsection is defined as damage to an extent of more than 50 percent of the replacement cost at time of destruction.

22.6.4. NONCONFORMING STRUCTURES³⁶⁷

A. CONTINUATION

Where a lawful structure exists on the effective date of this chapter that could not be built under the terms of this Town Code due to restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, it structure may be continued so long as it remains lawful, subject to the following provisions:

1. No nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but may be altered to decrease its nonconformity.

³⁶⁶ This section combines the standards of Sections 36-132(b) and (d) and adds clarity to the language.

³⁶⁷ This section carries forward Section 36-132(c) of the current code with clarifications to the language.

2. Enclosing the space below any portion of the structure on pilings with a nonconforming side, front, or rear setback is permitted provided the enclosure does not encroach any further into the nonconforming setback.

B. EXPANSION OF RESIDENTIAL STRUCTURES

A lawfully-established residential dwelling that met the district requirements at the time of establishment but that is rendered nonconforming with respect to side setback requirements after adoption or amendment of this chapter may continue operate and may also expand the portion of the structure in violation of the side setback requirements provided:

1. The expansion does not increase the nonconformity by extending further into the required side setback; or
2. The expansion does not exceed the side setback requirements in place immediately prior to the time the dwelling became nonconforming.

C. REPLACEMENT AFTER CASUALTY DAMAGE

1. Should a nonconforming structure (or nonconforming portion of a structure) be destroyed by any means to an extent of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter.
2. In cases where a nonconforming structure (or nonconforming portion of a structure) which is destroyed due to fire, flood, windstorm, or natural disaster, to an extent that the structure is declared unusable or to the extent that greater than 50 percent of its replacement cost at the time of destruction may be reconstructed on the same footprint existing at the time of its destruction, except as provided in Chapter 10: Emergency Management, pertaining to hurricane and storm reconstruction and redevelopment standards for ocean hazard areas. If the footprint cannot be verified by an on-site inspection, then an "as-built" survey containing the seal of a state-licensed professional land surveyor made prior to destruction must be provided in order to utilize the benefits of this provision.

D. RELOCATION

1. Except on lots adjacent to the Atlantic Ocean or sound waters, if a nonconforming structure is moved for any distance, it shall thereafter conform to the regulations for the district where located.
2. A nonconforming structure located on a lot adjacent to the Atlantic Ocean or sound waters may be moved on the same lot provided that such movement does not increase the nonconformity of the structure in any way.

22.6.5. NONCONFORMING LOTS³⁶⁸

1. SINGLE-FAMILY DWELLING PERMITTED

- a. In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory building may be erected on any single lot not under the same ownership as any adjacent lot and which met all legal requirements at the time of its creation and recording in the Dare County Register of Deeds.
- b. All applicable dimensional requirements other than lot area and lot width shall be met for development or redevelopment of such a lot except that a lot having a lot width of 50 feet or less may use a side setback of 12 feet.

2. RECOMBINATION REQUIRED

- a. If any of the following situations apply, all adjacent lots under the same ownership shall be recombined into:
 - i. A single lot which may or may not meet the minimum requirements for the district in which such lots are located; or
 - ii. Multiple lots which all meet the minimum requirements for the district in which such lots are located:
 - 1) Development is proposed upon land under the same ownership which includes one or more nonconforming lots adjacent to one or more other lots under the same ownership;
 - 2) Demolition or redevelopment exceeding 50 percent of an existing structure's value is proposed and any portion of the existing structure or associated use is currently or has

³⁶⁸ This section includes the language from ZTA-18-07.

- been within the previous seven years located upon or occurring on two or more lots under the same ownership, as measured from the time of application;
- 3) Development is proposed of a new structure or use to be located on two or more lots under the same ownership;
 - 4) Prior to the sale or transfer of land when any portion of the land being sold or transferred was a parcel or part of a parcel of land upon which an existing structure or associated use is currently or has been within the previous seven years located upon or occurring on two or more lots under the same ownership, as measured from the time of application; or
 - 5) Prior to the sale or transfer of land including a nonconforming lot or lots adjacent to one or more other lots under the same ownership;
- b. A plat prepared by a North Carolina licensed land surveyor showing the recombination shall be recorded in the Dare County Register of Deeds, and a copy of the recorded plat shall be provided to the Town prior to the issuance of a zoning or building permit for development or redevelopment upon any of the newly created lots. Lots created by a recombination required by this section shall be deemed to equal or exceed the subdivision standards of the Town, and are exempt from subdivision review.
 - c. For purposes of subsection (a), the term “same ownership” shall be construed broadly to effectuate the reduction of nonconforming lots within the Town. Land and lots under the same ownership shall include, but not be limited to, any of the following or any combination of the following:
 - i. A lot is owned, in whole or in part, by an individual and another lot is owned by the same individual or by an affiliate of the same individual; or
 - ii. A lot is owned, in whole or in part, by a legal entity and another lot is owned by the same legal entity or by an affiliate of the same legal entity.

3. TERMS DEFINED

Solely for the purposes of this section, the following definitions apply:

- a. An “Affiliate” of an owner shall mean:
 - i. In the case of an individual owner, a family member of the owner, or a legal entity controlled by the owner.
 - ii. In the case of a legal entity owner, an individual who controls the legal entity, or another legal entity controlled by the owner.
- b. “Controlled” or “controls” shall mean the power, by ownership, operation of law or contract, whether exercised or not, directly or indirectly, actually or effectively, to operate, supervise, or manage a legal entity, or to appoint or elect the management of the legal entity, or to otherwise direct the operation, supervision, or management of the legal entity.
- c. “Family member” of an owner shall mean the owner’s spouse, lineal descendants, siblings, and parents, whether related by blood or marriage.

CHAPTER 23.

[RESERVED]

CHAPTER 24. BUSINESS AND BUSINESS REGULATIONS

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GUIDANCE FROM CODE ASSESSMENT:

Chapter 24 of the new Town Code is proposed to include the business and business regulations material, which consists of the solicitor’s permit procedure and standards.

This permit process is currently administered by the Police Department, and is the only aspect of the Town Code other than the powers and duties material in Chapter 2 related to the police in the Town Code. The Town could consider shifting responsibility for this permit procedure to the Planning Department (while still retaining the background check responsibility with the Police Department). This would allow this proposed chapter to be removed from the updated Town Code.

Regardless of where located, the Solicitor’s Permit procedure is proposed for minor reorganization as shown.

Another opportunity for consideration is the relocation to new Chapter 24 of other provisions related to specific business or other uses that must obtain a special permit. Some communities address massage therapy, adult business, body piercing, and garage or yard sales in the business regulations chapter. In many cases, this is done because the use requires a special license or the community administers the enforcement provisions through the police force.

Alternatively, standards for these uses can also remain in the zoning provisions (where they are currently located).

Staff comments on this chapter indicated that the information on solicitor’s permits needs general updates for modernization and organization.

Article II of the current Chapter 8 has been relocated to new Chapter 16, Cable Television. As in other chapter, definitions have been relocated to the new consolidated Chapter 4, Definitions.

24.1. SOLICITOR'S PERMIT

24.1.1. WHEN REQUIRED³⁶⁹

- A.** It is unlawful for any person to solicit charitable contributions by going from door-to-door within the Town without having first secured a solicitor's permit from the Town as provided in Section 24.1.3.A, PERMIT APPLICATIONS.
- B.** Additionally, it is unlawful to solicit for charitable contributions unless the following requirements are met:
 - 1. Solicitation of charitable contributions shall be permitted only between the hours of 9:00 a.m. and 6:00 p.m. during Eastern Daylight Time and 9:00 a.m. and 5:00 p.m. during Eastern Standard Time.
 - 2. The solicitor permit issued for that person shall be carried and displayed at all times while conducting such solicitations in such a manner as to be clearly visible to a reasonable person of adequate vision.
 - 3. All other permits or licenses required by law shall have been obtained.

24.1.2. EXEMPTIONS³⁷⁰

This section shall not apply to:

- A.** The delivery of goods or services which have been ordered before delivery;
- B.** The circulation of petitions for signature or lawful distribution of advertising materials, flyers, or materials expressing views on political, social, or religious matters;
- C.** The lawful promotion or expression of views concerning political, social, religious, and other like matters;
- D.** The sale or offering for sale of goods, wares, merchandise, food, periodicals, or services by bona fide members or representatives of charitable, religious, civic, or fraternal organizations,³⁷¹ and who receive no compensation of any kind for their services, and such sale or offering by children under the age of 18 years who are students in a public or private school for school activities; and
- E.** The sale or delivery of goods to business establishments.

24.1.3. PROCEDURE

A. PERMIT APPLICATIONS³⁷²

Applications for permits to solicit charitable contributions shall be submitted to the Police Department during normal business hours (Monday through Friday, 9:00 a.m. to 5:00 p.m. Eastern Time) on a form provided by the Police Department, under oath, and shall include, but not be limited to, the following information:

- 1. The full name of the applicant;
- 2. The permanent residence address of the applicant;
- 3. The applicant's temporary address in or in the vicinity of the Town, if applicable;
- 4. The name and address of the applicant's employer or the organization with which the applicant is associated in connection with the solicitation of charitable contributions;
- 5. The period of time for which the application is sought, which shall not exceed 60 consecutive calendar days; provided that the permit may be renewed for 60-day periods without limit, upon proper application therefor;
- 6. A record of any and all crimes of which the applicant has been convicted or has pleaded no contest in the ten years preceding the submittal of the application;
- 7. The age, height, weight, and any other additional information which the Town may reasonably require for identification, including a copy of the document used by the applicant to verify personal identification (e.g. driver's license, passport, picture I.D.);
- 8. A complete listing of and information concerning all other permits or licenses,³⁷³ which were obtained by the applicant;

³⁶⁹ This section comes from Section 8-1(c) of the current Town code.

³⁷⁰ This section comes from Section 8-1(b) of the current Town code.

³⁷¹ "which are exempt from the payment of privilege licenses" has been removed to reflect current General Statutes.

³⁷² This section comes from Section 8-1(d) of the current Town code.

9. Documentation that the organization for which charitable contributions are to be solicited is a nonprofit and tax-exempt entity; and
10. If an application is filed by an employer, there shall also be filed separate applications for each solicitor, giving the information set forth above for each solicitor and signed and sworn to by each solicitor, and a separate permit shall be issued for each applicant.

B. PROCEDURE FOR CONSIDERING APPLICATIONS³⁷⁴

1. INVESTIGATION

Upon receipt of a complete application, the Police Chief or designee shall make or cause to be made such investigation as reasonably necessary to verify the information in the application and to ensure compliance with the provisions of this section and shall issue a permit if the applicant:³⁷⁵

- a. Has submitted a completed application;
- b. Is permitted by law to engage in such activity;
- c. Has not been convicted of, or has not pleaded no contest to, a felony charge within the ten years preceding the submittal of the application;
- d. Has not been, within the previous five years, convicted of, or not pleaded no contest to, a misdemeanor charge involving theft, fraud, forging, uttering, or other crimes of like nature or any crime involving moral turpitude;
- e. Has valid driving privileges in the State, in those cases where the applicant will be operating a vehicle in the course and scope of the soliciting for charitable contributions; and
- f. Has obtained the necessary licenses.

2. PERMIT APPROVAL AND ISSUANCE

The Police Chief or a designee shall approve or deny an application and issue a solicitor's permit as soon as possible and, except in the case of extraordinary circumstances, as when a number of applications are submitted within a short period of time, should act within 72 hours of receipt of the completed application.

3. PERMIT REFUSAL, SUSPENSION, OR REVOCATION

- a. The Town may refuse to issue a license or permit, or the licenses or permits issued pursuant to this chapter may be suspended or revoked by the Town Manager or a designee after notice and hearing for any of the following causes:
 - i. Any fraud, misrepresentations, or false statements contained in the application for permit or license;
 - ii. Any fraud, misrepresentation, or false statement made in connection with the selling of goods, wares, merchandise, and services;
 - iii. Any violation of this chapter or any ordinance of the Town;
 - iv. Conviction of the applicant, licensee or permittee of for a felony or a misdemeanor involving theft, fraud, forgery, moral turpitude, criminal trespass, or a threat to the public safety during the solicitation period, or has otherwise violated the provisions of this chapter; or
 - v. Conducting the activity under any ordinance of the Town in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, morals, or general welfare of the public.
- b. A permit which has been revoked shall be immediately surrendered to the Police Department.
- c. In case of refusal to issue a permit or license or the suspension or revocation of a license or permit as herein provided, no portion of the application, license, or permit fee shall be returned to the applicant, licensee, or permittee unless otherwise provided in this section or any ordinance of the Town.
- d. Suspension or revocation of a solicitor's permit shall not be considered a recovery or penalty so as to bar any other penalty from being enforced.

³⁷³ "such as privilege licenses" has been removed.

³⁷⁴ This section comes from Section 8-1 of the current Town code. It has been reorganized to aid in user-friendliness, but has not been substantively changed.

³⁷⁵ To aid in clarity and user-friendliness, this section's wording has been changed slightly to reflect the requirements for issuance of a permit, rather than the reasons why a permit might not be issued, as written in the current code Section 8-1(e)1.

4. TRANSFERABILITY

Permits to solicit charitable donations shall be nontransferable.

C. PERMIT RENEWAL³⁷⁶

1. A permit for solicitation of charitable contributions may be renewed for an unlimited number of 60-day periods, provided an application for renewal is made on such form as provided by the Police Chief or a designee no later than the expiration date on the current valid permit.
2. Applications received after the expiration date on the current valid permit shall be processed as new applications.
3. The Police Chief or a designee shall review each application for renewal to determine that the applicant is in full compliance with the provisions of this section. If the Police Department finds that the application meets the requirements of Section 24.1.3.B.1, Investigation, the renewal permit shall be issued.

D. APPEALS³⁷⁷

1. TIMING

- a. The appeal of a refusal to issue a permit or the revocation of a permit shall be made to the Town Manager by filing a written notice of appeal, specifying with particularity the grounds upon which the appeal is made, no later than ten days from the date of the refusal to issue a permit or the revocation of a permit.
- b. The Town Manager or designee shall fix a reasonable time for the hearing of the appeal, shall give due notice to all parties, and shall render a decision within a reasonable time.

2. NOTICE

- a. Notice of hearing for the suspension or revocation of a license or permit shall be in writing, given by the Town Clerk, setting forth specifically the grounds of the complaint and the time and place of the hearing.
- b. Service of such notice shall be made either by personal service or by certified mail, return receipt requested, to the applicant, licensee or permittee at the last known address, at least five days prior to the date set for the hearing.

3. FINAL ACTION

The order of the Town Manager or other authorized official, department, board or agency, where applicable, shall be the final municipal action for the purpose of judicial review.

24.2. ALCOHOL SALES³⁷⁸

The sale of malt beverages, unfortified wine, fortified wine and mixed beverages shall be allowed within the Town limits at any premises licensed by a valid and current alcoholic beverage control permit issued under Section 18B-1001 of the North Carolina General Statutes, on Sundays beginning at 10:00 a.m.

³⁷⁶ This section comes from Section 8-1(e)(3) of the current Town code.

³⁷⁷ This section comes from Section 8-1(e)(4) and 8-1(f)(2) of the current Town code.

³⁷⁸ This section includes language from Ordinance 2017-07-04 referred to as the “brunch bill”.

CHAPTER 25.

[RESERVED]

CHAPTER 26.

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GUIDANCE FROM CODE ASSESSMENT:

Chapter 30 of the current Town Code includes the subdivisions regulations.

The current chapter is comprised of five articles that address general provisions, subdivision procedures, permanent reference points and improvements, design standards, and plat requirements. This draft of the Town Code renumbers the subdivision provisions to Chapter 26. The definitions have been relocated to new Chapter 4, and current Section 30-8, Amendments, has been deleted in favor of the general Amendment procedure cited in new Chapter 1: General Provisions. The procedure also includes a new minor subdivision process reviewed and decided administratively as well as an enhanced section on performance guarantees for use when an applicant seeks a final plat prior to completion of all forms of public infrastructure.

Text shown in yellow highlight includes a cross reference to be filled in as part of the draft of the document proposed for public hearing.

The text includes numerous footnotes that track the origin of proposed text.

Proposed graphics are indicated in single-cell tables with yellow highlight. Additional graphics may be proposed by staff or the Town Manager.

26.1. TITLE³⁷⁹

This chapter shall be officially known and may be cited as the “Subdivision Ordinance of Town of Southern Shores, North Carolina” and may be cited as the “Subdivision Chapter”, or “this chapter.”

26.2. AUTHORITY³⁸⁰

26.2.1. ENABLING LEGISLATION

This chapter is adopted in accordance with Section 160A-371 of the North Carolina General Statutes as well as any relevant special legislative authority granted to the Town by the General Assembly.

26.2.2. CONFLICT

Should the requirements of this chapter conflict with those of Chapter 22: Zoning, or some other chapter of this Town Code, the more stringent requirements shall prevail.

26.2.3. AMENDMENT

This chapter may be amended, from time to time, by the Town Council, in accordance with Section 1.6, Amendments and Supplementation, but no amendment shall become effective unless it shall have been proposed by or shall have been submitted to the Planning Board for review and recommendation.

26.3. PURPOSE AND INTENT³⁸¹

26.3.1. PURPOSE

The purpose of this chapter is to establish procedures and standards for the development and subdivision of real estate within the Town’s planning area.

26.3.2. INTENT

The standards are intended to:

- A.** Ensure proper legal description, identification, monumentation, and recordation of real estate boundaries;
- B.** Further the orderly layout and appropriate use of land;
- C.** Provide safe, convenient, and economic circulation of vehicular traffic;
- D.** Provide suitable building sites which drain properly and are readily accessible to emergency vehicles;
- E.** Ensure the proper installation of roads and utilities;
- F.** Promote the eventual elimination of unsafe or unsanitary conditions arising from undue concentration of population; and
- G.** Help conserve and protect the physical and economic resources of the Town.

³⁷⁹ This section carries forward the standards in Section 30-1 from the current code but recognizes these standards as a chapter, not an ordinance.

³⁸⁰ This section carries forward the language in Sections 30-4, 30-8, and 30-9 from the current code with no substantive changes.

³⁸¹ This section carries forward the purpose material from Section 30-5 of the current Code with no substantive change, and supplements it with the intent language per the direction in the Code Assessment.

26.4. APPLICABILITY³⁸²

26.4.1. LOCATION

The standards in this chapter shall govern all subdivisions of land lying within the corporate limits of the Town and its extra territorial jurisdiction.

26.4.2. COMPLIANCE REQUIRED

Except for divisions of land exempted from these standards in accordance with Section 26.4.3, Exemptions, no subdivision of land in the Town's jurisdiction, as defined in Chapter 4: Definitions, shall occur, and no lot or parcel created by such division of land may be sold or developed, unless the division has received subdivision approval in accordance with the requirements of this chapter.

26.4.3. EXEMPTIONS

Any of the following divisions of land shall be exempted from the requirements of this chapter, in accordance with Section 160A-376 of the North Carolina General Statutes:

- A.** A combination or recombination of portions of previously subdivided and recorded lots that does not increase the total number of lots, and the resultant lots are equal to or exceed the standards of the zoning district where located (see Chapter 22: Zoning);
- B.** The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;
- C.** Public acquisition involving the purchase of strips of land for the widening or opening of streets; or
- D.** Division of a tract of land in single ownership, where the total area is no greater than two acres, the division creates no more than three lots, where no street right-of-way dedication is involved, and the resultant lots are equal to or exceed the standards of the zoning district where located (see Chapter 22: Zoning).

26.4.4. EXCEPTION FOR GROUP DEVELOPMENT

The standards and requirements of this chapter may be modified by the Planning Board in the case of a plan and program for a complete group development, which in the judgment of the Planning Board, provides adequate public spaces and improvements for the circulation, recreation, light, air and service needs of the tract, fully developed and populated, and which also provides such covenants or other legal provisions as will ensure conformity to and achievement of the plan.

26.4.5. VARIANCES

Variations from the standards in this chapter shall only be considered in accordance with the standards in Section 22.2.3.L, Variance.

26.5. SUBDIVISIONS DISTINGUISHED³⁸³

This chapter recognizes two forms of subdivision: a major subdivision and a minor subdivision. The distinctions between the two types are described below. Divisions of land exempted from these standards in accordance with Section 26.4.3, Exemptions, are not required to comply with either procedure.

26.5.1. MAJOR SUBDIVISION

A major subdivision includes any division of land subject to the standards in this chapter that creates five or more lots, including the original parent parcel, regardless of whether it includes the establishment or installation of public infrastructure. Major subdivisions shall be reviewed and decided in the following three phases:

- A.** Sketch Plan (optional);
- B.** Preliminary Plat; and

³⁸² This section carries forward the standards in Sections 30-4 and 30-6, along with additional clarity regarding divisions of land which are exempted from subdivision regulations generally. We note that Section 30-7, Variations, has been omitted from this draft in favor of the variance procedure set out in the Zoning chapter.

³⁸³ This section establishes a new minor subdivision review procedure that allows administrative review and approval of subdivisions including up to four lots. It is possible to increase this threshold as appropriate.

C. Final Plat.

26.5.2. MINOR SUBDIVISION

- A.** A minor subdivision includes any division of land subject to the standards in this chapter that creates fewer than five lots, including the original parent parcel, regardless of whether it includes the establishment or installation of public infrastructure. Minor Subdivisions shall be reviewed and decided by the Town Manager (or a designee) in the following two phases:
 - 1. Preliminary Plat; and
 - 2. Final Plat.
- B.** In the event the minor subdivision does not include the establishment, installation, or alteration to public infrastructure, review of the minor subdivision shall not require review of a preliminary plat, and may proceed directly to review and decision of a final plat.

26.6. PROCEDURES³⁸⁴

26.6.1. SKETCH PLAN

A. PURPOSE AND INTENT

The purpose for these standards is to establish the procedures and requirements for review of a sketch plan in advance of an application for a preliminary plat. Review of a sketch plan allows the Town staff and the Planning Board to become familiar with a proposed development before the applicant has expended considerable funds in engineering and construction documents. It also creates an opportunity for the applicant to become familiar with the Town’s process and expectations for development.

B. APPLICABILITY

All subdivisions are encouraged, but not required to, submit a sketch plan in accordance with these provisions.

C. APPLICATION PROCEDURE³⁸⁵

- 1. Prior to preliminary plat application, an applicant for a major subdivision seeking sketch plan review shall submit 12 copies of a sketch plan of the proposed subdivision prepared in accordance with Section 26.6.1.D, Sketch Plan Requirements. A sketch plan application may be filed 30 days prior to a regularly scheduled Planning Board Meeting.
- 2. At the meeting in which the proposed development is to be reviewed, the applicant shall discuss the proposed subdivision and become familiar with the regulations affecting the land to be subdivided.
- 3. At the close of the meeting, the Planning Board shall inform the applicant of the degree to which the proposed development, as depicted in the sketch plan, complies with the provisions of this chapter.
- 4. In the event a sketch plan is filed by an applicant in advance of an application for a minor subdivision, the Town Manager (or a designee) shall review and decide the sketch plan application in accordance with the standards in this section.

D. SKETCH PLAN REQUIREMENTS

All sketch plans shall contain at least the following information:

- 1. A sketch vicinity map showing the proposed subdivision in relation to the surrounding area;
- 2. A simple sketch plan shall be drawn at an approximate scale of one inch equals 200 feet and shall show:
 - a. The tentative street layout;
 - b. Approximate right-of-way widths;

³⁸⁴ Current Section 30-39 has been deleted due to redundancy with material that will be located in new Chapter 2: Authorities setting out the various responsibilities and procedures for each decision-making body, as detailed in the Code Assessment.

³⁸⁵ NOTE: This section carries forward some of the language in Section 30-40(a) of the current code. The current language includes almost no information on the procedure or criteria to be used by the Planning Board in deciding (if there is a decision) on a sketch plan.

- c. Lot arrangements;
- d. Drainage and utility easements
- e. Sites for schools, parks, churches, and other nonresidential uses;
- f. Existing structures;
- g. Watercourses;
- h. Wooded areas; and
- i. The existing zoning, both on the land to be subdivided and the land immediately adjacent to the proposed subdivision on all sides.
- j. Site data, including at least:
 - i. Total acreage;
 - ii. Number of acres devoted to each proposed use;
 - iii. Average lot sizes; and
 - iv. Approximate number of lots.

E. EFFECT

Following review of a sketch plan by the Planning Board, the applicant may file an application for a preliminary plat, in accordance with Section 26.6.2, Preliminary Plat, or an application for a minor subdivision.

26.6.2. PRELIMINARY PLAT³⁸⁶

A. PURPOSE AND INTENT

The purpose for the preliminary plat application procedure is an opportunity for the Town to review the general organization, layout, and phasing (if applicable) of a subdivision in advance of the installation of public infrastructure like roadways. This review helps ensure an efficient use of land and the establishment of public infrastructure in ways that maximizes the Town's ability to provide services to residents with manageable levels of expenditure.

B. APPLICABILITY

1. GENERALLY

All major subdivisions and any minor subdivisions that include the establishment, installation, or alteration of public infrastructure shall comply with the standards in this section.

2. REVIEW AUTHORITY

- a. Preliminary plats associated with a major subdivision shall be reviewed by the Planning Board, who shall make a recommendation on the preliminary plat application to the Town Council, who shall either approve, approve with conditions, or deny the preliminary plat application in accordance with the standards in this section.
- b. Preliminary plats associated with a minor subdivision shall be reviewed and decided by the Town Manager (or a designee). Appeals of the Town Manager's decision on a minor subdivision preliminary plat shall be to the BOA in accordance with Section 22.2.3.K, Appeals.

C. APPLICATION PROCEDURE

1. MAJOR SUBDIVISION

- a. The applicant shall submit all required application materials to the Planning Board at least 30 days prior to a regularly scheduled meeting.
- b. Before reviewing the preliminary plat, the Planning Board the applicant shall provide a report from the resident highway engineer, the County Health Director, the County School Superintendent, the U.S. Soil Conservation Service, and other officials or agencies directly affected by the proposed

³⁸⁶ NOTE: This section carries forward the standards in Section 30-40(b) through (f) as well as 30-124 with a few changes. The approval procedure is distinguished by major or minor subdivision type. The current language references an approval of the preliminary plat (for major subdivisions) by both the Planning Board and the Town Council. We have revised the language to reference a recommendation by the Planning Board. We note there are no review criteria; some have been provided for the Town's consideration. There are no provisions regarding amendment or expiration of a preliminary plat, and these aspects should be included. .

development. These reports shall certify compliance with or note deviations from the requirements of this Ordinance and include comments on other factors which bear upon the public interest.

- c. Should the Planning Board fail to make a recommendation on the proposed subdivision within 65 days after submission of the preliminary plat, the applicant, after complying with the requirements of the Planning Board, may seek application approval at the next regularly scheduled meeting of the Town Council.
- d. Should the Planning Board recommend disapproval or conditional approval of the preliminary plat, the reasons for such action shall be noted in the minutes of the Planning Board and reference shall be made to the specific sections of this Ordinance with which the preliminary plat does not comply, and the applicant shall be so notified.
- e. The Planning Board shall refer the preliminary plat, its recommendations, and associated documents required by this chapter, to the Town Council for review and decision.

2. MINOR SUBDIVISION

- a. Two copies of an application for a minor subdivision preliminary plat shall be prepared in accordance with Section 26.6.2.D, Submittal Requirements.
- b. Upon receipt, the Town Manager (or a designee) may request a report from the resident highway engineer, the County Health Director, the County School Superintendent, the U.S. Soil Conservation Service, and other officials or agencies directly affected by the proposed development. These reports shall certify compliance with or note deviations from the requirements of this chapter and include comments on other factors which bear upon the public interest.
- c. Following review, the Town Manager (or a designee) shall decide the application in accordance with Section 26.6.2.E, Review Criteria. In the event the Town Manager (or a designee) disapproves or conditionally approves the minor subdivision, the reasons for such action shall be noted in the decision, along with references to the specific sections of this Ordinance with which the minor subdivision does not comply. Written notice of decision on the application shall be provided by the Town Manager (or a designee) to the applicant.

D. SUBMITTAL REQUIREMENTS

1. PRELIMINARY PLAT

Along with any other required application materials, the applicant shall provide 12 copies of a preliminary plat. The preliminary plat shall be at a scale of one inch equals 100 feet and will be drawn on a sheet 18 inches by 24 inches or such other size as may be required for registration by the Dare County Register of Deeds. The preliminary plat shall be prepared by an professional engineer or land surveyor and land planner and shall show the following information:

- a. The location of existing and platted property lines, streets, buildings, watercourses, railroads, transmission lines, sewers, bridges, culverts and rain pipes, water mains, Town limit lines, and any utility easements;
- b. Boundaries of tract shown with bearings and distances;
- c. Wooded areas, marshes, flood hazard areas, and any other features which should be considered in development of the site;
- d. Names of the owners of adjoining property or subdivisions;
- e. Zoning classification, if any, both on the land to be subdivided and on adjoining lands;
- f. Proposed streets, street names, rights-of-way and pavement widths;
- g. The location of proposed utilities (sewer, water, gas, electricity, telephone, and fire hydrants) showing connections to existing systems or plans for individual water supply, sewage disposal, storm drainage, etc.;
- h. Other proposed right-of-way easements, locations, widths, and purposes;
- i. Proposed lot lines, lot and block numbers, and approximate dimensions;
- j. Proposed minimum building setback lines;
- k. Proposed parks, school sites, or other public open spaces, if any;
- l. Title, date, magnetic north point, and graphic scale;
- m. Name of owner, engineer or professional land surveyor and land planner;
- n. The following site data:
 - i. Acreage in total tract;
 - ii. Acreage in park or other land usage;
 - iii. Average lot size;
 - iv. Total number of lots; and

v. Lineal feet in streets

2. ADDITIONAL INFORMATION

Two signed statements describing the proposed use of the land and a draft of any protective covenants to be applied to the subdivision.

E. REVIEW CRITERIA

An application for a preliminary plat or a minor subdivision, as appropriate, shall be decided based upon whether the application complies with the following:

1. All applicable standards in this chapter;
2. All applicable standards in Chapter 22: Zoning;
3. All applicable standards in this Town Code;
4. All existing conditions of approval from any prior applicable permits or development approvals; and
5. All local, State, and federal requirements.

F. EFFECT

Upon approval of a preliminary plat, the applicant may proceed to make all required public infrastructure improvements. An applicant may also prepare an application for a final plat following preliminary plat approval.

G. EXPIRATION

A preliminary plat or a minor subdivision approval shall expire and become null and void if an applicant fails to:

1. File an application for a final plat (see Section 26.6.3, Final Plat) within two years from the date the preliminary plat is approved; or
2. File an application for a site plan, zoning permit, or building permit on land that is the subject of a minor subdivision within two years from the date the minor subdivision is approved.

26.6.3. FINAL PLAT³⁸⁷

A. PURPOSE AND INTENT

The purpose for the final plat review procedure is to ensure the subdivision has been prepared in substantial conformity with the approved preliminary plat. Approval of a final plat authorizes an applicant to proceed with conveyance of lots or application for appropriate permits to develop the land.

B. APPLICABILITY

1. GENERALLY

All subdivisions subject to this chapter shall comply with the standards in this section. Minor subdivisions that do not include the establishment, installation, or alteration of public infrastructure bypass the preliminary plat review step and proceed directly to review of a final plat.

2. REVIEW AUTHORITY

- a. Final plats associated with a major subdivision shall be reviewed and decided by the Town Council.
- b. Final plats associated with a minor subdivision shall be reviewed and decided by the Town Manager (or a designee). Appeals of the Town Manager’s decision on a final plat shall be to the BOA in accordance with Section 22.2.3.K, Appeals.

C. APPLICATION PROCEDURE

1. PUBLIC INFRASTRUCTURE INSTALLED

Prior to application for a final plat, subdivisions including public infrastructure shall have completed the installation of these features in accordance with Section 26.7, Installation of Improvements, or provided

³⁸⁷ NOTE: This section carries forward the standards in Section 30-41 through 30-43 and 30-125 with a few changes. The approval procedure is distinguished by major or minor subdivision type. The current language references an approval of the preliminary plat (for major subdivisions) by both the Planning Board and the Town Council. We have revised the language to reference a recommendation by the Planning Board (please confirm if this is appropriate).

a performance guarantee for the installation of these features in accordance with Section 26.10, Performance Guarantees.

2. STATE, FEDERAL, AND COUNTY APPROVALS ISSUED

- a. Prior to application for a final plat, all subdivisions subject to issuance of any State, federal, or county approvals (including but not limited to: environmental permits, soil erosion and sedimentation control permits, stormwater permits, water main extension permits, NCDOT encroachment agreements, etc.) shall have secured all required approvals.
- b. Evidence of required approvals shall be included with an application for a final plat.

3. MAJOR SUBDIVISION

- a. Within two years of preliminary plat approval, the applicant shall submit an application for a final plat at least 30 days prior to a regularly scheduled meeting of the Planning Board.
- b. The final plat shall be properly signed and executed as required for recording by the Dare County Register of Deeds.
- c. Should the Planning Board fail to make a recommendation on the proposed subdivision within 65 days of submittal of the final plat, the applicant, after complying with the requirements of the Planning Board may seek final approval of the final plat at the next regularly scheduled meeting of the Town Council.
- d. Should the Planning Board recommend disapproval or conditional approval of the final plat, the reasons for such action shall be noted in the minutes of the Planning Board and reference shall be made to the specific sections of this Ordinance with which the final plat does not comply, and the applicant shall be so notified.
- e. The Planning Board shall refer the final plat, its recommendations, and associated documents required by this chapter, to the Town Council for review and decision
- f. Action of the Town Council shall be noted on the final plat. Two prints of the final plat shall be returned to the subdivider for recording, one print shall be filed with the Town Clerk, and one print shall become a permanent record of the Town Council.

4. MINOR SUBDIVISION

- a. Three copies of an application for a minor subdivision final plat shall be prepared in accordance with Section 26.6.3.D, Submittal Requirements.
- b. Following review, the Town Manager (or a designee) shall decide the application in accordance with Section 26.6.3.E, Review Criteria. In the event the Town Manager (or a designee) disapproves the final plat, the reasons for such action shall be noted in the decision, along with references to the specific sections of this Ordinance with which the final plat does not comply. Written notice of decision on the application shall be provided by the Town Manager (or a designee) to the applicant.
- c. In the event the final plat is approved, the approval shall be noted on the final plat. Two prints of the final plat shall be returned to the subdivider for recording, one print shall be filed with the Town Clerk.

D. SUBMITTAL REQUIREMENTS

1. FINAL PLAT

Along with any other required application materials, the applicant shall provide 12 copies of a final plat at the same scale and on the same sheet size as the preliminary plat. The final plat shall be prepared by a North Carolina Licensed Land Surveyor or North Carolina Professional Engineer and shall conform substantially to the preliminary plat as approved. The final plat shall constitute only that portion of the approved preliminary plat which the applicant proposes to record and develop at the time; provided, however, that such portion conforms to all requirements of this chapter, and shall show the following information:

- a. The right-of-way lines of all roads;
- b. Lot lines and lot numbers;
- c. Minimum building setback lines (unless recorded in declaration of protective covenants);
- d. Reservations, easements, alleys and any areas to be dedicated to public use or sites for other than residential use with notes stating their purpose and any limitations;
- e. Sufficient data to determine readily and reproduce on the ground, the location, bearing and length of every road line, lot line, boundary line, block line and building line, whether curved or straight, and including magnetic north point;

- f. All dimensions to the nearest 1/5,000 of a foot and angles to the nearest 30 seconds times the square root of the number of angles turned;
- g. Accurate location and description of all monuments and markers. Where the map is the result of a survey, one or more corners shall, by a system of azimuths or courses and distances, be accurately tied to a monument of some United States or state agency survey system, such as the United States Coast and Geodetic Survey Systems where such monument is within 2,000 feet of the corner. Where the state grid system coordinates of said monument have been published by the North Carolina Department of Natural and Economic Resources, the coordinates of the referenced corner shall be computed and shown in X and Y coordinates on the map. Where such a monument is not available, the tie shall be made to some pertinent and permanent recognizable landmark or identifiable point;
- h. The names and locations of adjoining subdivisions and roads, and the location and ownership of adjoining unsubdivided property;
- i. Title, date, name, and location of subdivision and graphic scale;
- j. Name of subdivider, engineer or registered survey and land planner;
- k. Utility layouts, including;
 - i. Water;
 - ii. Natural gas;
 - iii. Sanitary sewer;
 - iv. Storm drainage;
 - v. Electricity;
 - vi. Telephone;
 - vii. Fire protection; and
- l. Flood hazard area with effective date of flood insurance rate map (FIRM).

2. ADDITIONAL INFORMATION

Each application for final plat approval shall include the following:

- a. A soil map and a conservation plan prepared by the U.S. Soil Conservation Service to ensure proper drainage and to provide for control of sedimentation and erosion; and
- b. Evidence of approval of all required State and federal permits (except for CAMA permits related to single-family dwellings and associated accessory structures).

3. FORMS FOR FINAL CERTIFICATIONS

- a. All final plats shall include all required final certifications.
- b. All certification and endorsement signatures on the final plat, except those of the Town Manager (or a designee), representatives of governmental agencies, and professional engineers or land surveyors shall be signed under oath and notarized.
- c. The following certificates shall be lettered or rubber stamped on the final plat:

i. Certificate of Review by the Town Manger (or a Designee)

This certification must be included on each page of a final plat.

<p>“I, _____(print name)____, _____(print title)___ with the Town of Southern Shores, certify that this plat creates a subdivision subject to and in accord with the Southern Shores Town Code of Ordinances, and that it meets all statutory requirements for recording.”</p>
--

<p>_____ Town of Southern Shores Representative</p>

<p>_____ Date</p>

<p>Approval expires if not recorded on or before _____(6 months from approval date)</p>

ii. Certificate of Ownership and Dedication

<p>“The undersigned party, being duly sworn, certifies that he is the owner or duly authorized representative of the owner of the property designated on this plat as described below, and hereby freely dedicates all rights-of-way, easements, streets, recreation area, open space, common area, utilities, and other improvements to public or private common use as noted on the plat, and further assumes full responsibility for the maintenance and control of said improvements until they are accepted for maintenance and control by an appropriate public</p>

body, or by an incorporated neighborhood or homeowners' association or similar legal entity.”

Description/reference to lots shown on this plat and covered by this certificate:

_____(lot numbers or other identification of lots covered by this certification)_____

_____ Owner or Duly Authorized Representative

_____ Date

I, __ (notary name)_____, hereby certify that __ (owner or representative)_____ personally appeared before me this day and acknowledged the due execution of this certification. Witness by my hand and official seal this _____ day of _____, A.D. _____.

Seal or Stamp

_____ Signature

iii. Certificate of Accuracy by Professional Engineer or Registered Land Surveyor

“I __ (insert name)_____, certify that:

This plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book _____, Page _____, etc.);

The boundaries not surveyed are clearly indicated as drawn from information found in Book _____, Page _____;

The ratio of precision as calculated is 1: _____; and

This plat was prepared in accordance with Section 47-30 of the North Carolina General Statutes, as amended.

Witness my original signature, registration number, and seal this _____ day of _____, A.D. _____.”

Seal or Stamp

_____, Professional Engineer or Registered Land Surveyor

_____, Registration Number

iv. Certificate of Approval by the Town Council for Major Subdivisions

The following certification is only required for major subdivision final plats.

"I, _____(print name)____, _____(print title)__ with the Town of Southern Shores, certify that this plat has been found to comply with the subdivision requirements for the Town of Southern Shores and that this plat has been approved for recording in the Office of the Register of Deeds of Dare County.

The Town of Southern Shores further certifies the acceptance of the dedication of roads, easements, rights-of-way, public parks, and other sites for public purposes, as shown hereon, but assumes no responsibility to open or maintain the same until, in the opinion of the Town Manager of the Town of Southern Shores, it is in the public interest to do so.

_____ Town of Southern Shores Representative

_____ Date

_____ Witness

_____ Date

v. Certificate of Required Improvements

The following certification is only required for major subdivision final plats that include public improvements.

"The Town Manager hereby certifies that all public improvements required by the Southern Shores Town Code of Ordinances have been installed as specified by the approved preliminary plat for _____ Subdivision and that said improvements comply with Town specifications."

_____ Town Manager

_____ Date

(OR)

"The Town Manager hereby certifies that a performance guarantee of a satisfactory amount has been posted with the Town of Southern Shores which surety guarantees that all public improvements will be completed as specified by the approved Preliminary Plat for _____ Subdivision within _____ days unless affirmatively extended in accordance with the subdivision standards in the Southern Shores Town Code of Ordinances. Notice will be duly recorded with the Dare County Register of Deeds if and when the surety is amended or extended prior to completion of all public improvements for which it was posted."

_____ Town Manager

_____ Date

E. REVIEW CRITERIA

A final plat application shall be approved if it complies with the following:

1. The final plat is prepared and sealed by a professional land surveyor or professional engineer licensed by the State.
2. The final plat is in substantial conformance with the preliminary plat and all applicable requirements in this chapter;
3. All required improvements depicted on the preliminary plat and final plat are installed and inspected by the Town, or are subject to a performance guarantee;
4. The final plat complies with all standards and conditions of any applicable permits and development approvals;
5. The final plat complies with all other applicable requirements in this Town Code; and
6. The final plat complies with all applicable local, State, and federal requirements.

F. RECORDATION

1. Within six months of approval, the final plat shall be recorded by the applicant with the Dare County Register of Deeds.
2. Should the six-month time limit expire before the final plat is recorded, it must be resubmitted for review in the manner of a new application for a final plat.
3. The Dare County Register of Deeds shall not file or record a subdivision plat located in the Town until it has been approved in accordance with this chapter. Without approval, the filing or recording of a subdivision plat shall be null and void.
4. Nothing shall prohibit the Register of Deeds from recording plats do not involve the subdivision of real estate for residential or commercial use, such as plats of cemetery property, right-of-way plats of public utilities, water companies, or boundary agreements.

G. EFFECT

Recordation of a final plat authorizes an applicant to convey lots or apply for subsequent development permits such as a site plan or building permit for the construction of a building.

26.7. INSTALLATION OF IMPROVEMENTS³⁸⁸

Prior to approval of a final plat for any subdivision that includes public infrastructure, the subdivider shall either comply with all the following requirements, or receive approval from the Town Manager for posting a performance guarantee securing the proper installation of these features in accordance with Section 26.10, Performance Guarantees.

26.7.1. ROAD IMPROVEMENTS

Road rights-of-way shall be graded to 50 percent of the full width of the right-of-way, or a minimum of 20 feet or such other minimum, as approved by the NCDOT, properly drained and prepared with a proper minimum base and appropriately topped in accordance with Town requirements.

26.7.2. UTILITIES

All public or private water and sewerage systems shall be installed and shall meet the requirements of the Dare County Health and Human Services Department.

26.7.3. REQUIRED PREPARATION OF LAND

- A.** Land which is unsuitable for development due to improper drainage, topography, soil characteristics, groundwater elevation, susceptibility to flooding or failure to meet the criteria of Section 130A-333 of the North Carolina General Statutes, shall not be subdivided unless adequate methods are utilized to correct the unsuitable conditions.
- B.** Any land disturbing activity, as defined in Section 113A-52 of the North Carolina General Statutes, shall be accomplished in accordance with the requirements of Section 113A-50 of the North Carolina General Statutes.
- C.** Any required land preparation must be completed prior to final plat approval.

26.8. REFERENCE POINTS³⁸⁹

Prior to the approval of the final plat, permanent reference points shall have been placed in accordance with the following requirements:

26.8.1. SUBDIVISION CORNER TIE

At least one corner of the subdivision shall be designated by course and distance (tie) from a readily discernible reference marker.

³⁸⁸ This section carries forward the standards in Section 30-76 of the current code with no substantive changes.

³⁸⁹ This section carries forward Section 30-75 of the current Code with no substantive changes.

26.8.2. MONUMENTS

- A.** Within each block of a subdivision at least two monuments designed as control corners shall be installed.
- B.** The land surveyor shall employ additional monuments when necessary.
- C.** Monuments shall be constructed of concrete, with steel reinforcing rods running their entire length, and shall be at least four inches in diameter or square and not less than three feet in length.
- D.** Each monument shall have embedded in its top, or attached by a suitable means, a metal plate of noncorrosive material marked plainly with the point, the land surveyor's registration number and the word "monument" or "control corner."
- E.** A monument shall be set at least 30 inches in the ground with at least six inches exposed above the ground unless this requirement is impractical because of vehicular traffic or other factors.

26.8.3. PROPERTY MARKERS

- A.** A steel or wrought iron pipe or equivalent, not less than three-fourths inch in diameter and at least 30 inches in length, shall be set at all corners including lot corners, except those located by monuments.
- B.** A marker shall also be set at a point of curve, point of intersection, property corner, point of tangency, reference point and tangent points.
- C.** Additional markers shall be placed at other points of importance.

26.9. SUBDIVISION DESIGN STANDARDS

The following design standards shall be minimum requirements for new subdivisions.

26.9.1. CONFORMITY TO ADOPTED MAPS AND PLANS

The location and width of all proposed roads shall be in conformity with official plans or maps of the Town and with existing or amended plans of the Planning Board and Town Manager.

26.9.2. ROADWAYS³⁹⁰

A. GENERALLY³⁹¹

1. CONTINUATION OF EXISTING ROADS

The proposed road layout shall be coordinated with the existing road system of the surrounding area and, where possible, existing principal roads shall be extended.

2. ACCESS TO ADJACENT PROPERTIES

Where it is desirable to provide access to an adjoining property, proposed roads shall be extended by dedication to the boundary of such property and a temporary turnaround shall be provided.

3. LARGE TRACTS OR PARCELS

Where land is subdivided into larger parcels than ordinary building lots, such parcels shall be arranged so as to allow for the opening of future roads and logical further re-subdivision.

4. ROAD NAMES AND ADDRESSING

- a.** Every subdivision plat submitted to the Town for approval shall bear upon its face proper names of any and all streets or public rights-of-way and the proper address of all lots. No street name shall duplicate or be phonetically similar to an existing street name used elsewhere in Atlantic Township, Dare County, North Carolina.
- b.** Proposed roads which are obviously in alignment with existing roads should be given the same name. In assigning new names, duplication should be avoided and in no case should the proposed

³⁹⁰ This section carries forward Section 30-76(1) with the revision, requested by staff and detailed in the Code Assessment, that the requirement for an 8-inch base course be removed and that the requirement for roadways to be "properly drained" be better explained (item B in this subsection).

³⁹¹ This section carries forward and combines Sections 24-62 and 30-96 (b) through (g).

name be phonetically similar to existing names, irrespective of the use of the suffix: street, avenue, boulevard, drive, place, court, etc.

B. CONSTRUCTION STANDARDS

Road rights-of-way shall comply with the following standards:

1. Graded to 50 percent of the full width of the right-of-way, or a minimum of 20 feet or other minimum as approved by the North Carolina Department of Transportation;
2. Properly drained;
3. Properly disked and compacted to an appropriate depth; and
4. Properly topped with appropriate materials and to an appropriate depth.

C. DIMENSIONAL STANDARDS³⁹²

In the event the following dimensional standards conflict with those of the NCDOT, the more stringent requirement shall apply. The dimensional standards for roads within the subdivision jurisdiction of the Town are as follows:

1. RIGHT-OF-WAY WIDTHS

Right-of-way widths shall be as shown on the Official Major Road Plan and shall not be less than the following:

- a. Primary roads: 80 feet;
- b. Collector or secondary roads: 60 feet (or 50 feet with five-foot easement on lots fronting on road with easement specified in protective covenants or in deed); and
- c. Cul-de-sacs, minor dead-end roads or marginal access roads: 30 feet.

2. PAVING WIDTHS

a. With Curbs and Gutters

Paving widths shall be in accordance with the minimum widths for roadways established in the NCDOT Subdivision Roads Minimum Construction Standards, January 2010 Edition, as amended.

b. Without Curbs and Gutters

Paving widths shall be in accordance with the minimum widths for roadways established in the NCDOT Subdivision Roads Minimum Construction Standards, January 2010 Edition, as amended.

3. HORIZONTAL CURVES

Where a centerline deflection angle of more than ten degrees occurs, a circular curve shall be introduced, having a centerline radius of not less than the following:

- a. Major roads: 300 feet;
- b. Secondary roads: 200 feet; and
- c. All other roads: 100 feet.

4. VERTICAL CURVES

All changes in street grades shall be connected by vertical curves of a minimum length equivalent in feet to 15 times the algebraic difference in the rates of grade for major and collector streets and one-half this minimum for all other streets.

5. TANGENTS

A tangent of at least 100 feet in length shall be provided between curves on all roads.

6. INTERSECTIONS

Road intersections shall be laid out as follows:

- a. All roads shall intersect as nearly as possible at right angles and no road shall intersect at less than 60 degrees;
- b. Intersections with a major road shall be at least 720 feet apart measured from centerline to centerline;
- c. Property lines at road intersections shall be rounded with a minimum radius of 20 feet. At an angle of intersection of less than 75 degrees, a greater radius may be required; and

³⁹² NOTE: This section carries forward Section 30-97(1) of the current code with no substantive changes. Several comments from staff discussed whether or not these were the appropriate dimensions, or if dimensional standards should be included at all.

- d. Where a centerline offset (jog) occurs at an intersection, the distance between centerlines shall be not less than 125 feet.
- 7. CUL-DE-SACS OR PERMANENT DEAD-END ROADS**
These roads shall be provided with a turnaround with a diameter of at least 80 feet and a right-of-way diameter of not less than 100 feet.
- 8. ALLEYS**
- a. Where alleys are provided for business access they shall be at least 20 feet in width.
 - b. Alleys in residential developments shall be subject to the approval of the Town.
 - c. A dead-end alley shall have a turnaround with a diameter of not less than 80 feet.
- 9. BLOCKS**
- a. Block lengths shall not exceed 1,400 feet nor be less than 400 feet.
 - b. Where deemed necessary by the Town, a pedestrian crosswalk of at least eight feet in width may be required.

26.9.3. LOTS³⁹³

A. CONFORMANCE WITH ZONING REQUIREMENTS

- 1. All lots in new subdivisions shall conform to the zoning requirements of the zoning district in which the subdivision is located. Minimum dimensional requirements such as lot area or lot width shall not be averaged in order to accommodate lots that do not meet the minimum requirements.
- 2. Subdivisions must comply in all respects with the requirements of the Chapter 22: Zoning, in effect in the area to be subdivided and any other officially adopted plans.

B. AREA

- 1. The minimum lot area shall conform to the zoning requirements of the district in which the subdivision is located.
- 2. Additional lot area may be required when a lot is not served by public water. In such cases, the lot shall not be less than the size required by the Dare County Environmental Health Department for installation of a well and/or septic tank.

C. LOTS SHAPED AND FILLED

Any lot shaped or filled must be approved as to quality and content by the Dare County Environmental Health Department.

D. ORIENTATION OF LOT LINES

Side lot lines shall be substantially at right angles or radial to street lines.

E. MINIMUM FRONTAGE³⁹⁴

- 1. All lots shall front upon a public road or access easement.
- 2. Double-frontage lots shall be avoided, to the maximum extent practicable.

26.9.4. EASEMENTS³⁹⁵

Utility and other easements shall be provided as follows:

- A.** Utility easement centered on rear or side lot lines shall be provided where necessary and shall be at least ten feet in width.
- B.** A crosswalk easement of ten feet in width shall be provided when required by the Town.
- C.** Where a subdivision is traversed by a watercourse, drainageway, channel, or stream, there shall be provided a stormwater easement or drainage right-of-way of adequate width conforming substantially with the lines of such watercourse. Parallel streets or parkways may also be required.

³⁹³ This section carries forward the material in current Section 30-97(2) with no substantive changes, but with organizational and formatting changes to improve readability, as suggested in the Code Assessment.

³⁹⁴ This subsection carries forward current Section 30-96(f).

³⁹⁵ This section carries forward Section 30-97(3) of the current Code.

- D. Where a subdivision is adjacent to the Atlantic Ocean, an easement for dune maintenance adjacent to the mean high-water mark may be required, or such other provisions as to dune maintenance may be required, as approved by the Town.
- E. Lakes, ponds, creeks, and similar areas within the Town will be accepted for maintenance only if such is recommended by the Planning Board and approved by the Town Council.
- F. Telephone, electric, and cable television service, within subdivisions of ten or more lots, shall be installed underground.

26.9.5. BUFFER STRIPS³⁹⁶

- A. A buffer strip of at least 50 feet in addition to the normal lot depth may be required adjacent to a limited-access highway or a commercial or industrial development.
- B. The strip shall be part of the platted lots, but shall have the following restrictions lettered on the face of the plat: "This strip reserved for the planting of trees or shrubs by the owners; the building of structures is prohibited."

26.9.6. SOLID WASTE COLLECTION³⁹⁷

The Town Council may require for each 25 lots an easily accessible site, not exceeding 400 square feet, to be reserved for the location of a solid waste container or containers for the unrestrained use of public or private waste collection.

26.10. PERFORMANCE GUARANTEES³⁹⁸

The standards in this section shall set out the procedures and requirements for posting and completing installation of required public improvements in accordance with this Town Code.

26.10.1. GENERAL

A performance guarantee, prepared in accordance with the standards in this section, shall be required to ensure the completion of public infrastructure improvements that are required as part of an approved preliminary plat, but that are not approved as complete before approval of a final plat.

26.10.2. TERM OF PERFORMANCE GUARANTEES

The term of the performance guarantee shall reflect any time limit for completing installation of required improvements that is included in the preliminary or final plat, as appropriate, but in any case, the term shall not exceed 18 months. The Town Manager (or a designee), for good cause shown, may grant up to one extension of time, for a time period not exceeding one year.

26.10.3. FORM OF PERFORMANCE GUARANTEE

- A. The applicant shall propose the form(s) of the performance guarantee, which shall be provided in one or more of the following forms:
 - 1. **CASH, IRREVOCABLE LETTER OF CREDIT, OR EQUIVALENT SECURITY**
 - a. The developer shall deposit cash, or other instrument readily convertible into cash at face value, such as an irrevocable letter of credit, either with the Town or in escrow with a financial institution.
 - b. If cash or other instrument is deposited in escrow with a financial institution, an agreement between the financial institution and the developer shall be filed with the Town guaranteeing the following:
 - i. That the escrow account shall be held in trust until released by the Town and may not be used or pledged by the developer for any other matter during the term of the escrow; and
 - ii. That in case of a failure on the part of the developer to complete or repair the improvements, the financial institution shall, upon notification by the Town, immediately pay the funds deemed necessary by the Town to complete or repair the improvements up to the full balance of the

³⁹⁶ This section carries forward Section 30-97(4) of the current Code.

³⁹⁷ Current subsection 30-96(h) is carried forward here.

³⁹⁸ This section expands on the standards in Section 30-43 of the current code.

escrow account, or deliver to the Town any other instruments fully endorsed or otherwise made payable in full to the Town.

- c. The financial institution holding the cash or other instrument shall indicate to the Town its notification requirements for release or payment of funds.

2. SURETY BOND

- a. The developer shall obtain a surety bond from a surety bonding company authorized to issue surety bonds in North Carolina.
- b. The bond shall be payable to the Town and shall be in an amount as required by this subsection.

- B.** The performance guarantee shall distinguish between the portion of the guarantee provided for public improvements as well as the portion of the guarantee provided for private improvements, as appropriate.
- C.** The performance guarantee shall be conditioned on the performance of all work necessary to complete the installation of the required improvements within the term of the financial guarantee.

26.10.4. APPORTIONMENT OF PERFORMANCE GUARANTEE

The performance guarantee shall be conditioned on the performance of all work necessary to complete the installation of the required improvements within the term of the performance guarantee.

26.10.5. AMOUNT OF PERFORMANCE GUARANTEE

A. GENERAL

Performance guarantees shall be in an amount equal to 125 percent of the estimated cost of completing the installation of the required improvements, including the costs of materials, labor, and project management.

B. ESTIMATED COSTS

Estimated costs of completing installation of required public improvements shall be itemized by improvement type and certified by the developer's licensed professional engineer, and is subject to approval by the Town Manager (or a designee).

26.10.6. RELEASE OR REDUCTION OF PERFORMANCE GUARANTEES

A. REQUIREMENTS FOR RELEASE OR REDUCTION

The Town Manager (or a designee), as appropriate, shall release or reduce a performance guarantee only after:

- 1. The owner or developer has submitted to the Town a written request for a release or reduction of the performance guarantee that includes certification by the owner's or developer's engineer or contractor, whichever is appropriate, that installation of the guaranteed improvements has been completed in accordance with approved plans and specifications, and as-builts (if applicable);
- 2. The Town Manager (or a designee) has performed an inspection of the improvements and certified in writing that installation of the guaranteed improvements is completed in accordance with approved plans and specifications; and
- 3. No release or reduction in performance guarantee amounts will be considered until more than 25 percent of the work is in place and approved.

B. ACCEPTANCE SHALL BE DOCUMENTED

The Town Manager (or a designee) shall provide written notice of the Town's final acceptance of the improvements subject to performance guarantees.

26.10.7. DEFAULT AND FORFEITURE OF PERFORMANCE GUARANTEES

A. NOTICE OF FAILURE TO INSTALL OR COMPLETE IMPROVEMENTS

If the owner or developer fails to complete installation of the guaranteed improvements within the term of the performance guarantee (as may be extended), the Town Manager (or a designee) shall give the owner or developer 30 days written notice of the scope and degree of the default, by certified mail.

B. TOWN COMPLETION OF IMPROVEMENTS

After the 30-day notice period expires, the Town may draw on the guarantee and use the funds to perform work necessary to complete installation of the guaranteed improvements. After completing such work, the

Town shall provide a complete accounting of the expenditures to the owner or developer. In the event of a default triggering the use of the financial guarantee, the Town shall return any of the unused deposited cash funds or other security.

CHAPTER 27.

[RESERVED]

CHAPTER 28. FLOOD DAMAGE PREVENTION

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GUIDANCE FROM CODE ASSESSMENT:

Chapter 16 of the current Town Code includes the flood damage prevention regulations.

The current chapter is comprised of five sections that address the statutory authority to regulate flood damage prevention; a definitions section; general provisions, administration; and specific provisions for flood hazard reduction. This draft of the Town Code rennumbers the flood damage prevention chapter to Chapter 28, relocates the definitions to new Chapter 4 with a cross-reference in this chapter, and cross-references the enforcement-related material in new Chapter 36 (Violations and Enforcement). There are also procedural references in new Chapter 22 (Zoning) that refer to the flood damage prevention procedures (including flood development permits, variances from flood damage prevention standards, and elevation certificates).

By and large, most of the material in this chapter is carried forward with no changes except to import the material into the updated code format and minor organizational changes in the administrative material.

28.1. STATUTORY AUTHORIZATION³⁹⁹

28.1.1. STANDARDS AUTHORIZED

The North Carolina Legislature has, in Sections 143-21.6, 160A-19.3, 19.5, and 19.8; and 160A-8 of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The standards in this section set out the flood damage prevention standards in furtherance of the public health, safety, and general welfare.

28.1.2. FINDINGS OF FACT

- A.** The floodprone areas within the jurisdiction of the Town are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures on flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- B.** These flood losses are caused by the cumulative effect of obstructions in floodplains and floodprone areas, causing increases in flood heights and velocities and by the occupancy in floodprone areas of uses vulnerable to floods or other hazards.

28.2. PURPOSE & OBJECTIVES

28.2.1. PURPOSE

It is the purpose of this chapter to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within floodprone areas by provisions designed to:

- A.** Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- B.** Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- C.** Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- D.** Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- E.** Prevent or regulate the construction of flood barriers that will unnaturally divert floodwaters or which may increase flood hazards to other lands.

28.2.2. OBJECTIVES

The objectives of this chapter are to:

- A.** Protect human life and health;
- B.** Minimize expenditure of public money for costly flood control projects;
- C.** Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D.** Minimize prolonged business losses and interruptions;
- E.** Minimize damage to public facilities and utilities (i.e., water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in floodprone areas;
- F.** Help maintain a stable tax base by providing for the sound use and development of floodprone areas; and
- G.** Ensure that potential buyers are aware that property is in a special flood hazard area.

³⁹⁹ This chapter carries forward chapter 16 from the current code with very few changes. The definitions from the current chapter 16 have been relocated to Chapter 4: Definitions. The administration information (current Section 16.4) has been reorganized slightly with more descriptive section titles.

28.3. GENERAL PROVISIONS

28.3.1. DEFINITIONS

Words, terms, and phrases which are used in this chapter are defined in Chapter 4: Definitions.

28.3.2. APPLICABILITY

This chapter shall apply to all special flood hazard areas within the Town, including its extraterritorial jurisdiction (ETJ).

28.3.3. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS

The special flood hazard areas are those identified under the cooperating technical state (CTS) agreement, between the state and FEMA in its flood insurance study (FIS) and its accompanying flood insurance rate maps (FIRM), for Dare County, dated September 20, 2006, which are adopted by reference and declared to be a part of this chapter.

28.3.4. ESTABLISHMENT OF THE FLOODPLAIN DEVELOPMENT PERMIT

A floodplain development permit shall be required, in conformance with the provisions of this section, prior to the commencement of any development activities within special flood hazard areas, determined in accordance with Section 28.4.2.B, Floodplain Development Permit Requirements.

28.3.5. COMPLIANCE REQUIRED

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this chapter and other applicable regulations.

28.3.6. ABROGATION AND GREATER RESTRICTIONS

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

28.3.7. INTERPRETATION

In the interpretation and application of this chapter, all provisions shall be:

- A.** Considered as minimum requirements;
- B.** Liberally construed in favor of the Town; and
- C.** Deemed neither to limit nor repeal any other powers granted under state statutes.

28.3.8. DISCLAIMER OF LIABILITY

- A.** The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by manmade or natural causes.
- B.** This chapter does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages.
- C.** This chapter shall not create liability on the part of the Town or by any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

28.3.9. PENALTIES FOR VIOLATION, GENERALLY

- A.** Violation, of the provisions of this chapter or failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with grants of variance or conditional use permits, shall constitute a misdemeanor and shall be subject to the remedies in Section 36.5.17, Violations of the Flood Damage Prevention Standards.
- B.** Nothing herein contained shall prevent the Town from taking such other lawful action as is necessary to prevent or remedy any violation in accordance with Chapter 36: Offenses and Enforcement.

28.4. ADMINISTRATION

28.4.1. FLOODPLAIN ADMINISTRATOR

The Town Manager (or his designee), hereinafter referred to as the Floodplain Administrator, is hereby appointed to administer and implement the provisions of this section.

28.4.2. FLOODPLAIN DEVELOPMENT APPLICATION, PERMIT, AND CERTIFICATION REQUIREMENTS

A. APPLICATION REQUIREMENTS

An application for a floodplain development permit shall be made to the Floodplain Administrator prior to any development activities located within special flood hazard areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

1. PLOT PLAN

A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

- a. The nature, location, dimensions, and elevations of the area of development/disturbance and existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
- b. The boundary of the special flood hazard area, as delineated on the FIRM or other flood map, as determined in Section 28.3.3, Basis for Establishing the Special Flood Hazard Areas, or a statement that the entire lot is within the special flood hazard area;
- c. Flood zone designation of the proposed development area, as determined on the FIRM or other flood map, as determined in Section 28.3.3, Basis for Establishing the Special Flood Hazard Areas;
- d. The boundary of the floodway or nonencroachment area as determined in Section 28.3.3, Basis for Establishing the Special Flood Hazard Areas;
- e. The base flood elevation (BFE), where provided, as set forth in Section 28.3.3, Basis for Establishing the Special Flood Hazard Areas; Section 28.4.2.D, Duties and Responsibilities of the Floodplain Administrator; or Section 28.5.2, Specific Standards;
- f. The old and new location of any watercourse that will be altered or relocated as a result of proposed development;
- g. The boundary and designation date of the coastal barrier resource system (CBRS) area or otherwise protected areas (OPA), if applicable; and
- h. Certification of the plot plan by a registered land surveyor or professional engineer.

2. PROPOSED ELEVATION

Proposed elevation, and method of determination thereof, of all development within a special flood hazard area including, but not limited to:

- a. Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
- b. Elevation in relation to mean sea level to which any nonresidential structure in zone AE, A, or AO will be floodproofed; and
- c. Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.

3. FLOODPROOFING CERTIFICATE

If floodproofing, a floodproofing certificate (FEMA Form 81-65) with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.

4. FOUNDATION PLAN

A foundation plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this chapter are met. These details include but are not limited to:

- a. The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls).
- b. Openings to facilitate equalization of hydrostatic flood forces on walls in accordance with Section 28.5.2.D, Elevated Buildings, when solid foundation perimeter walls are used in zones A, AO, AE, and A1—30.

- c. The following, in coastal high hazard areas, in accordance with Section 28.5.2.D, Elevated Buildings, and Section 28.5.3, Coastal High Hazard Areas (Zones VE):
 - i. V-zone certification with accompanying plans and specifications verifying the engineered structure and any breakaway wall designs;
 - ii. Plans for open wood latticework or insect screening, if applicable;
 - iii. Plans for nonstructural fill, if applicable. If nonstructural fill is proposed, it must be demonstrated through coastal engineering analysis that the proposed fill would not result in any increase in the base flood elevation or otherwise cause adverse impacts by wave ramping and deflection onto the subject structure or adjacent properties.

5. ADDITIONAL DOCUMENTATION

- a. Usage details of any enclosed areas below the regulatory flood protection elevation.
- b. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
- c. Copies of all other local, state, and federal permits required prior to floodplain development permit issuance (wetlands, endangered species, erosion and sedimentation control, CAMA, riparian buffers, mining, etc.).
- d. Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure Section 28.5.2.F, Recreational Vehicles, and Section 28.5.2.G, Temporary Structures, of this chapter are met.
- e. A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

B. FLOODPLAIN DEVELOPMENT PERMIT REQUIREMENTS

The floodplain development permit shall include, but not be limited to:

- 1. A description of the development to be permitted under the floodplain development permit.
- 2. The special flood hazard area determination for the proposed development per available data specified in Section 28.3.3, Basis for Establishing the Special Flood Hazard Areas.
- 3. The regulatory flood protection elevation required for the reference level and all attendant utilities.
- 4. The regulatory flood protection elevation required for the protection of all public utilities.
- 5. All certification submittal requirements with timelines.
- 6. A statement that no fill material or other development shall encroach into the floodway or nonencroachment area of any watercourse, as applicable.
- 7. The flood openings requirements, if in zones A, AO, AE or A1—30.
- 8. Limitations of use of the enclosures below the lowest floor (if applicable) (i.e., parking, building access and limited storage only).
- 9. A statement, if in zone VE, that there shall be no alteration of sand dunes which would increase potential flood damage.
- 10. A statement, if in zone VE, that there shall be no fill used for structural support.

C. FLOOD DAMAGE CERTIFICATION REQUIREMENTS

1. ELEVATION CERTIFICATE

- a. An elevation certificate (FEMA Form 81-31) is required after the reference level is established in accordance with the following:
 - i. Within seven calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level.
 - ii. Any work done within the seven-calendar-day period and prior to submission of the certification shall be at the permit holder's risk.
 - iii. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by the review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed.
 - iv. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop work order for the project.
- b. A final as-built elevation certificate (FEMA Form 81-31) is required after construction is completed and prior to certificate of compliance issuance in accordance with the following:

- i. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities.
- ii. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance.
- iii. In some instances, another certification may be required to certify corrected as-built construction.
- iv. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a certificate of compliance/occupancy.

2. FLOODPROOFING CERTIFICATE

If nonresidential floodproofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (FEMA Form 81-65), with supporting data and an operational plan, is required prior to the actual start of any new construction in accordance with the following:

- a. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level.
- b. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same.
- c. The Floodplain Administrator shall review the certificate data and plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval.
- d. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a certificate of compliance.

3. ENGINEERED FOUNDATION CERTIFICATION

If a manufactured home is placed within zone A, AO, AE, or A1—30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required per Section 28.5.2.C, Manufactured Home Standards.

4. WATERCOURSE ALTERATION OR RELOCATION

If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

5. CERTIFICATION EXEMPTIONS

The following structures, if located within zone A, AO, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified in this section:

- a. Recreational vehicles meeting requirements of Section 28.5.2.F, Recreational Vehicles;
- b. Temporary structures meeting requirements of Section 28.5.2.G, Temporary Structures; and
- c. Accessory structures less than 150 square feet meeting requirements of Section 28.5.2.H, Accessory Structures.

6. V-ZONE CERTIFICATION

A V-zone certification with accompanying design plans and specifications is required prior to the issuance of a floodplain development permit within coastal high hazard areas in accordance with the following:

- a. It shall be the duty of the permit applicant to submit to the Floodplain Administrator said certification to ensure the design standards of this section are met.
- b. A registered professional engineer or architect shall develop or review the structural design, plans, and specifications for construction and certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this chapter.
- c. This certification is not a substitute for an elevation certificate.

D. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

The Floodplain Administrator shall perform, but not be limited to, the following duties:

1. Review all floodplain development applications and issue permits for all proposed development within special flood hazard areas to ensure that the requirements of this chapter have been satisfied.

2. Advise permittee that additional federal or state permits (wetlands, endangered species, erosion and sedimentation control, CAMA, riparian buffers, mining, etc.) may be required, and require that copies of such permits be provided and maintained on file with the floodplain development permit.
3. Notify adjacent communities and the state department of crime control and public safety, division of emergency management, and state coordinator for the National Flood Insurance Program, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
4. Ensure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
5. Prevent encroachments into floodways and nonencroachment areas unless the certification and flood hazard reduction provisions of Section 28.5, Flood Hazard Reduction, are met.
6. Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new or substantially improved structures, in accordance with Section 28.4.2.C, Flood Damage Certification Requirements.
7. Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with Section 28.4.2.C, Flood Damage Certification Requirements.
8. Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with Section 28.4.2.C, Flood Damage Certification Requirements.
9. When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with Section 28.4.2.C, Flood Damage Certification Requirements and Section 28.5.2.B, Nonresidential Construction.
10. Where interpretation is needed as to the exact location of boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Town Code.
11. When base flood elevation (BFE) data has not been provided in accordance with Section 28.3.3, Basis for Establishing the Special Flood Hazard Areas, obtain, review, and reasonably utilize any base flood elevation (BFE) data, along with floodway data or nonencroachment area data, available from a federal, state, or other source, including data developed pursuant to Section 28.5, Flood Hazard Reduction, in order to administer the provisions of this section.
12. When base flood elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with Section 28.3.3, Basis for Establishing the Special Flood Hazard Areas, obtain, review, and reasonably utilize any floodway data or nonencroachment area data available from a federal, state, or other source in order to administer the provisions of this section.
13. When the lowest ground elevation of a parcel or structure in a special flood hazard area is above the base flood elevation, advise the property owner of the option to apply for a letter of map amendment (LOMA) from FEMA. Maintain a copy of the letter of map amendment (LOMA) issued by FEMA in the floodplain development permit file.
14. Permanently maintain all records that pertain to the administration of this chapter and make these records available for public inspection.
15. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of this chapter and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the Town at any reasonable hour for the purposes of inspection or other enforcement action.
16. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this section, the Floodplain Administrator may order the work to be immediately stopped. The stop work order shall be in writing and directed to the person doing the work. The stop work order shall state the specific work to be stopped, the specific reason for the stoppage, and the condition under which the work may be resumed. Violation of a stop work order constitutes a misdemeanor.
17. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable state or local law may also be revoked.

18. Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The Floodplain Administrator and each member of his inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
19. Follow through with corrective procedures of Section 28.4.3, Corrective Procedures.
20. Review, provide input, and make recommendations for variance requests.
21. Maintain a current map repository to include but not be limited to the FIS report, FIRM and other official flood maps and studies adopted in accordance with Section 28.3.3, Basis for Establishing the Special Flood Hazard Areas, including any revisions thereto, including letters of map change issued by FEMA. Notify state and FEMA of mapping needs.
22. Coordinate revisions to FIS reports and FIRMs, including letters of map revision based on fill (LOMR-F) and letters of map revision (LOMR).

28.4.3. CORRECTIVE PROCEDURES

A. VIOLATIONS TO BE CORRECTED

When the Floodplain Administrator finds violations of applicable state and local laws, it shall be his duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

B. ACTIONS IN EVENT OF FAILURE TO TAKE CORRECTIVE ACTION

If the owner of a building or property fails to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

1. That the building or property is in violation of the flood damage prevention chapter;
2. That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
3. That following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.

C. ORDER TO TAKE CORRECTIVE ACTION

If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of this chapter, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than 180 calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser period as may be feasible.

D. APPEAL OF ORDER

Any owner who has received an order to take corrective action may appeal the order to Town Council by giving notice of appeal in writing to the Floodplain Administrator and the Town Clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The Town Council shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

E. FAILURE TO COMPLY WITH ORDER

If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the Town Council following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

28.4.4. FLOOD DAMAGE PREVENTION VARIANCES

The Board of Adjustment, hereinafter referred to as the "appeal board," shall hear and decide requests for variances from the requirements of this chapter in accordance with the following:

A. ALLOWABLE VARIANCES

Variations may be issued for:

1. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure.
2. Functionally dependent facilities, if determined to meet the definition contained in this chapter, provided provisions of Section 28.4.4.C, Review Criteria, have been satisfied, and such facilities are protected by methods that minimize flood damages.
3. Any other type of development, provided it meets the requirements stated in this section.

B. FACTORS FOR CONSIDERATION

In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location as defined by this Ordinance as a functionally dependent facility, where applicable;
6. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
7. The compatibility of the proposed use with existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
11. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

C. REVIEW CRITERIA

1. Variances shall only be issued upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship; and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
2. Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.
3. Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued prior to development permit approval.

D. ADDITIONAL STANDARDS FOR CERTAIN USES

A variance may be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following conditions are met:

1. The use serves a critical need in the Town.
2. No feasible location exists for the use outside the special flood hazard area.
3. The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.
4. The use complies with all other applicable federal, state and local laws.
5. The Town has notified the Secretary of the State Department of Crime Control and Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

E. CONDITIONS OF APPROVAL

Upon consideration of the factors listed in Section 28.4.4.B, Factors for Consideration, and the purposes of this subsection, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this subsection.

F. WRITTEN REPORT REQUIRED

A written report addressing each of the factors set forth in Section 28.4.4.B, Factors for Consideration, shall be submitted with the application for a variance.

G. REQUIRED NOTIFICATION TO APPLICANT

Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and that such construction below the base flood elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to \$25.00 per \$100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

H. RECORDS

The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the state upon request.

I. APPEAL

Any person aggrieved by the decision of the Board of Adjustment may appeal such decision to the court, as provided in Chapter 7A of the North Carolina General Statutes.

28.5. FLOOD HAZARD REDUCTION

28.5.1. GENERAL STANDARDS

In all special flood hazard areas, the following general standards are required for all forms of development:

- A.** All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- B.** All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- C.** All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- D.** Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, appliances (washers, dryers, refrigerators, freezers, etc.), hot water heaters, and electric outlets/switches.
- E.** All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- F.** New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- G.** On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- H.** Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this section, shall meet the requirements of new construction as contained in this chapter.
- I.** Nothing in this section shall prevent the repair, reconstruction, or replacement of a building or structure existing on [insert the effective date of this ordinance] and located totally or partially within the floodway, nonencroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, nonencroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this section.
- J.** New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Section 28.4.4.D.

Additional Standards for Certain Uses. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a special flood hazard area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to Section 28.4.2.C, Flood Damage Certification Requirements.

- K.** All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- L.** All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- M.** All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- N.** All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1334.

28.5.2. SPECIFIC STANDARDS

In addition to the general standards in Section 28.5.1, General Standards, all development subject to this chapter shall comply with the following specific standards, as appropriate:

A. RESIDENTIAL CONSTRUCTION

New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Chapter 4: Definitions, of this Town Code.

B. NONRESIDENTIAL CONSTRUCTION

1. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Chapter 4: Definitions, of this Town Code.
2. Structures located in A, AE and A1-30 zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy.
3. For AO zones, the floodproofing elevation shall be in accordance with Section 28.5.2.D, Elevated Buildings. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 28.4.2.C, Flood Damage Certification Requirements, along with the operational and maintenance plans.

C. MANUFACTURED HOME STANDARDS

1. New or replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in Chapter 4: Definitions, of this Town Code.
2. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by engineer certification, or in accordance with the most current edition of the state regulations for manufactured homes, adopted by the Commissioner of Insurance pursuant to Section 143-143.15 of the North Carolina General Statutes or a certified engineered foundation. Additionally, when the elevation would be met by an elevation of the chassis 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or an engineered foundation. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.
3. All enclosures or skirting below the lowest floor shall meet the requirements of Section 28.5.2.D, Elevated Buildings.
4. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved, or substantially damaged manufactured home parks or subdivisions located within floodprone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local emergency management coordinator.

D. ELEVATED BUILDINGS

Fully enclosed areas of new construction and substantially improved structures, which are below the lowest floor:

1. HUMAN HABITATION PROHIBITED

Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

2. FLOOD-RESISTANT MATERIALS

Shall be constructed entirely of flood-resistant materials, up to the regulatory flood protection elevation;

3. FLOOD OPENINGS

Shall include, in zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:

- a. A minimum of two flood openings on different sides of each enclosed area subject to flooding;
- b. The total net area of all flood openings must be at least one square inch for each square foot of enclosed area subject to flooding;
- c. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
- d. The bottom of all required flood openings shall be no higher than one foot above the adjacent grade;
- e. Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
- f. Enclosures made of flexible skirting are not considered enclosures for regulatory purposes and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined in this subsection.

4. BREAKAWAY WALLS, LATTICEWORK, AND SCREENING

Shall allow, in coastal high hazard areas (zones VE and V1-30), breakaway walls, open wood latticework or insect screening, provided it is not part of the structural support of the building and is designed so as to breakaway, under abnormally high tides or wave action, without causing damage to the structural integrity of the building, provided the following design specifications are met:

- a. Material shall consist of open wood latticework or insect screening; or
- b. Breakaway walls shall meet the following design specifications:
 - i. Design safe loading resistance of each wall shall be not less than ten nor more than 20 pounds per square foot; or
 - ii. Breakaway walls that exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by state or local codes) shall be certified by a registered professional engineer or architect that the breakaway wall will collapse from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). The water loading values used shall be those associated with the base flood. The wind loading values used shall be those required by the state building code.

E. ADDITIONS & IMPROVEMENTS

1. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - a. Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more nonconforming than the existing structure.
 - b. A substantial improvement, both for the existing structure and the addition and/or improvements must comply with the standards for new construction.

2. Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.
 - a. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - b. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
 - c. A substantial improvement, both for the existing structure and the addition and/or improvements must comply with the standards for new construction.
3. Where an independent perimeter loadbearing wall is provided between the addition and the existing building, the addition shall be considered a separate building and only the addition must comply with the standards for new construction.

F. RECREATIONAL VEHICLES

Recreational vehicles shall either:

1. Be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or
2. Meet all the requirements for new construction.

G. TEMPORARY STRUCTURES

Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure in the event of a hurricane, flash flood, or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

1. A specified time period for which the temporary use will be permitted. Time specified should not exceed three months, renewable up to one year;
2. The name, address, and phone number of the individual responsible for the removal of the temporary structure;
3. The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
4. A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
5. Designation, accompanied by documentation, of a location outside the special flood hazard area, to which the temporary structure will be moved.

H. ACCESSORY STRUCTURES⁴⁰⁰

1. When accessory structures (sheds, detached garages, etc.) are to be placed within a special flood hazard area, the following criteria shall be met:
 - a. Portions of accessory structures located below the regulatory flood protection elevation within a designated special flood hazard area shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
 - b. Accessory structures shall not be temperature-controlled unless permitted in accordance with Chapter 22: Zoning, and provided all temperature-controlled space is located outside the regulatory flood protection elevation;
 - c. Accessory structures shall be designed to have low flood damage potential;
 - d. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 - e. Accessory structures shall be firmly anchored in accordance with Section 28.5.1, General Standards;
 - f. All service facilities such as electrical shall be installed in accordance with Section 28.5.1, General Standards; and
 - g. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with Section 28.5.2.D, Elevated Buildings. An accessory structure with a footprint less than 150 square feet that satisfies the criteria

⁴⁰⁰ This section is revised to include language from ZTA-17-01 as well as ZTA-17-05.

outlined in this subsection does not require an elevation or floodproofing certificate unless it includes habitable space or temperature-controlled space. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section 28.4.2.C, Flood Damage Certification Requirements.

2. Residential accessory structures existing as of January 1, 2017 which were otherwise lawful and duly permitted at the time of their construction or modification and which are nonconforming due solely to the inclusion of working, sleeping, living, cooking or restroom space within the accessory structure shall be considered legally nonconforming under this Ordinance so long as all such working, sleeping, living, cooking or restroom space is located above regulatory flood protection elevation. Such accessory structures may be modified in conformance with this Ordinance and the nonconforming working, sleeping, living, cooking or restroom space within them may continue so long as the nonconformity is not expanded.

28.5.3. COASTAL HIGH HAZARD AREAS (ZONES VE)

Coastal high hazard areas are special flood hazard areas established in Section 28.3.3, Basis for Establishing the Special Flood Hazard Areas, and designated as zone VE. These areas have special flood hazards associated with high velocity waters from storm surges or seismic activity and, therefore, in addition to meeting all requirements of this chapter, with the exception of floodway and nonencroachment area provisions in Section 28.5.1, General Standards, the following provisions shall apply:

A. LOCATION

All new construction and substantial improvements shall:

1. Be located landward of the reach of mean high tide;
2. Be located landward of the first line of stable natural vegetation; and
3. Comply with all applicable CAMA setback requirements.

B. ELEVATED

1. All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is no lower than the regulatory flood protection elevation. Floodproofing shall not be utilized on any structures in coastal high hazard areas to satisfy the regulatory flood protection elevation requirements.
2. All new construction and substantial improvements shall have the space below the lowest floor free of obstruction so as not to impede the flow of floodwaters, with the following exceptions:
 - a. Open wood latticework or insect screening may be permitted below the regulatory flood protection elevation for aesthetic purposes only and must be designed to wash away in the event of abnormal wave action and in accordance with Section 28.5.2.D.4, Breakaway Walls, Latticework, and Screening. Design plans shall be submitted in accordance with the relevant portions of Section 28.4.2.A.4, Foundation Plan, or
 - b. Breakaway walls may be permitted provided they meet the criteria set forth in Section 28.5.2.D.4, Breakaway Walls, Latticework, and Screening. Design plans shall be submitted in accordance with the relevant portions of Section 28.4.2.A.4, Foundation Plan.

C. PROPERLY ANCHORED

All new construction and substantial improvements shall be securely anchored to pile or column foundations. All pilings and columns and the structures attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.

1. Water loading values used shall be those associated with the base flood.
2. Wind loading values used shall be those required by the current edition of the state building code.

D. COMPLIANCE CERTIFIED

A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions contained in Section 28.4.2, Floodplain Development Application, Permit, and Certification Requirements, the appropriate portions of Section 28.5.3.B Elevated, Section 28.5.3.C, Properly Anchored, and Section 28.5.3.E, Use of Fill Limited, on the current version of the state "National Flood Insurance Program V-Zone Certification" form.

E. USE OF FILL LIMITED

Fill shall not be used for structural support. Limited noncompacted and nonstabilized fill may be used around the perimeter of a building for landscaping/aesthetic purposes provided it is demonstrated through coastal engineering analysis that the proposed fill would not result in any increase in the base flood elevation and not cause any adverse impacts by wave ramping and deflection to the subject structure or adjacent properties.

F. ALTERATION OF SAND DUNES PROHIBITED

There shall be no alteration of sand dunes which would increase potential flood damage.

G. MANUFACTURED HOMES

No manufactured homes shall be permitted except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring and elevation standards of this section have been satisfied.

H. RECREATIONAL VEHICLES

Recreational vehicles may be permitted in coastal high hazard areas provided that they meet the criteria of Section 28.5.2.F, Recreational Vehicles, and Section 28.5.2.G, Temporary Structures.

CHAPTER 29.

[RESERVED]

CHAPTER 30. WATERWAYS AND BEACHES

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GUIDANCE FROM CODE ASSESSMENT:

The Town’s waterway and beach standards are currently found in Chapter 34 of the Town Code. The standards are organized into three articles: In General, Waterway & Canal Maintenance, Beach and Waterway Usage, Coastal Area Management.

We suggest these standards be carried forward in new Chapter 30 with a slightly modified structure that consolidates similar provisions into common sections.

As with all other chapters, we suggest the section commence with sections on statutory authority and purpose and intent. We suggest a new section on boat operation. Additional consideration is needed about whether or not this section should include provisions for operation of non-motorized devices (like paddleboards, kayaks, and similar devices).

Along these lines, there appear to be no provisions for personal watercraft (jet skis); fishing or swimming from bridges over canals; rules related to public boat slips (if applicable).

Staff comments indicated a desire to remove the Coastal Area Management provisions in favor of cross references to other documents.

30.1. STATUTORY AUTHORITY

- A. The Town has jurisdiction over all waterways within the boundaries of the Town, and will enforce the standards in this chapter.⁴⁰¹
- B. The Town's authority to regulate swimming, personal watercraft operation, surfing, and littering in the Atlantic Ocean and waterways adjacent to the Town shall be in accordance with Section 160A-176.2 of the North Carolina General Statutes.⁴⁰²

30.2. PURPOSE & INTENT

- A. The purpose of this Ordinance is to protect the public health, safety, and general welfare of the citizens and landowners of the Town of Southern Shores by regulating the waterways and beaches.
- B. It shall be the policy of the Town to permit the construction of bulkheads, docks, and pilings on private property and on the Town rights-of-way on Osprey Lane, Wild Swan Lane, Tall Pine Lane, Yaupon Lane, and Holly Trail under the limitations and conditions in this chapter.⁴⁰³

30.3. BOAT OPERATION

30.3.1. WAKES AND SPEED LIMIT⁴⁰⁴

- A. The owner of any boat using the Town's waterways shall be responsible for ensuring that the boat is operated at such speeds as to leave a low wake to avoid erosion and washing away of the banks.
- B. In no case shall a boat be operated at a speed in excess of five statute miles per hour.

30.4. WATERWAYS & CANALS

30.4.1. MAINTENANCE REQUIRED

Owners of lands bordering waterways, with the exception of those bodies of water where the bottom land of the waterway is not owned by the Town or other public entity, shall keep such waterways clear of brush, fallen trees, and debris which project into or over the water.⁴⁰⁵

30.4.2. MAINTENANCE AREAS DISTINGUISHED

Obstructions which project within a plane, with its base at the mean low waterline and its upper edge at a point ten feet high and six feet out from the bank (see [Figure 30.4.2: Waterway Clear Zone](#)), shall be declared a nuisance and shall be removed or be subject to the applicable provisions of [Chapter 36: Offenses and Enforcement](#).⁴⁰⁶

⁴⁰¹ This section comes Section 34-20 of the current Town code.

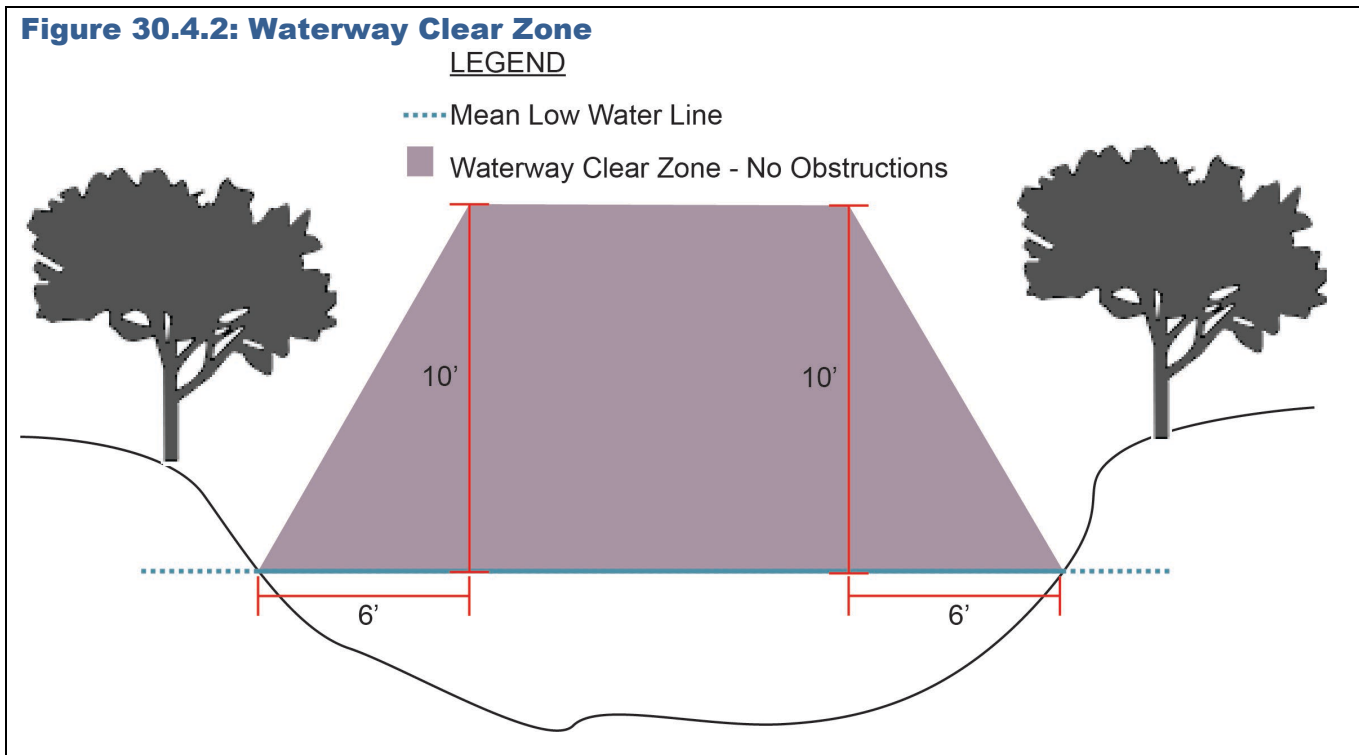
⁴⁰² This comes from the footnote at the head of the current Chapter 34.

⁴⁰³ This section comes from Section 34-21 of the current code.

⁴⁰⁴ This section comes from Section 34-23 of the current code.

⁴⁰⁵ This section comes from the first part of Section 34-22 of the current Town code.

⁴⁰⁶ This section and the attached figure come from the second part of Section 34-22 of the current Town code.



30.5. BULKHEADS, DOCKS, AND PILINGS

30.5.1. REQUIRED FOR DOCKING

No boat shall be moored next to a bank without being tied to a dock, bulkhead, or piling.

30.5.2. PROCEDURE

- A.** The owner of land bordering a waterway shall obtain a building permit prior to the construction of any improvement to a waterway, bank, or bottomland.
- B.** The building permit shall be subject to this Ordinance, as well as any appropriate Coastal Area Management Act or United States Army Corps of Engineers regulations and procedures.⁴⁰⁷
- C.** The Town Manager or a designee, having been furnished a plan sketch or diagram, shall review each site for compliance with all applicable rules prior to issuance of a building permit.

30.5.3. REQUIREMENTS⁴⁰⁸

All improvements shall be constructed in compliance with the following (see [Figure 30.5.3: Dock and Piling Location](#)):

- A.** No more than one dock will be permitted per bordering lot;
- B.** No dock or piling shall protrude into the water more than four feet, measured perpendicular to the shore line;
- C.** No dock, piling, or moored boat shall protrude into any area within 15 feet of the centerline of the waterway;
- D.** If a situation prevails where a narrow canal exists or an existing dock is opposite the proposed dock, both of which would affect the navigability of the adjacent waterway, then the Town Manager or a designee will determine the distance that a dock/bulkhead may protrude in the water;

⁴⁰⁷ This section comes from Section 34-24 of the current Town code.

⁴⁰⁸ This section comes from Section 34-25 of the current Town code.

- E. Docks shall be constructed parallel to the banks of a lagoon;
- F. Dock and bulkhead designs shall meet the standards and Ordinance requirements in existence at the time of granting of the building permit;
- G. Continuous bulkheading of banks between the dock and the shore will be required in an area extending eight feet beyond each end of the dock; and
- H. If the bulkhead is to be used as a dock, a minimum of 32 linear feet of bulkhead shall be installed.

30.5.4. EXEMPTIONS

A. EXISTING STRUCTURES⁴⁰⁹

All docks, bulkheads, and pilings existing on privately-owned property on April 3, 1984, may be exempt from this chapter, with approval of the Town Manager or a designee. No owner shall permit these structures to fall into disrepair.

B. CIVIC ASSOCIATION-OWNED PROPERTY⁴¹⁰

Docks, bulkheads, and pilings currently owned by a civic association, are subject to the provisions of this chapter, with the exception of the limitations on the number of docks per lot and the maximum distance a dock or piling may protrude into a waterway.

30.5.5. LEASING WATERFRONT LAND FROM TOWN⁴¹¹

The Town may, at its discretion, lease space for dock, bulkhead, or piling placement or construction on Town-owned lands which border waterways in accordance with the standards in this section.

A. LAND SEPARATED FROM WATERWAY

A landowner with land separated from a waterway by Town-owned land may request that the Town lease the waterfront property within an area encompassed by the extension of his property lines, subject to the following:

1. The lessee shall bear the complete cost of constructing the dock, bulkhead, or piling installation consistent with the provisions of Section 30.5.1, Required for Docking, and Section 30.5.2, Procedure, and shall be responsible for maintenance of the land leased, according to Section 30.4.1, Maintenance Required, and Section 30.4.2, Maintenance Areas Distinguished;
2. No structures may be placed on the dock or on the land and the lessee will keep the grass cut in the leased area; and
3. Pilings may be used only in conjunction with docks or bulkheads.

B. DETAILS OF LEASE

1. The text of the lease agreement shall be as established by the Town Council.
2. Lease fees of Town property that has been improved by installation of bulkheads and/or docking facilities will be waived for the original installer for a period of seven years. Thereafter, the annual fee will be renewable on January 1 of each year. Subsequent owners shall pay a higher fee.
3. The lessee shall have the right to renew the lease for succeeding years without limit, and the Town shall reserve the right to cancel the lease upon written notice.
4. Lessee shall have the right to request a hearing before the Town Manager prior to cancellation of the lease and within 30 days of the cancellation notice from the Town.

C. TERMINATION OR CANCEL OF LEASE

1. Sale of property is a condition for termination of lease. A new lease must be negotiated with the Town by the new owner.
2. If a lease is abandoned or cancelled according to the provisions of this section, any and all improvements on Town-owned land shall revert to and become property of the Town, the same being deemed to be a part of the consideration for the lease.

⁴⁰⁹ This section comes from Section 34-26 of the current Town code.

⁴¹⁰ This section comes from Section 34-27 of the current Town code.

⁴¹¹ This section comes from Section 34-29 of the current Town code.

30.6. BEACH AND WATERWAY USE

30.6.1. SWIMMING PROHIBITED DURING DANGEROUS CONDITIONS⁴¹²

It is recognized that during certain periods of time, as a result of a combination of environmental conditions, dangerous riptides and undercurrents occur in the ocean surf making conditions unsafe for swimmers.

A. DETERMINATION OF UNSAFE CONDITIONS

1. The Town's designated ocean rescue personnel shall make the determination of whether or not ocean conditions are safe based upon observations of the effects of winds, tides, storm conditions, and other environmental conditions affecting the surf in the Atlantic Ocean. They shall also take into consideration weather reports of existing storms in the Atlantic Ocean and the proximity of those storms to the beaches of the Town, and the effect thereof.
2. The Town Manager is authorized, when the Town's designated ocean rescue personnel make a determination that conditions are unsafe for swimmers in the Atlantic Ocean, to prohibit all swimming in the Atlantic Ocean until such time as the unsafe conditions have abated.

B. SWIMMING PROHIBITED

During periods in which swimming is prohibited and after notice is given to the public by announcement on the local radio station and by the posting of signs on the public accesses to the Atlantic Ocean, swimming in the Atlantic Ocean shall be unlawful and shall be a violation of this Ordinance subject to the provisions in Chapter 36: Offenses and Enforcement.

30.6.2. SURFING

Surfing without a leash shall be prohibited in accordance with Section 36.5.24, Waterway and Beach Violations.

30.6.3. OPERATION OF A MOTORIZED VEHICLE ON DUCK WOODS POND

Operation of a motorized vehicle on Duck Woods Pond shall be prohibited in accordance with Section 36.5.24, Waterway and Beach Violations.

30.7. BEACH AND DUNE MANAGEMENT

30.7.1. PROHIBITED ACTIVITIES⁴¹³

1. **PASSAGE OF VEHICLES**
No obstruction to the passage of permitted vehicles shall be placed, constructed, or maintained oceanward of the first line of vegetation.⁴¹⁴
2. **ERECTION OF STRUCTURES**
Erection of permanent structures on the beach shall be prohibited in accordance with Section 36.5.24, Waterway and Beach Violations.
3. **LEAVING ITEMS UNATTENDED AFTER DARK**
Leaving items unattended on the beach after dark shall be prohibited in accordance with Section 36.5.24, Waterway and Beach Violations.
4. **ALTERING THE CONTOUR**
Significantly altering the contour of the beach shall be prohibited in accordance with Section 36.5.24, Waterway and Beach Violations.
5. **ACTIVITIES WITHIN THE DUNE SYSTEM**

⁴¹² This section comes from Section 34-53 of the current code, with some reorganization to aid in user-friendliness. As suggested by staff and noted in the Code Assessment, subsection (c) dealing with posting of this provision inside rental properties, has been removed due to unenforceability. No other substantive change has been made.

⁴¹³ This section has been supplemented with language from TCA-17-02.

⁴¹⁴ This section carries forward Section 36-100 of the current code.

Walking on dunes outside of improved walkways as well as other activities that degrade the dune system shall be prohibited in accordance with Section 36.5.24, Waterway and Beach Violations.

6. BEACH BULLDOZING

a. Generally

Unless exempted in accordance with the following section, bulldozing sand, pushing sand by mechanical means, or other mechanical change to the topography is prohibited on the Town's ocean beaches within the limits of a completed public beach nourishment project.

b. Exemptions

- i. Beach bulldozing is permitted only in the following instances:
 - 1) When such work is performed as a part of a hurricane or erosion protection project or beach nourishment project sponsored by the Town, or another local, state, or federal government agency;
 - 2) When such work is performed at the direction of, and with authorization by, the Town for the purpose of beach maintenance; and
 - 3) When such work is authorized by the Town Council following a natural disaster.
- ii. When work is performed upon the ocean beaches in compliance with this subsection, the equipment operator shall maintain a copy of the CAMA permit/exemption letter from the Town on their person when conducting this activity and be familiar with all of the conditions associated with the permit.

30.7.2. EXEMPTIONS⁴¹⁵

This section shall not apply to the following activities:

- A.** Development activities authorized or permitted by the Town, the County Department of Environmental Health, or CAMA;
- B.** Dune or property maintenance activities including planting or fertilization of vegetation, sand fence installation, minor dune repairs, and removal of litter or debris;
- C.** Federal, State, and local officials engaged in official regulatory activities; and
- D.** Persons engaged in research, conservation, or extension activities as authorized by the Town Manager.

30.7.3. OCEAN DUNE PLATFORMS, WALKWAYS, AND STEPS⁴¹⁶

A. PURPOSE

Regulation of platforms, walkways, and steps is intended to preserve the natural appearance and integrity of the frontal dune and provide minimal interference with the natural accretion of sand and growth of vegetation.

B. PERMITS REQUIRED

A building permit, issued in accordance with Section 22.2.3.F, Building, Zoning, or Sign Permit, and a CAMA permit, shall be required prior to construction or alteration of an ocean dune platform or walkway and associated stairs.

C. OCEAN DUNE PLATFORMS

Ocean dune platforms shall be configured in accordance with the following:

- 1. The platform shall not exceed the lesser of:
 - a. 200 square feet; or
 - b. Maximum area specified in the North Carolina State Building Code;
- 2. No supporting posts shall be placed within four feet of the eastern side of the frontal dune;
- 3. The platform shall be at least 18 inches and no more than 24 inches above the highest natural grade within the footprint of the proposed platform, at the time of construction;

⁴¹⁵ This section comes from Section 34-55(d) of the current Town code. The balance of section 34-55 has been relocated to the new consolidated Enforcement chapter.

⁴¹⁶ This section carries forward the standards in Section 36-99 of the current code.

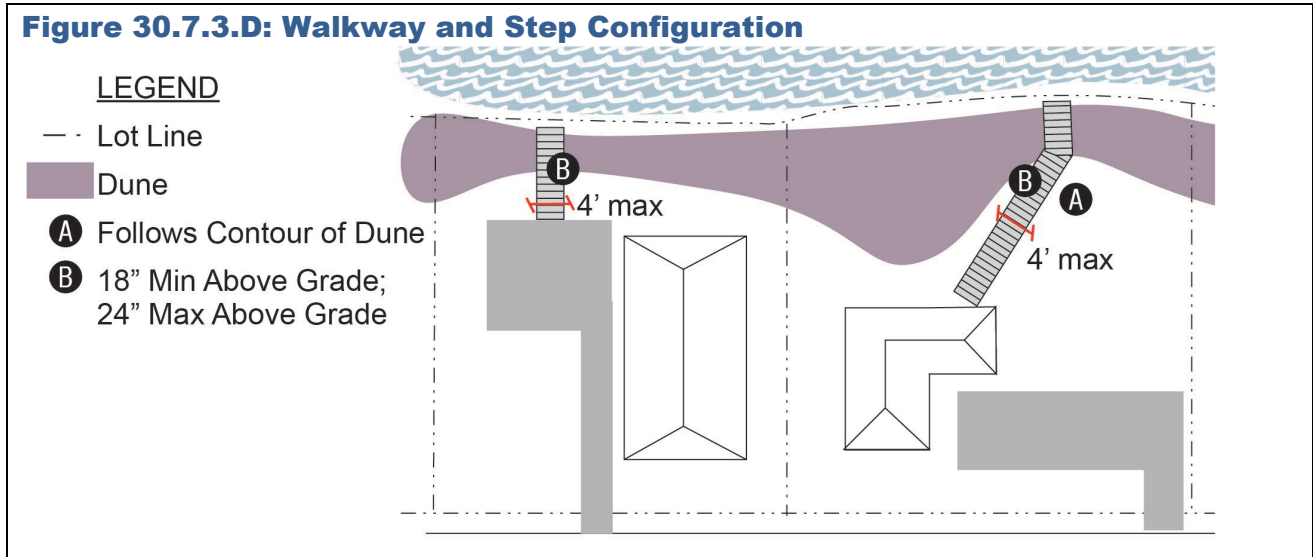
4. No part of the platform structure, except a flagpole, shall extend more than three feet above the deck; and
5. Permanently attached seating may be incorporated into an ocean dune platform.

D. WALKWAY AND STEPS

Up to one walkway or steps are permitted across the dunes, provided:

1. The walkway or steps are constructed in a manner which entails only negligible alterations to any dune (see Figure 30.7.3.D: Walkway and Step Configuration);
2. Walkways and steps shall not exceed four feet in width; and
3. Walkways and steps constructed on the frontal dune will reasonably follow the contour of the dune and will be placed at least 18 inches and not more than 24 inches above natural grade, at the time of construction.

Figure 30.7.3.D: Walkway and Step Configuration



E. EXCEPTIONS FOR COMMUNITY RECREATION FACILITIES

In addition to the ocean dune platforms, walkways, and steps listed above, public and private community recreation facilities may also include the following features.

1. Dune platforms of up to 500 square feet, provided the maximum size or dimensions do not exceed North Carolina State Building Code requirements.
2. A sunshade on the dune platform, meeting the following requirements:
 - a. The footprint of the sunshade does not exceed 180 square feet;
 - b. The sides are not enclosed;
 - c. The height from the deck does not exceed 11 feet; and
 - d. The sunshade is set back 25 feet from side lot lines.
3. No platform containing a structure extending more than three feet above the platform deck shall be constructed within 1,000 feet of a similar structure.

F. NONCONFORMING STRUCTURES

Existing ocean dune platforms, walkways, and steps that do not meet the requirements of this section are considered nonconforming structures subject to the standards in Section 22.6, Nonconformities.

30.8. COASTAL AREA MANAGEMENT

30.8.1. COMPLIANCE REQUIRED

Full compliance with all applicable sections of North Carolina Administrative Code, Title 15A, Chapter 7, Coastal Management, as amended, is required.⁴¹⁷

⁴¹⁷ As requested by staff, sections 34-75 through 34-84 of the current code, which contained detailed and outdated references to State rules and regulations, have been replaced with a reference to the State rules for Coastal Management. This cross-referencing ensures that users of the Town Code are not misled by outdated information, and removed unnecessary bulk from the code.

CHAPTER 31.

[RESERVED]

CHAPTER 32.

CEMETERIES

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GUIDANCE FROM CODE ASSESSMENT:

Chapter 10 in the current Town Code sets out the provisions for Southern Shores Cemetery, one of the few municipal cemeteries in the Outer Banks. The current standards address issues such as location, name, funding, and operation within a single section (10-1).

Staff comments suggest revising the locational provisions to simply reference the plat number. And to remove policy-related material related to funding through the sale of plots.

We suggest all non-policy related provisions be carried forward in new Chapter 32 with only minor reorganization to better organize information into name and location sections, general standards, and operational provisions.

32.1. STATUTORY AUTHORITY⁴¹⁸

The statutory authorization for the standards and procedures in this chapter is derived from the following.

32.1.1. REFERENCES

- A. Chapter 65 of the North Carolina General Statutes, regarding cemeteries;
- B. Section 160A-342 et seq., of the North Carolina General Statutes, regarding municipal cemeteries; and
- C. Section 136-18(20) of the North Carolina General Statutes, regarding maintenance of cemetery entrances and exits.

32.2. CEMETERY ESTABLISHED

32.2.1. LOCATION⁴¹⁹

1. The Town shall establish, operate and maintain a municipal cemetery on that parcel of land bearing the parcel number 029702932.
2. The cemetery property is bounded on the north by Kitty Hawk Land Company Lot No. 8, Block 202, on the west by Dogwood Trail and on the south and east by the property of the Outer Banks Recreation Association.⁴²⁰

32.2.2. OFFICIAL NAME⁴²¹

The cemetery shall be known as the Southern Shores Cemetery.

32.3. GENERAL STANDARDS⁴²²

32.3.1. NOTIFICATION REQUIRED

- A. The Town Clerk shall be notified, in writing, by a deceased's representative of any interment or disinterment in or from a cemetery lot prior to such action.
- B. No lot owner shall make any changes or alterations in or on any lot, including the removal or change in position of any memorial or marker, removal of trees or shrubs without the written consent of the Town Manager.

32.3.2. CONFIGURATION

- A. No coping, curbing, fencing, hedging, borders, perennial plantings, shrubs, corner posts, or enclosure of any kind will be allowed around a gravesite.
- B. No walks of brick, cinders, tile, stone, sand, cement, gravel, or wood or other materials will be allowed on any cemetery lot.
- C. No trinkets, toys, shells, glass jars, tin cans, sand, flagpoles, lights, or any article determined to be unsightly by the Town Manager shall be allowed on a grave. Any such articles may be removed without notice and the Town will not be responsible for the loss or destruction of the same.
- D. Lots containing trees shall only be used for burial of cremains.
- E. No loitering shall be allowed in the cemetery.⁴²³

⁴¹⁸ This section comes from the footnotes at the head of current chapter 10.

⁴¹⁹ This section comes from Section 10-1 of the current Town Code.

⁴²⁰ This section is part of Section 10-1(a) of the current Town Code

⁴²¹ This section comes from Section 10-1(b) of the current Town Code.

⁴²² This section comes from Section 10-1(e)(3) through (7) of the current Town Code.

⁴²³ This section comes fro Section 10-1(e)(13) of the current Town Code.

32.3.3. ALTERATION BY TOWN

The Town reserves the right to determine, establish, modify, alter, or change the grade of any vacant lot, road, driveway, pathway or part thereof, and it shall not be liable to anyone for any such action.

32.4. OPERATIONS

32.4.1. MONITORING AND MAINTENANCE⁴²⁴

- A. The Mayor, with the approval of the Town Council, may appoint a Councilmember to monitor cemetery operations and policies established by the Town Council and make recommendations to the Town Council, as appropriate.
- B. The Town Council may establish further regulations regarding the management or maintenance of the cemetery.

32.4.2. RIGHT-TO-USE CERTIFICATE⁴²⁵

- A. A certificate of burial rights shall be issued for the right to use, for burial purposes and in exchange for payment, a burial plot or plots in Southern Shores Cemetery, and is issued subject to the rules, regulations, and ordinances governing the cemetery adopted by the Town Council.
- B. The right conveyed by a certificate is for a period of 20 years from the date of execution of the certificate by the Town and thereupon shall expire.
- C. Once a lot is used for a family member, however, the entitlement to use one other lot owned by that family vests in perpetuity to the family without renewal requirements.
- D. Any remaining lots may be retained by the family as long as renewal requirements are met.
- E. The right to use the cemetery lot as burial place is vested to the grantee and any member of his or her immediate family which is defined as spouse, brother, sister, parent, child or grandchild or the spouse of any of those and shall not be assigned to any other person.
- F. No more than four lots may be owned by any one family, unless Town Council determines otherwise, based on number of children, grandparents, and spouses.
- G. Current purchase price is \$500.00 for Town property owners or \$2,000.00 for non-property owners.

32.4.3. RENEWAL AND EXPIRATION OF CERTIFICATE⁴²⁶

- A. Should no immediate family burial occur within 20 years from the date of the certificate expiration, then, upon tender of a renewal fee of \$10.00 within five years following the expiration date of the original certificate, the certificate may be renewed for a period of ten years from the expiration date of the original certificate.
- B. It is the responsibility of the grantee or his family, to advise the Town of any change of address and renew the certificate.

32.4.4. EXPIRATION OR TERMINATION OF CERTIFICATE

- A. Automatic cancellation of burial rights will occur if the certificate is not duly renewed within five years following the expiration date of the original certificate.
- B. Upon request of the certificate holder, the town may purchase lots back at the original purchase price.

32.5. MARKERS

32.5.1. SIZE⁴²⁷

⁴²⁴ This section comes from Section 10-1(d) and the first part of Section 10-1(e) of the current Town Code.

⁴²⁵ This section comes from Section 10-1(e)(1) of the current Town Code.

⁴²⁶ This section comes from Section 10-1(e)(2) of the current Town Code.

- A. Grave markers shall not be in excess of 12 by 24 inches in size.
- B. Adjoining family graves may share a common marker whose size shall not exceed 12 by 48 inches.

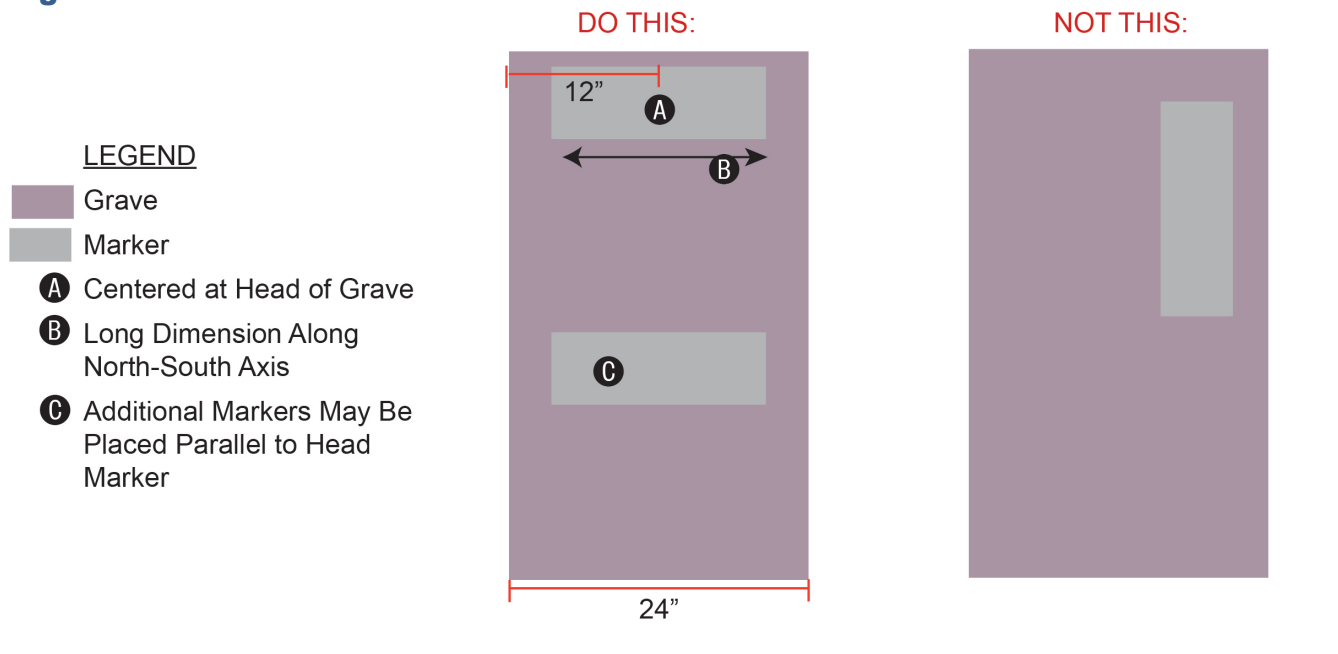
32.5.2. MATERIAL

- A. Grave markers shall be made of permanent material.
- B. Grave markers with porcelain or photographs are not permitted.

32.5.3. PLACEMENT

- A. Markers shall be located at the head of the grave, center measured one-foot from each side, readable west to east with long dimension of the marker to be on a North/South axis only.
- B. Additional 12 by 24-inch markers shall be placed parallel to the 24-inch dimension of the head marker (see Figure 32.5.3, Permitted Marker Placement).
- C. The top of a marker shall be flush and flat with the ground.

Figure 32.5.3: Permitted Marker Placement



⁴²⁷ This section comes from Section 10-1(e)(8) through (12).

CHAPTER 33.

[RESERVED]

CHAPTER 34. ANIMALS

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GUIDANCE FROM CODE ASSESSMENT:

This chapter sets out the rules and requirements related to animals in Town – both the keeping of pets and other provisions related to wild animals.

During the initial input stages, the suggestion was made to consider removing the standards adopting by reference the Dare County animal control provisions. The proposed chapter structure shown to the left includes the provisions necessary if this change were made. We note the current code has no provisions on dangerous animals, impoundment, or hunting.

The definitions in current Chapter 4, Animals, are proposed for relocation to the consolidated chapter on definitions. We suggest a reconfigured owner responsibility section that includes the current provisions plus standards for animal enclosures.

For the sake of clarity, we suggest the material related to dogs on the beach be removed from running at large and placed into its own section. We also suggest additional details be added regarding impoundment and redemption of pets found at large.

Recent changes in state law have exempted small-scale bee keeping from local regulations, so we suggest a new section addressing that issue. Finally, we suggest a provision be added to reference a Town policy on hunting (should one be developed).

34.1. STATUTORY AUTHORITY⁴²⁸

The statutory authorization for the standards and procedures in this chapter is derived from the following.

34.1.1. REFERENCES

- A.** Section 14-360 et seq., of the North Carolina General Statutes, regarding cruelty to animals;
- B.** Section 14-366 et seq., of the North Carolina General Statutes, regarding protection of livestock;
- C.** Chapter 19A of the North Carolina General Statutes, regarding protection of animals;
- D.** Chapter 67 of the North Carolina General Statutes, regarding domestic dogs;
- E.** Section 68-16 of the North Carolina General Statutes, regarding livestock running at large;
- F.** Chapter 106 of the North Carolina General Statutes, regarding agriculture;
- G.** Section 130A-184 et seq., of the North Carolina General Statutes, regarding rabies;
- H.** Section 160A-182 and Section 160A-186 et seq., of the North Carolina General Statutes, regarding municipal regulation of animals;
- I.** Section 160A-188 of the North Carolina General Statutes, regarding bird sanctuaries;
- J.** Section 160A-212 of the North Carolina General Statutes, regarding animal taxes;
- K.** Section 160A-493 of the North Carolina General Statutes, regarding municipal animal shelters;
- L.** Section 160A-187 of the North Carolina General Statutes, regarding regulation of dangerous animals; and
- M.** Chapter 10A NCAC 41G.0101 of the North Carolina Administrative Code, regarding rabies vaccination.

34.2. ENFORCEMENT⁴²⁹

It shall be the duty of the Police Department to enforce the provisions of this chapter.

34.3. OWNER RESPONSIBILITIES

34.3.1. HUMANE CARE REQUIRED⁴³⁰

It shall be unlawful for any owner or keeper to fail to provide any of the following to their animal or animals:

- A.** Proper shelter and protection from the weather;
- B.** Adequate and wholesome food and water;
- C.** Maintain their animal or animals in good health and comfort;
- D.** Provide the opportunity for vigorous daily exercise;
- E.** Ensure veterinary care when needed to prevent suffering; and
- F.** Provide humane care and treatment.

34.3.2. RABIES INOCULATION

A. REQUIRED

It shall be unlawful for any animal owner or other person to fail to comply with the State laws relating to the control of rabies.

⁴²⁸ This section comes from the statutory references located in a footnote at the head of current chapter 4.

⁴²⁹ This section comes from Section 4-23 of the current Town Code.

⁴³⁰ The sections on Humane Care, Rabies Inoculation, and Enclosures are suggested as additions to the code. They are intended to provide code users with information on how responsible animal ownership is defined by the Town. They have been drafted based best practices in use by comparable municipalities.

B. APPLICABILITY

Any dog or cat four months of age or older shall be inoculated against rabies in accordance with these standards and State law.

C. DEEMED CURRENT

A rabies vaccination shall be deemed "current" for a dog or cat if two vaccinations have been given one year apart and booster doses of rabies vaccine administered every three years thereafter.

34.3.3. ENCLOSURES

A. SUFFICIENT SPACE

1. Enclosures shall be constructed and maintained to provide sufficient space to allow each animal adequate freedom of movement.
2. Inadequate space may be indicated by evidence of overcrowding, debility, stress, or abnormal behavior patterns.

B. HUMANELY CLEAN CONDITIONS

Minimum standards of sanitation necessary to provide humanely clean conditions for both indoor and outdoor enclosures shall be required and shall include periodic cleaning to remove excretions and other waste materials, dirt, and trash, to minimize health hazards.

34.3.4. REMOVAL OF FECES⁴³¹

- A.** Each and every person, owner, keeper, or custodian of any dog shall immediately remove all feces deposited by the dog they are accompanying.
- B.** The removal of feces shall be accomplished by depositing feces in a sanitary container.
- C.** Burying feces in the sand or depositing in any body of water is prohibited and constitutes a violation of this Ordinance.

34.3.5. TAGS REQUIRED⁴³²

- A.** It shall be unlawful for any dog or cat owner to fail to provide their dog or cat with a collar or harness to which a current year's rabies vaccination and identification tag are securely attached.
- B.** A collar or harness, with the current year's rabies vaccination and an identification tag, must be worn at all times except when the dog or cat is confined on the owner's premises or during the time the animals are performing at an event or show sanctioned and supervised by a recognized organization.
- C.** It shall be unlawful for any person to allow any dog or cat to wear a current year's rabies vaccination and identification tag issued for another dog or cat.

34.4. DOGS ON THE BEACH⁴³³

34.4.1. LIMITED DAYS, TIME, AND LOCATION

Between September 15 and May 15 of each year, dogs shall be permitted on the ocean beaches of the Town between the hours of 9:00 a.m. and 6:00 p.m., provided that:

- A.** The dog is on a leash having a stretched length of no more than ten feet and held by a person who is physically capable of handling the dog; and
- B.** The person accompanying the dog must possess on his person a scooping device with which to remove feces in accordance with Section 34.3.4, Removal of Feces.

⁴³¹ This section comes from Section 4-27 of the current Town Code.

⁴³² This section comes from Section 4-25(d) of the current Town Code.

⁴³³ This section comes from Sections 4-25(b) and (c) of the current Town Code. The definition of "ocean beach" has been relocated to new Chapter 4, Definitions. The violation embedded within this section has been relocated to new Chapter 36.

34.4.2. EXEMPTION

- A. There is exempted from Section 34.4.1, Limited Days, Time, and Location, any dog which is accompanied by its owner or custodian while on any part of the ocean beach which is owned or leased by that dog's owner or custodian, and no further eastward than the mean high water mark of the Atlantic Ocean.
- B. Provided further, that the dog must be on a leash having a stretched length of no more than ten feet and held by a person who is physically capable of handling the dog.
- C. The person accompanying the dog must possess on his person a scooping device with which to remove feces in accordance with Section 34.3.4, Removal of Feces.

34.5. RUNNING AT LARGE⁴³⁴

All animals, other than an ordinary domesticated house cat, shall be prevented from running at large in accordance with these standards.

34.5.1. REMAIN ON PREMISES

When the animal is located upon the premises of the owner or custodian, it must not be able to enter upon public property or the premises of another person.

34.5.2. CONTAINED OR RESTRAINED

- A. Any animal off the premises of the owner or custodian shall be restrained by a leash, cord, or chain not exceeding ten feet in length, held by a person who is physically able to control the animal.
- B. Any animal brought onto property where the custodian of the animal is performing work for pay or under contract on the property shall be contained or restrained in a vehicle or other suitable enclosure.

34.5.3. UPON OWNER'S PREMISES

- A. No animal shall be deemed to be running at large when the animal is upon the premises of the owner or custodian and when the animal is contained on or restricted to such premises by any means, including verbal commands.
- B. Any animal enclosed within the automobile or other vehicle of its owner or custodian shall be deemed to be upon the owner's or custodian's premises.

34.6. LIVESTOCK & FOWL PROHIBITED⁴³⁵

The keeping and having of livestock and fowl, except canaries, parrots, and similar birds kept as household pets, within Town is prohibited.

34.7. BIRD SANCTUARY⁴³⁶

34.7.1. BIRD SANCTUARY ESTABLISHED

The territory within the corporate limits of the Town is hereby declared a bird sanctuary in accordance with the authority conferred upon the Town under Section 160A-188 of the North Carolina General Statutes.

34.7.2. PROHIBITED ACTIONS

It shall be unlawful for any person to hunt, kill, trap, or otherwise take any protected birds within the Town limits except as permitted under Section 160A-188 of the North Carolina General Statutes.

⁴³⁴ This section comes from Section 4-25(a) of the current Town Code. It has been edited for clarity. Definitions embedded in this section have been relocated to new consolidated Chapter 4, and violations have been relocated to new Chapter 36.

⁴³⁵ This section comes from Section 4-24 of the current Town Code.

⁴³⁶ This section comes from Section 4-1 of the current Town Code. "B" has been added for clarification.

34.8. BEEKEEPING⁴³⁷

34.8.1. PURPOSE AND INTENT

- A.** The purpose of this section is to provide standards for the keeping of bees.
- B.** It is intended to enable residents to keep an appropriate number of bees on a non-commercial basis while limiting the potential adverse impacts on the surrounding neighborhood.
- C.** This section is intended to create standards and requirements that ensure that bees kept by residents do not adversely impact the use and enjoyment of neighborhood properties surrounding the property on which the bees are kept.

34.8.2. STANDARDS

- A.** All beekeepers who manage bees within the Town shall be residents of the Town of Southern Shores.
- B.** Bees shall be kept in a manner so as to avoid causing any unhealthy condition or interference with the normal use or enjoyment by humans or animals of any property in the vicinity of the apiary.

34.8.3. WRITTEN CONSENT REQUIRED

- A.** Prior to establishing an apiary, a beekeeper shall obtain written consent from all adjoining landowners and shall provide it to the Town Manager or a designee. The written consent shall include the following:
 - 1. Proposed apiary site;
 - 2. Name and address of adjoining landowners;
 - 3. Name and address of the beekeeper;
 - 4. Number of proposed colonies;
 - 5. The date of the consent;
 - 6. Signatures of the beekeeper and adjoining landowner.
- B.** In the absence of such required written consent of all adjoining landowners, beekeeping shall not be permitted in the Town.
- C.** Written consent from an adjoining landowner is personal to the adjoining landowner and shall not run with the land. It shall be the duty of a beekeeper to obtain written consent from all adjoining landowners in the event that ownership of an adjoining tract changes.

34.8.4. RIGHT TO INSPECT

The Town, by and through its employees, shall have the right to inspect any apiary to ensure compliance with this chapter.

34.9. HUNTING & TRAPPING⁴³⁸

It shall be unlawful for any person to hunt or trap domestic or wild animals, or to set any animal trap, which may trap domestic or wild animals, not issued by the Police Department, the County Animal Control Department, or any other organization approved by the police department, within the corporate limits.

⁴³⁷ This is a new section included at the suggestion of staff in order to satisfy recent changes to state law that disallow municipalities from prohibiting beekeeping.

⁴³⁸ This section comes from Section 4-26 of the current Town Code. Hunting has been added

CHAPTER 35.

[RESERVED]

CHAPTER 36.

OFFENSES AND

ENFORCEMENT

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Guidance from Code Assessment:

This proposed draft Chapter 36 of the current Town Code includes all the enforcement and remedy-related material from all the chapters within the current Town Code. The information has been organized as a set of general provisions identifying responsible parties, then a summary table and section listing all the violations of the current Town Code and whether they are subject to the criminal or civil procedure. The chapter also includes a separate section on nuisances, including the procedure for abatement of nuisances.

In addition to the information on violations, the section also sets out the procedures and remedies available for civil and criminal violations. There is also a section on common and administrative remedies available.

This is a different approach from many other Town Codes, and may need further refinement to be helpful, but it is proposed in accordance with the Code Assessment recommendations.

Text shown in yellow highlight includes a cross reference to be filled in as part of the draft of the document proposed for public hearing.

The text includes numerous footnotes that track the origin of proposed text.

36.1. STATUTORY AUTHORITY⁴³⁹

36.1.1. CIVIL FINES AND PENALTIES

The Town of Southern Shores is empowered to impose civil fines and penalties for violation of this Code, and may secure injunctions and abatement orders to further insure compliance with this Code, as provided by Chapter 160A-75 of the North Carolina General Statutes.

36.1.2. CRIMINAL VIOLATIONS

Criminal violations of this Code, as distinguished in this chapter, shall be class 3 misdemeanors and punishable as provided in Section 14-4(a) of the North Carolina General Statutes.

36.1.3. BUILDING CODE VIOLATIONS

Violations of the State Building Code shall subject the offender to civil penalties as authorized under Chapters 160A-421 and 160A-432 of the North Carolina General Statutes.

36.1.4. FIRE CODE VIOLATIONS

A violation of the fire prevention code of the State Building Code shall subject the offender to a civil penalty as authorized under Chapter 143-139 of the North Carolina General Statutes.

36.2. PURPOSE AND INTENT⁴⁴⁰

The purpose and intent of this chapter is to enable the Town to exercise the fullest power and authority granted to municipal governments pursuant to the powers granted to municipalities by the North Carolina General Statutes including, establishment of certain violations of this Code as criminal violations and others as civil violations, creation of a set of procedures for enforcement of these standards, and establishment of a system of remedies for violations.

36.3. RESPONSIBLE PERSONS⁴⁴¹

36.3.1. GENERALLY

The landowner, tenant, or occupant of any land or structure, and an architect, engineer, builder, contractor, agent, or any other person who participates in, assists, directs, creates, or maintains a situation that constitutes a violation of this Town Code may be held responsible for the violation and is subject to the remedies and penalties set forth in this chapter.

36.3.2. FAILURE OF TOWN OFFICIAL

Failure of a Town official charged with enforcement responsibility to observe or recognize conditions which violate the intent and purpose of this Town Code, or to deny the issuance of a permit or approval, shall not relieve the responsible party from responsibility for the condition or damages resulting therefrom and shall not result in the Town, its officers, or agents being responsible for conditions or damages resulting therefrom.

36.3.3. REMEDY UPON NOTIFICATION

Upon notification of a violation or a citation, the responsible party shall immediately remedy the violation in accordance with this chapter or other direction provided by a designated officer or authority.

⁴³⁹ This is a new section that consolidates all of the statutory enabling chapters from General Statutes that pertain to enforcement powers of the local government.

⁴⁴⁰ This is a new section which clarifies the purpose and intent of this chapter.

⁴⁴¹ This is a new section that describes the persons held to account for violations and their responsibilities.

36.4. VIOLATIONS CLASSIFIED⁴⁴²

Table 36.4: Violations Classified, lists all the violations under this Town Code and identifies them as criminal violations subject to the criminal remedy procedure in Section 36.9, Criminal Procedure, or civil violations subject to civil remedy procedures in Section 0.

⁴⁴² This section sets out a summary table that identifies the violations of the Town Code set out in Section 1-6(b) through (f) as well as a listing of the other violations identified throughout the Town Code.

Chapter 36 Offenses and Enforcement

36.4 Violations Classified 441F

Civil Procedure, or Section 36.8.2 Civil Procedure for Motor Vehicle and Traffic Violations, as appropriate. The table also provides a cross reference to the specific standards related to the type of violation listed.

TABLE 36.4: VIOLATIONS CLASSIFIED			
CHAPTER	VIOLATION	SECTION⁴⁴³	CURRENT CODE SECTION⁴⁴⁴
CRIMINAL VIOLATIONS			
Chapter 2. Administration	Interference with a police officer	<u>36.5.2.B</u>	18-10
Chapter 6: Fire Prevention and Protection	Building or setting an open fire without a permit	<u>36.5.3.B.2</u>	14-70
	Burning of prohibited items	<u>36.5.3.B.3</u>	14-69
	Failure to secure a permit and certificate of fitness for conducting certain fire-related activities on a for-hire basis	<u>6.6.5</u>	14-38
	Failure to provide fire hydrants	<u>6.5.4</u>	14-37(c)
	Starting or setting a fire on the beach	<u>36.5.3.B.1</u>	14-67
	Starting or setting a bonfire or recreational fire	<u>6.6.3.B</u>	14-68
Chapter 8: Motor Vehicles and Traffic	Landing of a helicopter	<u>36.5.7.F</u>	22-9
	Unauthorized installation or removal of a traffic control device	<u>18.5.2</u>	20-70
Chapter 10. Emergency Management	Violation of curfew imposed during state of emergency	<u>10.6.3.A.1</u>	12-37
	Violation of restrictions on possession, consumption or transfer of intoxicating liquor imposed during state of emergency	<u>10.6.3.A.2</u>	12-38
	Violation of restrictions on possession, transportation or transfer of dangerous weapons and substances imposed during state of emergency	<u>10.6.3.A.3</u>	12-39
	Violation of restriction on access to certain areas imposed during state of emergency	<u>10.6.3.A.4</u>	12-40
	Violation of evacuation imposed during state of emergency	<u>10.6.3.B</u>	12-41
	Violation of miscellaneous prohibitions and restrictions imposed during state of emergency	<u>10.6.2.C</u>	12-42
Chapter 14: Wastewater	Violation of any wastewater provision	<u>Chapter 14</u>	32-44

⁴⁴³ Each row in this table will be hyperlinked to the section of the code that describes the standard from which the violation arises. The <> symbol is a placeholder for this hyperlink. These links will be inserted in the adoption draft of the code.

⁴⁴⁴ Current code Section numbers are included in this draft of the table for tracking and reference. These will be removed after hyperlinks to the updated code sections are included.

TABLE 36.4: VIOLATIONS CLASSIFIED

CHAPTER	VIOLATION	SECTION ⁴⁴³	CURRENT CODE SECTION ⁴⁴⁴
Chapter 18. Streets, Sidewalks, and Other Public Property	Smoking in municipal buildings	<u>36.5.13.E</u>	28-1
Chapter 28. Flood Damage Prevention	Violation of any flood damage prevention provision	<u>Chapter 28</u>	16-3
Chapter 30. Waterways and Beaches	Operation of motorized vessel on Duck Woods Pond	<u>36.5.24.B</u>	34-54
	Surfing without use of a surfing leash	<u>36.5.24.C</u>	34-51
	Swimming during dangerous conditions	<u>30.6.1</u>	34-53
Chapter 34. Animals	Allowing dangerous or damaging behavior by a dog or cat	<u>36.5.1.E</u>	4-25(e)
	Animal running at large	<u>36.5.1.A</u>	4-25(a)
	Failure to provide a dog or cat with a current rabies vaccination tag and identification tag	<u>36.5.1.C</u>	4-25(d)
	Keeping of livestock or fowl	<u>36.5.1.D</u>	4-24
	Violation of limitations of dogs on ocean beaches	<u>36.5.1.B</u>	4-25(b) and (c)
Chapter 36: Offenses and Enforcement	Blocking or damaging streets, sidewalks, alleys, and bridges	<u>36.5.13.A</u>	22-2
	Carrying a concealed or unconcealed handgun on government property or beach access areas	<u>36.5.5.A</u>	22-4(b)
	Disorderly conduct	<u>36.5.2</u>	22-1
	Firing or discharging a firearm or explosive	<u>36.5.5.B</u>	22-4(a)
	Noise violations	<u>36.6.5</u>	22-3
	Posting of bills	<u>36.5.10</u>	22-8
	Public urination	<u>36.5.2.C</u>	22-10
	Shooting or discharge of arrows	<u>36.5.5.E</u>	22-5

TABLE 36.4: VIOLATIONS CLASSIFIED

CHAPTER	VIOLATION	SECTION ⁴⁴³	CURRENT CODE SECTION ⁴⁴⁴
CIVIL VIOLATIONS			
Chapter 1. General Provisions	Tearing or defacing of Town ordinances	<u>36.5.10.A</u>	1-8
Chapter 6. Fire Prevention and Protection	Crossing of fire line barriers without a pass	<u>2.6.2.B</u>	14-1
	Failure to comply with an order from the Fire Inspector	<u>6.3.6</u>	14-35(a)
	Failure to obtain yearly sprinkler system inspection	<u>6.5.1.B</u>	14-37(e)
	Failure to provide fire extinguishing equipment	<u>6.5.1</u>	14-37(a)
	Failure to remove weeds, grass, vines, or other flammable growth	<u>36.6.1.A</u>	14-35(e)
	Failure to secure a permit to maintain, store, or handle hazardous materials or to install equipment for use with hazardous materials	<u>6.5.5.F</u>	14-31
	Improper storage of flammable liquids	<u>6.5.5.C</u>	14-33(d)
	Improper storage of liquefied petroleum gas	<u>6.5.5.D</u>	14-33(g)
	Improper transport of hazardous chemicals	<u>6.5.5.A</u>	14-33(f)
	Manufacture or storage of fireworks	<u>6.5.5.B</u>	14-33(c)
	Noncompliance with restrictions on camping	<u>36.5.13.C</u>	22-64
	Removal or destruction of a "No Smoking" sign	<u>6.5.2.C</u>	14-37(b)
	Smoking in a Fire Inspector designated "No Smoking" area	<u>6.5.2</u>	14-37(b)
	Unauthorized removal, destruction, or tampering with a fire department barrier	<u>36.5.15.B</u>	14-3
	Unauthorized or improper installation of automatic protection system	<u>6.4</u>	14-4(b)
Unauthorized storage or improper transport of explosives and blasting agents	<u>6.5.5.A</u>	14-33(a) and (b)	
Chapter 8. Motor Vehicles and Traffic	Attaching a motorcycle, bicycle or toy vehicle to a motor vehicle	<u>36.5.8.A</u>	20-10
	Backing a vehicle into an intersection or sidewalk	<u>8.6.1.G</u>	20-106
	Backing a vehicle in an unsafe manner	<u>8.6.1.G</u>	20-106
	Causing or allowing an abandoned vehicle	<u>36.5.6.A</u>	20-169
	Disobeying an official traffic control device	<u>18.5.1</u>	20-69
	Driving or landing aircraft on beaches	<u>36.5.7.B</u>	20-109

TABLE 36.4: VIOLATIONS CLASSIFIED

CHAPTER	VIOLATION	SECTION ⁴⁴³	CURRENT CODE SECTION ⁴⁴⁴
	Driving through a funeral procession	<u>36.5.7.D</u>	20-103
	Driving on sand dunes	<u>36.5.7.C</u>	20-108
	Failure to stop when emerging from alley or private driveway in a vehicle	<u>8.6.1.F</u>	20-105
	Failure to use a white light while using roller skates, inline skates, scooter, or skateboards during dark hours	<u>8.7.6</u>	20-11(e)
	Hanging out of or onto vehicles	<u>36.5.7.E</u>	20-9
	Operating a motorcycle or bicycle while carrying a person on the handlebars, frame or tank	<u>36.5.8.D</u>	20-107
	Overcrowding or overloading of a vehicle	<u>36.5.7.G</u>	20-104
	Parking a vehicle on prohibited streets	<u>36.5.9.A</u>	20-146
	Parking on a residential roadway	<u>36.5.9.A</u>	20-148
	Parking in designated Town parking areas without a permit	<u>36.5.9.B</u>	20-149
	Possessing or allowing a nuisance vehicle	<u>36.5.6.C</u>	20-170
	Possessing or allowing a junked vehicle	<u>36.5.6.B</u>	20-171
	Reckless driving in a school zone	<u>8.6.1.E</u>	20-114
	Riding in portion of vehicle not intended for passengers	<u>36.5.8.E</u>	20-7
	Standing or parking a vehicle for a prohibited reason	<u>36.5.9.C</u>	20-147
	Stopping or parking a vehicle in a prohibited area	<u>36.5.9.B</u>	20-145
	Unlawful removal of impounded vehicle	<u>8.10.3.E</u>	20-181
	Use of motorized vehicle on multipurpose pathway	<u>8.7.3</u>	20-11(b)
	Use of roller skates, toy vehicles, or off-road vehicles on streets, highways, or other public vehicular rights of way	<u>8.7.2.A</u>	20-11(a) and (d)
	Use of a coaster, toy vehicle, roller skates, inline skates, or skateboard on sidewalks or parking areas of shopping centers	<u>8.7.4</u>	20-11(c)
	Using roller skates, inline skates, scooter or skateboard in an unsafe or reckless manner	<u>36.5.8.C</u>	20-11(f)
	Violation of bicycle operation regulations	<u>8.7</u>	20-230
	Violation of one-way street	<u>8.6.1.D</u>	20-113
	Violation of speed limit	<u>8.6.1.A</u>	20-110
	Violation of yield intersection	<u>8.6.1.B</u>	20-111

TABLE 36.4: VIOLATIONS CLASSIFIED

CHAPTER	VIOLATION	SECTION ⁴⁴³	CURRENT CODE SECTION ⁴⁴⁴
	Violation of stop intersection	<u>8.6.1.C</u>	20-112
	Violation of vehicle weight limit restriction	<u>8.6.2</u>	20-115
Chapter 10. Emergency Management	Violation of moratorium imposed following a natural disaster	<u>10.8.4</u>	12-68
Chapter 12. Solid Waste	Depositing solid waste from other properties upon properties or areas within Town	<u>36.5.12.A.1</u>	26-16
	Failure to contain waste materials on construction and demolition sites	<u>12.5</u>	26-10
	Failure to have required number of Town approved receptacles or bulk containers	<u>12.3.2</u>	26-3; 26-4; 26-6
	Failure to maintain property to edge of street	<u>12.3.4</u>	26-13
	Failure to separate recyclable materials from solid waste	<u>12.4.3.A</u>	26-9
	Improper placement or maintenance of receptacle	<u>12.3.3</u>	26-5
	Littering upon public or private property	<u>36.5.12.A</u>	26-17
	Littering from vehicles	<u>36.5.12.B</u>	26-18
	Placing prohibited items in solid waste receptacles	<u>12.3.5</u>	26-19
	Throwing or depositing trash and solid waste upon private property	<u>36.5.12.A</u>	26-14
	Throwing or depositing trash and solid waste upon public property	<u>36.5.12.A</u>	26-15
	Violation of storage of solid waste and trash standards	<u>Chapter 12. Solid Waste</u>	26-12
Chapter 14. Wastewater	Connection of a sewer line or wastewater system outside the Town to a system within the Town	<u>14.6.4</u>	32-8
	Failure to comply with all requirements of the Dare County Health and Human Services Department and other agencies	<u>14.5.5</u>	32-5(a)
	Failure to comply with construction supervision and inspection requirements for wastewater management systems	<u>14.5.3</u>	32-104
	Failure to establish or maintain a wastewater monitoring system or to submit quarterly monitoring or inspection reports	<u>14.5.4</u>	32-69
	Failure to maintain wastewater system	<u>14.7.1</u>	32-108
	Failure to obtain permit for construction or operation of a wastewater system	<u>14.5.5</u>	32-5(c)
	Failure to obtain certificate of compliance before operation of a wastewater system	<u>14.5.4.D</u>	32-105

TABLE 36.4: VIOLATIONS CLASSIFIED

CHAPTER	VIOLATION	SECTION ⁴⁴³	CURRENT CODE SECTION ⁴⁴⁴
	Failure to submit a wastewater facilities plan	<u>14.5.1</u>	32-100
	Unlawful discharges of wastewater	<u>36.5.21.A</u>	32-109
	Unsatisfactory operation of a wastewater system	<u>14.6</u>	32-5(b)
	Unlawful inflow source	<u>36.5.21.B</u>	32-110
	Violation of design and appearance compatibility standards for wastewater plants and systems	<u>14.6.3</u>	32-9
	Violation of wastewater system operation standards	<u>14.6</u>	32-107
	Wastewater nuisances	<u>36.5.22</u>	32-10
Chapter 16. Cable Television	Failure to obtain necessary permits and licenses to construct, operate, or maintain a cable system	<u>16.5.1</u>	8-21
	Failure to comply with applicable state and federal laws pertaining to cable systems	<u>16.2</u>	8-22
	Failure to move facilities at the request of the Town	<u>16.8.1</u>	8-30
	Failure to repair damaged private or public property resulting from construction or operation of a cable system	<u>16.5.4</u>	8-24
	Failure to secure written approval before erecting poles in public rights-of-way	<u>16.5.6</u>	8-25
	Failure to provide strand and trench maps to the Town	<u>16.5.3</u>	8-28(b)
	Failure to provide contact number for emergency situations or to respond to an emergency call	<u>16.6.2</u>	8-28(c)
	Improper removal, trimming, or cutting of trees in public rights-of-way	<u>16.7</u>	8-29
Unreasonable interference with public or private property	<u>16.5.2</u>	8-23	
Chapter 20. Buildings and Building Regulations	Failure to properly display property numbers	<u>20.6.3</u>	24-60
	Defacing or removal of property numbers	<u>20.6.3</u>	24-63
Chapter 22. Zoning	Erection of more than one principal building on a lot	<u>22.3.5.D</u>	36-94
	Failure to secure building permit	<u>22.2.3.F</u>	36-297
	Failure to secure solicitor's permit	<u>24.1</u>	36-473
	Failure to secure zoning permit	<u>22.2.3.F</u>	36-297
	Failure to secure health department approval	<u>22.2.3.F.6</u>	36-298
	Failure to secure permit for a conditional use	<u>22.2.3.D</u>	36-300
	Failure to secure certificate of appropriateness, when required	<u>22.2.3.J</u>	

TABLE 36.4: VIOLATIONS CLASSIFIED

CHAPTER	VIOLATION	SECTION ⁴⁴³	CURRENT CODE SECTION ⁴⁴⁴
	Failure to secure certificate of compliance	<u>22.2.3.H</u>	36-301
	Noncompliance with height, bulk, density, lot coverage, yard, minimum lot size, or open space requirements	<u>22.3</u>	36-90; 36-91
	Noncompliance with lot access requirements	<u>22.5.1</u>	
	Noncompliance with off-street parking requirements	<u>22.5.2</u>	36-132
	Noncompliance with water supply and sewage disposal requirements	<u>22.1.4.B</u>	36-163
	Noncompliance with screening requirements	<u>22.5.3.E</u>	36-171
	Noncompliance with standards for development in ocean hazard areas	<u>22.5.8</u>	36-174
	Obstruction of passage of permitted vehicles on the beach	<u>30.7.1.1</u>	36-99
	Use, occupancy, or construction of a building, structure, or land without conformity to zoning regulations	Chapter 22	
	Violation of vision clearance at intersection requirements	<u>22.5.1.E</u>	
	Violation of requirements and limitations on ocean dune platforms, walkways, or steps	<u>30.7.3</u>	36-97
	Violations of nonconformity standards	<u>22.6</u>	36-100
	Violations of signage standards and limitations	<u>22.5.4</u>	36-164
	Violation of lighting standards	<u>22.5.5</u>	36-165
	Violation of use specific standards	<u>22.4.4</u>	36-166
	Violation of stormwater management and lot disturbance standards	<u>22.5.9</u>	36-167; 36-168; 36-169; 36-175; 36-176; 36-240;
Wall or fence over maximum height	<u>22.4.5.E.8.b</u>	39-96	
Chapter 24. Business and Business Regulations	Failure to submit sketch plan	<u>26.6.1</u>	8-1
Chapter 26. Subdivisions	Failure to install required improvements	<u>26.7</u>	30-75
	Failure to secure floodplain development permit and certification	<u>28.3.5</u>	30-97
	Failure to place permanent reference points	<u>26.8</u>	30-42
	Failure to secure final plat permit	<u>26.6.3</u>	30-40; 30-124
	Failure to record final plat with County Register of Deeds	<u>26.6.3.F</u>	30-41; 30-125

TABLE 36.4: VIOLATIONS CLASSIFIED

CHAPTER	VIOLATION	SECTION ⁴⁴³	CURRENT CODE SECTION ⁴⁴⁴
	Failure to secure preliminary plat permit	<u>26.6.2</u>	30-123
	Noncompliance with design standards	<u>26.9</u>	30-76
Chapter 28. Flood Damage Prevention	Failure to maintain waterway	<u>28.3.5</u>	16-4(b)
Chapter 30. Waterways and Beaches	Boat speed limit violation	<u>30.3.1</u>	34-22
	Failure to secure CAMA minor development permit	<u>30.8</u>	34-55
	Failure to secure permit for construction or improvement to a waterway, bank, or bottom	<u>30.5.2</u>	34-24
	Improper mooring of a boat	<u>30.5.1</u>	34-23
	Unlawful activity on a beach or dune	<u>30.7.1</u>	34-28
	Use of dock or waterway for commercial purposes	<u>36.5.24.A</u>	34-25
	Violations of construction of waterway improvements standards	<u>30.5.3</u>	34-24
Chapter 32. Cemeteries	Noncompliance with cemetery operation standards	<u>Chapter 32. Cemeteries</u>	10-1
Chapter 36: Offences and Enforcement	Noncompliance with restrictions on camping	<u>36.5.13.C</u>	22-39
	Nuisance violations	<u>36.6.1</u>	10-1

36.5. SPECIFIC VIOLATIONS

This section sets out the specific violations of this Town Code. Failure to identify a particular type of violation in this section or in [Table 36.4: Violations Classified](#), shall not limit the Town's ability to enforce the requirements of this Town Code or other adopted ordinance, including the application of the remedies identified in this chapter.

36.5.1. ANIMAL-RELATED VIOLATIONS⁴⁴⁵

A. ANIMALS RUNNING AT LARGE PROHIBITED

It shall be unlawful for the owner or custodian of any dog or other animal, other than an ordinary domesticated house cat, to fail to keep the animal from running at large within the Town.

B. DOGS ON THE BEACH, TIMING

1. FROM MAY 15 TO SEPTEMBER 15

Between May 15 and September 15 of each year, no dog, other than trained service dogs, shall be permitted on the ocean beaches of the Town between the hours of 9:00 a.m. and 6:00 p.m.

2. FROM SEPTEMBER 16 TO MAY 14

At all other times, no dogs shall be permitted on the ocean beaches of the Town except upon a leash having a stretched length of no more than ten feet and held by a person who is physically capable of handling the dog.

C. IDENTIFICATION TAGS REQUIRED

1. It shall be unlawful for any dog or cat owner to fail to provide his dog or cat with a collar or harness to which a current year's rabies vaccination and identification tag are securely attached.
2. It shall be unlawful for any person to allow any dog or cat to wear a current year's rabies vaccination and identification tag issued for another dog or cat.

D. KEEPING OF LIVESTOCK OR FOWL PROHIBITED

The keeping and having of livestock and fowl (including chickens, ducks, or guinea fowl) within the Town limits or the ETJ is prohibited. Nothing in these standards shall prohibit the keeping of canaries, parrots, and similar birds kept as household pets.

E. NUISANCE BEHAVIOR BY DOGS AND CATS PROHIBITED

Any of the following behaviors shall be a violation of this Town Code:

1. Allowing a dog to chase, snap at, show aggressive threatening behavior, or attack pedestrians, bicyclists or vehicles;
2. Allowing a cat to urinate on, scratch, or otherwise damage personal property not belonging to the owner; or
3. Allowing a dog or cat to conduct itself so as to be a public nuisance.

F. REMOVAL OF FECES REQUIRED

1. Any owner or custodian of any dog shall immediately remove all feces deposited by a dog they are accompanying and shall deposit such feces in a sanitary container.
2. Burying feces in the sand or depositing in any body of water is prohibited and constitutes a violation of this section.

G. TRAPPING OF ANIMALS PROHIBITED

It shall be unlawful for any person to trap domestic or wild animals by the use of animal traps, or to set any animal trap, which may trap domestic or wild animals, not issued by the police department, the county animal control department, or any other organization approved by the police department, within the corporate limits.

⁴⁴⁵ This section consolidates the animal-related violations from Sections 4-24 through 4-27 of the current code. The balance of the current standards are maintained in new Chapter 34: Animals.

36.5.2. DISORDERLY CONDUCT

A. ILLEGAL ACTIONS PROHIBITED

Any person who engages in any of the following shall be guilty of disorderly conduct and be subject to a criminal penalty in accordance with this chapter.

1. Act in a violent or threatening manner toward another person, who, as a result, believes they are placed in danger of safety of life, limb, or health.
2. Act in a violent or threatening manner toward another person such that public property or property of any other person is placed in danger of being destroyed or damaged.
3. Endanger lawful pursuits of another by acts of violence or threats of bodily harm.
4. Cause, provoke, or engage in any fight, brawl or riotous conduct so as to endanger the life, limb, health or property of public property or another person.
5. Assemble or congregate with one or more other persons and cause, provoke, or engage in any fight or brawl.
6. Collect in groups or crowds and engage in unlawful activities.
7. Assemble or congregate with one or more persons and engage or attempt to engage in games of chance.
8. Obtain (or attempt to obtain) money from another person by an illegal and fraudulent scheme, trick, artifice, or device.
9. Assemble with one or more persons and engage in (or attempt to engage in) any fraudulent scheme, device or trick, to obtain any valuable thing in any place or from any person.
10. Utter, in a public place, any obscene words or hate speech.
11. Frequent any place where gaming, or the illegal sale, possession, or use of alcoholic beverages or illegal substances is practiced, allowed, or tolerated.
12. Use "fighting words" (as defined under the First Amendment to the Constitution) directed towards any person.
13. Assemble or congregate with one or more persons and do bodily harm to another person.
14. Interfere, by acts of violence, with another's pursuit of a lawful occupation.
15. Congregate in or on any public way, so as to halt the flow of vehicular or pedestrian traffic.
16. Refuse to clear the public way when ordered to do so by a police officer or other person having authority.
17. Damage or disturb public or private property in any way that creates a hazardous, unhealthy, or physically offensive condition.

B. INTERFERENCE WITH POLICE OFFICER PROHIBITED⁴⁴⁶

It shall be unlawful for any person to interfere with, hamper, molest, resist or hinder a police officer in the lawful discharge of his duty.

C. PUBLIC URINATION PROHIBITED

1. No person shall urinate in the Town except in facilities (including mobile units) designed and constructed for the disposal and containment or elimination of human waste.
2. Violations of the provisions of this section shall be a misdemeanor under Section 14-4 of the North Carolina General Statutes, and punishable by a fine not to exceed \$50.00 and/or 30 days imprisonment.
3. Each violation shall be a separate offense.

36.5.3. EXPLOSIVES, FIREWORKS, AND LUMINARIES VIOLATIONS⁴⁴⁷

A. IGNITION OF FIREWORKS PROHIBITED⁴⁴⁸

Except for the discharge of approved fireworks by a licensed pyrotechnician at an event sponsored or approved by the Town, it shall be unlawful for any person to use, ignite, explode, or otherwise discharge any fireworks within the Town or its extra territorial jurisdiction (ETJ), including ocean and soundside beaches.

⁴⁴⁶ This section carries forward the standards in Section 18-10 of the current code with no substantive change.

⁴⁴⁷ This section consolidates a series of explosives and flammable material prohibitions in Section 14-33 of the current code.

⁴⁴⁸ This is a new standard proposed for the Town's consideration.

B. LIMITATIONS ON OPEN BURNING⁴⁴⁹

1. BEACH FIRES

It shall be unlawful for any person to start or set a fire of any kind on a beach.

2. OPEN BURNING

Open burning, except when conducted in accordance with the standards in Section Error! Reference source not found., Error! Reference source not found., Open Burning, shall be a violation of this Town Code.

3. PROHIBITED MATERIALS

It shall be unlawful for any person to burn any materials that produce heavy dense smoke such as that generated by the burning of automobile tires, inner tubes, tar paper, asphalt, shingles, or by the burning of synthetic materials that produce irritating and/or hazardous fumes.

C. LUMINARIES PROHIBITED⁴⁵⁰

Luminaries, Chinese lanterns, balloons, or other devices containing an open flame or illumination derived from combustion shall not be maintained, operated, or released within the Town or its extra territorial jurisdiction (ETJ), including ocean and soundside beaches.

D. MANUFACTURE OR STORAGE OF FIREWORKS PROHIBITED

Manufacture and storage of fireworks is prohibited within the corporate limits of the Town

E. STORAGE OF EXPLOSIVES OR BLASTING AGENTS LIMITED

Except where authorized in accordance with Section 6.5.5, Storage and Handling of Hazardous Materials, storage of explosives or blasting agents is prohibited within the corporate limits of the Town.

F. STORAGE OF FLAMMABLE LIQUID OR GAS LIMITED

Except where authorized in accordance with Section 6.5.5, Storage and Handling of Hazardous Materials, the following activities are prohibited within the corporate limits of the Town:

1. Outdoor storage of flammable liquids in aboveground containers; and
2. Bulk storage of liquefied petroleum.

36.5.4. FAILURE TO FOLLOW OFFICIAL DIRECTIVE

Failure to evacuate a designated area upon proclamation of a state of emergency (and subsequent requirement to evacuate) by the Mayor in accordance with Chapter 10: Emergency Management shall be a violation of this Town Code.

36.5.5. FIREARMS AND WEAPONS VIOLATIONS⁴⁵¹

A. CARRYING OF HANDGUN PROHIBITED

It shall be a violation of this Town Code to carry a handgun, whether concealed or otherwise in any building or appurtenant premises owned, leased or occupied by the Town for government purposes, and in all municipal parks, recreation areas and beach access areas, is prohibited.

B. DISCHARGE OF FIREARM LIMITED

It shall be unlawful for any person to fire or discharge any gun, shotgun, rifle, pistol, or any other firearm or air rifle, spring gun or pistol, compressed air rifle or pistol or similar device, or discharge any explosive devices by whatever name called within the corporate limits of the Town.

⁴⁴⁹ This section consolidates the violations described in Section 14-67 through 14-69 of the current code. The balance of this material is contained in new Chapter 6: Fire Prevention and Protection.

⁴⁵⁰ This is a new section.

⁴⁵¹ This section consolidates the violations in Sections 22-4 through 22-6 of the current code.

C. POSTING OF HANDGUN PROHIBITION⁴⁵²

1. The prohibition against carrying a concealed or unconcealed handgun shall be enforceable in any government building and appurtenant premises and in any park upon the posting of a notice stating "the carrying of a handgun concealed or otherwise, on these premises is prohibited and illegal."
2. This notice shall be posted in a conspicuous location near the entrance to any such premises.

D. RESPONSIBILITY OF PARENTS OR GUARDIANS REQUIRED

It shall be unlawful for any parent or guardian of any minor, to permit a minor to violate any provision of this subsection.

E. SHOOTING OF ARROWS PROHIBITED

It shall be unlawful for any person to shoot or discharge, by bow or otherwise, any arrow or similar projectile of deadly force within the Town's corporate limits.

36.5.6. MOTOR VEHICLE VIOLATIONS, GENERALLY⁴⁵³

Any of the following activities associated with a motor vehicle shall be a violation of the standards in Chapter 8: Motor Vehicles and Traffic, and shall be subject to the remedies in this chapter.

A. ABANDONED VEHICLES PROHIBITED

It is a violation of this Town Code for the registered owner or person entitled to possession of a motor vehicle to cause or allow such vehicle to be abandoned.

B. JUNKED MOTOR VEHICLES PROHIBITED

It is a violation of this Town Code for the registered owner or person entitled to the possession of a junked motor vehicle, or for the owner, lessee, or occupant of the real property upon which a junked motor vehicle is located, to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed by the Town.

C. NUISANCE VEHICLES PROHIBITED

It is a violation of this Town Code for the registered owner or person entitled to possession of a motor vehicle, or for the owner, lessee, or occupant of the real property upon which the vehicle is located, to leave or allow the vehicle to remain on the property after it has been declared a nuisance vehicle by the Town.

D. TOWN PROTECTION AGAINST LIABILITY

No owner or other person legally entitled to possession shall be subject to a civil or criminal penalty or action for disposing of an abandoned, nuisance or junked motor vehicle in accordance with the standards in Chapter 8: Motor Vehicles and Traffic.

36.5.7. MOTOR VEHICLE OPERATION VIOLATIONS⁴⁵⁴

Any of the following shall be a violation under this Town Code subject to the remedies in this chapter.

A. BOAT MOORING PROHIBITED

No boat shall be moored next to a bank without being tied to a dock, bulkhead, piling, or mooring buoy.

B. DRIVING VEHICLES AND LANDING AIRCRAFT ON BEACHES LIMITED

1. It shall be unlawful for any person to operate any motor vehicle or land or take off in any aircraft, except in case of emergency, within an area beginning at the northern boundary line of the Town and running thence in a southerly direction along the oceanfront with the low tidewater line to the southern boundary line of the Town.
2. This section shall not apply to the following uses or activities:

⁴⁵² This section has been broadened in accordance with staff direction on the section above related to concealed or unconcealed handguns.

⁴⁵³ This section consolidates several of the abandoned and nuisance vehicle provisions in Section 20-169 through 20-171

⁴⁵⁴ This section consolidates several motor vehicle-related violations from Sections 20-3 through 20-109 of the current code. The balance of the current standards are maintained in new Chapter 8: Motor Vehicles and Traffic.

- a. Operation of motor vehicles operated upon any regularly established or dedicated road or driveway on private property by the owners of such property, members of their immediate family or by bona fide guests with the written permission of such owner.
- b. The official operation of motor vehicles or aircraft belonging to or used by the United States Coast Guard Service and Town officials, including law enforcement, fire fighters, ocean rescue, and public works employees serving in their official capacities.⁴⁵⁵
- c. The operation of motor vehicles or automotive equipment belonging to and used and operated by commercial fishermen while such fishermen are actually engaged in the fishing or setting of nets or seines from or in the ocean; provided that nothing in this section shall be construed to authorize, permit or allow commercial fishermen or any other person to drive across, enter upon or conduct their fishing operations on any private property other than that owned or leased by them except by permission of the owners in the above-described area.

C. DRIVING ON SAND DUNES LIMITED

1. It shall be unlawful for any type of vehicle including but not limited to automobiles, motorcycles and beach buggies, to be driven on sand dunes within the Town.
2. Nothing shall prohibit the operation of police and other emergency vehicles operating in accordance with this Town Code or other applicable law.

D. DRIVING THROUGH FUNERAL PROCESSIONS LIMITED

No vehicle shall be driven through a funeral procession, except authorized emergency vehicles when responding to calls.

E. HANGING OUT OF OR ONTO VEHICLES PROHIBITED

No person when riding shall allow any part of his body to protrude beyond the limits of the vehicle in which he is riding, except to give such signals as are by law required; and no person shall hang on to any vehicle whatsoever.

F. LANDING OF HELICOPTERS PROHIBITED

1. It shall be unlawful for any person to land a helicopter in the Town except at a designated landing area.
2. Nothing in this section shall prohibit the landing of a helicopter in emergency situations at a site other than a designated site for the transporting of injured or critically ill patients, the landing of a government owned helicopter for official purposes, or the landing of a helicopter with an inflight emergency.

G. OVERCROWDING OR OVERLOADING OF VEHICLE PROHIBITED

No person shall operate upon a highway a motor vehicle which is so loaded or crowded with passengers or property, or both, as to obstruct the operator's view of the highway, including intersections, or so as to impair or restrict otherwise the proper operation of such vehicle.

36.5.8. NON-MOTORIZED VEHICLE OPERATION VIOLATIONS

A. ATTACHING TO MOTOR VEHICLES PROHIBITED

Any person riding upon any bicycle, motorcycle, coaster, sled, roller skates or any toy vehicle shall not attach such vehicle or himself to any public conveyance or moving vehicle upon any roadway.

B. OPERATION OF BICYCLE WITHOUT A HELMET LIMITED

1. **VIOLATIONS**
 - a. It shall be unlawful for anyone 15 years or age or under to operate a bicycle on a public right-of-way without a wearing a protective helmet that is properly strapped beneath the chin.
 - b. Failure to require a bicycle passenger to ride without a helmet shall be a violation of this Town Code, unless they are located within an enclosed trailer or other device which meets or exceeds current nationally recognized standards of design and manufacture for the protection of the passenger's head from impacts in an accident without the need for a helmet.

⁴⁵⁵ This section added based on staff comment.

2. REMEDIES

A person's first violation of this section shall be dismissed if the person charged with the violation submits proof that equipment meeting the standards has been acquired for use by the operator or passenger. Otherwise, any violation is punishable by the appropriate civil penalty in accordance with this chapter.

C. OPERATION IN AN UNSAFE OR RECKLESS MANNER PROHIBITED

No person shall use any bicycle, roller skates, inline skates, scooter, or skateboard on a public or private street or in a location generally open to the public in an unsafe or reckless manner at any time.

D. PASSENGER ON HANDLEBARS PROHIBITED

No operator of a motorcycle or bicycle, when upon a street, shall carry any person upon the handlebars, frame, or tank of any such vehicle.

E. RIDING IN PORTION OF VEHICLE NOT INTENDED FOR PASSENGERS LIMITED

1. No person shall ride on any public conveyance or vehicle or any portion thereof not designed or intended for the use of passengers.
2. This section shall not apply to any employee engaged in the necessary discharge of a duty or to persons riding within truck bodies in spaces intended for merchandise.

F. UNDERAGE PASSENGER ON BICYCLE LIMITED

No person operating a bicycle on a public right-of-way shall allow anyone four years old or younger, and weighing 40 pounds or less, to ride as a passenger on the bicycle, other than in a seat which shall adequately retain the passenger in place and protect the passenger from the bicycle's moving parts; or else astride a regular seat of a tandem bicycle.

36.5.9. PARKING VIOLATIONS⁴⁵⁶

A. PARKING ON CERTAIN ROADWAYS PROHIBITED

1. Parking is prohibited on all roadways and streets located in all residential zoning districts in the Town.
2. Parking is prohibited on the right-of-way of North Carolina Highway 12 from its intersection with U.S. Highway 158 at the southern corporate limits to the northern corporate limits of the Town.

B. PARKING OR STANDING IN CERTAIN AREAS PROHIBITED

No person shall stop, stand, or park a vehicle, attended or unattended in any of the following locations, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device:

1. On the sidewalk;
2. Within an intersection or in front of a private driveway;
3. On a crosswalk;
4. Within 30 feet of any flashing beacon, stop sign, or traffic control signal located at the side of a street or roadway;
5. Alongside or opposite any street excavation or obstruction when such stopping or standing or parking would obstruct traffic;
6. Upon any bridge or other elevated structure;
7. Within 15 feet in either direction of the entrance to a hotel, theatre, hospital, any public building, or fire station;
8. On the roadway side of any vehicle stopped, standing, or parked at the edge or curb of a street;
9. Within 25 feet from the intersection of curblines or if no curbs exist, then within 15 feet of the intersection of lot lines at an intersection of highways or streets;
10. Within 20 feet of either side of a fire hydrant;
11. On any street or highway where such action inhibits the passage of other vehicles;
12. Within designated fire lanes; or⁴⁵⁷

⁴⁵⁶ This section consolidates several motor vehicle-related violations from Sections 20-145 through 20-148 of the current code. The balance of the current standards are maintained in new Chapter 8: Motor Vehicles and Traffic.

13. Within any marked area proximate to a standpipe Fire Department connection.

C. STANDING OR PARKING FOR CERTAIN PURPOSES PROHIBITED

No person shall stand or park a vehicle upon any street for any of the following purposes:

1. Displaying it for sale;
2. Washing or repairing the vehicle, except for emergency repairs;
3. Storage, except when vehicular storage is part of the adjacent principal use; or
4. Storage of any detached trailer or van, when the towing unit has been disconnected or for the purpose of transferring merchandise or freight from one vehicle to another.

D. PENALTIES

The Police Department shall give parking tickets for parking violations. Such tickets shall be paid by mail or in person to the Town Clerk during office hours or such other assistants to the Clerk appointed to receive such fines when the Town Clerk is not available.

36.5.10. POSTING OF BILLS VIOLATIONS

A. DAMAGING POSTED ORDINANCES PROHIBITED⁴⁵⁸

No person shall tear, deface, or remove any posted Town ordinance or requirement.

B. POSTING BILLS ON SIGNS, BUILDINGS, OR STRUCTURES PROHIBITED

It shall be unlawful for any person to post or cause to be posted, upon garbage racks, buildings, telephone and electric light poles, or any other structure situated within the Town and adjacent to or on the streets, roadways and access areas within the Town, any poster, sign, bill, or other advertising medium; provided that such prohibition shall not apply to posting of signs in a lawful manner in accordance with Section 22.5.4, Signage Standards.

36.5.11. SOLICITING⁴⁵⁹

A. PEDDLING, BEGGING, OR PANHANDLING PROHIBITED

Peddling, begging, or panhandling are considered a public nuisance and are not permitted within the corporate limits of the Town.

B. SOLICITING LIMITED

Soliciting or collecting without a permit issued in accordance with Section 24.1, Solicitor's Permit, shall be a violation of this Town Code.

36.5.12. SOLID WASTE AND LITTER-RELATED VIOLATIONS⁴⁶⁰

A. IMPROPER DISCARDING OF WASTE PROHIBITED

1. It shall be unlawful for any person to discard or deposit solid waste, bottles, cans or other containers of any kind, garbage, waste material, containers of any kind, scrapped or abandoned automobile, truck, or other motor vehicle or part thereof, upon any property, whether public or private property, on a temporary or permanent basis.
2. It shall be unlawful to dump, deposit, or otherwise cause any trash, landscape debris, or other material of any form, to be placed in any canal, stream, channel, pond, or basin which regularly or periodically carries or stores water.
3. It shall be unlawful for any person to throw or otherwise deposit solid waste, bottles, cans or other containers of any kind, garbage, or any type of waste material from any public highway, road, street, beach, or from any adjoining properties upon any property or area in the Town.

⁴⁵⁷ Numbers 12 and 13 added based on staff comment

⁴⁵⁸ This section carries forward Section 1-8 of the current ordinance with no substantive changes.

⁴⁵⁹ This section carries forward the prefatory material in Section 8.1 of the current code. The balance of the material is located in new Chapter 24: Business and Business Regulation.

⁴⁶⁰ This section consolidates the violations from current Chapter 26. The balance of the related provisions are located in new Chapter 12: Solid Waste.

B. LITTERING FROM A VEHICLE PROHIBITED

It shall be unlawful for any person, while a driver or a passenger in a vehicle, to throw or deposit litter upon any street, highway, private property, or other public land within the Town.

C. PLACEMENT OF CONSTRUCTION WASTE IN MUNICIPAL CONTAINER PROHIBITED

Placement of construction and demolition waste or debris in a regular municipal waste container or recycling container shall be a violation of this Town Code subject to the remedies of this chapter.

D. PLACEMENT OF LANDSCAPING DEBRIS ON THE RIGHT OF WAY PROHIBITED

Yard waste, leaves, or tree and shrubbery trimmings shall not be placed within the right-of-way or on the paved portion of the street except in accordance with Section 12.7, Yard Waste.

E. PLACEMENT OF SOLID WASTE IN A RECYCLING CONTAINER PROHIBITED

It shall be a violation of this Town Code to place solid waste in a recycling container.

F. PROHIBITED MATERIALS IN A SOLID WASTE CONTAINER

1. The following items shall not be placed within the Town’s regular solid waste receptacles for collection:
 - a. Antifreeze (i.e., ethylene glycol);
 - b. Asbestos;
 - c. Building materials;
 - d. Burning or smoldering materials or any other materials which could create a fire hazard;
 - e. Hazardous, radioactive, or medical waste;
 - f. Lead-acid batteries (recycling);
 - g. Liquid waste;
 - h. Paint, motor oil, or other toxic or flammable liquids;
 - i. Motor vehicle tires;
 - j. Pesticides;
 - k. Rocks, dirt, sand;
 - l. Sharps not properly contained or wrapped; and
 - m. Yard trimmings (may be composted or burned with fire department permission).
2. Failure of an owner, operator, or contractor, after notice from the Town, or its authorized agent, to remove prohibited materials shall be deemed a violation of this chapter and subject to the remedies in this chapter.

36.5.13. STREETS, SIDEWALKS, AND OTHER PUBLIC PROPERTY VIOLATIONS

A. BLOCKING OR DAMAGING STREETS PROHIBITED⁴⁶¹

It shall be unlawful for any person to cause a condition such that the public streets, sidewalks, alleys, and bridges within the Town are not open for travel, nor free from unnecessary obstructions. Such conditions shall include, but are not limited to the following activities causing the flow of water, including water from storms or from manmade causes, to accumulate on a public street, sidewalk, alley, or bridge or to flow in such a manner that a public street, sidewalk, alley, or bridge is damaged or could reasonably be anticipated to be damaged and thus create an obstruction to travel.

B. OBSTRUCTIONS IN THE RIGHT OF WAY PROHIBITED⁴⁶²

1. Except for obstructions exempted in accordance with Section 18.8.1, Allowable Obstructions, all obstructions within the right-of-way of all streets and highways in the Town are hereby declared public nuisances and shall be removed immediately upon written notification from the Town Manager.
2. The Town shall not responsible for any damage incurred to any obstruction in any right-of-way.

C. OPEN AIR CAMPING LIMITED⁴⁶³

⁴⁶¹ This section carries forward the standards in Section 22-2 of the current code.

⁴⁶² This section carries forward the standards in Section 28-2(a) of the current code without substantive changes.

1. Camping on the ocean beach shall be prohibited at all times.
2. Open air camping by tent, sleeping bag, blanket or hammock, is permitted by children 16 years of age or under only, and only upon improved residential private property which is owned by the parent or by someone in the immediate family of the child engaged in open air camping.
3. Adequate sanitation facilities must be available or provided.

D. REMOVAL OF CERTAIN TREES IN THE RIGHT OF WAY LIMITED

No person, except upon written permission from the Town Manager (or a designee), may remove a living dogwood tree (genus Cornus) from a right-of-way.

E. SMOKING IN MUNICIPAL BUILDINGS

1. It shall be unlawful for any person to smoke in any building or facility or portion of a building or facility now or hereafter owned, leased, operated, occupied, managed or controlled by the Town.
2. For the purposes of this section, smoking shall include inhaling, exhaling, burning or carrying of a lighted pipe, cigar, cigarette, or other combustible tobacco product as well as use of electronic cigarettes or similar nicotine delivery devices and vapor mechanisms.

36.5.14. TRAFFIC VIOLATIONS

A. HEAVY VEHICLES PROHIBITED

1. GENERALLY

Except for no person, firm or corporation shall drive or operate or cause to be driven or operated a motor vehicle, including vans, trucks, tractors, tractor-trailer combinations, tractor-semi-trailer combinations having a total gross weight, including load, in excess of 10,000 pounds on, along, or through any Town street.

2. EXEMPTIONS

This prohibition shall not apply to:

- a. Vehicles exempted in accordance with Section 8.6.2, Weight Limits;
- b. Emergency and municipal service vehicles; or
- c. Vehicles engaged in the delivery of goods to a local destination.

36.5.15. VIOLATIONS OF THE FIRE CODE⁴⁶⁴

A. VIOLATIONS PROHIBITED, GENERALLY

Any person who violates or fails to comply with any provision of the following shall be in violation of this Town Code and shall be subject to the provisions related to penalties and associated remedies in this chapter:

1. Chapter 6: Fire Prevention and Protection;
2. The Fire Code adopted by the Town;
3. Any fire-related order made under the North Carolina State Building Code; or
4. Any permit or development approval issued under any of the above provisions.

B. TAMPER WITH DEVICE PLACED BY FIRE DEPARTMENT PROHIBITED

No person, except a person authorized by the fire official in charge of an emergency scene or a public officer acting within the scope of public duty, shall remove, unlock, destroy or tamper with or otherwise molest in any manner any locked gate, door or barricade, chain, enclosure, sign, tag, or seal which has been lawfully installed by the Fire Department, or by its order, or under its control.

36.5.16. VIOLATIONS OF CABLE TELEVISION PROVISION

Violations of the standards identified in Chapter 16: Cable Television, are a violation of this Town Code subject to the remedies of this chapter.

⁴⁶³ This section carries forward the standards in Sections 22-63 and 22-64 of the current code without substantive change.

⁴⁶⁴ This section consolidates the fire-related violations from Sections 14-3 through 14-69 of the current code. The balance of the current standards are maintained in new Chapter 6: Fire Prevention and Protection.

36.5.17. VIOLATIONS OF THE FLOOD DAMAGE PREVENTION STANDARDS

Violations of the standards identified in Chapter 28, Flood Damage Prevention, are a violation of this Town Code subject to the remedies of this chapter and Section 28.4.3, Corrective Procedures.

36.5.18. VIOLATIONS OF THE SUBDIVISION PROVISIONS⁴⁶⁵

A. SUBDIVIDE LAND LIMITED

1. Subdivide land in violation of this Town Code or Chapter 26: Subdivisions, or transfer or sell land by reference to a plat or map showing a subdivision of land before the plat or map has been properly approved under this Code and recorded in the office of the County Register of Deeds.
2. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction for violation this Ordinance.

B. INSTALLATION OF INFRASTRUCTURE OR IMPROVEMENTS LIMITED

Construction, installation, or operation public or private infrastructure in a manner inconsistent with the requirements of this Town Code or Chapter 26: Subdivisions, shall be a violation of this Town Code subject to the remedies in this chapter.

36.5.19. VIOLATIONS OF THE ZONING PROVISIONS⁴⁶⁶

Any of the following activities shall be a violation of this Town Code subject to the remedies in this chapter.

A. DEVELOPMENT WITHOUT AUTHORIZATION PROHIBITED

Engage in any development, use, construction, land disturbance, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this Town Code without all required plans, permits, certificates, or other forms of authorization as set forth in this Code or Chapter 22: Zoning.

B. DEVELOPMENT INCONSISTENT WITH AUTHORIZATION PROHIBITED

Engage in any development, use, construction, land disturbance, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form of authorization granted for such activity.

C. VIOLATION BY ACT OR OMISSION PROHIBITED

Violate, by act or omission, any term, variance, condition, or qualification placed upon any required plan, permit, certificate, or other form of authorization for the development, use, construction, land disturbance, or other activity upon land or improvements thereon.

D. USE IN VIOLATION PROHIBITED

Erect, construct, alter, repair, maintain or use any building or structure, or use any land in violation of this Town Code or any regulation made under the authority conferred thereby.

36.5.20. WASTEWATER SYSTEM VIOLATIONS⁴⁶⁷

A. UNREPORTED VIOLATIONS

Upon discovery of any unreported violations of terms, conditions or requirements of the wastewater permit, the Town may cause written notice to be given to the owner, specifying the facts constituting violation and stating the need and urgency to bring the treatment works into compliance. The Town may simultaneously pursue other available remedies and sanctions such as:

1. Condemnation order to immediately shut down operations.
2. If the system and works are not brought into compliance within a reasonable period of time after receipt of notice, as stated above, the Town may pursue condemnation and other legal means by which to correct any pollution problems resulting from the system and works malfunction.

36.5.21. WASTEWATER DISCHARGES AND INFLOW VIOLATIONS⁴⁶⁸

⁴⁶⁵ This is a new section.

⁴⁶⁶ This is a new section.

⁴⁶⁷ This section comes from Section 32-107 of the current code with no substantive changes.

A. WASTEWATER DISCHARGES PROHIBITED

1. No person shall discharge wastes to a community, non-community, or private sanitary sewer which cause, threaten to cause, or are capable of causing, either alone or by interaction with other substances, any of the following:
 - a. A fire or explosion;
 - b. Obstruction of flow or injury to the treatment works;
 - c. Danger to life or safety of personnel;
 - d. A strong offensive odor that inhibits the effective maintenance or operation of the treatment works;
 - e. Air pollution by the release of toxic or malodorous gases or noxious gas-producing substances;
 - f. Interference with the treatment process; or
 - g. Conditions which violate any statute or any lawful rule, regulation, or ordinance of any State or federal agency.
2. No person shall discharge septic tank effluent or cesspool overflow in any manner not approved by the Dare County Environmental Health Department.

B. WASTEWATER INFLOW PROHIBITED

Inflow sources shall be prohibited from any service connection to a community wastewater management system. Typical inflow sources are:

1. Roof drains;
2. Yard drains;
3. Swimming pools;
4. Normal groundwater;
5. Sump pumps; and
6. Garage drains.

C. ADDITIONAL PROHIBITIONS

1. Unpolluted water, included by way of illustration, but not limited to, cooling water, process water or blow-down water from cooling towers or evaporative coolers, shall not be discharged through direct or indirect connection to a community sewer unless a permit is issued by the Town. The Town shall approve the discharge of such water only when there is no reasonable alternative method of disposal available.
2. No person shall discharge or cause to be discharged any radioactive waste or toxic compounds into a wastewater system.
3. No person shall discharge any substance directly into an effluent pumping station or subsurface drain field other than through an approved sewer, unless issued a permit by the Town or County.
4. Unless permitted by the Town or the Dare County Environmental Health Department, no person shall employ a holding tank with a pump and haul type wastewater management system. In no case shall such a system be considered acceptable as a conventional means of wastewater treatment.
5. Unless permitted by the Town, no person shall discharge any holding tank waste from septic tanks into a community, non-community, or private sewer system. The permit shall state the specific location of discharge, the time of day the discharge is to occur, the volume of the discharge, and the wastewater constituents and characteristics. A separate permit shall be secured for each separate discharge unless otherwise allowed by the Town.

36.5.22. WASTEWATER NUISANCE; COMPLAINTS AND ABATEMENT⁴⁶⁹

A. NUISANCE

A wastewater nuisance shall be any odor or noise offensive to individuals, or conditions detrimental to the public health, which violates the rules and regulations of the Dare County Environmental Health Department or the Town.

B. TOWN TO NOTIFY THE COUNTY

⁴⁶⁸ This section carries forward the standards in Sections 32-109 and 32-110 from the current code with no substantive change. The balance of the wastewater chapter provisions have been relocated to new chapter 14: Wastewater.

⁴⁶⁹ This section comes from Section 32-10 of the current code.

The Town, upon evidence of the existence of any wastewater nuisance, shall notify the Dare County Environmental Health Department and institute such actions as may be necessary to immediately abate such conditions.

C. NOTIFICATION AND ABATEMENT

Upon further evaluation of the remedial efforts required to correct the nuisance, the Town shall notify, in writing, the owner, occupant, or person in possession of the premises in question of the conditions constituting such public nuisance, and shall order the prompt abatement thereof within a specified period, not to exceed 30 days.

D. FAILURE TO ABATE

If any person, having been ordered to abate a wastewater nuisance fails, neglects or refuses to abate, or correct the conditions constituting the nuisance within a reasonable period of time from receipt of order, the Town shall cause such conditions to be corrected, the costs of which shall be assessed to the property owner.

36.5.23. RIGHT TO ENTER FOR INSPECTION OF WASTEWATER SYSTEM⁴⁷⁰

Whenever it becomes necessary to enter any premises, stores, or dwellings for the purpose of inspecting sewer pipes, fixtures, or treatment systems, a Town representative may do so within normal business hours. Should the Town representative be refused admittance, the supply of water shall be cut off until the examination is made and the required information is obtained, or until repairs and alterations are made.

36.5.24. WATERWAY AND BEACH VIOLATIONS⁴⁷¹

A. COMMERCIAL USE PROHIBITED

No dock or waterway within the Town shall be used for commercial purposes.

B. OPERATION OF A MOTORIZED VEHICLE ON DUCK WOODS POND PROHIBITED

1. No person shall operate a boat of any type, jet ski, or other vehicle, which vessel contains an internal combustion engine, over, upon or underneath the waters of Duck Woods Pond.
2. This prohibition includes all water vessels which may have an internal combustion auxiliary engine.

C. SURFING WITHOUT LEASH PROHIBITED

1. No person shall use or operate a surfboard within the waters of the Atlantic Ocean bounded on the north by a prolongation of the northern boundary of the Town and on the south by a prolongation of the southern boundary of the Town, the same being the northern boundary of the Town of Kitty Hawk, unless a leash is physically attached to the surface of the surfboard and the opposite end of the leash is looped so that the leash shall be placed around the ankle or wrist of the user of the user.
2. Every surfboard user shall be required to physically maintain control of the surfboard by the attachment of the leash at all times while in the water to the ankle or wrist in order to avoid injury to bathers.
3. This section shall not apply to other floatation devices, used in similar fashion as a surfboard and commonly called boogie boards, or rubber rafts and such similar floatation devices which are made of rubber, styrofoam, or similar soft material.

D. UNLAWFUL ACTIVITIES ON THE BEACH

The following activities are unlawful on the beach:

1. ERECTION OF STRUCTURES

Erection of a tent, cabana, or umbrella (or multiple tents, cabanas, or umbrellas) which, in the opinion of the Town Manager or a designee prevents or disrupts the passage of emergency or ocean rescue vehicles or hampers the ability to provide adequate ocean rescue service by obstructing the line of sight to the water from lifeguard stands or other surveillance areas.

2. LEAVING UNATTENDED ITEMS AFTER DARK

⁴⁷⁰ This section comes from Section 32-11 of the current code.

⁴⁷¹ This section carries forward the violation provisions from Sections 34-24 through 34-55 of the current code with no substantive changes.

Leaving unattended personal articles on the beach between the hours of 5:00 p.m. and 7:00 a.m. including, but not limited to volleyball nets, badminton nets, poles, tents, chairs, cabanas, sunshades, horseshoe stakes, croquet courses, umbrellas, or any other personal property items.

3. ALTERING THE CONTOUR

Substantially altering the contour or shape of the flat beach area by excessive digging or mounding of sand in ways that in the opinion of the Town Manager or a designee, presents a dangerous condition to beach users.

E. UNLAWFUL ACTIVITIES WITHIN THE DUNE SYSTEM

Except where otherwise authorized by this Town Code, the following activities shall be considered unlawful within the dune system:

1. Walking or traversing on the dunes outside of an lawfully established improved or unimproved dune walkover access;
2. Degrading, disturbing, or compromising the integrity of the dune structure, including, but not be limited to:
 - a. Digging, shelling, mining, or mechanical alteration of the dune topography;
 - b. Playing, sliding, climbing, or rappelling on the frontal or primary dune or the dune escarpment; and
 - c. Discharging water into the dune where it will cause significant scouring or erosion or otherwise affect the integrity of the dune.
3. Development activities without a valid building permit, Dare County Environmental Health Department approval, or CAMA authorization; and
4. Littering.

F. USE OF A VESSEL AS A DWELLING PROHIBITED

No waterborne vessel shall be used as a dwelling unit.

36.6. NUISANCES⁴⁷²

This section sets out the activities and uses of land that are declared nuisances under this Town Code, and as such, are subject to the remedies in this chapter.

36.6.1. CERTAIN CONDITIONS DECLARED NUISANCES

The existence of any of the following conditions on any lot, whether improved or not, or other parcel of land within the Town corporate limits, is hereby declared to be dangerous and prejudicial to the public health or safety and to constitute a public nuisance:

A. GROWTH OF WEEDS AND GRASS

The uncontrolled growth of noxious weeds or grass causing or threatening to cause a hazard detrimental to the public health or safety.

B. ACCUMULATIONS OF ANIMAL OR VEGETABLE MATTER

Any accumulation of animal or vegetable matter that is offensive by virtue of odors or vapors, or by the inhabitation therein of rats, mice, snakes, or vermin of any kind, which is or may be dangerous to the public health or safety.

C. ACCUMULATIONS OF RUBBISH

Any accumulation of rubbish, trash, or junk on a lot or site that causes or threatens to cause:

1. A fire hazard;
2. Accumulation of stagnant water; or
3. Inhabitation by rats, mice, snakes, or vermin of any kind, which is or may be dangerous to public health or safety.

D. CONDITIONS VIOLATING HEALTH DEPARTMENT RULES

⁴⁷² This section includes the nuisance provisions from Sections 22-3, and 22-39 through 22-44 of the current code. The noise standards in Section 22-3 are replaced by new noise provisions at the request of staff.

Any condition detrimental to public health which violates the rules and regulations of the Dare County Environmental Health Department.

E. BURNED OR PARTIALLY-BURNED BUILDINGS AND STRUCTURES

Any building or other structure, which:

1. Has been burned, partially burned, or otherwise partially destroyed;
2. Is hazardous to public safety;
3. Is a continuing fire hazard; or
4. Is structurally unsound to the extent that the Town Manager (or a designee) can reasonably determine that there is a likelihood of personal or property injury to any person or property entering the premises.

F. STORM- OR EROSION-DAMAGED STRUCTURES AND RESULTING DEBRIS

Any storm- or erosion-damaged structures, or resultant debris, which are:

1. In danger of collapsing;
2. Damaged to extent that it can reasonably be determined that there is a likelihood of personal or property injury; or
3. Located in whole or in part in a public trust area or public land.

G. DAMAGED HOUSEHOLD CONTENTS AND BUILDINGS

Household contents or portions of a building or other structure remaining in an open area, lot, or parcel of land following damage by fire, wind, water, or erosion.

H. ABANDONED PERSONAL PROPERTY

The open storage or placement of any large household appliance, building materials (except on sites subject to a valid building permit), rubbish, wrecked or junked motor vehicles, or motor vehicle parts.

I. GROWTH OF TREES AND SHRUBS ON CANAL BANKS

Any growth of trees or shrubs or vines causing or threatening to cause a hazard detrimental to the safety of the boating public or to navigation.

J. DISTANCE FROM FIRE HYDRANT

To allow any improvement, structure, debris, or vegetation to be placed or remain any closer to a fire hydrant than:

1. A height of at least 18 inches from the center point of the largest outlet to the ground; and
2. A radius of 48 inches from the center of the hydrant.

K. WASTEWATER VIOLATIONS

Violation of the standards described in Chapter 14: Wastewater, is hereby declared to be a public nuisance and may be enforced by injunction and order of abatement in an action instituted in the general court of justice, as provided in Section 160A-175 of the North Carolina General Statutes.⁴⁷³

36.6.2. INVESTIGATION OF NUISANCE COMPLAINTS

The Town Manager (or a designee), upon notice from any person of the existence of any of the conditions described in Section 36.6.1, Certain Conditions Declared Nuisances, shall investigate (or cause to be investigated) to determine if a public nuisance exists.

36.6.3. NOTICE AND ORDER TO ABATE NUISANCE

A. NOTICE

1. Upon determining that a public nuisance exists, the Town Manager (or a designee) shall notify, in writing, the responsible party of the public nuisance, and shall order abatement of the nuisance within 15 days from receipt of the written notice.
2. Receipt shall be deemed to occur on the third day after the date of the postmark if the notice is deposited in a United States post office.

B. ORDER TO ABATE

⁴⁷³ This section comes from Section 32-45 of the current code.

1. Abatement of a public nuisance shall consist of taking whatever appropriate steps are reasonably necessary to remove the condition, which resulted in the declaration of a public nuisance.
2. Without limitation, the Town Manager (or a designee), in ordering the abatement of a public nuisance, may require the removal of debris, rubbish, accumulations of animal or vegetable matter, growth of weeds and grass, burned or partially burned buildings, the isolation of the condition to be abated so that access cannot be gained by persons or property which may be injured by the nuisance, or such other steps which are reasonably necessary to abate the nuisance.

36.6.4. NUISANCE ABATEMENT BY TOWN

- A. In the event any person ordered to abate a public nuisance fails, neglects, or refuses to abate or remove the nuisance, within 15 days from receipt of the order to abate, the Town Manager (or a designee) shall abate (or cause to be abated) the nuisance.
- B. Any person who has been ordered to abate a public nuisance may, within the time allowed by this chapter, request the Town abate the nuisance, the cost of which shall be paid by the person making the request.

36.6.5. NOISE⁴⁷⁴

A. PURPOSE AND INTENT

The purpose of these standards is to protect citizens from excessive sound (noise), which is detrimental to the health and peaceful enjoyment of property. No use shall be operated or permitted to be operated in a manner that creates prohibited forms of noise or sound that exceeds the maximum sound levels in this section.

B. APPLICABILITY

Except for uses and activities identified in Section 36.6.5, Noise, the standards in this section shall apply to all uses and activities taking place on lands and waters located within the corporate limits of the Town and its extra territorial jurisdiction.

C. EXEMPTIONS⁴⁷⁵

The standards in this section shall not apply to the following uses or activities:

1. Emergency work;
2. Generators for production of electricity at times when electrical service has been interrupted due to natural calamity or accidental disruption. Generators used for the production of electricity not exempted by this chapter shall be operated in accordance with the maximum decibel requirements of the zoning district where located;
3. Parades, fairs, circuses, or other similar public entertainment, sporting events taking place during the daytime hours in areas set aside for such activities, or any activities normally associated with any of the above, including use of a loud speaker or public address system;
4. Musical chimes or the sounding of bells emanating from a public, educational, or religious institution or facility provided the sound is of reasonable duration and frequency;
5. The intentional sounding or permitting the sounding of any fire, burglar, or civil defense alarm, siren, whistle or similar stationary emergency signaling device for emergency purposes or for routine testing;
6. Any activity to the extent regulation thereof has been pre-empted by State or federal law;
7. Noise resulting from the loading and unloading, opening, closing or other handling of boxes, crates, containers, building materials, or similar objects between the hours of 7:00 a.m. and 10:00 p.m.; and
8. The playing of a musical instrument between the hours of 3:00 p.m. and 7:00 p.m. Monday through Friday and 12:00 p.m. to 7:00 p.m. on Saturdays and Sundays provided said sound does not exceed 65 dB(A) at the property line of the property from which the sound emanates;

⁴⁷⁴ This is a new section that has been added at the request of staff (the Police Chief) as detailed in the Code Assessment. At the Police Chief's suggestion, we have imported the Town of Kill Devil Hills' noise ordinance in this section. No substantive changes have been made to the Kill Devil Hills Ordinance, but the zoning district names have been replaced with the Town of Southern Shores districts, and the language has been formatted to fit this Code's structure.

⁴⁷⁵ These standards have been supplemented with the language from ZTA-17-01 except that Town-directed beach nourishment activities are exempted from the regulations rather than declaring them not to be a nuisance.

9. Agencies of the United States government, law enforcement agencies, fire departments, ocean rescue services, emergency medical services, and Town refuse collection vehicles or apparatuses, engaged in their official duties are exempt from the provisions of this section; and
10. Noises and activity associated with public beach nourishment projects undertaken at the Town's direction.

D. MAXIMUM SOUND LEVELS AND NOISE DISTINGUISHED

1. The standards in this section identify a series of maximum sound levels that may not exceeded by typical uses and activities allowed under this Town Code. Noise levels from these uses and activities shall not exceed the maximum allowable levels.
2. These standards also identify a series of prohibited noises, which are prohibited regardless of the amount of sound they produce.

E. MAXIMUM PERMITTED SOUND LEVELS

It shall be unlawful to create, cause, or allow the continuance of a noise disturbance that exceeds the following maximum thresholds:

1. SOUNDS AFFECTING RESIDENTIAL AND SPECIAL DISTRICTS

In the Single-Family Residential (RS-1), Multifamily (RS-8), Residential (RS-10), Low Density Residential (R-1) and Ocean and Sound Waters (OSW) Districts, it shall be unlawful to create, cause, or allow any mechanical, amplified or sound from any source which registers more than 60 dB(A) during daytime hours or 55 dB(A) during nighttime hours at or beyond the property line of the property from which the sound originates.

2. SOUNDS AFFECTING COMMERCIAL AND INSTITUTIONAL ZONES

In the Government & Institutional (G&I) and General Commercial (C) Districts, it shall be unlawful to create, cause, or allow any mechanical, amplified, or sound from any source which registers more than 75 dB(A) during daytime hours or 65 dB(A) during nighttime hours at or beyond the property line from which the sound originates.

3. SOUNDS CROSSING ZONING DISTRICT BOUNDARIES

When the zoning classification of the property where the sound originates differs from the zoning classification of the adjoining sound receiving property, then the maximum permitted sound level which will apply will be the higher of the two.

4. NOISE SENSITIVE ZONES

- a. Notwithstanding their location, rest homes, healthcare facilities, places of worship, educational institutions, and day care facilities are noise sensitive zones and it shall be unlawful for any person to cause or allow the emission of sound onto said facilities during the facilities' operating hours which exceeds the noise limitations or reasonableness standards for sound levels affecting residential zones established by this chapter.
- b. For purposes of this section, measurements shall be made at the real property boundary of the noise sensitive zone facility nearest the real property boundary of the property from which the noise originates.

F. PROHIBITED NOISE

1. PROHIBITED ACTS

It shall be unlawful for any person to engage in the following acts, which are declared to be a prohibited noise in violation of this chapter:

- a. The playing of any television set, musical instrument, or other electronic sound amplification system in such a manner or with such volume as to annoy or disturb the quiet, comfort, or repose of a reasonable person with normal sensitivities as determined by the Town Manager (or a designee);
- b. The keeping of an animal which, by causing frequent or long continued noise, shall disturb the quiet, comfort, or repose of the immediate area to such an extent as to constitute a nuisance;
- c. The creation of any noise on any street adjacent to any noise sensitive zone which interferes with the workings of or which disturbs or unduly annoys the citizens;
- d. The shouting and crying of solicitors or vendors which disturbs the peace and quiet of the immediate area;
- e. The use of any drum, loud speaker, or other instrument or device for the purpose of attracting attention by creation of noise, to any performance, show, sale, or display of merchandise;

- f. The use of air-horns, klaxons, or whistles inside any Town facility;
- g. The loading, unloading, opening, closing, or other handling of boxes, crates, containers, building materials, garbage cans, dumpsters of similar objects between the hours of 10:00 p.m. to 7:00 a.m. the following day, in such a manner as to cause a noise disturbance across a residential real property boundary or within a noise sensitive zone is prohibited as set forth in the maximum decibel levels set for each zone at the times of day consistent with this chapter;
- h. The use of any mechanical device operated by compressed air unless the noise created thereby is effectively muffled and reduced.

2. PROHIBITED SOUNDS OR MUSIC LEVELS

- a. It shall be unlawful for any person to play, use, or permit to be played any electronic sound amplification system which generates a sound level exceeding the decibel limits set forth in this chapter for the zoning district in which it is located for any of the following:
 - i. Any public property including any public street, highway, building, sidewalk, park, or thoroughfare; or
 - ii. Any motor vehicle on a public street, highway, public space, or commercial space.
- b. Possession by a person of any machines or devices which may be classified as an electronic sound amplification system enumerated and defined in this chapter shall be prima facie evidence that person or those persons operated that machine or device.

3. PROHIBITED CONSTRUCTION ACTIVITY⁴⁷⁶

a. Generally

Except as allowed in this section, the erection (including excavation), demolition, alteration, or repair of any building other than between the hours of 7:00 a.m. and 8:00 p.m. on weekdays and Saturdays shall be prohibited.

b. Emergencies

- i. Erection, excavation, demolition, alteration, or repair of a building may take place outside the hours of 7:00 a.m. and 8:00 p.m. on weekdays or Saturdays, only in the case of urgent necessity in the interest of public health and safety, subject to an emergency construction permit issued by the Town Manager (or a designee).
- ii. A permit for emergency construction may only be granted for a period of up to three days while the emergency continues.
- iii. An emergency construction permit may be renewed for periods of three days or less while the emergency continues.

c. Non-Emergency

If the inability to erect, demolish, alter, or repair a building or excavate streets and highways between the hours of 8:00 p.m. and 7:00 a.m. would result in loss or inconvenience to any party in interest, the Town Manager (or a designee) may permit such work in accordance with Section 36.6.5.F.3.b. Emergencies, provided the public health and safety will not be impaired.

4. PROHIBITED EQUIPMENT NOISE

- a. Equipment being used for construction, agricultural, lawn care, vehicle or boat repairs, or the like is prohibited after 8:00 p.m. and cannot commence before 7:00 a.m. Monday through Sunday.
 - i. All equipment shall be operated in accordance with the manufacturer's specifications, manufacturers mufflers and noise reducing equipment shall be in use and in proper operating condition.
 - ii. Equipment shall not be used in a manner or with such volume as to indicate an intent to disturb or annoy a reasonable person with normal sensitivities.
 - iii. The Town Manager or a designee may, in the case of urgent necessity and in the interest of public safety issue a permit for other times, which may be renewed for a period of three days or less while the emergency continues.

5. OBTAINING WARRANTS

⁴⁷⁶ This section carries forward Section 22-3(15) from the current Code.

Nothing in this section shall preclude any citizen, without the benefit of noise measuring equipment or contacting a law enforcement officer, from appearing before a judicial officer to obtain a warrant based on this chapter.

G. MOTOR VEHICLES AND MOTOR BOATS

It shall be unlawful to operate or allow the operation of any motor vehicle or motor boat in the Town that:

1. Has its muffler, exhaust, and/or other noise-control equipment removed, altered, or maintained in such disrepair as to create unreasonably loud or disturbing noises to a reasonable person with normal sensitivities;
2. Engages in spinning tires, racing engines, or other operations that create unreasonably loud and disturbing noises to a reasonable person with normal sensitivities;
3. Plays or operates any sound system or sound producing instrument, device, or apparatus when the speaker volume is elevated to such an extent that the sound is clearly audible more than 50 feet from the vehicle.
 - a. This provision shall apply regardless of whether the vehicle is traveling upon the streets of the Town, parked on public property, or stopped in traffic.
 - b. If the vehicle or boat is parked on private property then the restrictions set forth in Section 36.6.5.E, Maximum Permitted Sound Levels, shall also apply; and
4. Uses the sounding of any horn or signal so as to create an unreasonably loud or harsh sound for an unreasonable period of time, except upon authorized emergency service vehicles.

H. NOISE MEASUREMENT TECHNIQUES

1. SOUND LEVEL METERS

- a. For the purpose of determining decibels, (dB(A)'s) as referred to in this chapter, noise shall be measured on the A-weighting scale on a sound level meter of standard design and quality having characteristics established by the American National Standards Institute.
- b. The sound level meter should be certified to meet or exceed the American National Standards Institute or its successor bodies and shall be serviced, calibrated and operated as recommended by the manufacturer.
- c. Persons utilizing the sound level meter for purposes of this chapter shall be familiar with sound level measurement and the operation of sound level measurement equipment, shall operate the sound level meter in accordance with the manufacturer's instructions, and shall be certified in its operation.

2. ALTERNATIVE MEASUREMENT TECHNIQUES

- a. In the event that the noise cannot be measured on a sound level meter operated on the "A" weighting network (scale) or it is otherwise impractical to utilize this measurement technique under the circumstances:
 - i. The complaints of numerous persons, at least one of whom resides in a different location from the other complaining person or persons, when combined with the complaint of an authorized investigating officer, shall be prima facie evidence that the sound is unreasonably loud, disturbing, or excessive noise; or
 - ii. If the noise is of such a nature that a reasonable person with normal sensitivities should have known that the noise was creating an unreasonably loud, disturbing or excessive noise the same shall be prima facie evidence of a violation of this chapter.
- b. Sound emission decibel measurements shall not be required for establishment of a violation under the circumstances set out above and the same shall be deemed to be a noise disturbance.
- c. In determining whether a noise, under this section, is of such character as to be noise disturbance the investigating officer shall consider the following non-exclusive list of factors:
 - i. Whether the noise crosses property lines;
 - ii. Complaints of neighbors regarding the noise;
 - iii. Effect on neighbors complaining of the noise;
 - iv. Time of day at which the noise takes place;
 - v. The intensity and duration of the noise;
 - vi. The type of noise produced;
 - vii. The reason or reasons for the noise; and
 - viii. The alternative means available which will not produce excessive noise.

3. LOCATION OF MEASUREMENT

- a. Except for noise within multi-family or multi-tenanted structures, all noise measurements shall be made at or beyond the lot line of the property from which the noise originates to determine if the noise creates a noise disturbance. For purposes of measurement, the back of the curb, the outside edges of driveways, fences, hedges or other physical features commonly associated with property boundaries are presumed to be at a point which is at or beyond the lot line.
- b. In the case of noise within multi-family or multi-tenanted structures, noise measurements shall be made in the complaining unit with all windows and doors closed and at a point that is approximately the center of the room in the complaining unit that is nearest the unit from which the noise originates. If access to the complaining unit is not possible, then the measurement shall be at least 25 feet from the nearest point of habitable space of the unit from which the noise originates.

36.7. REMEDIES GENERALLY

36.7.1. REMEDIES ESTABLISHED⁴⁷⁷

- A. Unless otherwise specifically provided, violation of any provision of this Code or any other Town ordinance that exists on or after [insert the effective date of this Ordinance] shall subject the offender to the remedies in this section.
- B. In cases where the North Carolina General Statutes provide specific civil remedies for violations of this Code, those remedies shall be available to the Town in addition to any remedies included in this section.
- C. No criminal penalties shall be applicable to violations of this Code unless stated identified in Table 36.4: Violations Classified, or otherwise identified in this Town Code.
- D. Subject to the express terms of this chapter, this Code may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section, except that any provisions for which the violation incurs a civil penalty shall not be enforced by criminal penalties.

36.7.2. REMEDIES DISTINGUISHED

A. CRIMINAL REMEDIES⁴⁷⁸

- 1. A criminal violation of this Code shall be a class 3 misdemeanor and punishable by a fine of not more than \$500.00 as provided in Section 14-4(a) of the North Carolina General Statutes and following the procedure described in Section 36.9, Criminal Procedure.
- 2. Violation of any requirements in Chapter 28: Flood Damage Prevention, shall constitute a misdemeanor, and upon conviction, subject a violator to a maximum fine of \$50, imprisonment for up to 30 days, or both.
- 3. Each day a violation exists following notification shall constitute a separate offense.

B. CIVIL REMEDIES⁴⁷⁹

A civil violation of this Code, established upon issuance of a citation, shall subject the offender to a civil penalty to be recovered by the Town in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after citation has been made for violation of this Ordinance following the procedure described in Section 0.

⁴⁷⁷ This section carries forward the standards in Section 1-6(a) and (j) of the current ordinance with no substantive changes.

⁴⁷⁸ This subsection carries forward the language in Section 1-6(b) of the current code with no substantive changes.

⁴⁷⁹ This subsection replaces the language currently located in Sections 1-6(d) and (e).

Civil Procedure.

C. ADMINISTRATIVE REMEDIES⁴⁸⁰

The administrative procedures of this Code provide for administrative enforcement action for certain violations. Administrative remedies include the following, further described in Section 36.10, Administrative Procedures:

1. Denial of application for permit;
2. Revocation or suspension of permit;
3. Stop work order; or
4. Discontinuation of services.

D. REMEDIES IN COMMON

In addition to the criminal, civil, and administrative remedies established in this section, the Town may also seek the following remedies in common from a court of competent jurisdiction.

1. INJUNCTIVE RELIEF AND ORDER OF ABATEMENT⁴⁸¹

An ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement, and the general court of justice shall have jurisdiction to issue such orders.

- a. When a violation of such an ordinance occurs, the Town may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general, and Rule 65 in particular.
- b. In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that:
 - i. Buildings or other structures on the property be closed, demolished, or removed;
 - ii. Fixtures, furniture, or other movable property be removed from buildings on the property;
 - iii. Grass and weeds be cut;
 - iv. Improvements or repairs be made; or
 - v. Any other action be taken that is necessary to bring the property into compliance with this Ordinance.
- c. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the Town may execute the order of abatement. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien.
- d. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

2. EQUITABLE REMEDY⁴⁸²

In addition to any civil or criminal penalties set out in this section, any provision of this Code or any other Town ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the Town for equitable relief that there is an adequate remedy at law.

⁴⁸⁰ This is a new subsection that clarifies that administrative actions (denial of permit, etc.) also constitute enforcement actions.

⁴⁸¹ This subsection carries forward the standards in Sections 1-6(h) and (i) of the current code with only minor reformatting.

⁴⁸² This section carries forward the standards in Section 1-6(g) of the current code with no substantive changes.

36.8. CIVIL PROCEDURE

36.8.1. GENERALLY

A. WARNING CITATION⁴⁸³

Upon determination of a violation of any section of this Code, the penalty for which is a civil penalty, the Town shall cause a warning citation to be issued to the violator setting out:

1. The nature of the violation;
2. The section violated;
3. The date of violation;
4. An order to immediately cease the violation or, if the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time is stated in which the violation must be abated; and
5. Specification that a second citation shall incur a civil penalty.

B. FAILURE TO COMPLY; CIVIL CITATION⁴⁸⁴

1. Upon failure of the violator to obey the warning citation, a civil citation and penalty shall be issued by the appropriate official of the Town and shall be served directly on the violator, his duly designated agent, or registered agent if a corporation, either in person or posted in the United States mail service by first class mail, addressed to the last known address of the violator as contained in the records of the Town, or obtained from the violator at the time of issuance of the warning citation.
2. The violator shall be deemed to have been served upon the mailing of said citation.
3. The citation shall direct the violator to appear before the Town Manager or a designee within 15 days of the date of the citation, or alternatively to pay the penalty by mail. The violation for which the citation is issued must have been corrected by the time the citation is paid; otherwise further citations shall be issued.
4. Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated.

C. PENALTIES

The following penalties shall be applied for following issuance of a citation for violations of this Town Code identified as civil violations in Table 36.4: Violations Classified. Failure to make payment for a civil penalty in accordance with this section shall subject to violator to a civil action in accordance with Section 36.8.1.D, Civil Action.

1. CIVIL PENALTIES⁴⁸⁵

- a. Except for penalties associated with violation of the cable television standards, motor vehicle and traffic violations, or bicycle safety violations, the maximum penalty for a civil violation shall be no more than \$500.00 for each violation.
- b. Each day the violation exists shall be a separate offense.

2. BICYCLE SAFETY VIOLATIONS

Violation of the bicycle safety regulations in Section 8.7, Operation of Bicycles and Non-motorized Vehicles, shall be \$10.00 for each violation.

3. CABLE TELEVISION VIOLATIONS⁴⁸⁶

- a. Except for operation of a cable television system without a cable franchise from the Town, any violation of the standards in Chapter 16: Cable Television, shall carry a penalty of \$250.00 for each calendar day a violation continues.

⁴⁸³ This section carries forward the standards in Section 1-6(m) of the current code with only formatting changes.

⁴⁸⁴ This section carries forward the standards in Section 1-6(n) of the current code with only formatting changes.

⁴⁸⁵ The penalty information is relocated here from Section 1-6(d) of the current code.

⁴⁸⁶ The penalty information is relocated here from Section 1-6(f) of the current code.

- b. Operation of a cable television system without a cable franchise from the Town shall carry a penalty of \$500 for each calendar day a violation exists.

4. MOTOR VEHICLE AND TRAFFIC VIOLATIONS

See Section 36.8.2, Civil Procedure for Motor Vehicle and Traffic Violations, for civil penalty procedures and penalty amounts.

5. WASTEWATER VIOLATIONS⁴⁸⁷

- a. Any person (including any responsible officer or employee of a corporate violator) who willfully or negligently violates any provisions of this chapter, or falsifies any information or data in any application, report or other document given to the Town under this chapter, shall be guilty of a misdemeanor punishable by fine, imprisonment, or both, as provided in Section 14-4(a) of the North Carolina General Statutes.
- b. Any person (including any corporation) who violates any provision of this chapter, shall be subject to the imposition, by the Town Council, of a civil penalty not to exceed \$5,000.00 for each violation and, in addition, shall reimburse the Town, upon demand, for any expenses, loss, or damage actually sustained by the Town, and for the amount of any fine or penalty imposed upon the Town by any state or federal regulatory agency as a result of such violation.
- c. A civil penalty shall be assessed only after the Town shall have given the alleged violator notice of contemplated Town Council action and a hearing if requested. If the offender fails to pay the civil penalty so assessed within 15 days after written notice of final assessment thereof, then the penalty may be recovered by the Town in a civil action in the nature of debt.

D. CIVIL ACTION⁴⁸⁸

If the violator fails to respond to a citation within 15 days of its issuance and pay the penalty prescribed therein, the Town may institute a civil action in the nature of debt in the appropriate division of the general court of justice for the collection of the penalty.

36.8.2. CIVIL PROCEDURE FOR MOTOR VEHICLE AND TRAFFIC VIOLATIONS⁴⁸⁹

A. TICKETING OF VEHICLES

Whenever a member of the Police Department, or other person charged by this Code or other ordinance with the enforcement of the provisions of this Code or other ordinances of the Town regulating the parking of vehicles, shall find that any of such provisions are being or have been violated by the owner or operator of any vehicle, such person shall notify such owner or operator of such violation by conspicuously attaching to such vehicle a notice or ticket, in such form as the Police Chief or a designee may determine.

B. PENALTY⁴⁹⁰

- 1. Violations of Chapter 8: Motor Vehicles and Traffic, shall carry a penalty of \$50.00 for each violation.
- 2. Receipt of a notice or citation shall require the owner or operator to pay a civil fine in an amount noted on the citation either in person to the Town Clerk or by mail.

C. CIVIL ACTION

If the violator fails to respond to a notice or citation within 15 days of its issuance and pay the penalty prescribed therein, the Town may institute a civil action in the nature of debt in the appropriate division of the general court of justice for the collection of the penalty.

D. DISPOSITION OF PROCEEDS

All penalties paid to the Town Clerk as provided in this section shall be paid into the general fund of the Town.

⁴⁸⁷ This section is relocated here from Section 32-44 of the current code.

⁴⁸⁸ This section is carried forward from Section 1-6(o) of the current ordinance with no substantive changes.

⁴⁸⁹ These standards are relocated here from current Sections 20-202 and 20-203 with only minor formatting changes.

⁴⁹⁰ The stop work penalty information is relocated here from Section 1-6(e) of the current code.

36.9. CRIMINAL PROCEDURE

Review of criminal violations under this Town Code shall be conducted in accordance with Chapter 15A of the North Carolina General Statutes. Violators found guilty of a criminal procedure shall be subject to the ruling of the Superior Court for Dare County, North Carolina.

36.10. ADMINISTRATIVE PROCEDURES⁴⁹¹

In addition to the criminal and civil procedures and associated remedies, the Town shall also have the authority to exercise the following administrative procedures as remedies for a violation of this Town Code.

36.10.1. DENIAL OF PERMIT OR CERTIFICATE

- A.** The Town Manager (or a designee) may withhold or deny any permit, certificate, or other authorization on any land, subdivision, building, structure, sign, or use in which there is an uncorrected violation of a provision of this Ordinance, or of a condition or qualification of a permit, certificate, or other authorization previously granted.
- B.** In no instance shall this provision be used to deny or withhold a permit or certificate on a separate lot or development under common ownership.

36.10.2. REVOCATION OR SUSPENSION OF PERMIT

- A.** The Town Manager (or a designee) may revoke and require the return of a permit by notifying the permit holder in writing, stating the reason for the revocation.
- B.** Permits or certificates may be revoked for any substantial departure from the approved application, plans, or specifications; refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit or certificate.
- C.** Any permit or certificate mistakenly issued in violation of an applicable State or Town law may also be revoked.

36.10.3. STOP WORK ORDER⁴⁹²

- A.** Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of Chapter 14, Wastewater; Chapter 20, Buildings and Building Regulations; Chapter 22, Zoning; or Chapter 28, Flood Damage Prevention, or other applicable provision of this Town Code, the Town Manager (or a designee) may order the work to be immediately stopped.
- B.** The stop work order shall be in writing and directed to the person doing the work. The stop work order shall state:
 - 1. The specific work to be stopped;
 - 2. The specific reason for the stoppage; and
 - 3. The condition under which the work may be resumed.
- C.** Violation of a stop work order constitutes a misdemeanor subject to the criminal penalty remedies in this chapter.

36.10.4. DISCONTINUANCE OF SERVICES

The Town may discontinue services, such as those related to waste collection services, for responsible parties who fail to comply with the requirements of this Town Code, or who otherwise violate the standards in some other Town ordinance.

⁴⁹¹ Several of these are new remedies not present in the current code.

⁴⁹² Information from current Sections 16-4(c)(16) and 32-6(d) are relocated here with minor formatting alterations.

36.11. REMEDIES CUMULATIVE ⁴⁹³

36.11.1. REMEDIES NOT EXCLUSIVE

- A.** The civil penalties, criminal penalties, and other remedies provided in this chapter are cumulative and not exclusive, and may be independently and separately pursued against the same person for the activity constituting a violation of this Code.
- B.** The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies in other provisions of this Code or other laws and regulations.

36.11.2. EACH DAY A SEPARATE VIOLATION

Each day any violation of this Code shall continue shall constitute a separate offense, unless otherwise specified.

⁴⁹³ This is a new section which clarifies that an action which violates multiple code provisions may be enforced under multiple code sections and receive multiple violations simultaneously. It also states that every day a violation continues is considered a separate violation, which is currently stated in multiple code locations including current Section 1-6.

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