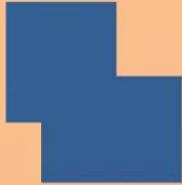


TOWN OF SOUTHERN SHORES

CODE OF ORDINANCES

Module 1 Public Review Draft
March, 2017



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.

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, 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 Council 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 Council were subsequently analyzed and addressed through new language in this draft code document. Text related to these topic areas in these draft standards is shown in **blue highlight** to make it easy to find. Where appropriate, this updated code document includes options for further consideration by the Town Council.

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

PROPOSED Town Code Chapter Structure
1. General Provisions
2. Administration
4. Definitions [NEW]
6. Fire Prevention and Protection
8. Motor Vehicles and Traffic
10. Emergency Management
12. Solid Waste
14. Wastewater
16. Cable Television [NEW]
18. Streets, Sidewalks, and Other Public Property
20. Buildings and Building Regulations
22. Zoning
24. Businesses and Business Regulations
26. Subdivisions
28. Flood Damage Prevention
30. Waterways and Beaches
32. Cemeteries
34. Animals
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. In some cases, text in yellow highlight is indicated for deeper consideration by the Town.

Text in blue highlight corresponds to issues discussed by the Town Council during discussion of the survey. This information needs to be considered and will be discussed in greater detail during the presentation of the module.

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 Council throughout the process.

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."

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 as follows:

- 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 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.

1.2.3. AMENDMENTS TO GENERAL STATUTES⁴

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.

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. CATCHLINES AND REFERENCES⁶

1.4.1. FORMATTED TEXT

The catchlines of the several sections of this Code printed in boldface or colored type are intended as mere catchwords to indicate 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 catchlines, 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. [RESERVED]

1.6. REPEAL OR EXPIRATION⁷

1.6.1. 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.

1.6.2. 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.

1.7. AMENDMENTS AND SUPPLEMENTATION⁸

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

1.8. [RESERVED]

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.

1.9. ORDINANCES NOT AFFECTED BY CODE⁹

1.9.1. NO REPEAL

- 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.

1.10. 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 160A, Article 19 (G.S. 160A-360—160A-459) of the North Carolina General Statutes.

1.10.1. 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.

1.10.2. 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

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

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

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.

1.10.3. 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 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.

1.11. SEVERABILITY¹¹

If any section, subsection, sentence, clause, or phrase of this Town Code or any part of the Official Zoning 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 Official Zoning 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 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.

Each module will include an updated version of this chapter as additional terms are included in each of the two subsequent modules.

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. In some cases, text in yellow highlight is indicated for deeper consideration by the Town.

Text in blue highlight corresponds to issues discussed by the Town Council during discussion of the survey. This information needs to be considered and will be discussed in greater detail during the presentation of the module.

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

4.1. PURPOSE AND INTENT¹³

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

4.2. [RESERVED]

4.3. DEFINED TERMS¹⁴

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

TABLE <>: DEFINED TERMS	
TERM	DEFINITION
A	
"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)
Accessory Dwelling Unit	A subordinate dwelling unit added to, created within, or detached from a single-family residence, but located on the same lot or parcel as a primary residential structure, that provides basic requirements for living, sleeping, cooking, and sanitation. new
Accessory Structure (Appurtenant Structure)	As used in Chapter 28: Flood Damage Prevention, Accessory Structure (Appurtenant Structure) means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building. flood damage prevention
Accessory Use	See Use, Accessory. zoning
Addition (to an existing building)	As used in Chapter 28: Flood Damage Prevention, Addition (to an existing building) means 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	Use as defined in Section 14-202.10(1) of the North Carolina General Statutes, which is incorporated herein by reference. 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:

¹³ NOTE: Because definitions are sometimes necessary during review, we anticipate including the latest version of this chapter with each of the three modules. This version has the definitions associated with the chapters included in Module 1.

¹⁴ 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.

TABLE <>: DEFINED TERMS

TERM	DEFINITION
	1. Persons who appear in a state of nudity or seminudity; 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	Use as defined in Section 14-202.10(2) of the North Carolina General Statutes, which is incorporated herein by reference. zoning
Adult Live Entertainment	Use as defined in Section 14-202.10(3) of the North Carolina General Statutes, which is incorporated herein by reference. zoning
Adult Live Entertainment Business	Use as defined in Section 14-202.10(4) of the North Carolina General Statutes, which is incorporated herein by reference. zoning
Adult Media Center	Includes, but is not limited to, an adult bookstore and an adult video store and means any place: (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 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	Use as defined in Section 14-202.10(6) of the North Carolina General Statutes, which is incorporated herein by reference. 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 subrent the room for a period of time that is less than 12 hours. zoning
Adult Motion Picture Theater	As defined in Section 14-202.10(5) of the North Carolina General Statutes, which is incorporated herein by reference. 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

TABLE <>: DEFINED TERMS

TERM	DEFINITION
	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
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
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. new
Area of Special Flood Hazard	See Special Flood Hazard Area (SFHA). flood damage prevention
B	
Bank	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
Base Flood	As used in Chapter 28: Flood Damage Prevention, Base Flood means the flood having a one percent chance of being equaled or exceeded in any given year. flood damage prevention
Base Flood Elevation (BFE)	As used in Chapter 28: Flood Damage Prevention, Base Flood Elevation (BFE) means a determination of the water surface elevations of the base flood as published in the flood insurance study. When the BFE has not been provided in a special flood hazard area, it may be obtained from engineering studies available from a federal, state or other source, using FEMA approved engineering methodologies. This elevation, when combined with the freeboard, establishes the regulatory flood protection elevation. flood damage prevention
Basement	As used in Chapter 28: Flood Damage Prevention, Basement means any area of the building having its floor subgrade (below ground level) on all sides. 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
Berm	An elongated earthen mound typically designed or constructed on a site to separate, screen, or buffer adjacent uses or site features. new
Boundary, Real Property	For the purposes of applying the noise standards in Chapter 36: Offences and Enforcement, a line along the ground surface and its vertical extension, which separates the real property owned by one person from that owned by another. new – offenses (noise)
Breakaway Wall	As used in Chapter 28: Flood Damage Prevention, Breakaway Wall means 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 of 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
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 and the nearest portion of any building, excluding any allowable encroachments. zoning; subdivisions

TABLE <>: DEFINED TERMS

TERM	DEFINITION
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
C	
CAMA	As used in Chapter 28: Flood Damage Prevention, CAMA means North Carolina's Coastal Area Management Act. This act, along with the Dredge and Fill Law and the Federal Coastal Zone Management Act, is managed through the North Carolina Department of Environment and Natural Resources' (NCDENR's) Division of Coastal Management (DCM). flood damage prevention
Chemical Storage Facility	As used in Chapter 28: Flood Damage Prevention, Chemical Storage Facility means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products. flood damage prevention
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
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, Small Home	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 Barrier Resources System (CBRS)	As used in Chapter 28: Flood Damage Prevention, Coastal Barrier Resources System (CBRS) consists of undeveloped portions of coastal and adjoining areas established by the Coastal Barrier Resources Act (CoBRA) of 1982, the Coastal Barrier Improvement Act (CBIA) of 1990, and subsequent revisions, and includes areas owned by federal or state governments or private conservation organizations identified as otherwise protected areas (OPA). flood damage prevention
Coastal High Hazard Area	As used in Chapter 28: Flood Damage Prevention, Coastal High Hazard Area means a special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a flood insurance rate map (FIRM), or other adopted flood map as determined in Section <>, Basis for Establishing the Special Flood Hazard Area , 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
Collocation	The placement or installation of wireless facilities on existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with the wireless telecommunications sites and towers standards in this Ordinance. zoning
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
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
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

Chapter 4 Definitions

4.3 Defined Terms 2.10.8

TABLE <>: DEFINED TERMS

TERM	DEFINITION
County	The County of Dare, in the State of North Carolina, except as otherwise provided. general provisions
Cul-de-sac	A road permanently terminated by a turnaround or dead end. subdivisions
D	
Daytime Hours	As used in Section <> , 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.
Decibel	The decibel is a unit of measure of sound (noise) level relative to a standard reference sound on a logarithmic scale. new - offenses (noise)
Delicatessen	A retail store with no customer seating specializing in the sale of prepared cooked meats, smoked fish, cheeses, sandwiches and other specialty food items. 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	As used in Chapter 28: Flood Damage Prevention, Development means 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
Disposal	As used in Chapter 28: Flood Damage Prevention, Disposal means, as defined in Section 130A-290(a)(6) of the North Carolina General Statutes, 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. flood damage prevention
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
Drive-Through Facility	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
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
Dwelling Unit	One room, or rooms connected together, constituting a separate, independent housekeeping establishment that is physically separated from any other dwelling units which may be in the same structure and containing independent cooking and sleeping facilities for a single-family made available for owner occupancy, rental, or lease. zoning
Dwelling, Large Home	Any principal residential structure exceeding 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 connected 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
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)

Chapter 4 Definitions

4.3 Defined Terms 2.10.8

TABLE <>: DEFINED TERMS

TERM	DEFINITION
Elevated Building	As used in Chapter 28: Flood Damage Prevention, Elevated Building means a nonbasement building 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 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)
Encroachment	As used in Chapter 28: Flood Damage Prevention, Encroachment means 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
Erosion Escarpment	The normal vertical drop in the beach profile caused from high tide and/or storm tide erosion. zoning
Establishment	That portion of a building owned or held through tenancy used for the purpose specified. zoning
Equipment Compound	An area surrounding or near the base of a wireless support structure within which a wireless facility is located. zoning
Event Facility ¹⁵	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: <ol style="list-style-type: none"> 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
Existing Manufactured Home Park or Manufactured Home Subdivision	As used in Chapter 28: Flood Damage Prevention, Existing manufactured home park or manufactured home subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the original effective date of the floodplain management regulations adopted by the community. flood damage prevention
F	
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
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
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

¹⁵ NOTE: 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.

Chapter 4 Definitions

4.3 Defined Terms 2.10.8

TABLE <>: DEFINED TERMS

TERM	DEFINITION
Flood, Flooding	As used in Chapter 28: Flood Damage Prevention, Flood or Flooding means 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 Insurance	As used in Chapter 28: Flood Damage Prevention, Flood Insurance means the insurance coverage provided under the National Flood Insurance Program. flood damage prevention
Flood Insurance Rate Map (FIRM)	As used in Chapter 28: Flood Damage Prevention, Flood Insurance Rate Map (FIRM) means 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)	As used in Chapter 28: Flood Damage Prevention, Flood Insurance Study (FIS) means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data, in a community, issued by the Federal Emergency Management Agency. The flood insurance study report includes flood insurance rate maps (FIRMs). flood damage prevention
Flood Zone	As used in Chapter 28: Flood Damage Prevention, Flood Zone means a geographical area shown on a flood hazard boundary map or flood insurance rate map that reflects the severity or type of flooding in the area. flood damage prevention
Floodplain	As used in Chapter 28: Flood Damage Prevention, Floodplain means any land area susceptible to being inundated by water from any source. flood damage prevention
Floodplain Administrator	As used in Chapter 28: Flood Damage Prevention, Floodplain Administrator means the individual appointed to administer and enforce the floodplain management regulations. flood damage prevention
Floodplain Development Permit	As used in Chapter 28: Flood Damage Prevention, Floodplain Development Permit means 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	As used in Chapter 28: Flood Damage Prevention, Floodplain Management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans. flood damage prevention
Floodplain Management Regulations	As used in Chapter 28: Flood Damage Prevention, Floodplain Management Regulations means 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 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	As used in Chapter 28: see Floodplain. flood damage prevention
Floodproofing	As used in Chapter 28: Flood Damage Prevention, Floodproofing means 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. zoning
Freeboard	As used in Chapter 28: Flood Damage Prevention, Freeboard means 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
Frontal Dune	The first mound of sand located landward of the ocean beach that has stable and natural vegetation present. new
Functionally Dependent Facility	As used in Chapter 28: Flood Damage Prevention, Functionally Dependent Facility means 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,

TABLE <>: DEFINED TERMS

TERM	DEFINITION
	shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities. flood damage prevention
G	
Geographic Antenna Coverage Area	The general vicinity within which an antenna serves the transmission requirements of a cellular or other broadcasting network. zoning
Ground Elevation, Average ¹⁶	The average elevation of the finished grade or the original grade, whichever is lower, at the corners of the structure. zoning
Ground Elevation, Lowest ¹⁷	The lowest elevation of the finished grade or the original grade, whichever is lower, at the corners of the structure. zoning
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 (Living Space)	Enclosed areas within a structure which are located below the top plate, and containing rooms or areas which have been designed, and constructed for human habitation. zoning
Hazardous Waste Facility	As used in Chapter 28: Flood Damage Prevention, Hazardous Waste Facility means, as defined in Section 130A-290(a)(9) of the North Carolina General Statutes, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste. flood damage prevention
Height, Maximum	The vertical distance measured from the lowest ground elevation to the top of the tallest part of a structure. zoning
Height, Top Plate	The vertical distance measured from the average ground elevation to the top of the highest top plate. zoning
Highest Adjacent Grade (HAG)	As used in Chapter 28: Flood Damage Prevention, Highest Adjacent Grade (HAG) means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure. flood damage prevention
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
Highway	See "Street."
Historic Structure	As used in Chapter 28: Flood Damage Prevention, Historic Structure means 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 met the requirements of the National Historic Preservation Act of 1966, as amended in 1980. flood damage prevention
Home Occupation and Home-Based Business	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 Chapter 20: Zoning. zoning
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. Some rooms may include in-room kitchen,

¹⁶ NOTE: Depending on what happens with height measurement in the zoning chapter, this definition may change.

¹⁷ NOTE: Depending on what happens with height measurement in the zoning chapter, this definition may change.

TABLE <>: DEFINED TERMS

TERM	DEFINITION
	dining, and laundry facilities. new
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 farther, mother, brother, sister, son, daughter, or grandparent. offenses
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
J	
K	
L	
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 Section <>, Rules of Measurement , 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 Section <>, Rules of Measurement . zoning
Lot Coverage	See Section <>, Rules of Measurement . zoning
Lot Depth	See Section <>, Rules of Measurement . zoning
Lot, Double Frontage	See Section <>, Rules of Measurement . subdivisions
Lot Line, Front	See Section <>, Rules of Measurement . zoning
Lot Line, Rear	See Section <>, Rules of Measurement . zoning
Lot Line, Side	See Section <>, Rules of Measurement . 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 Section <>, Rules of Measurement . zoning
Lot, Corner	See Section <>, Rules of Measurement . zoning
Lowest Adjacent Grade (LAG)	As used in Chapter 28: Flood Damage Prevention, Lowest Adjacent Grade (LAG) means 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 Chapter 28: Flood Damage Prevention, Lowest Floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter. flood damage prevention
M	

TABLE <>: DEFINED TERMS

TERM	DEFINITION
Major Damaged Structure	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
Manufactured Home	As used in Chapter 28: Flood Damage Prevention, Manufactured Home means 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 Chapter 28: Flood Damage Prevention, Manufactured Home Park or Subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale. flood damage prevention
Market Value	As used in Chapter 28: Flood Damage Prevention, Market Value means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal: replacement cost depreciated for age of building and quality of construction (actual cash value): or adjusted tax assessed values. flood damage prevention
Mean Sea Level	As used in Chapter 28: Flood Damage Prevention, Mean Sea Level means 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 Section <>, General Use Standards for Ocean Hazard Areas , 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
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
Minor Dead-end Road	See Cul-de-sac.
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
Motel	See "Hotel or Motel." new
Motor Vehicle	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 or motorized scooters or skateboards. new - noise
Motor Boat	Any vessel which operates on water and is propelled by a motor, including, but not limited to, boats, barges, amphibious craft, water ski towing devices, jet skis and hovercraft. new - noise
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
N	
Net Acreage	The total land area to be developed as part of a development proposal, minus any area covered by waterways, marshes, or wetlands. zoning
New Construction	As used in Chapter 28: Flood Damage Prevention, New Construction means structures for which the start of construction commenced on or after the effective date of the original version of the community's flood damage prevention ordinance and includes any subsequent improvements to such structures. flood damage prevention

TABLE <>: DEFINED TERMS

TERM	DEFINITION
Night	The period of time each day beginning one hour after sunset and ending one hour before sunrise. offenses
Nighttime Hours	As used in Section <>, Noise, Nighttime Hours 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 noise. new – offenses (noise)
Noise Level in Decibels	See Sound level in decibels.
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)
Noise, Unreasonably Loud, Disturbing, or Excessive	Any sound which because of its volume, level, duration or character disturbs, discomforts, injures or endangers the health, peace or safety of a reasonable person with normal sensitivities. new – offenses (noise)
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 excepted 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 than ten percent of the course hours. zoning
Nudity or State of Nudity	The appearance of a 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
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
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	The area of land consisting of unconsolidated soil material that extends from the mean low water line landward to a point where either: 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 <>, Rules of Measurement. zoning
Oceanfront Setback	A line which is shoreward from the mean high water line of the Atlantic Ocean seaward of which no structure may be located unless approved by the Town Council as required for beach access or pier construction under the conditional use provisions of Chapter <>, Zoning. zoning
Ocean Hazard Area	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. 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
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

TABLE <>: DEFINED TERMS

TERM	DEFINITION
Official Plans	Any plans officially adopted by the Town Council as a guide for the development of the Town. subdivisions
OPA	As used in Chapter 28: Flood Damage Prevention, OPA means 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 Space	Unoccupied space open to the sky. zoning
Open Storage	An unroofed storage area, whether fenced or not. zoning
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
P	
Parking Space	A vehicular storage space plus the necessary access space. zoning
Person	An individual, proprietorship, partnership, corporation, association, or other legal entity. zoning
Personal Property	See Property, personal.
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 <>, Planned Unit Development. zoning
Post	To erect, attach, or affix in any manner, including without limitation nailing, tacking, tying, gluing, pasting, painting, staking, marking, or writing. zoning
Preceding	Refers to the item or items appearing immediately before the term. general provisions
Post-FIRM	As used in Chapter 28: Flood Damage Prevention, Post-FIRM means 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 area. flood damage prevention
Pre-FIRM	As used in Chapter 28: Flood Damage Prevention, Pre-FIRM means construction or other development for which the start of construction occurred before the effective date of the initial flood insurance rate map for the area. flood damage prevention
Primary Dune	As used in Section <>, General Use Standards for Ocean Hazard Areas , Primary Dune means the first mounds of sand located landward of the ocean beach having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceed in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression landward of that same mound of sand (commonly referred to as the dune trough). zoning¹⁸
Primary Frontal Dune	As used in Chapter 28: Flood Damage Prevention, Primary Frontal Dune means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and 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
Principally Above Ground	As used in Chapter 28: Flood Damage Prevention, Principally Above Ground means that 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
Property	The term "property" includes real and personal property. general provisions

¹⁸ NOTE: This definition matches the definition in 15A NCAC 07H .0305(a)(3)

Chapter 4 Definitions

4.3 Defined Terms 2.10.8

TABLE <>: DEFINED TERMS

TERM	DEFINITION
Property, Personal	Includes every species of property except real property as defined in this chapter. general provisions
Property, Real	Land, tenements, and hereditaments. general provisions
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
Public Safety and/or Nuisance	As used in Chapter 28: Flood Damage Prevention, Public Safety and/or Nuisance means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin. flood damage prevention
Q	
R	
Real Property	See Property, real.
Real Property Boundary	See Boundary, real property.
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 Vehicle (RV)	As used in Chapter 28: Flood Damage Prevention, Recreational Vehicle (RV) means a vehicle which is: <ol style="list-style-type: none"> 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
Redevelopment	Any change of use or site plan amendment associated with existing development that requires approval by the Town. zoning
Reference Level	As used in Chapter 28: Flood Damage Prevention, Reference Level means 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
Regulatory Flood Protection Elevation	As used in Chapter 28: Flood Damage Prevention, Regulatory Flood Protection Elevation means the base flood elevation plus the freeboard. In special flood hazard areas where base flood elevations (BFEs) have been determined, this elevation shall be the base flood elevation plus two feet of freeboard. flood damage prevention
Remedy a Violation	As used in Chapter 28: Flood Damage Prevention, Remedy a Violation means to bring the structure or other development into compliance with state and community floodplain management regulations or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the chapter or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development. flood damage prevention
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,

TABLE <>: DEFINED TERMS

TERM	DEFINITION
	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 <>, Noise, right-of-way means street, avenue, boulevard, highway, sidewalk or alley which is owned or controlled by a governmental entity. new – offenses (noise)
Riverine	As used in Chapter 28: Flood Damage Prevention, Riverine means relating to, formed by, or resembling, a river (including tributaries), stream, brook, etc. flood damage prevention
Road	A dedicated public right-of-way for vehicular traffic. The term "road" includes the term "street." subdivisions
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	
Salvage Yard	As used in Chapter 28: Flood Damage Prevention, Salvage Yard means 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
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
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
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.)
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	As defined in Section 14-202.10(9) of the North Carolina General Statutes, which is incorporated herein by reference. zoning
Signature	The term "signature" includes a mark when the person cannot write. general provisions

TABLE <>: DEFINED TERMS

TERM	DEFINITION
Sidewalk	Any portion of a street between the curblineline and the adjacent property line intended for the use of pedestrians. general provisions
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, Noncommercial Charity Event	A temporary sign designed and intended to promote, support, call attention to, or give notice to a specific noncommercial event wholly organized by a nonprofit individual, charitable organization, political group or other entity that is tax exempt pursuant to the Internal Revenue Code. zoning
Sign, Real Estate	A sign indicating the availability for sale, rent, or lease of the specific lot, building, or portion of a building upon which the sign is posted. ¹⁹ zoning
Sign, Temporary	A sign intended to display either commercial or noncommercial 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. The temporary period may be different for various types of events or circumstances the sign advertises; (2) Typically constructed from nondurable materials, including paper, cardboard, cloth, plastic, and/or wallboard; (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
Solid Waste Disposal Facility	As used in Chapter 28: Flood Damage Prevention, means, as defined in Section 130A-290(a)(35) of the North Carolina General Statutes, any facility involved in the disposal of solid waste. flood damage prevention
Solid Waste Disposal Site	As used in Chapter 28: Flood Damage Prevention, Solid Waste Disposal Site means, as defined in Section 130A-290(a)(36) of the North Carolina General Statutes, any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method. flood damage prevention
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	See Muffler.

¹⁹ **NOTE:** Along with the other changes required under *Reed*, speaker-based speech, such as that pertaining to a particular use or a particular type of sign must also withstand strict scrutiny.

Chapter 4 Definitions

4.3 Defined Terms 2.10.8

TABLE <>: DEFINED TERMS

TERM	DEFINITION
Device	
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)	As used in Chapter 28: Flood Damage Prevention, Special Flood Hazard Area means the land in the floodplain subject to a one percent or greater chance of being flooded in any given year, as determined in Section <>, Basis for Establishing the Special Flood Hazard Areas. flood damage prevention
Specified Anatomical Areas	As defined in Section 14-202.10(10) of the North Carolina General Statutes, which is incorporated herein by reference. zoning
Specified Sexual Activities	As defined in Section 14-202.10(11) of the North Carolina General Statutes, which is incorporated herein by reference. zoning
Start of Construction	As used in Chapter 28: Flood Damage Prevention, Start of Construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building. 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
Street	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 term "highway" or "street" or a combination of the two terms shall be used synonymously. general provisions For the purposes of zoning, street means 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
Structure	As used in Chapter 28: Flood Damage Prevention, Structure means 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	Subdivider means any person who subdivides or develops any land deemed to be a subdivision as herein defined. 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 Chapter 26: Subdivisions: 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 this chapter. 2. The division of land into parcels greater than ten acres if no street right-of-way dedication is

Chapter 4 Definitions

4.3 Defined Terms 2.10.8

TABLE <>: DEFINED TERMS

TERM	DEFINITION
	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 if the resultant lots are equal to or exceed the standards of the town as required by Chapter 26: Subdivisions. subdivisions
Subscription	The term "subscription" includes a mark when the person cannot write. general provisions
Substantial Damage	As used in Chapter 28: Flood Damage Prevention, Substantial Damage means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 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 Chapter 28: Flood Damage Prevention, Substantial Improvement means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 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 community code enforcement official 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 sites and towers standards in this Ordinance, substantial modification means mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure. (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. (1) Increasing the square footage of the existing equipment compound by more than 2,500 square feet. zoning
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
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
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 Chapter 22: Zoning. 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, hot tubs and spas. zoning
T	
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

TABLE <>: DEFINED TERMS

TERM	DEFINITION
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
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
Tourist-Oriented Directional Signs (TODS)	Guide signs that display the business identification of and directional information for tourist-oriented businesses and tourist-oriented facilities (as defined in Section 136-140.15 of the North Carolina General Statutes) or for a class of businesses or facilities that are tourist-oriented. ²⁰ zoning
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
Town Council	The term "Town Council" or "Council" means the Town Council of the Town of Southern Shores. general provisions
Townhouse	A single-family dwelling unit on its own individual lot but connected, by means of a common wall for at least ten feet of its length, to one or more other single-family dwelling unit. zoning
Town Manager	The term "Town Manager" means the appointed Town Manager of the Town of Southern Shores or his designee. general provisions
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
U	
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 building, structure, or use meeting all of the following criteria: (1) It is clearly incidental to and customarily found in connection with a principal building or use; (2) It is subordinate to and serves a principal building or principal use served; (3) It is subordinate in area, extent or purpose to the principal building or principal use served; (4) It contributes to the comfort, convenience or needs of occupants, or business in the principal building or the principal use served; (5) It is located on the same lot as the principal building or use; and (6) It is not a sexually oriented business or a sexually oriented business activity. ²¹ zoning
Use, Conditional	A use that would 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

²⁰ **NOTE:** This definition identifies both sign content and the type of use it serves. Both must pass strict scrutiny under *Reed*.

²¹ **NOTE:** This definition is carried forward from the current zoning code. It is an example of standards that are embedded in a definition – something we sought to remove in this update. The Town may wish to consider relocating the standards in items 1-6 to the section on accessory uses.

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4.3 Defined Terms 2.10.8

TABLE <>: DEFINED TERMS

TERM	DEFINITION
Utility Pole	A structure that is designed for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting. zoning
V	
Variance	As used in Chapter 28: Flood Damage Prevention, Variance means a grant of relief from the requirements of Chapter 28. flood damage prevention 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	The first line of stable natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. It is generally located at, or immediately oceanward of, the seaward toe of the frontal dune and/or erosion escarpment. In areas where there is no stable natural vegetation present, this line shall be established by connecting or extending the lines from the nearest adjacent vegetation on either side of the site and by extrapolating (by either on-ground observation or by aerial photographic interpretation) to establish the line. zoning
Violation	As used in Chapter 28: Flood Damage Prevention, Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section <28.5>, Administration, and Section <28.6>, Flood Hazard Reduction , is presumed to be in violation until such time as that documentation is provided. flood damage prevention
W	
Watercourse	As used in Chapter 28: Flood Damage Prevention, Watercourse means 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
Water Surface Elevation (WSE)	As used in Chapter 28: Flood Damage Prevention, Water Surface Elevation (WSE) means 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
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 must be a self-supporting monopole and 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 or Windmill	A wind energy conversion system that converts wind energy into electricity. zoning
Wireless Facility	The set of equipment and network components, exclusive of the underlying wireless support structure or tower, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and wireless telecommunications services to a discrete geographic area. zoning
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 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, Written	The terms "writing" and "written" include printing, engraving, lithographing, and any other mode of representing words and letters. general provisions
X	

TABLE <>: 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, Front	See Section <>, Rules of Measurement . zoning
Yard, Rear	See Section <>, Rules of Measurement . zoning
Yard, Side	See Section <>, Rules of Measurement . zoning
Z	
Zoning Administrator	A person who is appointed by the Town Manager and is responsible for administering and enforcing Chapter 22 of this Town Code. zoning
Zoning Permit	A permit issued by the Zoning Administrator which authorizes the recipient to make use of property in accordance with the requirements established in this Town Code. zoning

4.4. [RESERVED]

4.5. GLOSSARY OF ABBREVIATIONS

[Table <>, Abbreviations](#), sets out the abbreviations used in this Town Code.

TABLE <>: ABBREVIATIONS

ABBREVIATION	ASSOCIATED TERM
ADU	Accessory Dwelling Unit
BFE	Base Flood Elevation
BUA	Built Upon Area
CAMA	Coastal Area Management Act
CBIA	Coastal Barrier Improvement Act
CRBS	Coastal Barrier Resources System
CoBRA	Coastal Barrier Resources Act 1982
DCM	Division of Coastal Management
FIRM	Flood Insurance Rate Map
FIS	Flood Insurance Study
G.S.	General Statutes of the State of North Carolina
HAG	Highest Adjacent Grade
NCDENR	North Carolina Department of Environment and Natural Resources
NCDEQ	North Carolina Department of Environmental Quality
N.C.G.S.	General Statutes of the State of North

Chapter 4 Definitions

4.5 Glossary of Abbreviations 2.10.8

	Carolina
OPA	Otherwise Protected Area
SFHA	Special Flood Hazard Area
WSE	Water Surface Elevation

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 will be 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. In some cases, text is yellow highlight is indicated for deeper consideration by the Town.

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

20.1. APPLICABILITY²³

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

20.2. STATE BUILDING CODE ADOPTED²⁴

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. [RESERVED]

20.4. FEES²⁵

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.

20.5. INSPECTIONS²⁶

20.5.1. INSPECTIONS REQUIRED

- A. The Planning and Code Enforcement Department 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 Statutes²⁷, 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 Town Code, 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.

20.5.2. INSPECTIONS PROCEDURE

- A. Applicants shall notify the Planning and Code Enforcement Department at least 24 hours in advance of any inspection required by this Code.
- 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.

²³ 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.

²⁴ 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.

²⁵ 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.

²⁶ This section carries forward the standards in Section 6-6 of the current code with no substantive changes

²⁷ 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.

20.6. TEMPORARY TOILET FACILITIES²⁸

20.6.1. 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.

20.6.2. STANDARDS

Temporary toilet facilities shall:

- A. Comply with Section 311 of the North Carolina Plumbing Code;
- B. Comply with all County Department of Environmental Health 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.

20.7. PROPERTY NUMBERING²⁹

20.7.1. 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 this 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 property numbering map shall be kept on file in the office of the Planning and Code Enforcement Department.

20.7.2. NUMBERING SYSTEM

A. CONVENTION

1. On the 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.

B. ASSIGNMENT OF NUMBERS

²⁸ This section carries forward current Section 6-8 with no substantive changes, but with formatting and reorganization to improve clarity.

²⁹ 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.

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.

20.7.3. 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.
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.

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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 renumbers 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. In some cases, text in yellow highlight is indicated for deeper consideration by the Town.

Text in blue highlight corresponds to issues discussed by the Town Council during discussion of the survey. This information needs to be considered and will be discussed in greater detail during the presentation of the module.

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 Council.

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. TITLE³⁰

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. AUTHORITY³¹

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 DATE³²

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 & INTENT³³

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;
- 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;

³⁰ This section replaces Section 36-2 and sets out the Official Zoning Map in Section 22.3.1, Official Zoning Map.

³¹ 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.

³² This section replaces Section 36-451(a) related to reenactment and repeal of the current regulations.

³³ 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.

- F. Provide methods of administration of this Chapter; and
- G. Supersede any ordinances in conflict herewith.

22.1.4. APPLICABILITY³⁴

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.³⁵

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 & AGREEMENTS [NEW]³⁶

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 covenants and 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. CONFLICT³⁷

- 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 or natural features shall control.
- C. In cases where this 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.

³⁴ 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.

³⁵ This section carries forward the standards in Section 36-164 with no substantive changes.

³⁶ This is a new section proposed for the Town’s consideration.

³⁷ This section carries forward Section 36-449 of the current code with additional standards to address conflicts between different provisions of this chapter.

22.1.7. TRANSITIONAL PROVISIONS [NEW]³⁸

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. 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 <>, 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 APPLICATION³⁹

- 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 subject to the provisions of Section <>, 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.

D. APPROVED APPLICATIONS

1. BUILDING PERMIT VALID FOR SPECIFIED PERIOD⁴⁰

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

³⁸ 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.

³⁹ This reflects changes in state law referring to "permit choice".

⁴⁰ 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.

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 of [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 <>, 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 <>, Nonconformities.

22.1.8. RULES OF MEASUREMENT [NEW]⁴¹

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 <>, 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. ROUNDING

All calculations that result in part of a whole number shall be rounded up to the next highest whole number, unless otherwise provided in this section or elsewhere in this Town Code.

3. 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, setback, or bulk standard.

4. 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.

b. Use Type to Use Type

When the provisions of this chapter require one use type to be separated from another use type, 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.

Suggest separation illustration be included here

⁴¹ 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 Line**⁴²

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

b. **Side Lot Line**⁴³

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 Line**⁴⁴

The rear lot line is the lot boundary opposite and most distant from the front lot line. In the case of a pointed or irregular lot, it shall be an imaginary line parallel to and farthest from the front lot line, not less than 30 feet long and wholly within the lot.

Suggest lot line type illustration be included here

2. LOT TYPES⁴⁵a. **Corner Lot**⁴⁶

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 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.

e. **Interior Lot**

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

f. **Townhouse Lot**

A parcel of land intended as a unit for transfer of ownership and lying underneath, or underneath and around, a townhouse dwelling unit.

Suggest lot type illustration be included here

3. LOT MEASUREMENTS

a. **Lot Area**⁴⁷

⁴² 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.

⁴³ 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.

⁴⁴ This carries forward the current rear lot line definition.

⁴⁵ This is a new section proposed for the Town's consideration. Most of these lot types are not identified in the current ordinance.

⁴⁶ 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.

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 private street.

b. Lot Coverage

Lot coverage is a topic discussed by the Town Council. The direction from Town Council was to explore the way lot coverage is measured, not necessarily to change the current standards. Lot coverage is defined in the current code as follows:

“Lot coverage means that portion of the lot area, expressed as a percentage, that is occupied and obstructed by any structure above the ground including, but not limited to, building, decks, pools, parking areas, accessways, private sidewalks, driveways, and roadways, and any accessory use or structure requiring location on or above the ground. Government owned and maintained sidewalks and multipurpose pathways located on private property are excluded from the calculation of lot coverage.”

The issue here is how we determine the amount of ground area occupied by buildings, and whether or not there are some features that could be credited as pervious under the lot coverage definition. In terms of buildings, the current standards are unclear as to how the size of the building is determined. It may be possible for 1st story eaves of overhangs to be counted in addition to eaves of overhangs that are upper stories. Clarity could be added to ensure lower-story eaves and overhangs are not docuble counted.

The current standards make no allowances for green roofs, rainwater harvesting devices, or pervious materials even though these features do help address stormwater runoff by absorbing some rain water.

In light of these issues, we suggest the following options be considered:

Option A: No changes to the current approach, including no changes in how lot coverage is measured and no credit for provision of pervious or semi-pervious site features.

Option B: Revise the lot coverage measurement approach to measure the outer footprint of all principal and accessory buildings, but excluding any building area or projections located on lower stories and within the outer footprint).

Option C: Remove all or a portion of green roofs (perhaps 75%) from the identified lot coverage for a site.

Option D: Provide a credit towards total lot coverage of ½ of the impervious surface area served by a rainwater harvesting system. Rainwater harvesting systems (like cisterns) capture and hold rainwater for re-use for irrigation or for subsequent release after a rainfall event. This option would necessitate new rainwater harvesting system standards.

Option E: Exclude vehicle use areas and walkways that are comprised solely of crushed stone atop a soil base.

Option F: Allow up to 50 percent of the lot coverage area associated with pervious paving materials (concrete and pavers) to be subtracted from the lot coverage amount. This option should be supplemented with guidance for how vehicular use areas should be configured to ensure smooth transitions with Town or public facilities.

c. Lot Coverage on Oceanfront Lots

⁴⁷ 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.

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.

d. Lot Depth⁴⁸

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.

e. Lot Frontage⁴⁹

The portion of a lot abutting a public or private street right-of-way that provides access to the lot.

f. Lot Width⁵⁰

The distance between straight lines connecting front and rear lot lines at each side of the lot, measured at the building setback line.

Suggest lot measurement illustration be included here

D. REQUIRED SETBACKS⁵¹

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 <>, General Dimensional Standards**.

1. BUILDING SETBACK LINE

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 to 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.

3. MINIMUM CORNER SIDE SETBACK

- a. 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.
- b. The minimum corner setback distance shall be the same as the minimum front setback.

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.

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.

6. YARDS FOLLOWING GOVERNMENT ACQUISITION OF LAND

⁴⁸ This section carries forward the current definition.

⁴⁹ This is a new term, but Section 36-95 of the current code sets out requirements for minimum lot frontage.

⁵⁰ 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.

⁵¹ 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).

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.

Suggest building setback illustration be included here

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. **HABITABLE SPACE⁵²**

- a. The enclosed area above the top plate of a structure is not intended for inhabitation or used for any purpose other than storage of personal effects or property.
- 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 a part of such habitable space.

2. **MAXIMUM HEIGHT DETERMINATION**

Building height determination is a topic discussed by the Town Council. The direction from Town Council was to explore the way building height is measured, not necessarily to change the current standards. Currently, the code applies two maximum height figures to buildings: (1) maximum height to the top plate of a wall, and (2) the maximum overall height (measured to the tallest part of a structure). These terms are defined in the current code in the following ways:

“Height, maximum, means the vertical distance measured from the lowest ground elevation to the top of the tallest part of a structure.”

“Height, top plate, means the vertical distance measured from the average ground elevation to the top of the highest top plate.”

There are two other definitions that must be understood to properly grasp how the height definitions are interpreted: average ground elevation and lowest ground elevation. Those terms are defined in the current code as follows:

“Ground elevation, average, means the average elevation of the finished grade or the original grade, whichever is lower, at the corners of the structure.”

“Ground elevation, lowest, means the lowest elevation of the finished grade or the original grade, whichever is lower, at the corners of the structure.”

⁵² This section is carried forward from Section 36-101 of the current code.

As indicated in the definitions, wall plate height is measured from the **average** ground elevation and maximum height is measured from the **lowest point** of ground elevation. The subsequent definitions clarify where the building heights are determined from and when (whether before or after construction, whichever is lower).

While the concepts of height measurement or grade determination alone are straightforward and easy to understand, the two concepts must be understood together to grasp the concept of how maximum height is determined. The standards are further complicated by the need to understand both wall plate height and total building height (though wall plate height is not as important as total height from a more general aesthetics or compatibility standpoint). Another issue that would benefit from additional clarity is the interplay between the maximum height and lowest grade standards interplay. The lowest grade standard is measured at the corners of a structure but it is unclear if the maximum height is measured from the LOWEST corner.

A separate, but related, issue is the Town's two-foot freeboard requirement and the fact that building heights do not factor freeboard into the maximum height determination. This puts lots with a lower AMSL elevation at a disadvantage to lots with a higher AMSL elevation since structures on lower lots must be higher above the ground to meet freeboard, but they receive no relief in terms of maximum allowable height. Homes on higher AMSL lots lose less allowable habitable space to the freeboard requirement and could project higher above the average rooftop height of homes on surrounding lower lots.

In light of these issues, we suggest the following options be considered:

Option A: No changes to the current approach, including no changes in how height or grade is measured and no allowance of the impacts of freeboard on lots with lower AMSL characteristics.

Option B Consolidate the maximum height and grade definitions (as appropriate) for greater clarity.

Option C: In determining the maximum height, clarify if the lowest ground elevation is taken from the lowest corner, and average of the elevation at all corners, the corner closest to street, or some other location.

Option D: Consider simplifying the approach to standards controlling just the maximum building height.

Option E: In light of the current limitations on habitable occupation of space above the highest wall plate (it may only be used for storage), consider measuring maximum height to the midpoint of a pitched roof and the highest point of a flat roof. This could yield greater diversity in roof styles, if that is a desirable goal.

Option F: Consider revising the current approach to measuring height from the base flood elevation (BFE) instead of the grade. This "levels the playing field" for lots with high or low AMSL. The current total heights could be reduced, as needed, to ensure this approach does not create new incompatible buildings with much taller heights.

Option G: Consider allowing some structures to add additional height (perhaps two feet) to the maximum wall plate height when the base flood elevation is four or more feet above the pre-construction grade elevation. This recognizes the impact of freeboard, but in a less drastic way as suggested in Option F.

Option H: Broaden the current BOA height consideration procedure to allow maximum overall height to increase by up to four feet for single-family detached structures when the base flood elevation is four or more feet above the preconstruction grade.

We note there are other provisions related to height, such as those in Section 36-98 related to structures like church spires, cupolas, or communication masts that are exempted from height requirements, Section 36-175(d) related to height of telecommunications towers, and Section 36-176(c) related to height of wind generation facilities, these standards are proposed to be carried forward with no impact from these suggested changes.

Suggest height measurement illustration be included here

3. STRUCTURES EXCLUDED FROM HEIGHT LIMITATIONS⁵³

Except for banks in the General Commercial (GC) district, the BOA may vary the maximum height limits of up to four feet above the roofline of the building, for the following structures, providing such variances shall be 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 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; and
- e. Communications mast (excluding private television antennas).

G. 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.

H. SIGNAGE⁵⁴

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.
- 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

⁵³ NOTE: This section carries forward Section 36-98 of the current code, however, additional discussion is needed. It appears these provisions rely on the variance process which hinges on the existence of a hardship in order to be granted. The Town should consider a different procedure to consider these height increases other than a variance. It is unclear if these provisions can be extended to residential structures. It is typical to exempt wireless communications equipment from these provisions, and it is unclear if that is the case. It is commonplace to exclude rooftop equipment such as chimneys, elevator shafts, domes, water towers, solar equipment, fire escapes, skylights, roof access stairways, or similar mechanical equipment to operate the building. Should these things be included?

⁵⁴ This section carries forward the sign measurement standards in Section 36-165(2) but adds additional provisions for measurement of sign height.

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.

Suggest signage measurement illustration be inserted here

I. EXTERIOR LIGHTING⁵⁵

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.
3. 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.
4. 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.

J. 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.

2. WALL OR BERM BELOW FENCE

Any retaining wall or berm below a fence shall be included within the fence height.

Suggest fence height measurement illustration be inserted here

K. LANDSCAPING

1. PLANT MATERIAL HEIGHT⁵⁶

Height is measured from the proposed average ground surface elevation immediately adjacent to the buffer.

L. OCEAN ERODIBLE AREA⁵⁷

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:

⁵⁵ 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.

⁵⁶ This standard is carried forward from Section 36-173(b)(2) with no substantive changes.

⁵⁷ 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 PROCEDURES⁵⁸

Table <>, Summary Table of Specific Review Procedures, identifies the review authority for specific development applications reviewed under this chapter.

TABLE <> 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)	PLANNING BOARD	TOWN COUNCIL	BOARD OF ADJUSTMENT		
Amendment (Zoning Chapter or Official Zoning Map)	22.2.3.<>	.	R	<D>	.		
Lot Disturbance and Stormwater Management Permit	22.2.3.<>	D	.	.	<A>		
Planned Unit Development	22.2.3.<>	.	R	<D>	.		
Conditional Use Permit	22.2.3.<>	.	R	<D>	.		
Site Plan	22.2.3.<>	.	R	D [1]	.		
Building, Zoning, or Sign Permit	22.2.3.<>	D	.	.	<A>		
Floodplain Development Permit / Elevation Certificate / Variance to Flood Damage Prevention Standards	See Chapter 28: Flood Damage Prevention						
Certificate of Compliance	22.2.3.<>	D	.	.	<A>		
Variance	22.2.3.<>	.	.	.	<D>		
Appeal (of an Administrative Decision)	22.2.3.<>	.	.	.	<D>		
Vested Right Determination	22.2.3.<>	.	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.							

22.2.2. STANDARD REVIEW PROCEDURES⁵⁹

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 <>, Specific Review Procedures.

B. PURPOSE AND INTENT

⁵⁸ This is a new section proposed to increase user friendliness by indicating the application procedures and review process.

⁵⁹ 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.

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 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.
- c. Application fees are used to defray the cost of application review and required public notification (when required).

4. 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 subsection 6 below.

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;
- 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 <>, **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, 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 <>, **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 <>, **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 NOTIFICATION⁶⁰

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

⁶⁰ 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.

All development applications subject to public notification shall comply with standards in Section 160A-364, Section 160A-384, and Section 160A-388 of the North Carolina General Statutes, the provisions listed in Table <>, **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 <>, **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 <>: 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 Council	X [3]	.	.
Amendment (Official Zoning Map)	Planning Board	X	X	X
	Town Council	X [3]	X	X
Conditional Use Permit (including Planned Development)	Planning Board	.	X	.
	Town Council	.	X	.
Variance	Board of Adjustment	.	X	X
Appeal	Board of Adjustment	.	X	X
Vested Right Determination	Town Council	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.				

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 <>, **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 <>, **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 <>, 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 decision-making body, the decision-making body 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. NOT BOUND BY RULES OF EVIDENCE

Except as otherwise provided in the North Carolina General Statutes, the body conducting a quasi-judicial public hearing is not bound by the rules of evidence, or limited to consideration of evidence that is admissible in a court of law. The body may consider all testimony and evidence it deems competent and material to the application under consideration, but the decision must be based on substantial, competent, material evidence in the record.

3. LIMITATION ON EVIDENCE

The Chair or other presiding officer may limit or exclude incompetent evidence, immaterial evidence, repetitive evidence, and ad hominem attacks.

4. 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.

5. 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 <>, 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 <>, 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, the decision-making body 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 <>, Specific Review Procedures.

2. QUASI-JUDICIAL PROCEDURES

Required quasi-judicial public hearings (see Table <>, Summary Table of Specific Review Procedures) shall be conducted in accordance with Section <>, 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 <>, **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 <>, **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

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).

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 <>, Specific Review Procedures, for the particular type of development permit or approval.
- b. If no expiration period is provided in Section <>, 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 <>, 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 PROCEDURES⁶¹

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 <>, Summary Table of Specific Review Procedures. They apply in addition to, or instead of, the standard procedures set forth in Section <>, Standard Review Procedures.

A. AMENDMENT⁶²

⁶¹ 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.

⁶² 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

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.
- 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 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 Planning Board shall adopt a statement describing whether its action is consistent with the adopted Land Use Plan and explaining why the Planning Board 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. STANDARDS⁶³

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.

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.

⁶³ NOTE: These are new review criteria proposed for the Town's consideration.

- 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;
- 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 PERMIT

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 standards in this section.
- iv. The Town Manager (or a designee) may request reasonable additional information to make a decision on the application.

3. REVIEW CRITERIA

A lot disturbance or stormwater management permit shall be approved, provided it complies with the following:

- a. The standards in Section <>, 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.

C. PLANNED UNIT DEVELOPMENT⁶⁴

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 REQUIREMENTS⁶⁵

Applications for PUD approval shall be submitted in accordance with Section <>, Application Submittal and Acceptance, and shall include 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;
 - 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.
 - 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

⁶⁴ 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.

⁶⁵ NOTE: Are these application requirements associated with the conditional use permit portion of the application or the development plan portion?

Planned unit development applications shall require review and approval of a conditional use permit application in accordance with Section <>, **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 <>, 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 Health and Human Services 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 <>, **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 <> **Common 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 <>, **PUD 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 <>, Off-street Parking and Loading.

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 PLANS⁶⁶

- 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

⁶⁶ NOTE: This language is unclear. It infers that it is addressing changes to plans after approved, but this is just not clear.

- 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 PERMIT⁶⁷

1. GENERALLY

- a. The Town Council may approve permits for conditional uses in the zoning districts where such conditional uses are specified in Table <>, **Principal Use Table**.
- b. Applications for permits for planned unit development, shall be processed in accordance with this section and Section <>, **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 <>, **Common 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 <>, **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 <>, **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 <>, **Approval Criteria**.
- e. In instances where a property owner seeks to obtain a vested right in accordance with Section <>, **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:

- 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.

⁶⁷ This section carries forward Section 36-300 of the current code with no substantive changes.

- 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 article. 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 article and punishable under article XI of this chapter.

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 the 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 PLAN⁶⁸

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, 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.
 - 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.

⁶⁸ 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.

- 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 Council.
 - 10) Storm drainage in accordance with the policy of the Town Council.
 - 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. PROCEDURE⁶⁹

- a. Following submittal of a site plan application, the Planning Board shall review the application and shall recommend approval, conditional approval, or denial of the proposed site plan application
- b. Upon completion of review, the Planning Board will transmit their recommendations to the Town Council.
- c. The Town Council, following review, shall approve, approve with conditions, or disapprove a site plan application.
- d. Approval of a site plan authorizes an applicant to apply for a building permit.

⁶⁹ 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.

- e. A denied site plan may be resubmitted, in accordance with Section <>, Common Review Procedures, when redrafted to meet the specifications of this chapter.

5. REVIEW CRITERIA⁷⁰

A site plan application shall be approved if the application complies with the following:

- a. All standards or conditions of any prior applicable permits and development approvals;
- b. All applicable requirements of this chapter and the Town Code; and
- c. All applicable State and federal laws and requirements.

6. AMENDMENT⁷¹

- 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.

7. EXPIRATION⁷²

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.
 - 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

⁷⁰ NOTE: This is a new section. The current provisions, as best as we can tell, do not include any approval criteria for site plan approval.

⁷¹ This section carries forward the standards in Section 36-299(b)(5) with no substantive changes.

⁷² This section carries forward the standards in Section 36-297(a)(2-4) and (b) with no substantive changes.

- 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 the 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 PERMIT⁷³

1. PURPOSE AND INTENT

This section sets out the procedures 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 <>, 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 <>, 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 REQUIRED⁷⁴

- 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 REQUIREMENTS⁷⁵

⁷³ 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.

⁷⁴ 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.

⁷⁵ 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,

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 state registered 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 Health and Human Services 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 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.
 - 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.
- 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;

but deals primarily with standards related to site plans (either for single-family and duplex dwellings, or site plans for all other uses). Please clarify if single-family detached and duplex dwellings require submittal of a site plan. If so, why are these regulations organized into their own section apart from Section 36-299(b)? Where are the other standards pertaining to application, review, and decision of zoning and building permits for things not requiring a site plan?

- v. Description of proposed sign; and
- vi. Attached drawing of sign annotated with all dimensions.

c. Zoning Permits

The application shall include such other 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 state registered 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 Health and Human Services 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. PROCEDURE⁷⁶

- 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. REVIEW CRITERIA⁷⁷

A building permit, zoning permit, or sign permit (as appropriate) shall be approved only if the application complies with the following standards:

- a. The North Carolina State Building Code;
- b. The adopted fire code;
- c. All standards or conditions of any prior applicable permits and developments approvals; and
- d. All other applicable requirements of this chapter and in the Town Code, including the standards in **Section <>, Signage Standards**, (if applicable).

7. HEALTH DEPARTMENT APPROVAL REQUIRED⁷⁸

The Town Manager (or a designee) shall not approve a building permit for any building for which county department of environmental health approval is required, until such approval has been given.

8. PROOF OF STATE OR FEDERAL APPROVAL REQUIRED⁷⁹

Prior to issuance of a building permit and 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;
- f. Receipts for payment of water connection fee from the county regional water system; and

⁷⁶ NOTE: The current code is silent on the procedure for submittal, review, and decision on a zoning, sign, or building permit.

⁷⁷ NOTE: These are new standards proposed for the Town's consideration. As best we can tell, there are no review criteria for any of these permit types in the current ordinance. Additional discussion is required.

⁷⁸ This section carries forward the standards in Section 36-298 of the current code with no substantive changes.

⁷⁹ This section carries forward the standards in Section 36-299(6) of the current code with no substantive changes.

g. Septic tank or other wastewater treatment approval by appropriate permitting agencies.

9. INSPECTION⁸⁰

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 COMPLIANCE⁸¹

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 has been issued in accordance with Section 160A-423 of the North Carolina General Statutes, and this section.
- b. A certificate of compliance shall be required upon renewal, change, or extension a nonconforming use.
- c. A record of all certificates of compliance shall be kept on file in Town Hall.

2. WHEN REQUIRED

A certificate of compliance 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 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. APPEALS OF ADMINISTRATIVE DECISIONS⁸²

1. ADMINISTRATIVE DECISIONS

a. Definition⁸³

- i. An appealable "administrative decision" is any final and binding order, requirement, or determination issued in writing by an administrative official charged with enforcement of this chapter.
- ii. Administrative decisions include, but are not limited to:
 - 1) Permit issuance or denial;
 - 2) Issuance of a notice of violation, warning citation, or civil citation; or
 - 3) Issuance of a formal interpretation of a provision of this chapter.

b. Formal Interpretation⁸⁴

- i. Only formal interpretations issued in accordance with this subsection are subject to being appealed as an administrative decision.

⁸⁰ 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. Additional discussion is necessary.

⁸¹ 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.

⁸² 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.

⁸³ This should be in definitions.

⁸⁴ 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. Is this the case?

- 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.
- c. 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.
- d. 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.⁸⁵
 - 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."
- e. 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.
- f. 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 <>, Time to Appeal**.

2. 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 board.
- 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 <>, 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:

⁸⁵ 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.

- 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.⁸⁶
- d. Duties of Official who Made Decision**
- i. No less than one week before an appeal is to be heard, the official who made the decision being appealed shall transmit to the BOA all documents and exhibits constituting the record upon which the action appealed from is taken.
 - ii. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
 - 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 <>, **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**

⁸⁶ NOTE: Posting a sign is not a requirement under the statutes. We suggest it not be included here.

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.

3. 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 <>, When Effective**. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

J. VARIANCE⁸⁷

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

⁸⁷ NOTE: This section carries forward the standards for a variance in Section 36-367 of the current ordinance as directed by staff.

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.
 - 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 <>, 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.

K. VESTED RIGHT DETERMINATION⁸⁸

⁸⁸ 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 Council for approval. Perhaps this process could be simplified by

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 <>, Specific Review Procedures, and shall not include a vested rights determination.
- 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 <>, 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

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 Council.

- 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 ENFORCEMENT⁸⁹

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: Violations 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: Violations and Enforcement of this Town Code.

B. 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: Offences and Enforcement, to ensure compliance with or to prevent violations of its provisions.

C. PENALTIES FOR VIOLATION

Any violation of this chapter shall subject the offender to remedies prescribed in Chapter 36: Offences and Enforcement.

⁸⁹ 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.

22.3. ZONING DISTRICTS

This chapter sets out the provisions for the base and overlay zoning districts as well as the Official Zoning Map.

22.3.1. OFFICIAL ZONING MAP⁹⁰

A. ZONING MAP ESTABLISHED

The Official Zoning Map of the Town of Southern Shores divides the Town and the 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".

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 <>, Zoning Map Amendment**, 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 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; boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such centerlines;
5. 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;
6. Where physical or cultural features existing on the ground 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 Board of Adjustment shall interpret the district boundaries;
7. 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 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
8. 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.

⁹⁰ This section carries forward Section 36-25 of the current code with minor text editing for clarity.

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, Top Plate (feet)	26
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)	25			

NOTES:

[1] The maximum lot coverage for Town-owned facilities and fire stations is 85 percent.

3. ILLUSTRATION

[Placeholder]

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			

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

[Placeholder]

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-1 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) ⁹¹	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
<p>NOTES:</p> <p>[1] Applies to townhouse dwellings as well as single-family detached dwellings as part of a group development.</p> <p>[2] Applies to single-family detached dwellings in traditional and group development.</p>					
3. ILLUSTRATION					
[Placeholder]					
4. DISTRICT SPECIFIC STANDARDS					
<p>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-1 districts.</p> <p>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.</p>					

⁹¹ NOTE: The current standards list a “minimum lot size for single-family detached residence” and do not list a minimum lot size for other uses. Discussion is needed as to whether churches and community recreation facilities, which are allowed in the RS-10 district as conditional uses, should use the same minimum lot size as single-family detached dwellings.

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 [2]
B	Minimum Lot Width (feet)	100	H	Maximum Height, Top Plate (feet)	26 [3]
C	Minimum Front Setback (feet)	25	I	Maximum Height (feet)	35 [4]
D	Minimum Side Setback (feet)	15	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			

NOTES:

- [1] For clubs, public or private (including country clubs), the minimum lot size shall be 150 acres.
- [2] 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.
- [3] 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.
- [4] 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

[Placeholder]

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 Side Setback (feet)	15
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
NOTES: [1] Maximum lot coverage for Town-owned facilities and fire stations is 85 percent.			S	Maximum Height (feet)	35
			T	Minimum Living Space (square feet)	1,000
			U	Maximum Size of Single-family Dwelling (square feet)	6,000

3. ILLUSTRATION

[Placeholder]

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 Health and Human Services Department, to provide adequate siting for structures, and to provide parking, loading and maneuvering space for vehicles as required by [Section <>, Off-Street Parking](#).

[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 NCDENR 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

[Placeholder]

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 <>, 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 SPACE⁹²

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 PROHIBITED⁹³

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 MAINTAINED⁹⁴

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 LOT⁹⁵

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.

22.3.6. ENCROACHMENTS⁹⁶

⁹² This section carries forward the standards in Section 36-90 of the current code.

⁹³ This section carries forward Section 36-91(a) of the current code.

⁹⁴ 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.

⁹⁵ This section carries forward Section 36-94 of the current code.

⁹⁶ 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. These appear in the yellow rows in the table.

Table <>, 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 <>, 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
Required off-street parking space	May encroach into required setbacks, but not required landscaping areas Parking spaces serving multi-family residential uses may not be located in the between the front of the building and the street it faces
Fences and walls	May be located in any required setback
Flagpoles, mailbox, lamp and address posts	May be located in any required setback
Decks	Shall be subject to the setbacks applied to principal structures
Handicap ramps	May encroach into a required setback up to three feet
Signs	May encroach into or be located within any required setback subject to applicable standards in Section <>, Signage Standards
Vegetation and landscaping features	May be located in any required setback
Underground structures except pools	May be located in any required setback
Pools, patios, terraces	May encroach into a required side or rear setback up to five feet, but may not encroach into a front or corner side setback
Covered porches, patios, 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
<p>NOTES:</p> <p>[1] Accessory structures shall be subject to the standards in Section <>, Accessory Uses.</p> <p>[2] Ocean dune platforms, walkways, and associated steps are addressed in Section <>, Standards for Specific Accessory Uses.</p>	

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 STRUCTURE⁹⁷

A. GENERALLY

1. **Table <>, 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 <>, Conditional Use Permit**, and any additional standards referenced in the principal use table.

D. PROHIBITED USES⁹⁸

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. Floating home;
 - b. Sexually oriented businesses;
 - c. Explosives manufacturing; and
 - d. Landfills.

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 <>, Zoning Districts**.

22.4.2. PRINCIPAL USE TABLE⁹⁹

TABLE <>. PRINCIPAL USE TABLE		
	P = Permitted Uses	C = Conditional Uses · = Prohibited Use [1]
USE TYPE	ZONING DISTRICT	ADDITIONAL

⁹⁷ This section contains new prefatory information which explains how to read and interpret the principal use table.

⁹⁸ This section addresses recent NC Supreme Court rulings regarding the need to identify prohibited uses. There may be other uses (including accessory uses) the Town wishes to prohibit.

⁹⁹ NOTE: This table includes several use types not listed as permitted or conditional uses in the district standards, but present in other 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.

Chapter 22 Zoning

22.4 Use Standards 22.4.2 Principal Use Table

	RS-1	RS-8	RS-10	R-1	G&I	C	OSW	
RESIDENTIAL								
Duplex	.	P	.	.	.	P	.	◇
Floating Home ¹⁰¹	.	.	.	.	.	.	.	◇
Residential group development	.	.	C	.	.	.	.	◇
Manufactured home ¹⁰²	.	.	.	P	.	P	.	◇
Multifamily dwellings	.	P	.	.	.	P	.	◇
Planned unit development	.	.	.	.	.	P	.	◇
Single-family detached dwelling	P	P	P	P	P	P	.	◇
Townhouse dwelling			C					◇
INSTITUTIONAL¹⁰³								
Church or place of worship	.	C	C	C	.	.	.	◇
Clinic (medical and dental)								◇
Community Beach Access	P	.	.	.	.	.	.	◇
Community recreation facility	C	C	C	C	C	.	.	◇
Club, public or private (including country club)			.	C				◇
Fire station	C	C	.	C	.	.	.	◇
Governmental office	.	.	.	.	P	.	.	◇
Medical evacuation facilities	C	.	.	.	.	.	.	◇
Nonprofit entity office	.	.	.	.	P	.	.	◇
Parking lot	.	.	.	.	P	.	.	◇
Police station	.	.	.	.	P	.	.	◇
Schools and other public buildings	.	C	.	C	.	.	.	◇
Substation (telephone or electric)	P	P	P	P	P	P	.	◇
Wind generation facility	C	C	C	C	C	C	.	◇
Sewage system effluent disposal subsurface drainfields and repair areas	.	.	.	.	.	C	.	◇
COMMERCIAL								
Child day care center	.	.	.	.	.	C	.	◇
Event facility	.	.	.	.	.	P	.	◇
Garden center/nursery	.	.	.	.	.	C	.	◇
Group development of commercial buildings	.	.	.	.	.	C	.	◇
Office	.	.	.	.	.	P	.	◇
Restaurant	.	.	.	.	.	C	.	◇
Retail store	.	.	.	.	.	P	.	◇
Service establishment	.	.	.	.	.	P	.	◇
Sexually oriented businesses	.	.	.	.	.	.	.	◇

¹⁰⁰ This column contains placeholders for what will be links to any additional use standards for each use.

¹⁰¹ This use is prohibited throughout the Town's planning jurisdiction.

¹⁰² This is a new use type that needs to be included for consistency with the Fair Housing Act.

¹⁰³ 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. Additional discussion is needed.

TABLE <>. PRINCIPAL USE TABLE								
P = Permitted Uses			C = Conditional Uses			. = Prohibited Use [1]		
USE TYPE	ZONING DISTRICT							ADDITIONAL STANDARDS ¹⁰⁰
	RS-1	RS-8	RS-10	R-1	G&I	C	OSW	
Theatre	C	.	<>
Veterinary clinic	C	.	<>

NOTES:
 [1] Uses associated with an application subject to Section <>, Vested Right Determination, shall be subject to the conditional use permit standards in Section <>, Conditional Use Permit regardless of how permitted in this table.

22.4.3. UNLISTED USES

- A. For use types not listed in Table <>, Principal Use Table, not listed as an example of a use type in Chapter 4: Definitions, and not listed as a prohibited use in Section <>, Prohibited Uses, the Town Manager (or designee) shall determine which use category or 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 the unlisted uses.
- 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. Generally¹⁰⁴

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;

¹⁰⁴ This is a new set of standards that apply to manufactured homes that are built on their own lot.

- 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 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

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.<>, **Manufactured Home Standards**.

2. PLANNED UNIT DEVELOPMENTS¹⁰⁵

Development proposed as part of or located within a planned unit development shall comply with the standards in Section <>, **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 <>, **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

- a. It shall be prohibited for open commercial activity to take place at a community recreation facility.¹⁰⁶
- b. No signage other than directional signage shall be allowed at a community recreation facility.¹⁰⁷

3. GOVERNMENTAL OFFICES

Governmental offices located in the G&I District are exempt from the requirements of Section <>, **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.

¹⁰⁵ NOTE: We recommend that PUDs not be dealt with in the use section. This language is included here, and in the summary use table, for now, but we would like to discuss removing it.

¹⁰⁶ NOTE: The language about “open commercial activity” is from the current text in Section 36-202(c)(1) and other sections. Discussion is needed as to the definition of “open” commercial activity.

¹⁰⁷ NOTE: Discussion is needed as to how the Town would like to address “directional” and “safety” signage under the Reed ruling. This language is carried forward for now, but will likely need to be revised.

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 dropoff areas shall be provided separate from the drive aisle.
- c. The pickup and dropoff areas shall be designed so that no child is required to cross the parking lot or any other traffic areas.

2. EVENT FACILITIES¹⁰⁸

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 Health and Human Services 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.

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 <>, 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 <>, 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

¹⁰⁸ 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.

Event venues shall ensure adequate ingress and egress from all buildings and structures to accommodate emergencies.

3. 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.

4. 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.

5. 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.

6. 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.

7. SEXUALLY ORIENTED BUSINESSES¹⁰⁹

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 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

¹⁰⁹ This section carries forward the standards in Section 36-172 with no changes.

- 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 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.

8. 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 <>, Zoning Permit**, 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 STRUCTURE¹¹⁰

1. TABLE AS GUIDE

Table <>, 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 <>, 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 <>, 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 <>, Accessory Use Table**, on a case-by-case basis, in accordance with the procedure in **Section <>, Formal Interpretation**. shall require preparation of a written formal interpretation as part of determining an unlisted accessory use type.
- b. In making the interpretation, 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 <>, General Standards for Accessory Uses**;
 - ii. The additional regulations for specific accessory uses established in **Section <>, Standards for Specific Accessory Uses**.
 - iii. The purpose and intent of the zoning district in which the accessory use is located (see **Section <>, 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 <>, Accessory Use Table, specifies common types of accessory use types and the zoning districts where each type shall be permitted.

¹¹⁰ 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 22.6.6. ACCESSORY USE TABLE ¹¹¹								
P = PERMITTED USES			C = CONDITIONAL USES			. = PROHIBITED USE		
USE TYPE	ZONING DISTRICT							ADDITIONAL STANDARDS ¹¹²
	RS-1	RS-8	RS-10	R-1	G&I	C	OSW	
Accessory dwelling unit ¹¹³	P	P	P	P	C	.	.	
Beach access walks, ramps, and steps ¹¹⁴	P	P	.	P	.	.	.	
Boathouse ¹¹⁵	P	.	.	.	.	.	.
Boat lift	P	P	P	P	.	.	P	
Boat ramp	P	P	P	P	.	.	P	
Child day care	.	.	.	C	P	P	.	
Child day care, small home	C	.	.	C	.	.	.	
Drive-through facility	.	.	.	.	.	C	.	
Estuarine bulkhead	P	P	P	P	.	P	P ¹¹⁶	
Garage	P	P	.	P	P	P	.	
Home occupations and home based businesses	P	P	P	P	.	.	.	
Ice vending structure	.	.	.	.	.	C	.	
Ocean dune platform	P	P	.	P	.	.	.	
Piers and docks	P	P	P	P	.	.	P	
Sewage treatment drainfields	.	.	.	.	.	P	.	
Storage of heavy trucks, trailers, semitrailers, and prefabricated cargo shipping containers	.	.	.	.	.	.	.
Swimming lessons	C	.	.	.	.	.	.
Swimming pool	P	P	.	P	.	.	.	
Tennis court	P	P	.	P	.	.	.	
Wind energy conversion facilities ¹¹⁷	C	C	C	C	C	C	.	
Wireless telecommunications site	C	.	.	C	C	C	.	
Wireless telecommunications site collocation	P	.	.	P ¹¹⁸	P	P	.	

¹¹¹ 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.

¹¹² As in the Permitted Uses Table, the right-most column will contain links to any additional use standards for each accessory use.

¹¹³ NOTE: This is a new use type proposed for the Town's consideration.

¹¹⁴ 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.

¹¹⁵ 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

¹¹⁶ 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.

¹¹⁷ 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.

¹¹⁸ 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.

D. GENERAL STANDARDS FOR ACCESSORY USES¹¹⁹

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:

- a. Are clearly incidental to an allowed principal use or structure;
- b. Are subordinate to and serving an allowed principal use or structure;
- c. Are subordinate in area, extent, and purpose to the principal use or structure;
- d. Contribute to the comfort, convenience, or needs of occupants, business or industry associated with the principal use or structure;
- e. Are located on the same lot as the principal building or the principal use served; and
- f. Are not sexually oriented businesses or sexually oriented business activities.

2. LIVING SPACE PROHIBITED

It shall be prohibited for any accessory use to be used as living space.

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 <>, Zoning Districts](#), or the development standards in [Section <>, Development Standards](#).

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 <>, 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 <>, Zoning Districts](#), or use-specific standards for a principal use in [Section <>, 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 <>, Standards for Specific Accessory Uses](#), accessory uses or structures located within a flood hazard area shall also comply with the standards in [Section 28.<>, Accessory Structures](#).

E. STANDARDS FOR SPECIFIC ACCESSORY USES

1. ACCESSORY DWELLING UNIT¹²⁰

An accessory dwelling unit (ADU) is permitted as accessory to a single-family detached dwelling if it complies with the following standards:

a. General

- i. No more than one ADU shall be located on a lot with a single-family detached dwelling.
- ii. An ADU shall have a maximum of two bedrooms.

¹¹⁹ 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.

¹²⁰ NOTE: These are new standards proposed for the town's consideration. As drafted, these standards would allow an ADU in a detached structure. The relevant language in Chapter 28: Flood Damage Prevention, has been modified as well.

- iii. An ADU and the principal dwelling shall have the same street address and mailbox.
- iv. An ADU shall not be subdivided or otherwise separated in ownership from the principal dwelling unit.
- v. An ADU and the principal dwelling shall utilize the same driveway, unless the ADU is accessed from a right-of-way not used by the principal dwelling (e.g., a rear alley or separate street access on a corner or through lot).
- vi. An ADU shall be served by water, sanitary sewer, gas and electrical utilities as part of the principal dwelling.

b. Design

An ADU shall maintain the architectural design, style, appearance and character of the principal dwelling by incorporating design elements such as similar materials, façade treatment, colors, window style, roof design, and roof pitch.

c. Location

i. Principal Structure

- 1) If an ADU is located within the principal structure, the ADU shall not exceed 30 percent of the gross floor area of the structure.
- 2) Entrance doors or exterior stairways to the ADU facing streets shall be prohibited; separate access to the ADU shall be by means of a side or rear door in the principal structure.

ii. Accessory Structure

If an ADU is located in an accessory structure, it shall meet the residential accessory structure requirements in Section <>, **General Standards for Accessory Structures**.

2. BEACH ACCESS WALKS, RAMPS, AND STEPS

Beach access walks, ramps, and steps shall not exceed four feet in width.

3. BOAT LIFTS

Boat lifts shall be subject to an approved CAMA permit.

4. 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.

5. 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.

6. CHILD DAY CARE, SMALL HOME

- a. Small home 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 small home child day care use is not treated as a home occupation.

7. 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.

8. ESTUARINE BULKHEADS

Estuarine bulkheads must be permitted by all applicable local, state, and federal agencies having jurisdiction.

9. 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.
- c. Design**
- i. The finished side of the fence shall face the adjacent lot or street.
 - ii. Fence or wall material shall be compatible with other exterior materials used on the site.¹²¹

10. HOME OCCUPATION / HOME BASED BUSINESS¹²²

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

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.

11. 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.

¹²¹ NOTE: This is taken from the current regulations. What happens if the site is vacant?

¹²² This section carries forward the standards in Section 36-239 of the current code with no substantive changes.

- 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. 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.

12. PIERS AND DOCKS

a. Generally

- i. Piers and docks must be permitted by the state 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 zoning administrator will determine the distance that a dock/bulkhead may protrude in the water. Docks will be constructed parallel to the banks of the lagoon.
- ii. No dock, piling or moored boat shall protrude into any area within 15 feet of the centerline of the waterway.
- iii. Dock and bulkhead designs shall meet the standards and Code requirements in existence at the time of granting of the permit.
- iv. 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.

13. RECREATIONAL VEHICLES

- a. Recreational vehicles located in a flood hazard area shall comply with the standards in Section 28.<>, **Recreational Vehicles**.
- b. Recreational equipment parked or stored in any location shall not be used for living, sleeping, or housekeeping purposes.

14. 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 <>, Landscaping**, 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.

15. 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.

16. 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.

17. WIND ENERGY CONVERSION FACILITIES¹²³

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 article.
- 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 article.
- 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 as an accessory use to a structure.
- 2) No more than one attached wind energy conversion facility 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 be a self-supporting monopole; and installation and design of the wind energy conversion facility shall be site specific and conform to applicable industry standards, including those of the American National Standards Institute.

¹²³ 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.

- 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 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 which identifies the turbine manufacturer or facility owner 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.¹²⁴

v. Noise and Vibration

- 1) Wind energy conversion facilities shall comply with the standards established in **Section <>, 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 registered 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;

¹²⁴ This subsection has been revised to be Reed compliant. References to sign content (“advertising”) have been removed to withstand strict scrutiny.

- 7) Other relevant information as may be reasonably requested by the Town of Southern Shores to ensure compliance with the requirements of this section;
- 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, setbacks, and fall zones.

18. WIRELESS TELECOMMUNICATIONS SITE¹²⁵

All wireless telecommunications sites, new wireless support structures or substantial modification of wireless support structures located within the Town shall comply with the following requirements:

a. Safety

All proposed telecommunication towers, new wireless support structures or substantial modification of wireless support structures and wireless facilities shall comply with all applicable federal, state and local laws including specifically the following:

- 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;
- 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. Accommodation of Collocation

i. 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.

ii. 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.

c. Development Standards

i. Location

1) Short Telecommunications Towers

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 Town Council may reduce or disregard the distance requirement stated herein.

¹²⁵ 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 components which refer to components which refer to collocation and eligible facilities requests are located in the section immediately following this one.

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.
- c) Wireless support structures using other designs, including, but not limited to guyed towers and lattice type towers shall not be permitted.

2) 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 <>, 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 Council 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 <>, 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.¹²⁶
- 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.

d. Dimensional Standards

i. 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.

- 1) In no case shall a wireless support structure of any kind or any attached wireless facilities exceed 195 feet in height.
- 2) The height of tall telecommunications towers shall not exceed 195 feet.
- 3) The height of short telecommunications towers shall not exceed 70 feet.
- 4) The height of stealth structures incorporated within or upon an otherwise permitted structure shall not exceed the height allowed for the structure.
- 5) 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.
- 6) In no case shall a wireless support structure of any kind or any attached wireless facilities exceed the minimum height necessary to accomplish the purpose it is proposed to serve. Notwithstanding the foregoing, when measuring the height of a wireless support structure, the purpose of the structure may include maximizing the ability for collocations upon the structure and shall include ensuring that the structure is capable of supporting at least the minimum number of collocations required by this Ordinance.

ii. Setbacks

- 1) 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 <>, Safety**, is maintained.
- 2) The base of a wireless support structure shall be at located at least one foot from the nearest property line for every one foot of proposed height.
- 3) 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-

¹²⁶ This subsection has been revised to be *Reed* compliant. References to commercial- and non-commercial signage have been removed to withstand strict scrutiny.

third of the height of the proposed structure. The 1:1 setback requirement may only be reduced 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 any or all of the following are also shown by the applicant:

- a) No dwelling unit is located or can be constructed within the fall zone of the wireless support structure; or
 - b) 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.
- 4) When stealth structures are incorporated within or upon an existing or otherwise permitted structure, the setbacks associated with the structure shall apply.
 - 5) 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 Council may reduce the setback to no less than 15 feet.

e. Review of Applications¹²⁷

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 article 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

- 1) 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, 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

¹²⁷ 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.

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 Council determines that denial of a permit based on any requirement or requirements of this section as applied to the application before the Town Council may be contrary to federal or state law, the Town Council may in its sole discretion vary, modify or disregard any such requirement in a manner which complies with the relevant law. The Town Council 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 <>, 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 supports structure height requirements, setbacks, access driveways or easements, parking, fencing, landscaping, adjacent uses and any other information necessary to assess compliance with this article 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.

19. WIRELESS TELECOMMUNICATIONS SITE COLLOCATION¹²⁸

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

¹²⁸ 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.

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 <>, 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.
- 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 USES¹²⁹

¹²⁹ 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.

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 <>, 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;
- 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 <>, Standards for Specific Temporary Uses, temporary uses or structures located within a flood hazard area shall also comply with the standards in Section 28.<>, 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 1 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 compliance 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 THOROUGHFARES¹³⁰

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

The following standards 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 curblines.
3. There shall be a minimum distance between one-way driveways of 50 feet measured along the curblines.¹³¹

C. LOT FRONTAGE¹³²

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.

D. SIGHT DISTANCE TRIANGLES¹³³

Corner lots shall include sight distance triangles, configured in accordance with the following standards:

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 registered engineer.

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.

Suggest a sight distance triangle configuration illustration be included here

22.5.2. OFF-STREET PARKING STANDARDS¹³⁴

¹³⁰ This section carries forward the standards in Section 36-169 with no substantive changes.

¹³¹ Carries forward the standards in Section 36-163(2)(c) with no substantive changes.

¹³² 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.

¹³³ 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.

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 zoning use or occupancy to another, permanent off-street parking space shall be provided according to the amounts and specifications provided by this section.

B. GENERAL PROVISIONS

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 CONFIGURATION¹³⁵

1. MINIMUM SPACE SIZE

- a. Each parking space, for other than single-family residential homes, duplexes, and townhouses shall have a minimum length of 18 feet and a minimum width of nine and one-half feet.
- b. Parking spaces serving single-family residential homes, duplexes, and townhouses shall have a minimum of length of 18 feet and minimum width of eight feet.
- c. 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, in which case a bumper or wheel stop shall be installed.
- 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.
- e. Each parking space shall be marked off and maintained so as to be distinguishable.

Suggest a parking space configuration illustration be included here

2. COMPACT PARKING SPACES

- a. Identified compact parking spaces may be allowed within group development parking lots for no greater than 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 ACCESSWAYS¹³⁶

- a. Except for single-family residential homes, duplexes, and townhouses, drive aisles serving off-street parking areas shall be at least 22 feet wide.
- b. Drive aisles serving single-family residential homes, duplexes, and townhouses shall be at least eight feet wide.
- c. 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.
- d. Sufficient 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.
- e. On lots occupied by single-family residential homes, duplexes, and townhouses, 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. SURFACING¹³⁷

¹³⁴ 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.

¹³⁵ 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.

¹³⁶ These standards have been supplemented with the standards related to residential parking requirements in Section 36-163(3)(a) of the current code.

- a. Except for single-family detached and duplex dwellings, required parking spaces and driveways shall be graded, improved with concrete, asphalt, or pavers and maintained in a manner which will provide a surface permitting safe and convenient use in all weather conditions.
 - b. Single-family detached and duplex dwellings may employ concrete, asphalt, pavers, gravel, sand, or grass.
- 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**
- 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. LOCATION**
- a. Any off-street parking space required by a use permitted in any residential zoning district shall be provided on the same lot with the use by which it is required.
 - b. Off-street parking space in conjunction with commercial uses in other districts shall not be permitted in a residential district.
 - c. No off-street parking spaces serving a residential use shall be located in the required front yard (setback).
 - d. No off-street parking lot shall be located closer than five feet to a public right-of-way.
- 8. 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.

D. MINIMUM OFF-STREET PARKING REQUIREMENTS¹³⁸

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 REQUIREMENTS

Table <>, Minimum Parking Requirements, sets out the minimum number of required off-street parking spaces by use type.

TABLE <>, MINIMUM PARKING REQUIREMENTS		
USE TYPE	OFF-STREET PARKING SPACES REQUIRED	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
Manufactured home ¹³⁹		

¹³⁷ NOTE: Depending on the Town Council's direction with respect to lot coverage, this section may include additional clarification regarding how surfacing affects maximum allowable lot coverage.

¹³⁸ 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.

¹³⁹ This is a new use type that needs to be included for consistency with the Fair Housing Act.

TABLE <>, MINIMUM PARKING REQUIREMENTS		
USE TYPE	OFF-STREET PARKING SPACES REQUIRED	NOTES
		Services Department
Multifamily dwellings	2.5 spaces per unit	
Planned unit development	In accordance with the master plan	
Single-family detached dwelling ¹⁴⁰	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
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 600 square feet of outdoor area + 1 space for every 400 square feet of indoor area	
Fire station	1 per employee + 1 per volunteer (new)	
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)	
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)	1 space + 1 space for every 2 collocators (new)	
COMMERCIAL USES		
Child day care center	1 space for every 400 square feet of gross floor area (new)	
Event facility ¹⁴¹	1 space for every 150 square feet of floor area	
Garden center/nursery	1 space per every 500 square feet of retail display area	
Office	1 space for every 200 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)	

¹⁴⁰ We have simplified the parking calculation to be a minimum number of spaces per septic capacity. With rounding up, the requirements are the same as the current standard.

¹⁴¹ NOTE: We think this requirement is too low. A 6,000 square foot facility requires 40 spaces.

TABLE <>, MINIMUM PARKING REQUIREMENTS

USE TYPE	OFF-STREET PARKING SPACES REQUIRED	NOTES
Theatres	1 space for every three seats	
Veterinary clinic	5 spaces per veterinarian + 1 per employee	Use must maintain at least 16 spaces

2. SHARED PARKING¹⁴²

- Shared parking spaces are not required to be on the same lot as the principal use they serve.
- Shared parking spaces serving separate uses may be combined on one lot.
- Nothing shall limit the assignment of shared parking for one use to another use sharing the same spaces, provided the peak attendance or peak usage times between the two or more uses occur at different times or on different days of the week.

3. REDUCTION FOR PROVISION OF BICYCLE PARKING¹⁴³

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 REQUIREMENTS¹⁴⁴**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 of **Table <>, Off-Street Loading Space Requirements**.

TABLE <>: 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

- A loading berth shall have minimum plan dimensions of 12 feet by 60 feet and a 14-foot overhead clearance.
- 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.
- The Town Manager (or a designee) shall determine if a proposed loading space is sufficient in terms of its size or capacity.
- 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.
- 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

¹⁴² Carries forward the standards in Section 36-163(1)(i) with no substantive changes.

¹⁴³ 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.

¹⁴⁴ This section carries forward the standards in Section 36-163(2)(g) with no substantive changes.

the open-face paving block is equivalent to turfstone in terms of compressive strength, density, absorption, and durability.

22.5.3. LANDSCAPING STANDARDS¹⁴⁵

A. PURPOSE AND INTENT¹⁴⁶

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. APPLICABILITY¹⁴⁷

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 DISTINGUISHED¹⁴⁸

Table <>, Landscape Buffers Distinguished, sets out the three differing types of landscape buffers and their configurations. These are minimum standards, and nothing shall prohibit the installation of a buffer that exceeds these minimum requirements.

TABLE <>: LANDSCAPE BUFFERS DISTINGUISHED				
BUFFER TYPE	MINIMUM BUFFER WIDTH (FEET)	MINIMUM HEIGHT OF PLANTINGS (3 YEARS AFTER)	MINIMUM OPACITY [1]	ADDITIONAL REQUIREMENTS [2]

¹⁴⁵ 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.

¹⁴⁶ This section carries forward the standards in Section 36-173 of the current code with no substantive changes.

¹⁴⁷ This is a new section based on the final paragraph in Section 36-173, but also adds screening provisions.

¹⁴⁸ 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, but additional discussion is necessary. One other issue for discussion is that the buffer standards are not clear on the types of vegetation required (canopy trees, understory trees, shrubs, ground cover, etc.). It is more common to provide a minimum number of trees and shrubs for every 100 linear feet of a buffer.

		PLANTING)		
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.

NOTES:

- [1] The bottom foot of the buffer may allow visual contact between uses.
- [2] Berms shall be comprised of clean, suitable, native, or borrowed soil material with finished slopes not exceeding 1:3 (rise:run).
- [3] The vegetation may be 50% opaque, but the buffer requires a fully-opaque fence.
- [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.

Suggest an illustration of buffer types be included here (we will need to rely on Town staff to provide these images or identify examples suitable for use)

2. WHERE REQUIRED¹⁴⁹

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;
 - ii. Public and private streets; and
 - iii. Driveways.
- b. The following forms of development shall not be located within a required landscape buffer:

¹⁴⁹ 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.

- 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 LANDSCAPING¹⁵⁰

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.

- 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.

e. Stormwater Management

A landscape island may be designed to function as a stormwater management device provided its landscaping performance function is maintained.

¹⁵⁰ 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.

Suggest an illustration of interior parking lot landscaping be included here

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.
- 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.

Suggest an illustration of perimeter parking lot landscaping be included here

E. SCREENING¹⁵¹

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

- a. The following items are permitted for use as screening materials. 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.

¹⁵¹ This section replaces Section 36-174 in the current code which pertains to screening of natural gas facilities.

- 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.

Suggest an illustration of screening methods be included here

F. LANDSCAPING PLAN¹⁵²

1. PRELIMINARY LANDSCAPING PLAN

- a. A preliminary landscape 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. The determination of what constitutes a significant expansion warranting a preliminary landscape plan shall be made by the Town Manager (or a designee).
- b. The preliminary plan shall be reviewed and decided by the decision-making body deciding the application.

2. FINAL LANDSCAPING PLAN

A final landscape plan shall be submitted as part of the application for a building permit, and shall be in substantial conformity with the preliminary landscaping plan, as modified during the review and approval process.

G. MAINTENANCE¹⁵³

- 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.
- 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. TREE REMOVAL ON LOTS

Tree removal as part of construction on private property was a topic discussed by the Town Council. Tree preservation standards can often be complicated, divisive, and difficult to enforce, particularly in communities where tree preservation standards are applied to single-family detached development. The current standards include no provisions for tree protection, preservation, or replacement.

There is a very wide continuum of tree preservation standards all the way from no standards at all, to voluntary incentives for tree retention, to mandatory tree retention during construction only, to mandatory reforestation following construction, to mandatory tree retention during and after construction. The impact on development potential and necessary staff resources increases as you move along the tree protection standards continuum – voluntary incentives require only minimal staff resources, mandatory retention of existing trees requires considerable staff resources (particularly when enforcing post-construction standards applied to single-family development). The following paragraphs describe each step along the continuum for the Town's consideration.

¹⁵² NOTE: This section replaces Section 36-173(d) as this section includes considerable inconsistencies. Why are applicants asked to submit a final landscaping plan?

¹⁵³ 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.

Option A: No provisions for tree protection, replacement, or preservation. The Town's current standards include no provisions for tree protection, replacement, or preservation.

Option B: Voluntary incentives for tree retention. In this approach, a local government creates incentives, often in the form of accelerated credit towards landscaping requirements, for developments that retain existing trees of a minimum size (typically 6" DBH or larger). Developers who retain existing trees for use as part of required landscaping get greater credit towards meeting the standard for use of existing trees (typically 1½ times) than for the planting of new trees. It is not necessary for trees to be retained to meet landscaping requirements, but incentives are of little value when it comes to keeping trees that serve no landscaping performance function. This system incentivizes tree retention outside the edges of a site where landscaping is typically required anyway. It does require the applicant to document the existing trees in place proposed for credit, and requires tree protection measures to be employed during construction.

Option C: Mandatory tree retention during construction. This options crosses the boundary from voluntary to mandatory tree protection, but only requires it during the construction phase (in other words, a landowner could remove retained trees after construction with no penalty, as long as the performance requirements for landscaping are maintained. This approach also rests largely on the preservation of trees around the edge of a development site (typically in the areas required for side and rear yards or setbacks). This method requires tree protection measures to be in place during construction, and because it is mandatory, also requires enforcement provisions and monitoring during construction. There must also be mitigation provisions to address cases when required trees are damaged or removed during construction. Mitigation standards can be re-planting requirements, payments in-lieu, or some other approach, but all require management oversight from Town staff. It is easier to administer after construction since the mandate to save trees goes away (but not the required landscaping performance objectives).

Option D: Mandatory reforestation. This is the next step along the continuum, and relies on the notion that trees may be removed during construction as long as all or a portion of the canopy is re-established after construction through on-site re-forestation efforts. This approach requires the applicant to identify, and the Town to verify, the amount of existing tree canopy cover on a site before construction or development begins. The standards typically specify a threshold portion of the existing tree canopy cover to be re-established (typically 50 to 75%) through reforestation efforts after development. An applicant may avoid the reforestation requirements by simply retaining the trees necessary to meet the reforestation threshold, or may remove some or all of the canopy and reforest after development. This approach recognizes that it will take some time (typically 10 years) to re-establish the pre-development level of tree canopy cover. Like the other standards, this approach requires the Town to know what level of tree canopy cover existed before development, monitor any trees to be saved during development, and then monitor to ensure no tree removal occurs after development until the site reaches the specified level of canopy cover- after that, the local government no longer monitors the site. This method requires tree protection measures to be in place during construction if existing trees are to be saved, and because it is mandatory, also requires enforcement provisions and monitoring during and after construction. There must also be mitigation provisions to address cases when required trees are damaged or removed during construction. Mitigation standards can be re-planting requirements, payments in-lieu, or some other approach, but all require management oversight from Town staff. This approach is easier than outright retention requirements since existing trees may be removed, and the need to monitor the site ends at a specified point in the future (typically 10 years).

Option E: Mandatory retention of specific trees. This approach requires a developer to maintain specific trees on-site during and after construction in perpetuity. Typically, the trees to be retained consist of "special" trees, often referred to as specimen, historic, or heritage trees – typically the largest and oldest trees in the community. Other communities have instead focused on a specific species, for example, the standard may require that all the trees of a particular species (like live oaks or eastern red cedars) that are of a particular size (4" in caliper or greater) be retained during and after construction. Still other communities focus instead on retention of all the trees within particular habitats, like maritime forest. The nature of the standards depends largely on the type of trees to be retained, but basically, the standards mandate that all trees of the protected class be retained on site in perpetuity (or until they die of natural causes or Acts of God). This approach requires the applicant to determine, and the Town to verify, the locations of trees in the protected class, the applicant to install protection measures during construction, and then not remove or damage the trees in the protected class after development. The standards must establish the minimum threshold of trees of the protected class to be

maintained, and if only some must be retained, where priority locations for retention are located. This approach requires a mitigation system that identifies what actions to take when a tree or trees in a protected class make development of the lot impossible (or impractical). There must also be a detailed set of provisions that identifies what does or does not constitute natural damage or death versus damage or death due to causes that are not natural. In addition, the Town must monitor and enforce the prohibition of damage or removal of protected trees in perpetuity. One variant of this approach often used during subdivision is to structure the lots so that the protected trees are located on their own lot, which is rendered unbuildable. This aids dramatically in enforcement.

Option F: Mandatory retention of a percentage of all existing tree canopy cover. This is the farthest approach on the continuum, and basically requires that a portion of the existing tree canopy be retained during and after construction. Many communities who adopt these kinds of standards exempt single-family detached development from compliance given the potential for enforcement difficulty since sites must be monitored for compliance with the tree protection standards in perpetuity. It is not uncommon for communities to blend these kinds of standards with standards associated with protection of specific trees or a specific class of trees. The standards require an applicant to identify (and the Town to verify, usually via tree survey) the amount of existing tree canopy cover. The standards require a threshold percentage of the existing tree canopy cover to be maintained. The amount of cover to be maintained is often inversely proportional to the amount of the lot area covered by canopy – put another way, lots with more pre-development tree cover are usually required to retain a lower percentage of the total tree cover than are lots with less area pre-development lot area covered by tree canopy. One issue for consideration is how such standards are applied to lots that were developed prior to the tree protection standards, but then made subject to the standards. It may be necessary to establish a flat percentage, tree count, or basal area requirement in order to treat all lands fairly, and this will require some discussion. As with the other standards, these provisions must establish the minimum threshold of trees to be retained, and the desired location for retention (however, on sites with less pre-development tree cover, the location issue takes on less importance since there are fewer options for where priority save areas are located. This approach requires a mitigation system that identifies what actions to take when a tree required to be preserved is damaged or removed. There must also be a detailed set of provisions that identifies what does or does not constitute natural damage or death versus damage or death due to causes that are not natural. In addition, the Town must monitor and enforce the prohibition of damage or removal of protected trees in perpetuity.

We would strongly recommend against a mandatory tree retention approach as this can become difficult to enforce rather quickly. A voluntary or incentive-based approach often makes more sense. If a mandatory approach is still desired, we suggest the reforestation approach may be a good option since it does not require enforcement in perpetuity.

22.5.5. SIGNAGE STANDARDS¹⁵⁴

¹⁵⁴ 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 signs 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

A. PURPOSE AND INTENT¹⁵⁵

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. APPLICABILITY¹⁵⁶

1. Except for the sign types exempted from these standards identified in Section <>, 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. EXCLUSION¹⁵⁷

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;
3. Legal notices required by governmental bodies, public utilities, or civic associations with the approval of Town Council;
4. Integral decorative or architectural features of buildings, except moving parts or moving lights;
5. Signs directing and guiding traffic on private property;¹⁵⁸
6. Temporary signs of less than one day duration.

D. PROHIBITED SIGNS¹⁵⁹

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;¹⁶⁰
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; and
9. Any signs painted on or affixed to a roof surface;
10. Any signs painted on or affixed to a vehicle; and

current sign standards are already organized in this fashion, and will only require some moderate adjustment to avoid the strict scrutiny doctrine.

¹⁵⁵ Carries forward the prefatory standards in Section 36-165 with only minor revision to emphasize protection of public safety.

¹⁵⁶ This section carries forward the standards in Section 36-165(4) with additional provisions to introduce exempt signs.

¹⁵⁷ This section carries forward the standards in Section 36-165(1) with no substantive changes.

¹⁵⁸ This pushes the limit on content neutrality, but is important for public safety – we suggest it be retained.

¹⁵⁹ This section carries forward the standards in Section 36-165(7), but deletes “tourist-oriented” directional signs as these are not *Reed*-compliant.

¹⁶⁰ This pushes the limit on content neutrality as it requires the sign to be read, but we suggest it be carried forward.

11. Signs supported in whole or in part by water, air or gas.

E. SIGN PERMIT REQUIRED¹⁶¹

Except for signs exempted from the requirement to obtain a sign permit in accordance with Section <>, Signs Not Requiring a 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 PERMIT¹⁶²

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 REQUIRED¹⁶³

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 REMOVED¹⁶⁴

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 SIGNS¹⁶⁵

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 height are determined in accordance with Section <>, Rules of Measurement.

K. PERMANENT SIGNS PERMITTED IN RESIDENTIAL DISTRICTS¹⁶⁶

Each lot in a residential district may have one or more permanent signs, configured in accordance with Table <>, Permanent Signage in a Residential District.

TABLE <>: PERMANENT SIGNAGE IN A RESIDENTIAL DISTRICT

¹⁶¹ This section carries forward the standards in Section 36-165(3) with no substantive changes.
¹⁶² This section carries forward the standards in Section 36-165(3) pertaining to signs exempted from a sign permit.
¹⁶³ This section carries forward the standards in Section 36-165(5) with no substantive changes.
¹⁶⁴ This section carries forward the standards in Section 36-165(5) pertaining to removal of unsafe signage.
¹⁶⁵ This section carries forward the standards in Section 36-165(6) with no substantive changes.
¹⁶⁶ 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). Additional discussion is necessary regarding if and how the standards address noncommercial charity event signage (Section 36-165(11)) since the standards may no longer regulate based on commercial message or specific events (speaker-based).

Chapter 22 Zoning

22.5 Development Standards 22.5.5 Signage Standards

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
Multifamily Uses	2	32	16	4	Wall Sign; Freestanding Sign	2. Signs shall be located outside of sight distance triangles
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) DISTRICT¹⁶⁷

Each lot in the commercial district may have one or more permanent signs, configured in accordance with Table <>, Permanent Signage in the Commercial District.

TABLE <>: PERMANENT SIGNAGE IN THE COMMERCIAL DISTRICT						
Use Type	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	20% of the	Top of the wall	Sign shall not extend more than 6 inches beyond

¹⁶⁷ 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 <>: PERMANENT SIGNAGE IN THE COMMERCIAL DISTRICT						
Use Type	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
			of lot frontage; maximum of 64	exposed wall surface (including openings)		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) DISTRICT¹⁶⁸

Each lot in the G/I district may have one or more permanent signs, configured in accordance with Table <>, Permanent Signage in the Government/Institutional District.

TABLE <>: 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	

¹⁶⁸ 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.

N. TEMPORARY SIGNS PERMITTED IN ALL DISTRICTS¹⁶⁹

In addition to the other forms of allowable signage, lots in the Town may also include temporary signage, configured in accordance with **Table <>, Temporary Signage.**

TABLE <>: 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
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
NOTES: [1] Townhouse and multi-family developments shall be subject to the standards for All Other Districts.					

22.5.6. EXTERIOR LIGHTING¹⁷⁰

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

¹⁶⁹ This section consolidates the standards in Sections 36-165(8)(c)(d)&(g) and 36-165(12) without substantive changes.

¹⁷⁰ 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.

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:

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 ILLUMINATION¹⁷¹**

Principal buildings employing exterior illumination shall maintain intensities at no greater than those permitted in the **Table <>, Range of Illumination**:

TABLE <>: 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**

¹⁷¹ 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. Additional discussion is needed.

Floodlights, when provided, shall not exceed 500 watts.

4. SOURCE OF ILLUMINATION¹⁷²

- a. Any lighting shall be so arranged as to direct glare away from streets and adjacent lots.
- b. In no instance shall the source of illumination (the bulb or LED) be directly visible from street rights-of-way or residentially-zoned land.
- c. Exterior lighting that includes shielding devices designed to focus the beam of light directly downwards shall be deemed sufficient to comply with these standards.

5. 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.

6. WIND LOADING

Lighting fixtures shall be designed to withstand a minimum wind velocity of 130 miles per hour for a three second gust.

7. WIRING UNDERGROUND

All wiring for outdoor lighting not located on a building shall be placed underground.

8. OCEANFRONT LOTS

For purposes of protecting wildlife habitat, the following standards shall apply to all development on lots adjacent to the ocean beach:

- a. The source of illumination (i.e., the bulb, or element) shall not be directly visible from the beach.
- b. Lights may be mounted on poles with a maximum overall height of 12 feet. All lighting fixtures atop poles shall be fully shielded fixtures that are configured to minimize glare as seen from ocean beach areas.

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 <>, Rules of Measurement.**

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.

22.5.7. ELECTRICAL AND COMMUNICATION SERVICE¹⁷³

¹⁷² This is a new section that carries forward the standards in Section 36-165(2)(e) and adds a provision that sources of illumination not be visible from streets or residential lands.

¹⁷³ This section carries forward the standards in Section 36-170 of the current code without substantive changes.

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.

22.5.8. COMMERCIAL DESIGN STANDARDS¹⁷⁴

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 in the county. 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 <>, 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% of the structure's assessed value for improvements at the time of construction.

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.

Suggest an illustration of comparable façade design.

- 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:
 - 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;

¹⁷⁴ This is a new section that is suggested for addition in response to direction from the Citizen Survey and Town Council Input that we should add design standards for new or updated commercial development.

- 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.

Suggest an illustration of multi-building development.

2. BUILDING DESIGN

a. Design Features

Front building facades shall provide a minimum of three of the following six 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.

Suggest an illustration of the six design feature options.

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.

Suggest an illustration of roof form.

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.

22.5.9. OCEAN HAZARD AREA STANDARDS^{175 176}

¹⁷⁵ 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.

¹⁷⁶ NOTE: The Code Assessment calls for the "removal of regulatory obstacles to moving homes away from the advancing high tide line on deeper oceanfront lots." Our current understanding of the code provisions is that the

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 USE STANDARDS FOR OCEAN HAZARD AREAS

All uses allowed in an ocean hazard area shall comply with the standards in Section 15A NCAC 07H .0308 of the North Carolina Administrative Code.

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;
- 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.

22.5.10. STORMWATER MANAGEMENT¹⁷⁷

A. PERMIT REQUIRED

Development subject to the standards in this section shall be reviewed and decided in accordance with the standards in Section <>, Lot Disturbance and Stormwater Management Permit.

B. MINIMUM STANDARDS

provisions that would potentially be regulatory obstacles to moving homes backward would be the setback requirements, lot coverage limitations, and the front yard parking maximums. More discussion is needed as to whether and how to address the desire to move homes backward given these provisions.

¹⁷⁷ This section carries forward the standards in Section 36-171 with no substantive change.

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.
2. The burden shall be on the applicant to demonstrate the proposed stormwater management improvements will meet Town requirements.
3. The Town Manager (or a designee) is hereby authorized to include requirements in the permit which minimize the disturbance or damage of any adjacent lots or land, including any reasonable conditions meeting current best management practices for retaining all stormwater generated by a 1.5 inch rain event.

C. ADDITIONAL REQUIREMENTS

Controlling stormwater runoff from one lot onto another lot or from a lot onto Town streets was a topic discussed by the Town Council.

Aside from the stormwater management standards in Section 36-171, the current code contains no provisions to address this issue (though there may be additional standards in an outside manual). The current standards require proposed to development to include an engineer-prepared stormwater management plan that is configured to retain the first 1.5 inches of rainfall on site. There are no provisions for addressing any amount of stormwater resulting from rain falling after the first 1.5 inches. Staff has indicated the current provisions are adequate and that no one in the development community has expressed concern. If residents are not experiencing nuisance flooding during rainfall events, then there is no need to address the standards. If there are concerns associated with flooding from rainfall events, then these standards may help address some of these problems, particularly in cases where lot-to-lot flooding is occurring.

One common problem in coastal areas not served by centralized sewer is the need to elevate on-site wastewater management systems and their associated drainfields above the water table. In some cases, this kind of elevation results in lot-to-lot elevation differentials that cause water from one lot to pool on an adjacent lot, depending upon where the fill placement occurs and how far above existing grade the new fill is located. One way to address is this issue is to limit fill placement within areas proximate to lot lines. By avoiding fill deposition along lot lines, a natural "holding area" for stormwater is created between the two lots, helping to prevent nuisance flooding on one lot due in part to filling on an adjacent lot.

We suggest the inclusion of some additional basic language that further clarifies minimum expectations regarding stormwater management, including limitations on undue amounts of standing water on sites or roadways, and requirements that adjoin developments do not configure their sites in ways that shed undue amounts of stormwater runoff on neighboring lands.

In light of these issues we propose the following options for the Town's consideration:

Option A: No changes to the current stormwater standards, including additional "expectation" language or limitations regarding the placement of fill.

Option B: Inclusion of new generic language that indicates that developments must drain properly, as follows:

All developments shall be provided with a stormwater drainage system that is adequate to prevent the undue retention of surface water on the development site. Surface water shall not be regarded as unduly retained if:

- i. The retention results from a technique, practice, or device deliberately installed as part of an approved sedimentation or storm water runoff control plan; or*
- ii. The retention is not substantially different in location or degree than that experienced by the development site in its pre-development stage, unless such retention presents a danger to health or safety.*
- iii. Whenever practicable, the drainage system of a development shall coordinate with and connect to the drainage systems or drainage ways on surrounding properties or streets.*

Option C: Inclusion of new generic language that indicates that developments must not impede surface water flow, as follows:

All developments shall be constructed and maintained so that adjacent lands are not unreasonably burdened with surface waters as a result of such developments. More specifically:

- iv. *No development may be constructed or maintained so that such development unreasonably impedes the natural flow of water from higher adjacent properties across such development, thereby unreasonably causing substantial damage to such higher adjacent properties; and,*
- v. *No development may be constructed or maintained so that surface waters from such development are unreasonably collected and channeled onto lower adjacent properties at such locations or at such volumes as to cause substantial damage to such lower adjacent properties.*

Option D: Limit land clearing and land-disturbing activities within 10 feet of a lot line (except as needed for driveways and public infrastructure).

Option F: Limit the deposition of fill within 10 feet of lot lines, except as needed for driveways or sidewalks.

Option G: Limit the amount of filling on a lot to that specified by the Dare County Health and Human Services Department for the purposes of on-site wastewater systems.

Option I: Establish maximum toe of slope requirements (typically 3:1) of fill pads necessary for wastewater systems.

We suggest that if any of Options B-I are embraced, the standards should also include a flexibility provision that allows the Town Manager (or a designee) to grant minor deviations from the standards, or that allows an engineered plan to propose deviations from the standards.

D. 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.

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 chapter 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 INTENT¹⁷⁸

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 AUTHORIZED¹⁷⁹

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 CONTINUATION¹⁸⁰

A. MAINTENANCE ALLOWED¹⁸¹

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 ALLOWED¹⁸²

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.

22.6.3. NONCONFORMING USES¹⁸³

¹⁷⁸ This section builds on and clarifies the language in Section 36-131(a) of the current code.

¹⁷⁹ This section carries forward Section 36-131(b) of the current code.

¹⁸⁰ NOTE: Section 36-131(f) seems to use circular reasoning and needs to be discussed.

¹⁸¹ 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.

¹⁸² 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.

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 STRUCTURES¹⁸⁴

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.
2. Enclosing the space below any portion of the structure on pilings with a nonconforming side, front, or rear yard does is permitted provided the enclosure does not encroach any further into the nonconforming yard.

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 yard 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 yard requirements provided:

1. The expansion does not increase the nonconformity by extending further into the required side yard; or

¹⁸³ This section combines the standards of Sections 36-132(b) and (d) and adds clarity to the language.

¹⁸⁴ This section carries forward Section 36-132(c) of the current code with clarifications to the language.

2. The expansion does not exceed the side yard 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 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 LOTS¹⁸⁵

A. GENERALLY

1. Except as provided in Section <>, Exemptions, in any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on a lawfully-established but nonconforming lot of record, provided the use complies with all other applicable standards in this chapter, including required yards.
2. Deviations from required yards may only be considered in accordance with Section <>, Variance.

B. EXEMPTIONS

If on or after July 7, 1981, two or more adjacent and vacant nonconforming lots are in single ownership at any time, and such lots individually have less lot frontage, area, or width than the minimum requirements of the district where located, then the lots shall be considered and treated as a single lot or several lots that meet the minimum requirements of this chapter.

C. RECOMBINATION REQUIRED

1. When a nonconforming lot is adjacent to one or more conforming lots under the same ownership, and when any portion of a proposed structure or required use is located on two or more lots, the lots shall be combined into one single lot of record, and a plat combining such lots shall be recorded by the Dare County Register of Deeds prior to the issuance of a building permit.
2. When a nonconforming lot entirely within the Town is adjacent to one or more lots under the same ownership and when any portion of a proposed structure or required use is located on two or more lots, the lots shall be combined into one single lot of record.

¹⁸⁵ This section carries forward Section 36-132(a) of the current code but simplifies the general standards and creates a new sub-section for required recombinations.

CHAPTER 26.

SUBDIVISIONS

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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. In some cases, text is yellow highlight is indicated for deeper consideration by the Town.

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 Council.

26.1. TITLE¹⁸⁶

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. AUTHORITY¹⁸⁷

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 <>, Amendment 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 INTENT¹⁸⁸

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.

26.4. APPLICABILITY¹⁸⁹

26.4.1. LOCATION

¹⁸⁶ This section carries forward the standards in Section 30-1 from the current code but recognizes these standards as a chapter, not an ordinance.

¹⁸⁷ This section carries forward the language in Sections 30-4, 30-8, and 30-9 from the current code with no substantive changes.

¹⁸⁸ 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.

¹⁸⁹ 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, Variances, has been omitted from this draft in favor of the variance procedure set out in the Zoning chapter.

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 <>, 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 <>, Variance.

26.5. SUBDIVISIONS DISTINGUISHED¹⁹⁰

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 <>, 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
- B. Preliminary Plat; and
- 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:

¹⁹⁰ 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.

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. PROCEDURES¹⁹¹

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 major subdivisions shall comply with the standards in this section. Minor subdivisions are encouraged but not required to submit a sketch plan. 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.

C. APPLICATION PROCEDURE¹⁹²

1. Prior to preliminary plat application, an applicant for a major subdivision shall submit 12 copies of a sketch plan of the proposed subdivision prepared in accordance with **Section <>, Submittal Requirements**. A sketch plan application shall be filed at least seven 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.

D. SUBMITTAL 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;
 - 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:

¹⁹¹ 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.

¹⁹² NOTE: This section carries forward some of the language in Section 30-40(a) of the current code, and makes sketch plans mandatory as indicated in the Code Assessment. 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). Additional discussion is needed.

- 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 <>, Preliminary Plat](#).

26.6.2. PRELIMINARY PLAT¹⁹³

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 and decided by the Planning Board.
- 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 <>, Appeal](#).

C. APPLICATION PROCEDURE

1. MAJOR SUBDIVISION

- a. The applicant shall submit all required application materials to the Planning Board at least 15 days prior to a regularly scheduled meeting.
- b. Before acting on the preliminary plat, the Planning Board 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. 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 chapter with which the preliminary plat does not comply, and the applicant shall be so notified.

¹⁹³ 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. .

- 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 <>, 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 <>, Review Criteria. In the event the Town Manager (or a designee) disapproves or conditionally approves the preliminary plat, the reasons for such action shall be noted in the decision, along with references to the specific sections of this chapter with which the preliminary plat 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 registered 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 registered 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 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.

26.6.3. FINAL PLAT¹⁹⁴

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 Planning Board.
- 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 minor subdivision preliminary plat shall be to the BOA in accordance with **Section <>, Appeal**.

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 <>, Installation of Improvements**, or provided a performance guarantee for the installation of these features in accordance with **Section <>, 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 one year of preliminary plat approval, the applicant shall submit an application for a final plat at least seven 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 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.

¹⁹⁴ 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).

- 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 chapter 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 Planning Board.
- 4. MINOR SUBDIVISION**
- a. Three copies of an application for a minor subdivision final plat shall be prepared in accordance with **Section <>, Submittal Requirements.**
 - b. Following review, the Town Manager (or a designee) shall decide the application in accordance with Section <>, **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 chapter 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
- i. 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 registered 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.

"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."

_____ Town of Southern Shores Representative

_____ Date

Approval expires if not recorded on or before _____(6 months from approval date)_____

ii. Certificate of Ownership and Dedication

"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 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 Dare County Health and Human Services Department¹⁹⁵

v. 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 Council of the Town of Southern Shores, it is in the public interest to do so.

_____ Town of Southern Shores Representative

_____ Date

_____ Witness

_____ Date

vi. Certificate of Required Improvements

The following certification is only required for major subdivision final plats that include public improvements.

¹⁹⁵ NOTE: We have not been able to find an example of the Dare County Health and Human Services Department certification. Please provide and we will include the required language.

"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 licensed professional land surveyor or professional engineer.
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 IMPROVEMENTS¹⁹⁶

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 Council for posting a performance guarantee securing the proper installation of these features in accordance with Section <>, 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 POINTS¹⁹⁷

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.

26.8.2. MONUMENTS

- A. Within each block of a subdivision at least two monuments designed as control corners shall be installed.
- B. The 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 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.

¹⁹⁶ This section carries forward the standards in Section 30-76 of the current code with no substantive changes.

¹⁹⁷ This section carries forward Section 30-75 of the current Code with no substantive changes.

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 Council.

26.9.2. ROADWAYS¹⁹⁸

A. GENERALLY¹⁹⁹

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 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 STANDARDS²⁰⁰

In the event the following design standards conflict with those of the NCDOT, the more stringent requirement shall apply. The design 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 major road plan and shall not be less than the following:

- a. Primary roads: 80 feet.

¹⁹⁸ 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).

¹⁹⁹ This section carries forward and combines Sections 24-62 and 30-96 (b) through (g).

²⁰⁰ 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. Regardless of this issue, we think this material should be reorganized into a table. Additional discussion is necessary.

- 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).
- 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.
- 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.
- 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. LOTS²⁰¹

A. CONFORMANCE WITH ZONING REQUIREMENTS

²⁰¹ 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.

1. All lots in new subdivisions shall conform to the zoning requirements of the 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 zoning chapter 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 Health and Human Services 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 Health and Human Services Department.

D. ORIENTATION OF LOT LINES

Side lot lines shall be substantially at right angles or radial to street lines.

E. MINIMUM FRONTAGE²⁰²

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. EASEMENTS²⁰³

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.
- 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 STRIPS²⁰⁴

- 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 COLLECTION²⁰⁵

²⁰² This subsection carries forward current Section 30-96(f).

²⁰³ This section carries forward Section 30-97(3) of the current Code.

²⁰⁴ This section carries forward Section 30-97(4) of the current Code.

²⁰⁵ Current subsection 30-96(h) is carried forward here.

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 GUARANTEES²⁰⁶

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 1 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 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

²⁰⁶ This section expands on the standards in Section 30-43 of the current code.

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 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 renumbers 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.

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. In some cases, text is yellow highlight is indicated for deeper consideration by the Town.

The text includes 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 Council.

28.1. STATUTORY AUTHORIZATION²⁰⁷

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.

²⁰⁷ 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, and start with the words, "As used in Chapter 28: Flood Damage Prevention."

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 <>, Floodplain Development Permit.

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 Council; 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 <>, Flood Damage Prevention Violation.
- 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. 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 <>, 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 <>, Basis for Establishing the Special Flood Hazard Areas**;
 - d. The boundary of the floodway or nonencroachment area as determined in **Section <>, Basis for Establishing the Special Flood Hazard Areas**;
 - e. The base flood elevation (BFE), where provided, as set forth in **Section <>, Basis for Establishing the Special Flood Hazard Areas**; **Section <28.5.2.D.11>** and **<28.5.2.D.12>** under **Duties and Responsibilities of the Floodplain Administrator**; or **Section <>, 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, 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. 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. 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 <>, 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 <D28.5.5.D>** and **<28.5.6.C>** and **Section <>, 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. Usage details of any enclosed areas below the regulatory flood protection elevation.
6. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
7. 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.).
8. Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure Section <>, Recreational Vehicles, and Section <>, Temporary Nonresidential Structures, of this chapter are met.
9. A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

B. 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 <>, 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 <>, Manufactured Homes](#).

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 <>, Recreational Vehicles](#);
- b. Temporary structures meeting requirements of [Section <>, Temporary Nonresidential Structures](#); and
- c. Accessory structures less than 150 square feet meeting requirements of [Section <>, 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 <>, 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 <>, 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 <>, Certification Requirements**.
8. Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with **Section <>, Certification Requirements**.
9. When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with **Section <>, Certification Requirements** and **Section <>, 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 <>, 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 <>, 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 <>, 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 <>, 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 <>, 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 the local elected Town Council by giving notice of appeal in writing to the Floodplain Administrator and the Clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The 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

A. The Board of Adjustment, hereinafter referred to as the "appeal board," shall hear and decide requests for variances from the requirements of this chapter.

B. Any person aggrieved by the decision of the appeal board may appeal such decision to the court, as provided in Chapter 7A of the North Carolina General Statutes.

C. Variances may be issued for:

1. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and 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 **Sections <28.4.4.I and J>** 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.

D. 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.
- E. A written report addressing each of the factors set forth in Section <28.4.4.D> shall be submitted with the application for a variance.
- F. Upon consideration of the factors listed in Section <28.4.4.D> and the purposes of this subsection, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this subsection.
- G. 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. 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. Conditions for variances:
1. Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.
 2. Variances shall 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.
 3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 4. Variances shall only be issued prior to development permit approval.
- J. Variances shall only be issued upon:
1. A showing of good and sufficient cause;
 2. A determination that failure to grant the variance would result in exceptional hardship; and
 3. 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.
- K. A variance may be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following conditions are met:
1. The use serves a critical need in the community.
 2. No feasible location exists for the use outside the special flood hazard area.
 3. The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.
 4. The use complies with all other applicable federal, state and local laws.
 5. The Town has notified the Secretary of the State Department of Crime Control and Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

28.5. FLOOD HAZARD REDUCTION

28.5.1. STANDARDS GENERALLY

In all special flood hazard areas, the following provisions are required:

- A. All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- B. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- 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 <>, Variances. 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 <>, 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 <>, Standards Generally, 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 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 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 <>, 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 <>, 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 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 Chapter 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 **Sections <28.5.2.D.1, 2, and 3**.
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. 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. Shall be constructed entirely of flood-resistant materials, up to the regulatory flood protection elevation;
 3. 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. 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 STRUCTURES

When accessory structures (sheds, detached garages, etc.) are to be placed within a special flood hazard area, the following criteria shall be met:

1. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);²⁰⁸
2. Accessory structures shall not be temperature-controlled;
3. Accessory structures shall be designed to have low flood damage potential;
4. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
5. Accessory structures shall be firmly anchored in accordance with Section <>, Standards Generally;
6. All service facilities such as electrical shall be installed in accordance with Section <>, Standards Generally; and
7. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with Section <>, Elevated Buildings. An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined in this subsection does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section <>, Certification Requirements.

28.5.3. COASTAL HIGH HAZARD AREAS (ZONES VE)

Coastal high hazard areas are special flood hazard areas established in Section <>, 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.I.>, the following provisions shall apply:

- A. 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. 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.
- C. 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:
 1. Open wood latticework or insect screening may be permitted below the regulatory flood protection elevation for aesthetic purposes only and must be designed to wash away in the event of abnormal wave action and in accordance with Section <28.5.2.D.4>. Design plans shall be submitted in accordance with Section <28.4.2.A.4.c>, or
 2. Breakaway walls may be permitted provided they meet the criteria set forth in Section <28.5.2.D.4>. Design plans shall be submitted in accordance with Section <28.4.2.A.4.c>.
- D. 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.
- E. A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions contained in Section <>, Floodplain Development Application, Permit, and Certification Requirements, and Sections <28.5.3.C>, <28.5.3.D>, and <28.5.3.F>, on the current version of the state "National Flood Insurance Program V-Zone Certification" form.
- F. 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

²⁰⁸ NOTE: the zoning chapter of this draft Town Code includes language allowing accessory dwelling units within detached attached structures.

Chapter 28 Flood Damage Prevention

28.5 Flood Hazard Reduction 28.5.3 Coastal High Hazard Areas (Zones VE)

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.

- G. There shall be no alteration of sand dunes which would increase potential flood damage.
- H. No manufactured homes shall be permitted except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring and elevation standards of this section have been satisfied.
- I. Recreational vehicles may be permitted in coastal high hazard areas provided that they meet the criteria of Section <>, Recreational Vehicles, and Section <>, Temporary Structures.

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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. In some cases, text in yellow highlight is indicated for deeper consideration by the Town.

Text in blue highlight corresponds to issues discussed by the Town Council during discussion of the survey. This information needs to be considered and will be discussed in greater detail during the presentation of the module.

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

36.1. STATUTORY AUTHORITY²¹¹

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 INTENT²¹²

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 PERSONS²¹³

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.

²¹¹ 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.

²¹² This is a new section which clarifies the purpose and intent of this chapter.

²¹³ This is a new section that describes the persons held to account for violations and their responsibilities.

36.4. VIOLATIONS CLASSIFIED²¹⁴

Table <>: Violations Classified, lists all the violations under this Town Code and identifies them as criminal violations subject to the criminal remedy procedure in Section <>, Criminal Procedure, or civil violations subject to civil remedy procedures in Section <>, Civil Procedure, or Section <>, Civil Procedure for Traffic Violations, as appropriate. The table also provides a cross reference to the specific standards related to the type of violation listed.

TABLE <>: VIOLATIONS CLASSIFIED			
CHAPTER	VIOLATION	SECTION ²¹⁵	CURRENT CODE SECTION ²¹⁶
CRIMINAL VIOLATIONS			
Chapter 2. Administration	Interference with a police officer	<>	18-10
Chapter 6: Fire Prevention and Protection	Building or setting an open fire without a permit	<>	14-70
	Burning of prohibited items	<>	14-69
	Failure to secure a permit and certificate of fitness for conducting certain fire-related activities on a for-hire basis	<>	14-38
	Failure to provide fire hydrants	<>	14-37(c)
	Starting or setting a fire on the beach	<>	14-67
	Starting or setting a bonfire or recreational fire	<>	14-68
Chapter 8: Motor Vehicles and Traffic	Landing of a helicopter	<>	22-9
	Unauthorized installation or removal of a traffic control device	<>	20-70
Chapter 10. Emergency Management	Violation of curfew imposed during state of emergency	<>	12-37
	Violation of restrictions on possession, consumption or transfer of intoxicating liquor imposed during state of emergency	<>	12-38
	Violation of restrictions on possession, transportation or transfer of dangerous weapons and substances imposed during state of emergency	<>	12-39
	Violation of restriction on access to certain areas imposed during state of emergency	<>	12-40
	Violation of evacuation imposed during state of emergency	<>	12-41
	Violation of miscellaneous prohibitions and restrictions imposed during state of emergency	<>	12-42

²¹⁴ 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.

²¹⁵ 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.

²¹⁶ 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.

Chapter 36 Offenses and Enforcement

36.4 Violations Classified 36.3.3 Remedy Upon Notification

TABLE <>: VIOLATIONS CLASSIFIED			
CHAPTER	VIOLATION	SECTION ²¹⁵	CURRENT CODE SECTION ²¹⁶
Chapter 18. Streets, Sidewalks, and Other Public Property	Smoking in municipal buildings	◇	28-1
Chapter 28. Flood Damage Prevention	Violation of any flood damage prevention provision	◇	16-3
Chapter 30. Waterways and Beaches	Operation of motorized vessel on Duck Woods Pond	◇	34-54
	Surfing without use of a surfing leash	◇	34-51
	Swimming during dangerous conditions	◇	34-53
Chapter 34. Animals	Allowing dangerous or damaging behavior by a dog or cat	◇	4-25(e)
	Animal running at large	◇	4-25(a)
	Failure to provide a dog or cat with a current rabies vaccination tag and identification tag	◇	4-25(d)
	Keeping of livestock or fowl	◇	4-24
	Violation of limitations of dogs on ocean beaches	◇	4-25(b) and (c)
Chapter 36: Offenses and Enforcement	Blocking or damaging streets, sidewalks, alleys, and bridges	◇	22-2
	Carrying a concealed or unconcealed handgun on government property or beach access areas	◇	22-4(b)
	Disorderly conduct	◇	22-1
	Firing or discharging a firearm or explosive	◇	22-4(a)
	Noise violations	◇	22-3
	Posting of bills	◇	22-8
	Public urination	◇	22-10
	Shooting or discharge of arrows	◇	22-5

Chapter 36 Offenses and Enforcement

36.4 Violations Classified 36.3.3 Remedy Upon Notification

TABLE <>: VIOLATIONS CLASSIFIED			
CHAPTER	VIOLATION	SECTION ²¹⁵	CURRENT CODE SECTION ²¹⁶
CIVIL VIOLATIONS			
Chapter 1. General Provisions	Tearing or defacing of Town ordinances	◇	1-8
	Chapter 6. Fire Prevention and Protection		
	Crossing of fire line barriers without a pass	◇	14-1
	Failure to comply with an order from the fire inspector	◇	14-35(a)
	Failure to obtain yearly sprinkler system inspection	◇	14-37(e)
	Failure to provide fire extinguishing equipment	◇	14-37(a)
	Failure to remove weeds, grass, vines, or other flammable growth	◇	14-35(e)
	Failure to secure a permit to maintain, store, or handle hazardous materials or to install equipment for use with hazardous materials	◇	14-31
	Improper storage of flammable liquids	◇	14-33(d)
	Improper storage of liquefied petroleum gas	◇	14-33(g)
	Improper transport of hazardous chemicals	◇	14-33(f)
	Manufacture or storage of fireworks	◇	14-33(c)
	Noncompliance with restrictions on camping	◇	22-64
	Removal or destruction of a "No Smoking" sign	◇	14-37(b)
	Smoking in a fire inspector designated "No Smoking" area	◇	14-37(b)
	Unauthorized removal, destruction, or tampering with a fire department barrier	◇	14-3
	Unauthorized or improper installation of automatic protection system	◇	14-4(b)
	Unauthorized storage or improper transport of explosives and blasting agents	◇	14-33(a) and (b)
Chapter 8. Motor Vehicles and Traffic			
	Attaching a motorcycle, bicycle or toy vehicle to a motor vehicle	◇	20-10
	Backing a vehicle into an intersection or sidewalk	◇	20-106
	Backing a vehicle in an unsafe manner	◇	20-106
	Causing or allowing an abandoned vehicle	◇	20-169
	Disobeying an official traffic control device	◇	20-69
	Driving or landing aircraft on beaches	◇	20-109

Chapter 36 Offenses and Enforcement

36.4 Violations Classified 36.3.3 Remedy Upon Notification

TABLE <>: VIOLATIONS CLASSIFIED			
CHAPTER	VIOLATION	SECTION²¹⁵	CURRENT CODE SECTION²¹⁶
	Driving through a funeral procession	◇	20-103
	Driving on sand dunes	◇	20-108
	Failure to stop when emerging from alley or private driveway in a vehicle	◇	20-105
	Failure to use a white light while using roller skates, inline skates, scooter, or skateboards during dark hours	◇	20-11(e)
	Hanging out of or onto vehicles	◇	20-9
	Operating a motorcycle or bicycle while carrying a person on the handlebars, frame or tank	◇	20-107
	Overcrowding or overloading of a vehicle	◇	20-104
	Parking a vehicle on prohibited streets	◇	20-146
	Parking on a residential roadway	◇	20-148
	Parking in designated Town parking areas without a permit	◇	20-149
	Possessing or allowing a nuisance vehicle	◇	20-170
	Possessing or allowing a junked vehicle	◇	20-171
	Reckless driving in a school zone	◇	20-114
	Riding in portion of vehicle not intended for passengers	◇	20-7
	Standing or parking a vehicle for a prohibited reason	◇	20-147
	Stopping or parking a vehicle in a prohibited area	◇	20-145
	Unlawful removal of impounded vehicle	◇	20-181
	Use of motorized vehicle on multipurpose pathway	◇	20-11(b)
	Use of roller skates, toy vehicles, or off-road vehicles on streets, highways, or other public vehicular rights of way	◇	20-11(a) and (d)
	Use of a coaster, toy vehicle, roller skates, inline skates, or skate board on sidewalks or parking areas of shopping centers	◇	20-11(c)
	Using roller skates, inline skates, scooter or skateboard in an unsafe or reckless manner	◇	20-11(f)
	Violation of bicycle operation regulations	◇	20-230
	Violation of one-way street	◇	20-113
	Violation of speed limit	◇	20-110
	Violation of yield intersection	◇	20-111

Chapter 36 Offenses and Enforcement

36.4 Violations Classified 36.3.3 Remedy Upon Notification

TABLE <>: VIOLATIONS CLASSIFIED			
CHAPTER	VIOLATION	SECTION ²¹⁵	CURRENT CODE SECTION ²¹⁶
	Violation of stop intersection	◇	20-112
	Violation of vehicle weight limit restriction	◇	20-115
Chapter 10. Emergency Management	Violation of moratorium imposed following a natural disaster	◇	12-68
Chapter 12. Solid Waste	Depositing solid waste from other properties upon properties or areas within Town	◇	26-16
	Failure to contain waste materials on construction and demolition sites	◇	26-10
	Failure to have required number of Town approved receptacles or bulk containers	◇	26-3; 26-4; 26-6
	Failure to maintain property to edge of street	◇	26-13
	Failure to separate recyclable materials from solid waste	◇	26-9
	Improper placement or maintenance of receptacle	◇	26-5
	Littering upon public or private property	◇	26-17
	Littering from vehicles	◇	26-18
	Placing prohibited items in solid waste receptacles	◇	26-19
	Throwing or depositing trash and solid waste upon private property	◇	26-14
	Throwing or depositing trash and solid waste upon public property	◇	26-15
	Violation of storage of solid waste and trash standards	◇	26-12
Chapter 14. Wastewater	Connection of a sewer line or wastewater system outside the Town to a system within the Town	◇	32-8
	Failure to comply with all requirements of the Dare County Health and Human Services Department and other agencies	◇	32-5(a)
	Failure to comply with construction supervision and inspection requirements for wastewater management systems	◇	32-104
	Failure to establish or maintain a wastewater monitoring system or to submit quarterly monitoring or inspection reports	◇	32-69
	Failure to maintain wastewater system	◇	32-108
	Failure to obtain permit for construction or operation of a wastewater system	◇	32-5(c)
	Failure to obtain certificate of compliance before operation of a wastewater system	◇	32-105
Failure to submit a wastewater facilities plan	◇	32-100	

Chapter 36 Offenses and Enforcement

36.4 Violations Classified 36.3.3 Remedy Upon Notification

TABLE <>: VIOLATIONS CLASSIFIED			
CHAPTER	VIOLATION	SECTION ²¹⁵	CURRENT CODE SECTION ²¹⁶
	Noncompliance with county and state regulations	◇	32-103
	Unlawful discharges of wastewater	◇	32-109
	Unsatisfactory operation of a wastewater system	◇	32-5(b)
	Unlawful inflow source	◇	32-110
	Violation of design and appearance compatibility standards for wastewater plants and systems	◇	32-9
	Violation of wastewater system operation standards	◇	32-107
	Wastewater nuisances	◇	32-10
Chapter 16. Cable Television	Failure to obtain necessary permits and licenses to construct, operate, or maintain a cable system	◇	8-21
	Failure to comply with applicable state and federal laws pertaining to cable systems	◇	8-22
	Failure to move facilities at the request of the Town	◇	8-30
	Failure to repair damaged private or public property resulting from construction or operation of a cable system	◇	8-24
	Failure to secure written approval before erecting poles in public rights-of-way	◇	8-25
	Failure to provide strand and trench maps to the Town	◇	8-28(b)
	Failure to provide contact number for emergency situations or to respond to an emergency call	◇	8-28(c)
	Improper removal, trimming, or cutting of trees in public rights-of-way	◇	8-29
	Unreasonable interference with public or private property	◇	8-23
Chapter 20. Buildings and Building Regulations	Failure to properly display property numbers	◇	24-60
	Defacing or removal of property numbers	◇	24-63
Chapter 22. Zoning	Erection of more than one principal building on a lot	◇	36-94
	Failure to secure building permit	◇	36-297
	Failure to secure solicitor's permit	◇	36-473
	Failure to secure zoning permit	◇	36-297
	Failure to secure health department approval	◇	36-298
	Failure to secure permit for a conditional use	◇	36-300
	Failure to secure certificate of compliance	◇	36-301

Chapter 36 Offenses and Enforcement

36.4 Violations Classified 36.3.3 Remedy Upon Notification

TABLE <>: VIOLATIONS CLASSIFIED			
CHAPTER	VIOLATION	SECTION ²¹⁵	CURRENT CODE SECTION ²¹⁶
	Noncompliance with height, bulk, density, lot coverage, yard, minimum lot size, or open space requirements	◇	36-90; 36-91
	Noncompliance with lot access requirements	◇	
	Noncompliance with off-street parking requirements	◇	36-132
	Noncompliance with water supply and sewage disposal requirements	◇	36-163
	Noncompliance with screening requirements	◇	36-171
	Noncompliance with standards for development in ocean hazard areas	◇	36-174
	Obstruction of passage of permitted vehicles on the beach	◇	36-99
	Use, occupancy, or construction of a building, structure, or land without conformity to zoning regulations	◇	
	Violation of vision clearance at intersection requirements	◇	
	Violation of requirements and limitations on ocean dune platforms, walkways, or steps	◇	36-97
	Violations of nonconformity standards	◇	36-100
	Violations of signage standards and limitations	◇	36-164
	Violation of lighting standards	◇	36-165
	Violation of use specific standards	◇	36-166
	Violation of stormwater management and lot disturbance standards	◇	36-167; 36-168; 36-169; 36-175; 36-176; 36-240;
Wall or fence over maximum height	◇	39-96	
Chapter 24. Businesses and Business Regulations	Failure to submit sketch plan	◇	8-1
Chapter 26. Subdivisions	Failure to install required improvements	◇	30-75
	Failure to secure floodplain development permit and certification	◇	30-97
	Failure to place permanent reference points	◇	30-42
	Failure to secure final plat permit	◇	30-40; 30-124
	Failure to record final plat with County Register of Deeds	◇	30-41; 30-125
	Failure to secure preliminary plat permit	◇	30-123

TABLE <>: VIOLATIONS CLASSIFIED			
CHAPTER	VIOLATION	SECTION ²¹⁵	CURRENT CODE SECTION ²¹⁶
	Noncompliance with design standards	<>	30-76
Chapter 28. Flood Damage Prevention	Failure to maintain waterway	<>	16-4(b)
Chapter 30. Waterways and Beaches	Boat speed limit violation	<>	34-22
	Failure to comply with cemetery operation standards	<>	34-81
	Failure to secure CAMA minor development permit	<>	34-55
	Failure to secure permit for construction or improvement to a waterway, bank, or bottom	<>	34-24
	Improper mooring of a boat	<>	34-23
	Unlawful activity on a beach or dune	<>	34-28
	Use of dock or waterway for commercial purposes	<>	34-25
	Violations of construction of waterway improvements standards	<>	34-24
Chapter 32. Cemeteries	Noncompliance with cemetery operation standards	<>	10-1
Chapter 36: Offences and Enforcement	Noncompliance with restrictions on camping	<>	22-39
	Nuisance violations	<>	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 <>, **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 VIOLATIONS²¹⁷

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.

²¹⁷ 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.

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.

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 PROHIBITED²¹⁸

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 VIOLATIONS²¹⁹

A. IGNITION OF FIREWORKS PROHIBITED²²⁰

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.

B. LIMITATIONS ON OPEN BURNING²²¹

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 <>, Combustible Materials, 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.

²¹⁸ This section carries forward the standards in Section 18-10 of the current code with no substantive change.

²¹⁹ NOTE TO STAFF: This section consolidates a series of explosives and flammable material prohibitions in Section 14-33 of the current code. The section also prohibits new "bulk plants". What does this term bulk plant refer to?

²²⁰ NOTE TO STAFF: This is a new standard proposed for the Town's consideration. Additional discussion is necessary regarding this standard and the standards in Section 14-33(a)(4) of the current code as well as application of this standard in the ETJ.

²²¹ 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.

C. LUMINARIES PROHIBITED²²²

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 <>, Establishment of Limits, 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 <>, Establishment of Limits, 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

A. FAILURE TO EVACUATE PROHIBITED

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 VIOLATIONS²²³

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

Except where exempted in Section <>, Discharge of Weapons, 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.

C. POSTING OF HANDGUN PROHIBITION²²⁴

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

²²² NOTE TO STAFF: This is a new section. Additional discussion is needed about its content and structure.

²²³ This section consolidates the violations in Sections 22-4 through 22-6 of the current code.

²²⁴ NOTE TO STAFF: This section has been broadened in accordance with staff direction on the section above related to concealed or unconcealed handguns.

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, GENERALLY²²⁵

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 VIOLATIONS²²⁶

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 bouy.

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:
 - 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.
 - 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.

²²⁵ This section consolidates several of the abandoned and nuisance vehicle provisions in Section 20-169 through 20-171

²²⁶ This section consolidates several motor vehicle-related violations from Sections 20-6 through 20-109 of the current code. The balance of the current standards are maintained in new Chapter 8: Motor Vehicles and Traffic.

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.

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 Section <>, Civil Procedure.

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 VIOLATIONS²²⁷

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; or
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.

36.5.10. POSTING OF BILLS VIOLATIONS

A. DAMAGING POSTED ORDINANCES PROHIBITED²²⁸

No person shall tear, deface, or remove any posted Town ordinance or requirement.

²²⁷ 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.

²²⁸ This section carries forward Section 1-8 of the current ordinance with no substantive changes.

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 <>, Signage Standards**.

36.5.11. SOLICITING²²⁹

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 <>, **Solicitor's Permit**, shall be a violation of this Town Code.

36.5.12. SOLID WASTE AND LITTER-RELATED VIOLATIONS²³⁰

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 or beach or from any adjoining properties upon any property or area in the Town.

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, 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 <>, **Storage of Solid Waste and Trash**.

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;

²²⁹ 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.

²³⁰ This section consolidates the violations from current Chapter 26. The balance of the related provisions are located in new Chapter 12: Solid Waste.

- 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 PROHIBITED²³¹

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 PROHIBITED²³²

- 1. Except for obstructions exempted in accordance with **Section <>, 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 LIMITED²³³

- 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

²³¹ This section carries forward the standards in Section 22-2 of the current code.

²³² This section carries forward the standards in Section 28-2(a) of the current code without substantive changes.

²³³ This section carries forward the standards in Sections 22-63 and 22-64 of the current code without substantive change.

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 <>, Vehicle Weight Restriction;
- 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 CODE²³⁴

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.

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 <>, Corrective Procedures.

36.5.18. VIOLATIONS OF THE SUBDIVISION PROVISIONS²³⁵

A. SUBDIVIDE LAND LIMITED

- 1. Subdivide land in violation of this Town Code or Chapter 26: Subdivision, 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 PROVISIONS²³⁶

Any of the following activities shall be a violation of this Town Code subject to the remedies in this chapter.

²³⁴ 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.

²³⁵ This is a new section.

²³⁶ This is a new section.

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 DISCHARGES AND INFLOW VIOLATIONS²³⁷

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 Health and Human Services Department.

B. WASTEWATER INFLOW PROHIBITED

1. Inflow sources shall be prohibited from any service connection to a community wastewater management system. Typical inflow sources are:
 - a. Roof drains;
 - b. Yard drains;
 - c. Swimming pools;
 - d. Normal groundwater;
 - e. Sump pumps; and
 - f. 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.

²³⁷ This section carries forward the standards in Sections 32-108 and 32-109 from the current code with no substantive change. The balance of the wastewater chapter provisions have been relocated to new chapter 14: Wastewater.

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 Health and Human Services 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, noncommunity, 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.

36.5.21. WATERWAY AND CANAL VIOLATIONS²³⁸

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 which, in the opinion of public safety personnel 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

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 public safety personnel, presents a dangerous condition to beach users.

E. UNLAWFUL ACTIVITIES WITHIN THE DUNE SYSTEM

²³⁸ This section carries forward the violation provisions from Sections 34-24 through 34-55 of the current code with no substantive changes.

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, 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. NUISANCES²³⁹

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

Any condition detrimental to public health which violates the rules and regulations of the Dare County Health and Human Services 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

²³⁹ NOTE TO STAFF: 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. We should discuss the possibility of merging these nuisance actions with the other violations and simply refer to the civil penalty procedure. Additional discussion is needed.

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;
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. GROWTH, PLANTING, OR MAINTENANCE OF BEACH VITEX

1. The growing, planting, causing to be planted, or maintaining of Beach Vitex (*Vitex Rotundifolia*) on any property located within the town limits of the Town.
2. Beach Vitex shall be deemed to be "growing" for the purposes of this section if Beach Vitex is located anywhere on any property with the municipal limits of the Town of Southern Shores.²⁴⁰

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 <>, **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

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.

²⁴⁰ NOTE TO STAFF: Need to discuss this provision. Failure to remove or arrest an invasive species is not the same as growing it.

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. NOISE²⁴¹

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 <>, Exemptions**, 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 the extra territorial jurisdiction.

C. EXEMPTIONS

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; and
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.

²⁴¹ 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.

D. MAXIMUM SOUND LEVELS AND NOISE DISTINGUISHED

1. The standards in this section identify a series of maximum sound levels that may not be 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 or 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 ACTIVITY²⁴²

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 <>, 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 building inspector 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

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:

²⁴² This section carries forward Section 22-3(15) from the current Code.

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 <>, 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 TECHNIQUES²⁴³

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

²⁴³ NOTE TO STAFF: Should we consider relocating these to the rules of measurement in the zoning chapter?

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 ESTABLISHED²⁴⁴

- 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 <>, *Violations Identified*, 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 REMEDIES²⁴⁵

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 <>, 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 REMEDIES²⁴⁶

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 <>, Civil Procedure*.

C. ADMINISTRATIVE REMEDIES²⁴⁷

The administrative procedures of this Code provide for administrative enforcement action for certain violations. Administrative remedies include the following, further described in *Section <>, Administrative Procedures*:

1. Denial of application for permit;
2. Revocation or suspension of permit;
3. Stop work order; or
4. Discontinuation of services.

²⁴⁴ This section carries forward the standards in Section 1-6(a) and (j) of the current ordinance with no substantive changes.

²⁴⁵ This subsection carries forward the language in Section 1-6(b) of the current code with no substantive changes.

²⁴⁶ This subsection replaces the language currently located in Sections 1-6(d) and (e).

²⁴⁷ This is a new subsection that clarifies that administrative actions (denial of permit, etc.) also constitute enforcement actions.

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 ABATEMENT²⁴⁸

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 the 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 REMEDY²⁴⁹

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.

36.8. CIVIL PROCEDURE

36.8.1. GENERALLY

A. WARNING CITATION²⁵⁰

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;

²⁴⁸ This subsection carries forward the standards in Sections 1-6(h) and (i) of the current code with only minor reformatting.

²⁴⁹ This section carries forward the standards in Section 1-6(g) of the current code with no substantive changes.

²⁵⁰ This section carries forward the standards in Section 1-6(m) of the current code with only formatting changes.

- 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 CITATION²⁵¹

- 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 Treasurer in the Town Hall 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 <>, 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 **<>, Civil Action**.

1. CIVIL PENALTIES²⁵²

- 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 <>, Bicycle Safety Standards**, shall be \$10.00 for each violation.

3. CABLE TELEVISION VIOLATIONS²⁵³

- 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.
- 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 <>, Civil Procedure for Motor Vehicle and Traffic Violations**, for civil penalty procedures and penalty amounts.

D. CIVIL ACTION²⁵⁴

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 VIOLATIONS²⁵⁵

²⁵¹ This section carries forward the standards in Section 1-6(n) of the current code with only formatting changes.

²⁵² The penalty information is relocated here from Section 1-6(d) of the current code.

²⁵³ The penalty information is relocated here from Section 1-6(f) of the current code.

²⁵⁴ This section is carried forward from Section 1-6(o) of the current ordinance with no substantive changes.

²⁵⁵ These standards are relocated here from current Sections 20-202 and 20-203 with only minor formatting changes.

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 may determine.

B. PENALTY²⁵⁶

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.

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 PROCEDURES²⁵⁷

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 ORDER²⁵⁸

²⁵⁶ The stop work penalty information is relocated here from Section 1-6(e) of the current code.

²⁵⁷ NOTE TO STAFF: several of these are new remedies not present in the current code.

²⁵⁸ Information from current Sections 16-4(c)(16) and 32-6(d) are relocated here with minor formatting alterations.

- 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.

36.11. REMEDIES CUMULATIVE ²⁵⁹

36.11.1. REMEDIES NOT EXCLUSIVE

- A. The civil penalties, criminal penalties, and other remedies provided in this article 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

- A. Each day any violation of this Code shall continue shall constitute a separate offense, unless otherwise specified.

²⁵⁹ 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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