



Town of Southern Shores

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Ordinance 2022-XX-XX

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160D-701, the Town of Southern Shores (the “Town”) may enact and amend ordinances regulating the zoning and development of land within its jurisdiction. Pursuant to this authority and the additional authority granted by N.C.G.S. § 160D-702, the Town has adopted a comprehensive zoning ordinance (the “Town’s Zoning Ordinance”) and has codified the same as Chapter 36 of the Town’s Code of Ordinances (the “Town Code”); and

WHEREAS, the Town further finds that in accordance with the findings above it is in the interest of and not contrary to the public's health, safety, and general welfare for the Town to amend the Town’s Zoning Ordinance as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein, but are instead replaced by an ellipses (“...”) shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of Zoning Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Southern Shores, North Carolina, that the Town Code shall be amended as follows:

PART I. That **Chapter 36. Zoning.** Be amended as follows:

...

ARTICLE II. ESTABLISHMENT OF ZONING DISTRICTS AND PROVISION FOR ZONING MAP

Sec. 36-25. Official zoning map.

- (a) For the purpose of this article, the town and its ETJ area are hereby divided into zones or districts as shown on the official zoning map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this article.
- (b) The official zoning map shall be identified by the signature of the mayor and attested by the town clerk and bear the seal of the town under the following words:

"This is to certify that this is the official zoning map referred to in article II of the zoning ordinance of the Town of Southern Shores, North Carolina," together with the date of the adoption of this chapter.

- (c) If, in accordance with article XIV 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.
- (d) Regardless of the existence of purported copies of this official zoning map which may be made or published, the official zoning map, which shall be located in the town office, shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the town.

(Code 1988, § 11-2.01)

Sec. 36-26. Rules governing the interpretation of district boundaries.

Where uncertainty exists with respect to the boundaries of any of the districts as shown on the official zoning map, the following rules shall apply:

- (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~~ a special 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;
- (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.

(Code 1988, § 11-2.02)

Secs. 36-27—36-55. Reserved.

ARTICLE III. INTERPRETATION AND DEFINITION OF TERMS

Sec. 36-56. Interpretation of common words and terms.

For the purpose of this chapter, certain words or terms used herein shall be interpreted as follows:

- (1) Words used in the present tense include the future tense.
- (2) Words used in the singular shall include the plural and words used in the plural shall include the singular.
- (3) The word "person" includes a firm, copartnership, company, organization, trust, association, or corporation, as well as an individual.
- (4) The word "lot" includes the words "plot," "site," "parcel," or "tract."
- (5) The word "building" includes the word "structure."

- (6) 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."
- (7) The word "shall" is always mandatory.
- (8) The word "may" is permissive.

(Code 1988, § 11-3.01)

Sec. 36-57. Definition of specific terms and words.

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

Accessory use. See *Use, accessory.*

Adult arcade means 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.

Adult bookstore means as defined in G.S. 14-202.10(1) which is incorporated herein by reference.

Adult cabaret means a nightclub, bar, restaurant, or similar commercial establishment that, for at least ten percent of its business hours in any day, features:

- (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.

Adult escort means 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.

Adult escort agency means a person or business that furnishes, offers to furnish, or advertises to furnish adult escorts as one of its business purposes for consideration.

Adult establishment means as defined in G.S. 14-202.10(2) which is incorporated herein by reference.

Adult live entertainment means as defined in G.S. 14-202.10(3) which is incorporated herein by reference.

Adult live entertainment business means as defined in G.S. 14-202.10(4) which is incorporated herein by reference.

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 G.S. 14-202.10(10), or specified sexual activities as defined in G.S. 14-202.10(11), or sexually oriented devices as defined in G.S. 14-202.10(9), 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 G.S. 14-202.10(10), or specified sexual activities as defined in G.S. 14-202.10(11), or sexually oriented devices as defined in G.S. 14-202.10(9), 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.

Adult mini motion picture theater means as defined in G.S. 14-202.10(6) which is incorporated herein by reference.

Adult motel means 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.

Adult motion picture theater means as defined in G.S. 14-202.10(5) which is incorporated herein by reference.

Adult theater means a theater, concert hall, auditorium, or similar commercial establishment that for at least ten percent of its business hours in any day, features persons who appear in a state of nudity or live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities.

Adult video store means 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.

Bank means 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 and 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.

Buffer strip means a device of material 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. Vegetated buffer strips shall be composed of evergreen trees and shrubs.

Building means any structure enclosed and isolated by exterior walls constructed or used for residence, business, industry or public purposes.

Building, accessory, means 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 where the accessory building is attached to the principal structure by breezeways, covered walkways, walkways, or other structures not constituting enclosed living space.

Building inspector means 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 chapter.

Building, principal, means a building in which is conducted the principal use of the lot on which it is located.

Building setback line means a line parallel to or concentric with the street right-of-way establishing the minimum allowable distance between such right-of-way and the nearest portion of any building, excluding the outermost three feet of any uncovered porches, steps, gutters and similar fixtures.

Child day care means 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.

Child day care center means 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.

Child day care, small home, means 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. A small child day care home shall not be deemed a home occupation as provided in this section.

Code enforcement officer means 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 chapter.

Communications tower, municipal and fire station means a customary accessory structure to a fire station or municipal building consisting of a tower 80 feet or less in height measured from ground level to the highest point which provides emergency, municipal, fire and/or police communications services only.

Community beach access means beach access ocean dune platforms, walks, ramps (including Hatteras ramps), 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, open to, and available for use by property owners, members, and their guests or by the town.

Community recreational facilities means 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.

Condominium means ownership in common with others of a parcel of land and certain parts of a building thereon which would normally be used by all the occupants together with individual ownership in fee simple of a particular unit in such building.

Country club means a private recreational facility which is open to members and their guests and shall include a golf course and clubhouse. A swimming pool, tennis courts, and meal services may also be provided.

Delicatessen means a retail store with no customer seating specializing in the sale of prepared cooked meats, smoked fish, cheeses, sandwiches and other specialty food items.

Drive-in restaurant or refreshment stand means 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 eat or drink the food, refreshments, or beverages on the premises.

Drive-through facility or establishment (large) means a customer service facility located on a lot greater than or equal to two and one-half acres within the principal structure, which is intended to enable the customer to transact business with a customer service person located within the principal structure without exiting the motor vehicle. It is presumed that the motor vehicle exits the premises immediately upon the transaction of business.

Drive-through facility or establishment (small) means a customer service facility located on a lot less than 20,000 square feet within the principal structure, which serves items over a general service counter for the customer to carry to a small seating area, to a motor vehicle, or off-premises.

Driveway means 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.

Dwelling, large home, means any residential structure exceeding the maximum size, maximum transient occupancy capacity or maximum septic capacity for such structures in the zoning district in which it is located. Large home dwellings are not a permitted use in any zoning district.

Dwelling, multifamily, means a building or portion thereof used or designed as a residence for three or more families living independently of each other and doing their own cooking therein, including apartment houses and condominiums.

Dwelling, single-family, means a detached building designed for or occupied exclusively by one family.

Dwelling, two-family (duplex), means 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, or having the ceiling structure of the lower unit and the floor structure of the unit above.

Dwelling unit means one or more rooms or living spaces connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease, and physically separated from any other rooms, living spaces or dwelling units which may be in the same structure, and containing a stove or stoves and/or an oven or ovens and sleeping facilities for a single-family.

Enclosed living space. See *living space*.

Establishment means that portion of a building owned or held through tenancy used for the purpose specified.

Event facility means an establishment, structure or property designed, maintained, advertised or actually used for the primary purpose of hosting pre-planned events. The term "events", includes, but is not limited to, private parties, community uses, 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. The term "community uses" means meetings of charitable, political, governmental or civic groups. The term "private parties" means events 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. On site sales of food and/or beverages at an event facility shall constitute a restaurant as defined in section 36-57 which shall require a ~~conditional~~ special use permit. The term "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 or for traditional family events. The term "traditional family events" includes, but is not limited to, holiday parties

and meals, birthday parties, funeral services, religious ceremonies and weddings for family members related by blood or marriage to: (i) any of the individual holders of legal title to the property; (ii) a majority of the owners of a business entity holding legal title to the property; or (iii) the beneficiaries of a trust holding legal title to the property.

Family means 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 (N.C.G.S. Chap. 42A), then no such family shall contain more than five persons.

Fill material means material that is of substantially similar composition to the soils present on the lot being filled and shall not include debris, organic material, or be finished with soils or materials that will adversely affect the absorption of precipitation. Materials for landscaping shall not be included in this definition.

Footprint means 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.

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.

Group development means multiple principal buildings on a single lot.

Group development, residential, means detached single-family or townhouses on individual lots less than 20,000 square feet permitted only in the RS-10 district.

Habitable floors and stories means enclosed living space within a structure located below the top plate.

Habitable space. See *living space*.

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.

Home occupation/home-based business means a business, profession, occupation or trade conducted for gain or support within a residential dwelling. See article VIII of this chapter, pertaining to home occupation/home based business regulations.

Ice vending structure (automated) means an enclosed, free standing, unmanned structure that produces and vends bagged and bulk ice.

Indoor entertainment means 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. Sexually oriented business activities and adult live entertainment are specifically excluded from this indoor entertainment definition.

Indoor entertainment facilities means 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. Indoor entertainment facilities must be constructed to meet noise buffering requirements of the zoning district where located.

Living space means enclosed conditioned areas within a structure that are designed or constructed for human habitation. All conditioned areas within a structure are presumed to be constructed for human habitation unless affirmatively shown to be to the contrary in a manner such that the use of the area cannot be modified, i.e. a conditioned wine cellar or refrigerated storage area.

Lot means any piece or parcel of land entirely within the town, 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 a 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. For the purposes of this chapter only that area within the town will be considered as a single lot.

Lot area means the total surface areas included within the lot line measured on a horizontal plane.

Lot, corner, means 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.

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.

Lot depth means the average distance from the street line of the lot to its rear line measured in a general direction of the side lines of the lot.

Lot lines means the lines bounding a lot as defined herein:

- (1) *Lot line, front*. The line separating said lot from that street which is designated as the front street on the building permit, certificate of occupancy or subdivision plat.
- (2) *Lot line, rear*. 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.
- (3) *Lot line, side*. A side lot line is any lot boundary line not a front lot line or rear lot line.

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

Lot width means the width of a lot at the required building setback line measured at right angles to depth.

Medical clinic means a building or structure or portion thereof where medical services are provided for outpatients only.

Mobile home (include doublewide and triplewide homes) means a preassembled dwelling unit built on a chassis, with body width exceeding eight feet and body length exceeding 32 feet, designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities. A travel trailer is not to be considered a mobile home.

Modular homes means a factory fabricated transportable building designed to be used by itself or to be incorporated with similar units at a building site into a modular structure. The term is intended to apply to major assemblies and does not include prefabricated panels, trusses, plumbing trees, and other prefabricated sub-elements which are to be incorporated into a structure at the site.

Motel means any group of separate or connected dwelling units or lodging units used for the purpose of accommodating transient guests whether designated as a motel, hotel, inn, motor lodge, or otherwise.

Net acreage means total area to be developed minus any area covered by waterways, marshes or wetlands.

Nude model studio means 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.

Nudity or state of nudity means 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.

Ocean dune platform means a platform constructed on the frontal dune.

Oceanfront setback means 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~~ special use provisions of this chapter.

Open space means an unoccupied space open to the sky.

Open storage means an unroofed storage area, whether fenced or not.

Parking space means a vehicular storage space plus the necessary access space.

Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.

Planned unit development means complete development of land which is under central control or for which central control mechanisms have been established. The plan will be in accordance with such guides and objectives as may be established by the planning board and town council in article IX of this chapter.

Post means to erect, attach, or affix in any manner, including without limitation nailing, tacking, tying, gluing, pasting, painting, staking, marking, or writing.

Public right-of-way means 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.

Recreational equipment means boats and boat trailers, pickup campers or coaches (designed to be mounted on automotive vehicles), motorized dwellings, tent trailers, and the like.

Restaurant means 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. To qualify as a restaurant, an establishment shall have all the following:

- (1) A food preparation area occupying at least 20 percent of the gross square footage of the establishment;
- (2) At least 75 percent of all customer seats designated for either fast casual or full-service, full-menu, dining; and
- (3) 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; dance floor, stage, live performance and disc jockey areas. Accessory entertainment uses referenced in this definition 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.

Retail shopping center means a commercial structure which includes or is designed to include two or more establishments with combined floor area of at least 20,000 square feet planned for a single or contiguous lot or parcel.

Seminude means 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.

Sexual encounter center means 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.

Sexually oriented business means 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 G.S. 14-202.10(2) 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.

Sexually oriented business activities means 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.

Sexually oriented devices means as defined in G.S. 14-202.10(9) which is incorporated herein by reference.

Sign means 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.

Sign, commercial, means a sign which identifies, advertises, or directs attention to a business, or is intended to induce the purchase of goods, property, or service, including, without limitation, any sign naming a brand of goods or service and real estate signs, as further defined below.

Sign, noncommercial, means a sign designed and intended to promote, support, call attention to, or give notice to a cause, nonprofit and noncommercial service, or political message of an individual, charitable organization, political group or other entity. Any symbols, letters or other identifying characteristics describing the commercial sponsor of a noncommercial sign shall not exceed four inches in height and may not be repeated on the same face of the sign. A noncommercial sign shall contain no commercial advertising or statements, logos, designs or trademarks designed or intended to promote or produce financial gain other than donations for charitable organizations such as groups which are tax exempt pursuant to the Internal Revenue Code.

Sign, noncommercial charity event, means 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.

Sign, off-site, means an off-site sign is any sign other than an on-site sign including signs erected for the provision of outdoor displays or display space as a business on a lease or rental basis.

Sign, on-site, means a sign relating in its subject matter to the premises on which it is located, or to products, services, accommodations, or activities on these premises.

Sign, real estate, means 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.

Sign, temporary, means 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 code provisions.

Sign, vehicle, means 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.

Special use permit means a permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards. The term includes permits previously referred to as conditional use permits or special exceptions.

Specified anatomical areas means as defined in G.S. 14-202.10(10) which is incorporated herein by reference.

Specified sexual activities means as defined in G.S. 14-202.10(11) which is incorporated herein by reference.

Street means any permanently dedicated public right-of-way which has been accepted for maintenance by the state department of transportation 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 and which has been approved by the town council as a street to satisfy the requirements of this chapter.

Structure means anything constructed or erected, the use of which requires location of the ground, or attachment to something having location on the ground.

Swimming lessons means 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 this section.

Swimming pool means 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.

Top plate means the point at which the structural wall framing and the structural roof framing join together at the top of the uppermost habitable floor. When a building is designed with top plates at more than one horizontal level, the uppermost plate is the one referred to and regulated by this chapter.

Tourist-oriented directional signs (TODS) means guide signs that display the business identification of and directional information for tourist-oriented businesses and tourist-oriented facilities (as defined in G.S. 136-140.15) or for a class of businesses or facilities that are tourist-oriented.

Townhouse means 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. No more than six such dwelling units may be attached in a single group.

Trailer includes 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.

Transient occupancy, means overnight occupancy in a residential structure for periods of less than 30 days for vacation, leisure, recreation or other purposes by a person or persons who have a place of residence to which they intend to return including when such property or structure is offered in whole or in part for rent or use by the day, week, or other period of less than 30 days.

Use means:

- (1) Any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained, or occupied; or
- (2) 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.

Use, accessory, means a building, structure or use which meets 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.

~~*Use, conditional*, means a use that would not be appropriate, generally or without restriction, throughout a particular zoning district but which, if controlled as to number, area, location or relation to the neighborhood, would preserve the intent of this chapter to promote the public health, safety, morals and general welfare. Specific provisions are made for conditional uses which may be permitted in certain zones and the procedures for application are set out in section 36-300.~~

Use, nonconforming, means a use of building or land which does not conform with the regulations of the district in which such building or land is situated but was lawful before adoption of this chapter.

Vacation cottage, means the use of a property and associated single-family dwelling in whole or in part for any part of a calendar year for the purpose of transient occupancy. Any property or structure advertised in a manner meeting the definition of vacation cottage shall be presumed to be actually in use as a vacation cottage.

Variance means a relaxation of the terms of this chapter where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this chapter would result in unnecessary and undue hardships.

Yard means 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 eaves, fences, walls, poles, posts, ocean dune platforms, walks, accessible ramps, steps and other customary yard accessories, ornaments, and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility or any other requirements of this chapter.

- (1) *Yard, front*. A yard extending between side lot lines across the front of a lot adjoining

the public street. Depth of required front yard shall be measured at right angles to a

straight line joining the foremost points of the side lot lines. The foremost point of the side lot line, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without such rounding. Front and rear yard lines shall be essentially parallel.

- (2) *Yard, rear.* A yard extending across the rear of the lot between side lot lines. Depth of a required rear yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the rear lot line.
- (3) *Yard, side.* A yard extending from the rear line of the required front yard to the rear yard. Width of a required side yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the side lot line.

Zoning administrator: A person who is appointed by the town manager and is responsible for administering and enforcing this chapter.

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 chapter.

(Code 1988, § 11-3.02; Ord. No. 01-10-016, pt. I, 10-2-2001; Ord. No. 02-06-019, pt. II, 6-25-2002; Ord. No. 05-04-03, art. III, 5-3-2005; Ord. No. 05-08-02, art. III, 11-1-2005; Ord. No. 06-11-01, art. III, 11-8-2006; Ord. No. 2006-09-02, art. III, 11-28-2006; Ord. No. 2007-05-01, art. III, 6-5-2007; Ord. No. 2007-07-01, art. III, 8-7-2007; Ord. No. 2009-08-01, pt. VI, 1-5-2010; Ord. No. 2011-01-01, art. VIII, pt. I, 1-4-2011; Ord. No. 2011-04-01, art. III, pt. I, 4-5-2011; Ord. No. 2011-12-01, art. III, pt. I, 12-6-2011; Ord. No. 2012-02-01, art. III, pt. I, 2-7-2012; Ord. No. 2013-03-01, art. III, pt. I, 3-5-2013; Ord. No. 2013-06-02, art. III, pt. I, 6-18-2013; Ord. No. 2016-01-01, art. III, pt. I, 1-22-2016; Ord. No. 2016-01-02, art. III, pt. I, 1-22-2016; Ord. No. 2016-01-04, art. III, pt. 1, 1-22-2016; Ord. No. 2017-12-02, art. III, pt. I, 12-5-2017; Ord. No. 2018-05-02, art. III, pt. I, 6-5-2018; Ord. No. 2019-05-02, art. III, pt. 1., 5-7-2019; Ord. No. 2019-11-01, art. III, pt. I, 11-6-2019; Ord. No. 2021-07-01, art. III, pt. I, 7-6-2021)

Secs. 36-58—36-87. Reserved.

ARTICLE IV. APPLICATION OF REGULATIONS

Sec. 36-88. Territorial application.

The provisions of this article shall apply to all lands, waters, structures, and uses thereon, within the zoning areas designated on the official zoning map.

(Code 1988, § 11-4.01)

Sec. 36-89. Use, occupancy and construction.

- (a) No building, structure, or land shall hereafter be used or occupied, and no structure or part thereof shall hereafter be constructed except in conformity with all of the regulations herein specified for the district in which it is located.
- (b) Permitted, prohibited and ~~conditional~~ special uses are listed by district, within the schedule of district regulations.

(Code 1988, § 11-4.02; Ord. No. 2021-07-03 , art. III, pt. I, 7-6-2021)

Sec. 36-90. Height, bulk, density, lot coverage, yards and open spaces.

After the effective date of the ordinance from which this chapter is derived, no building or other structure shall be erected or altered to exceed the height or bulk requirements of this article; nor to accommodate a greater number of families than allowed by this article; nor to have narrower or smaller front yards, side yards, rear yards, or other open spaces than required by this article; nor shall any building, structure or land be used in any other manner contrary to the provisions of this article.

(Code 1988, § 11-4.03)

Sec. 36-91. Computation of required spaces.

- (a) No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this article, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building except as specifically allowed by this article.
- (b) All lots created shall have all of the minimum square footage contiguous to all other minimum square footage within the same lot. No street or road right-of-way, or body of water may separate one area of a lot from another area of the same lot. No recombination of two or more lots shall create a lot where the minimum square footage is not contiguous to all other minimum square footage.

(Code 1988, § 11-4.04; Ord. No. 04-10-01, art. III, 11-17-2004)

Sec. 36-92. Reduction of lots or areas below minimum.

- (a) 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.
- (b) Yards or lots created on or after July 7, 1981, shall meet at least the minimum requirements established by this article.

(Code 1988, § 11-4.05; Ord. No. 05-09-01, art. III, 11-1-2005)

Sec. 36-93. Classification of added territory.

All territory not included under the provisions of this article hereafter added to the zoned area shall be considered to be RS-1 until otherwise classified.

(Code 1988, § 11-4.06)

Sec. 36-94. One principal building on any lot.

Only one principal building and its customary accessory building may hereafter be erected on any lot, except as authorized in this article.

(Code 1988, § 11-4.07)

Sec. 36-95. Lot access requirements.

- (a) No structure requiring a building permit shall be erected on any lot having less than 30 feet of frontage and which:
 - (1) Does not abut either a public right-of-way or a private street or easement which has been approved in accordance with the provisions of this article, the subdivision ordinance set forth in chapter 30, or any applicable town ordinance and recorded by the county register of deeds; or
 - (2) Does not have access to a public street or highway, which access is described in an instrument recorded in the county register of deeds office prior to adoption of the ordinance from which this chapter is derived.
- (b) Single-family residential home sites and site plans shall include a driveway with a minimum width of eight feet extending from the front property line to the principal structure, as well as required external parking spaces. Where a driveway is not shown on a proposed site plan, a line that is the shortest distance from the building to the front property line shall be drawn and a second, parallel line, eight feet wide to scale, shall be drawn, demarking the required driveway to calculate contribution of the driveway toward lot coverage.
- (c) Home sites and site plans shall not require vehicles to back into the public right-of-way. Home sites and site plans shall include a minimum ten-foot by ten-foot area adjacent to the required driveway to allow for vehicle turnaround.

(Code 1988, § 11-4.08; Ord. No. 05-09-01, art. IV, 11-1-2005; Ord. No. 2006-09-02, art. IV, 11-28-2006)

Sec. 36-96. Vision clearance at intersections.

On a corner lot which abuts town- or state-maintained rights-of-way in any district, no planting, structure, fence, wall or other obstruction to vision more than three feet in height shall be placed or maintained within the triangular area formed by the intersecting street right-of-way lines, each of which is 25 feet distant from the point of intersection. On other rights-of-way, the

proper setback for vision clearance shall be determined by the zoning administrator, but in no case shall the requirement exceed that previously stated.

(Code 1988, § 11-4.09; Ord. No. 2011-01-01, art. VIII, pt. II, 1-4-2011)

Sec. 36-97. Walls and fences.

The setback requirements of these regulations shall not prohibit any necessary retaining wall or prohibit any wall or fence. However, within or abutting any residential district, no wall or fence shall exceed six feet in height and within any commercial or industrial district, no fence shall exceed ten feet in height. For wireless telecommunications sites, no wall or fence shall exceed ten feet in height.

(Code 1988, § 11-4.10; Ord. No. 2013-07-01, art. III, pt. I, 7-16-2013)

Sec. 36-98. Structures excluded from height limitations.

Except for banks in the general commercial district, the board of adjustment may vary the height limits of these regulations 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:

- (1) Church spires or belfries.
- (2) Decorative cupolas that do not exceed five feet in width on any side or 25 square feet in cross section.
- (3) Flagpoles.
- (4) Communications masts (private TV antenna excluded).

(Code 1988, § 11-4.11; Ord. No. 2011-12-01, art. III, pt. II, 12-6-2011)

Sec. 36-99. Ocean dune platforms, walkway, steps.

Regulation of these structures 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.

- (1) *Ocean dune platforms.* Ocean dune platforms shall not exceed 200 square feet in area and no supporting posts shall be placed within four feet of the east side of the frontal dune. At the time of construction, ocean dune platforms will be at least 18 inches and no more than 24 inches above the highest natural grade within the footprint of the proposed platform. No part of the platform structure, except a flagpole, shall extend more than three feet above the deck. Permanently attached seating and areas incorporating permanently attached seating are considered part of such ocean dune platforms.

- (2) *Walkway and/or steps.* 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. 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.
- (3) *Exceptions.* Community recreation facilities may erect:
 - a. Dune platforms not to exceed 500 square feet.
 - b. A sunshade on the dune platform provided the footprint of the sunshade does not exceed 180 square feet; the sides are not enclosed; the height from the deck does not exceed 11 feet; and it is set back 25 feet from side property lines. 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.
- (4) *Nonconforming structures.* Existing ocean dune platforms, walkways and steps that do not meet the above requirements are considered nonconforming structures (article V). All structures covered by this section require a building permit.

(Code 1988, § 11-4.12; Ord. No. 05-08-02, art. IV, 11-1-2005)

Sec. 36-100. Beach obstacles.

No obstruction to the passage of permitted vehicles will be placed, constructed, or maintained oceanward of the first line of vegetation.

(Code 1988, § 11-4.13)

Sec. 36-101. Habitable floors.

- (a) 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.
- (b) The enclosed area above the top plate of a structure shall not be inhabited by any person or used for any purpose other than storage of personal effects or property.

(Code 1988, § 11-4.14)

Sec. 36-102. Living space within accessory structures.

On lots where enclosed living space is permitted within accessory structures, the living space within an accessory structure shall count towards any living space restrictions for the principal building.

(Ord. No. 2017-12-02, art. III, pt. V, 12-5-2017)

Secs. 36-103—36-130. Reserved.

ARTICLE V. NONCONFORMITIES

Sec. 36-131. Intent.

- (a) Within the districts established by this chapter or amendments that may later be adopted, there exist lots, structures, uses of land and structures, and characteristics of use which were lawful before the ordinance from which this chapter is derived was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this chapter or future amendments. It is the intent of this article to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this article that nonconformities shall 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) To avoid undue hardship, nothing in this article shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of the ordinance from which this chapter is derived and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in a permanent position and fastening in a permanent manner. (See section 36-448.) Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation, demolition, or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

(Code 1988, § 11-5.01)

Sec. 36-132. Regulation of structures and uses nonconforming.

- (a) *Nonconforming lots of record.*
 - (1) *Development and sale of certain nonconforming lots without recombination.* In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory building may be erected on any currently nonconforming single lot which met all legal requirements at the time of its creation and recording in the Dare County public registry if:
 - a. The lot is not under the same ownership as any adjacent lot;
 - b. The lot meets or exceeds the lot area requirements for the district and is located adjacent to a single conforming lot under the same ownership on which is located an existing single-family dwelling;
 - c. The lot is one of three or less adjacent nonconforming lots under the ownership of related siblings on September 6, 2019; or
 - d. The lot is located adjacent to land under the same ownership on which is located

an existing single-family dwelling, and the adjacent land is made up of:

1. No more than two lots all of which are nonconforming; or
2. A single conforming lot not adjacent to any other land under the same ownership that was created after January 1, 2015 due to a recombination of two previously nonconforming lots.

If a currently nonconforming single lot meets the requirements of subsection (a)(1)a, b, c or d then the lot may be sold without being recombined with the remaining land if recombination would have been required by subsection (a)(2) below. All applicable dimensional requirements other than lot area and lot width shall be met for development or redevelopment of such a lot except that a lot having a lot width of 50 feet or less may use a side yard setback of 12 feet.

(2) *Recombination required.* If any of the following situations apply, all adjacent lots under the same ownership shall be recombined into: (i) a single lot which may or may not meet the minimum requirements for the district in which such lots are located; or (ii) multiple lots which all meet the minimum requirements for the district in which such lots are located:

- a. Development is proposed upon land which includes one or more nonconforming lots adjacent to one or more other lots under the same ownership;
- b. Demolition or redevelopment exceeding 50 percent of an existing structure's value is proposed and any portion of the existing structure or associated use is currently or has been within the previous seven years located upon or occurring on two or more lots under the same ownership, as measured from the time of application;
- c. Development is proposed of a new structure or use to be located on two or more lots under the same ownership;
- d. Prior to the sale or transfer of land when any portion of the land being sold or transferred was a parcel or part of a parcel of land upon which an existing structure or associated use is currently or has been within the previous seven years located upon or occurring on two or more lots under the same ownership, as measured from the time of application; or
- e. Prior to the sale or transfer of land including a nonconforming lot or lots adjacent to one or more other lots under the same ownership;

A plat prepared by a North Carolina licensed surveyor showing the recombination shall be recorded in the Dare County public registry, and a copy of the recorded plat shall be provided to the town prior to the issuance of a zoning or building permit for development or redevelopment upon any of the newly created lots. Lots created by a recombination required by this section shall be deemed to equal or exceed the standards of the town under chapter 30, and are exempt from the subdivision process under chapter 30.

- (3) For purposes of this subsection (a), the term "same ownership" shall be construed broadly to effectuate the reduction of nonconforming lots within the town. Land and

lots under the same ownership shall include, but not be limited to, any of the following or any combination of the following:

- a. A lot is owned, in whole or in part, by an individual and another lot is owned by the same individual or by an affiliate of the same individual; and/or,
 - b. A lot is owned, in whole or in part, by a legal entity and another lot is owned by the same legal entity or by an affiliate of the same legal entity.
- (4) For purposes of this subsection (a), the following definitions apply:
- a. An "affiliate" of an owner shall mean:
 1. In the case of an individual owner, a family member of the owner, or a legal entity controlled by the owner or a family member of the owner.
 2. In the case of a legal entity owner, an individual who controls the legal entity or their family member, another legal entity controlled by the owner or controlled by a family member of any individual who controls the owner.
 - b. "Controlled" or "controls" shall mean the power, by ownership, operation of law or contract, whether exercised or not, directly or indirectly, actually or effectively, to operate, supervise, or manage a legal entity, or to appoint or elect the management of the legal entity, or to otherwise direct the operation, supervision or management of the legal entity.
 - c. "Family member" of an owner shall mean the owner's spouse, lineal descendants, siblings and parents whether related by blood or marriage.
- (b) *Nonconforming uses of land.* Where at the time of passage of this article lawful use of land exists which would not be permitted by the regulations imposed by this chapter, and where such use involves no individual structure with a replacement cost exceeding \$1,000.00, the use may be continued so long as it remains otherwise lawful, provided:
- (1) No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this article.
 - (2) No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this article.
 - (3) If any such nonconforming use of land ceases for any reason for a period of more than 30 days, any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located.
 - (4) No additional structures not conforming to the requirements of this article shall be erected in connection with such nonconforming use of land.
- (c) *Nonconforming structures.* Where a lawful structure exists at the effective date of adoption or amendment of this chapter that could not be built under the terms of this article by reason of restriction on area, lot coverage, height, yards, its location on the lot, or other

requirements concerning the structure, such structure may be continued so long as it remains lawful, subject to the following provisions:

- (1) No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity. In the case of a structure on pilings with a nonconforming side, front or rear yard setback, enclosing the space below any portion of the structure does not increase its nonconformity unless the footprint of the structure within the nonconforming setback is increased by such enclosure. In the case of a residential primary structure with a nonconforming side yard setback which was compliant with the side yard setback in effect at the time of construction of the nonconforming portion of the structure, the enlargement or alteration of the structure in a manner which violates the current side yard setback does not increase the structure's nonconformity unless the enlargement or alteration also:
 - a. Extends into the side yard beyond the existing nonconforming portion of the structure; or
 - b. Violates the side yard setback in effect at the time the nonconforming portion of the structure was initially constructed.
- (2) Should such 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 article. An exception is 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 article XVI of this chapter, pertaining to hurricane and storm reconstruction and redevelopment and general use 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.
- (3) Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
- (4) Any such 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.
- (5) Residential accessory structures existing as of January 1, 2017 which were otherwise lawful and duly permitted at the time of their construction or modification and which are nonconforming due solely to the inclusion of living space within the accessory structure shall be considered legally nonconforming under this article. Such accessory structures may be modified in conformance with this chapter and the nonconforming

living space within them may continue so long as the nonconformity is not expanded.

(d) *Nonconforming uses of buildings or of buildings and premises in combination.* If lawful use involving buildings with a replacement cost of \$1,000.00 or more, or of building and premises in combination, exists at the effective date of adoption or amendment of the ordinance from which this chapter is derived, that would not be allowed in the district under the terms of this article, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (1) No existing structure devoted to use not permitted by this article in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
- (2) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this article, but no such use shall be extended to occupy any land outside such building.
- (3) If no nonconforming structural alterations are made, any nonconforming structure or use of structures may be changed to any conforming use, with the approval of the town council.
- (4) Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed.
- (5) When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for ten consecutive months (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 the regulations of the district in which it is located.
- (6) 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. 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.
- (7) No mobile home or trailer existing as a nonconforming use may be returned or replaced after removal.

(e) *Repairs and maintenance.*

- (1) In any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, to an extent not exceeding ten percent of the current replacement cost of the nonconforming structure or nonconforming portion of the structure, as the case may be, provided that the cubic content existing when it became nonconforming shall not be increased.
- (2) If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is

declared by the building inspector to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

- (3) Nothing in this article shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.
- (f) *Uses under ~~conditional~~ special use provisions not nonconforming.* Any use which is permitted as a ~~conditional~~ special use in a district under the terms of this article shall not be deemed a nonconforming use in such district, but shall without further action be considered a conforming use.

(Code 1988, § 11-5.02; Ord. No. 05-01-01, art. III, 3-1-2005; Ord. No. 05-09-01, art. V, 11-1-2005; Ord. No. 2008-12-01, art. III, 2-3-2009; Ord. No. 2017-07-04, art. III, pt. I, 7-11-2017; Ord. No. 2018-06-03, art. III, pt. I, 9-5-2018; Ord. No. 2019-09-01, art. III, pt. I, 9-10-2019)

Secs. 36-133—36-162. Reserved.

ARTICLE VI. GENERAL PROVISIONS

Sec. 36-163. Off-street parking requirements.

At the time of erection of any building or structure, or at the time any main 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.

- (1) *General provisions.*
 - a. Each parking space, for other than single-family residential homes, shall have a minimum length of 18 feet and a minimum width of nine and one-half feet. Drive aisle width shall be a minimum of 22 feet. It shall have vehicular access to a publicly dedicated or town approved private street and be located outside of any dedicated right-of-way.
 - b. 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.
 - c. Sufficient maneuvering space shall be provided so that no vehicle will be required to back into the public right-of-way. Such space shall be a minimum dimension of ten feet by ten feet and contiguous with the driveway if a required parking space is located in the driveway.
 - d. No parking spaces for residential use, except for single-family and two-family use, shall be located in the required front yard.

- e. Required parking spaces and driveways for other than single-family and two-family uses shall be graded, improved with concrete or I-2 asphalt and maintained in a manner which will provide a surface permitting safe and convenient use in all weather conditions.
- f. Required off-street parking spaces are permanent areas and shall not be used for any other ground purpose.
- g. All space requirements which are based upon employment shall be computed on the basis of the greatest number of persons on duty at any one period during time of peak use. In instances where calculations indicate a portion of one space is required, an additional full space shall be provided.
- h. Each application for a zoning permit submitted to the zoning administrator 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 zoning administrator to determine whether or not the requirements of this section are met. All required parking and drive areas shall be shown on the site plan application.
- i. The required parking space for any number of separate uses may be combined in one lot, but the required space assigned to one use may not be assigned to another use, except that one-half of the parking space required for churches, theaters, or assembly halls whose peak attendance will be at night or on Sundays may be assigned to a use which will be closed at night or on Sundays.
- j. Any off-street parking space required by a use permitted in any residential district shall be provided on the same lot with the use by which it is required. Off-street parking space in conjunction with commercial uses in other districts shall not be permitted in a residential district.
- k. Where off-street parking is provided between the building line and the street right-of-way line for any business use, a buffer strip of at least five feet in width shall be provided adjacent to such street right-of-way line. Curb cuts through such buffer strips shall be separated by a minimum of 50 feet unless otherwise approved by the town council.
- l. All parking spaces which abut open space or buffer space shall have a fixed wheel stop of concrete, plastic or chemically-treated wood six inches in height. Allowances shall be made for two feet of overhang within the parking space so that no part of any car can be located within the required yard.
- m. Where a driveway meets the paved street in the town right-of-way there may be not more than two flares or aprons constructed. The sum of the two flares shall not exceed the width of the driveway by more than five feet. The sum of all construction in the town right-of-way on one platted lot cannot exceed 20 feet.
- n. Provisions for compact or short vehicular parking spaces. Marked 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. Each

compact parking space shall have a minimum length of 15 feet and a minimum width of eight feet. Drive aisle width shall be a minimum of 22 feet.

- o. Required parking spaces for fire stations that cannot be provided on the site of the fire station may be located on town-owned property and/or within the town right-of-way.
- (2) *Shared parking.* Within any one site, or on contiguous commercial sites, the required parking for any number of separate uses may be combined on the site or sites, but the number of parking spaces assigned to one use may not be assigned to another use, except as provided in this subsection.
- a. Shared parking shall be a ~~conditional~~ special use requiring approval by the town council and subject to requirements imposed by the town council as provided in section 36-300.
 - b. A portion of parking spaces required for one use may be used to meet the parking requirements of another use on the same, or on contiguous commercial, parcel(s) when the peak hours of operation and parking demands of the uses occur at different times of day which shall be established in the ~~conditional~~ special use permit.
 - c. In the event that the peak hours of operation or parking demands of either site(s) change(s) such that the peak hours of operation are no longer different or the number of parking spaces required for either site increases, each site shall be brought into compliance with the parking requirements of this chapter.

Prior to final approval of the shared parking proposal, a shared parking agreement, in recordable form and executed by the property owners sharing parking, shall be submitted to the town. The shared parking agreement shall contain terms consistent with the provisions of the shared parking requirements set forth herein; shall contain terms prohibiting its revocation or modification without the town's prior notification; and upon final approval of the site plan, the shared parking agreement shall be recorded in the county registry at owners' expense.

- d. Shared parking agreements between adjacent lots require adequate and safe pedestrian access to and from the shared parking areas.
- (3) *Requirements for parking lots.* Where parking space for five or more cars is permitted or required (other than single-family detached dwellings and townhouses), the following provisions shall be complied with:
- a. *Curb bumpers.* The required front and side yards shall be set off from the parking area by a fixed curb approved by the zoning administrator, not less than six inches or more than two feet high.
 - b. *Drainage.* Parking lots shall not drain onto or across public sidewalks, roadways or into adjacent property except where a drainage easement has been provided or obtained.

- c. *Entrances.* 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. 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 curblin. There shall be a minimum distance between one-way driveways of 50 feet measured along the curblin.
- d. *Internal circulation.* The internal circulation plan of parking lots shall be approved by the town council.
- e. *Lighting.* Any lighting shall be so arranged as to direct the light and glare away from streets and adjacent property.
- f. *Markings.* Each parking space shall be marked off and maintained so as to be distinguishable.
- g. *Off-street loading.*
 - 1. One or more loading spaces shall be provided for standing, loading and unloading operations, either inside or outside a building and on the same premises with every building or structure erected after the enactment of this article, and shall be in accordance with the requirements of the following table. 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 necessarily a full berth but shall be sufficient to allow normal loading and unloading operations of a kind and magnitude appropriate to the property served thereby. The town engineer shall determine the sufficiency of loading space but in no case shall the use of such space hinder the free movement of vehicles and pedestrians over a street, sidewalk, parking lot or alley.

| Use Classification | Space Requirements |
|---|---|
| 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) as defined in 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 spaces shall be located at least 50 feet from any street right-of-way and shall be paved with asphalt, concrete, or porous paving as approved by the town engineer or an open-face paving block over sand and filter-cloth base, provided the open-face paving block is equivalent to turfstone with regards to compressive strength, density, absorption and durability.
- h. *Planting.* Buffer strips (subsection (1)k. of this section) and not less than 15 percent of any parking lot land area shall be planted with trees or shrubs. The

buffer shall be comprised of planting material placed ten feet on center and having

minimum height of five feet when planted and expected to reach a height of eight feet within three years. Suitable plant types shall be those recommended for the coastal area by the U.S. Department of Agriculture. The vegetation plan shall be approved by the town council.

- i. *Solid waste and recycling container requirements.* Sufficient space shall be provided on the premises for the location of a solid waste container. Such solid waste container location may be in a required parking lot provided, however, that such location does not occupy a required parking space or maneuvering space and further provided that such solid waste container location shall provide convenient and safe access to the servicing vehicle.
 - j. *Surfacing.* All parking lots shall be provided and maintained with concrete or I-2 asphalt surface and paved drainage facilities adequate to provide safe and convenient access in all weather conditions.
 - k. *Yards.* No parking lot shall be located closer than five feet to a public right-of-way. The area between the parking lot and the street right-of-way shall be planted in accordance with subsection (2)h. of this section and maintained with lawn or other appropriate planting, or shall be improved otherwise as approved in site plan review.
- (4) *Minimum parking requirements.* The number of off-street parking spaces required by this section shall be provided on the same lot with the principal use, or in combination with adjacent lots, provided the applicant has secured a shared parking agreement, and ~~conditional~~ special use permit, as described in subsection 36-163(1)j., and the required number of off-street parking spaces specified for each use shall be considered as the absolute minimum. Where a fraction of a space is required by this article, the next whole number shall be provided. In addition, a developer shall evaluate his own needs to determine if they are greater than the minimum specified by this article.
- a. *Residential and related uses.*
 1. Detached single-family dwelling units, two-family dwelling units and townhouses: three parking spaces for each dwelling unit with up to eight-person septic capacity and one additional space for each two persons of septic capacity, or fraction thereof, in excess of eight-person septic capacity up to 12-person septic capacity and one additional space for each person of septic capacity over 12.
 - i. The number of persons of septic capacity shall be determined by the county health department in establishing residence occupancy limits for wastewater/septic system.
 - ii. An eight-foot-wide drive aisle shall be provided, which must be separate from any parking spaces, such that no vehicle will be required to back into the public right-of-way. The following exception shall apply: one required 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.

- iii. Each parking space shall have a minimum length of 18 feet and a minimum width of eight feet.
2. Multifamily residence group housing projects and condominiums: two and one-half parking spaces on the same lot for each unit.
3. Hotel, motel: one and one-half parking spaces for each room to be rented plus one additional parking space for each employee.
- b. *Public and semipublic uses.*
 1. Churches: one parking space for each three seats in the sanctuary.
 2. Clinic (medical and dental): five parking spaces for each doctor assigned plus one parking space for each employee, but not less than ten spaces total.
 3. Elementary school: one parking space for each classroom and administrative office.
 4. Event facilities: one space for each 150 square feet of floor area.
 5. Public or private clubs: one parking space for each 200 square feet of gross floor space.
 6. Telephone switching stations or electric substations: one parking space for each employee.
- c. *Retail and office uses.*
 1. Animal hospitals: five spaces per veterinarian, plus one space for each employee, but not less than 16 spaces.
 2. Funeral home: one parking space for each four seats in the chapel or parlor.
 3. Garden center/nursery: one space for every 500 square feet of outdoor retail display area.
 4. General or professional offices, banks (doctors and dentists, see clinic requirements): one parking space for each 300 square feet of gross floor space, plus one space for each two employees.
 5. Grocery or appliance stores: one parking space for each 500 square feet of gross floor area.
 6. Municipal building: one parking space for each 200 square feet of net office area, plus one space for each two seats in municipal council chambers.
 7. Municipal complex: one parking space for each 200 square feet of gross floor space.
 8. Fire Stations: one parking space for each employee plus one space for each four seats in the training room.

9. Restaurant: one parking space for each three customer seats, plus one additional parking space for each employee.
 10. Retail uses not otherwise listed: one parking space for each 300 square feet of floor area.
 11. Theaters: one parking space for each three seats.
 12. Nonprofit entities: a minimum of three parking spaces shall be provided.
 13. Drive-through facility or establishment (small): one parking space for each three customer seats, plus one additional parking space for each employee.
- d. *Off-street parking and/or storage of certain vehicles prohibited.*
1. 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.
 2. 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.
- e. *Reduction of required parking for commercial uses within group developments with the use of bicycle racks holding at least four bicycles.* The total parking requirement for every 50 parking spaces for the proposed use may be reduced by one parking space for each bicycle rack located on the site for up to four bicycle racks.

(Code 1988, § 11-6.01; Ord. No. 2006-09-02, art. V, 11-28-2006; Ord. No. 2007-07-01, art. IV, 8-7-2007; Ord. No. 2007-09-02, art. III, 9-4-2007; Ord. No. 2011-01-01, art. VIII, pts. III, IV, 1-4-2011; Ord. No. 2012-02-01, art. III, pt. II, 2-7-2012; Ord. No. 01-04, art. III, pt. 7, 1-22-2016; Ord. No. 2016-03-01, art. III, 3-1-2016; Ord. No. 2018-05-01, art. III, 5-1-2018; Ord. No. 2018-05-02, art. III, pt. II, 6-5-2018; Ord. No. 2018-07-02, art. III, pts. I, II, 7-10-2018; Ord. No. 2021-05-05, art. III, pt. I, 5-4-2021)

Sec. 36-164. Water supply and sewage disposal requirements.

The building inspector shall not issue a building permit for any use or structure requiring a water supply or sewage disposal or both unless the application is accompanied by approval, in writing, by the appropriate authority, of the water supply and method of sewage disposal.

(Code 1988, § 11-6.02)

Sec. 36-165. Regulations governing signs.

The town adopts these standards and regulations to ensure that permitted signs reflect the aesthetics desired by its residents; promote traffic safety; and, provide minimum interference with individual property rights.

(1) *Exclusions.* The following shall not be included in the application of these regulations:

- a. Signs not exceeding one square foot in area and bearing only property numbers, post box numbers, names of occupants of premises, or other identification of premises not having commercial connotations;
 - b. Flags and insignia of any government except when displayed in connection with commercial promotion;
 - c. Legal notices, identifications, directional and informational signs erected or required by governmental bodies, fire stations, public utilities or civic associations with the approval of town council;
 - d. Integral decorative or architectural features of buildings, except letters, trademarks, moving parts, or moving lights;
 - e. Signs directing and guiding traffic and parking on private property, but bearing no advertising matter;
 - f. Temporary signs of less than one day duration.
- (2) *Number and area.*
- 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. 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.
 - b. 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) *Sign permit required.* No 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 zoning administrator. No permit is required for signs enumerated in subsection (8), (11) or (12) of this section or any sign not exceeding three square feet in area.
- (4) *Material and design.* 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.
- (5) *Inspection required.* Each sign or outdoor advertising structure subject to the regulations of subsection (3) of this section may be subject to an annual inspection by the building inspector 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. When a sign becomes structurally unsafe, the

building inspector 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.

- (6) *Illuminated signs.* 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 building inspector. The light source shall not be visible from the road right-of-way or from adjacent property.
- (7) *Prohibited signs.* The following signs, sign construction, and displays are prohibited:
 - a. 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.
 - b. Any sign that obstructs corner visibility or visibility at a driveway between a height of two feet and ten feet.
 - c. A sign attached to any traffic sign, utility pole or structure, or tree.
 - d. 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.
 - e. Any sign that violates any provision of any law of the state relative to outdoor advertising.
 - f. Any off-site signs.
 - g. Any sign which contains, employs, or utilizes lights or lighting which rotates, flashes, moves or alternates.
 - h. Any sign located within a public or private right-of-way.
 - i. Any signs painted on or affixed to a roof surface.
 - j. Vehicle signs.
 - k. Signs supported in whole or in part by water, air or gas.
 - l. Tourist-oriented directional signs.
- (8) *Signs permitted in residential districts.*
 - a. Directional signs not over four square feet in area indicating the location of churches, schools, hospitals, parks, scenic or historic places, or other places of general interest. Any such sign and mounting shall not exceed three feet in total height.
 - b. One two-sided name sign or bulletin board, not to exceed a total height of nine feet above approved grade as shown on the site plan, or exceeding 32 square feet in size per face (excluding any support structure), for any permitted church, school or other semipublic institution, which sign or board may be indirectly lighted and shall be set back at least 15 feet from the property line.

- c. Temporary real estate sign, provided such sign shall be located on the site it advertises, shall be neatly painted and maintained, shall be removed when the property has been sold, shall not be illuminated, and in accordance with the following standards:
 - 1. "For Sale" sign: One "For Sale" sign not to exceed five square feet in area, including riders, shall be permitted to be placed on the site it advertises. The lower edge of "For Sale" sign shall be no more than three feet above ground level, and the upper edge no more than five feet above ground level.
 - 2. "For Lease" or "For Rent" sign: One "For Lease" or "For Rent" sign not to exceed 3½ square feet in area shall be permitted to be placed on the principal building it advertises.
 - d. Temporary nonilluminated signs not exceeding six square feet in area advertising the general contractor, contractor, subcontractor, architect, landscape architect or other such professional persons or organizations engaged in or associated with the lawful construction, alteration, remodeling, or demolition of any building or use; provided that such signs shall be limited to one to each organization involved, and that the signs shall be removed upon completion of the work involved or issuance of a certificate of occupancy, whichever comes first.
 - e. Signs announcing the name of a subdivision located on the premises at major entrances provided that such signs are neatly constructed and maintained; limited to announcing only the name of the subdivision; do not obstruct corner visibility; and do not exceed 32 square feet in area.
 - f. Directional signs that bear no commercial information.
 - g. Temporary "Open House" real estate signs shall be permitted in any residential district subject to the following conditions:
 - 1. There shall be a maximum of one such sign for the house offered for sale.
 - 2. The sign shall have a maximum area of six square feet.
 - 3. The sign shall not be placed in the right-of-way.
 - 4. The sign may be double-faced and shall not be illuminated.
 - 5. The sign shall only be displayed between the hours of 8:00 a.m. and 8:00 p.m. and only when a salesperson is on duty at the home for sale.
 - 6. No such sign shall be displayed for more than 30 days in any calendar year.
 - h. Country Club signs. One freestanding sign per street frontage. Sign may be one- or two-sided, not to exceed a total height of nine feet above existing grade or exceeding 32 square feet in size per face (excluding support structure), which may be indirectly lighted and shall be set back at least 15 feet from the property line.
- (9) *Signs permitted in commercial (C) district.* Total signage for each lot, tract or parcel in business use is limited to one square foot of sign area for each two linear feet of

frontage facing on a public street right-of-way, not to exceed 64 square feet, and subject to the following limitations and qualifications:

- a. Wall signs placed against the exterior walls of buildings shall not extend more than six inches beyond the building wall surface and shall not exceed 20 percent of the exposed finished wall surface including openings.
 - b. One freestanding sign per lot may be located either temporarily or permanently on the ground but shall not exceed 32 square feet in area and shall not exceed 12 feet in height above street grade.
 - c. Window signs shall be placed only inside a commercial building and shall not exceed 75 percent of the glass area of the pane upon which the sign is displayed.
 - d. Retail shopping center. In lieu of the above requirements for signs in the commercial (C) district, retail shopping centers may have the following on-site signage:
 1. Freestanding sign. Only one freestanding sign shall be allowed. The sign structure shall be located permanently on the ground and the sign structure and the sign shall not exceed 12 feet above street grade. The sign shall be limited to 64 square feet of sign display area on each sign face. There shall be no more than two sign faces on the freestanding sign. The sign structure shall be proportional to the sign display area, but in no event greater than 1½ times the approved sign display area. No messages shall be displayed on the sign structure other than on the sign display area on the sign face.
 2. Wall signs. One square foot of business sign area for each linear foot of store frontage shall be allowed. Stores which are corner stores or end stores shall be entitled to the amount of linear footage based on the total frontage of the store front and adjacent exterior side. Wall signs shall be placed on the exterior wall of the building which it advertises and shall not extend more than 15 inches beyond the wall surfaces.
 3. Canopy sign. One under-canopy sign, visible from the sidewalk, will be permitted for each store and shall not exceed four square feet in sign area, nor be a hazard to pedestrians.
 4. Ice vending structure (automated). Wall signs placed against the exterior walls of structure shall not extend more than six inches beyond the structure wall surface and shall not exceed 20 percent of the exposed finished wall surface on which the signage is located including openings.
- (10) *Noncommercial signs.* Noncommercial signs, except noncommercial charity event signs, shall be allowed in all districts, on vacant and developed lots, subject to the following limitations:
- a. No sign shall exceed six square feet in area on each side and shall not be illuminated.
 - b. No sign shall exceed ten feet in height above street grade.

- c. The side yard and front yard setback from any property line shall be at least five feet. In the case of a corner lot, to ensure adequate sight clearance for a distance of not less than 40 feet from the point of intersection of the intersecting right-of-way lines, the side yard and front yard setback shall be no less than 15 feet.
 - d. Such signs shall be taken down within three calendar days after the event.
 - e. Such signs shall be treated as temporary signs.
- (11) *Noncommercial charity event signs.* Noncommercial charity event signs shall be allowed in all districts, on vacant and developed lots, subject to the following limitations:
- a. Signs shall be of a temporary "banner type" sign; shall be made of a flexible or plasticized cloth, plastic or similar materials; and shall not be attached to the ground or any other structure with the purpose of being more than a temporary fixture.
 - b. Sponsor logos may appear on a noncommercial charity event sign but such logos shall be subordinate to the principle message of the sign and, in aggregate, shall not exceed 15 percent of the total area of one side of the sign.
 - c. No sign shall have an area greater than 60 square feet on any one face. No sign shall have more than two sides containing any message or sponsor logo.
 - d. No sign shall be installed having a top height greater than ten feet.
 - e. No sign shall be erected or installed in a town right-of-way or on other town-owned property unless the event is organized by the town.
 - f. No sign shall be erected or installed more than four weeks prior to the date of the event and the sign shall be removed no later than three days upon conclusion of the event. One sign shall only be located on the site where the charity event is to occur.
- (12) *Temporary signs permitted in all zones.* Temporary signs may be posted on property in all zones of the town, subject to the following requirements and those applicable provisions stated elsewhere in this section.
- a. The total square footage for temporary signs posted on a lot in all residential zones shall not exceed six square feet. The total square footage for temporary signs posted on a building lot in all other zones, in the aggregate, shall not exceed 32 square feet, with no individual sign exceeding 32 square feet. The total square footage of a sign is measured to include all of the visible display area of one side of the sign.
 - b. No temporary sign shall obstruct or impair access to a public sidewalk, public or private street or driveway, traffic control sign, bus stop, fire hydrant, or any other type of street furniture, or otherwise create a hazard, including a tripping hazard.
 - c. No temporary sign shall be illuminated or painted with light-reflecting paint.

- d. A temporary sign shall only be posted with the consent of the property owner or occupant.
- e. A temporary sign may be posted for a period of up to 90 days, at which time the sign shall be removed or replaced.
- f. A temporary sign shall not advertise or promote any commercial enterprise or event not conducted on the same building lot but may provide directional information to the public.

(13) *Signs permitted in government and institutional (G/I) district.*

- a. Town-owned facilities are subject to the following conditions:
 - 1. One freestanding sign with frame or one attached sign with frame per facility. Any such freestanding sign with frame shall not exceed 48 square feet, shall be located permanently on the ground and the sign structure and the sign shall not exceed four feet above street grade. Any such attached sign with frame shall not exceed 24 square feet, shall be placed on the exterior wall of the building which it identifies and shall not extend more than 15 inches beyond the wall surfaces.
 - 2. Directional signs as permitted in subsection (8) of this section.
- b. Nonprofit entities qualified under section 501(c)(3) of the Internal Revenue Code:
 - 1. One freestanding sign with frame or one attached sign with frame per facility. Any such freestanding sign with frame shall not exceed four square feet, shall be located permanently on the ground and the sign structure and the sign shall not exceed three feet above street grade. Any such attached sign with frame shall not exceed four square feet.
 - 2. Directional signs as permitted in subsection (8) of this section.

(Code 1988, § 11-6.03; Ord. No. 06-11-01, arts. IV—VI, 11-8-2006; Ord. No. 2007-09-02, art. IV, 9-4-2007; Ord. No. 2011-01-01, art. VIII, pt. V, 1-4-2011; Ord. No. 2013-03-01, art. III, pt. II, 3-5-2013; Ord. No. 2013-06-02, art. III, pt. II, 6-18-2013; Ord. No. 2018-07-02, art. III, pt. III, 7-10-2018)

Sec. 36-166. Outdoor lighting.

- (a) *Intent.* Outdoor lighting standards are hereby established to provide desirable levels of lighting for adequate visibility, safety and security without unreasonably interfering with the use and enjoyment of neighboring properties. This section is designed to provide uniform distribution of light that minimizes light trespass and controls glare on and off the property. All outdoor lighting shall be planned, erected, altered and maintained in accordance with the following provisions.
- (b) *Lighting prohibited.*

- (1) Light fixtures that imitate an official highway or traffic control light or sign are prohibited.
- (2) Light fixtures in the direct line of vision with any traffic control light or sign are prohibited.
- (3) Light fixtures having a flashing or intermittent pattern of illumination are prohibited.
- (4) Privately owned light fixtures located in the public right-of-way are prohibited.
- (5) Searchlights are prohibited except when used by a federal, state or local authority.
- (6) Light fixtures that violate any law of the state relative to outdoor lighting are prohibited.
- (7) Floodlights for illuminating sports are prohibited except for permitted outdoor recreational uses.
- (8) Illumination of the public beach and estuarine waters from uses that are not water dependent shall be prohibited.
- (9) Lighting of windsocks, fountains or flags is prohibited, except the flags of the United States of America, North Carolina, official flag of the town or permitted flag sign.
- (10) Light fixtures directed overhead are prohibited.

(c) *General provisions.*

- (1) Exterior lighting shall not exceed one footcandle of light (forward or back lighting) measured at the property line of any adjacent property.
- (2) All wiring for outdoor lighting not located on a building shall be placed underground.
- (3) Principal buildings shall be lit for security at intensities no greater than permitted in the table in subsection (c)(7) of this section.
- (4) Floodlights shall not exceed 500 watts. When placed in a cluster the combined wattage shall not exceed the footcandle permitted in the table in subsection (c)(7) of this section.
- (5) Lighting fixtures shall be designed to withstand a minimum wind velocity of 130 miles per hour for a three second gust.
- (6) Freestanding light fixtures within commercial parking lots shall not exceed 35 feet in height, measured from ground level or lowest surrounding ground elevation, and in all other areas, shall not exceed 18 feet in height, measured from ground level. For purposes of this article, "ground level" shall be interpreted to mean the original site elevation before any site work or fill material is added.
- (7) The following lighting intensity levels, measured at ground level in footcandles, shall be exempt from these restrictions. Permitted intensity levels may be approved by town council for reasonable cause.

| Type of Outdoor Area or Use Permitted | Range of Average Footcandles Minimum—Maximum |
|---------------------------------------|---|
|---------------------------------------|---|

| | |
|----------------------------|-------|
| <i>Parking Areas</i> | |
| Commercial parking lots | 4.0—7 |
| Industrial warehouses | 0.5—1 |
| <i>Building Exteriors</i> | |
| Loading platforms | 10 |
| Commercial entrances | 5 |
| Architectural | 1 |
| <i>Security</i> | |
| Commercial | 1 |
| Industrial | 1 |
| Walkways/roads | 1 |
| <i>Recreational</i> | |
| Baseball/football/soccer | 25 |
| Tennis/handball/volleyball | 20 |
| Basketball | 10 |
| Swimming pool | 10 |
| Playground | 5 |

- (d) *Site plan requirements.* The town shall require an outdoor lighting plan for review as part of the site plan review process for all uses other than one- and two-family dwelling units. Lighting plans submitted for review shall provide:
- (1) The rationale for the proposed lighting plan.
 - (2) Evidence that a lower lighting level than that requested would not provide sufficient illumination.
 - (3) Rationale for why the selected option was chosen for the particular site.
 - (4) The stamp/seal, license number and signature of the design professional responsible for the plan. Design professional must be a professional engineer, architect or landscape architect licensed to practice in the state.
- (e) *Light fixture (luminaire) specifications.* As part of the site plan submittal for all uses other than one- and two-family dwelling units, the design professional shall provide manufacturers technical specification sheets describing the fixtures to be used.
- (f) *Measurements.*
- (1) Measurements are to be made in footcandles with a direct reading, portable light meter.
 - (2) Unless otherwise specified, the meter sensor shall be mounted not more than six inches above ground level in a horizontal position to measure horizontal illumination. 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.
- (g) *Inspection.* All outdoor lighting fixtures may be subject to annual inspection by the code enforcement officer to ensure compliance with the provisions of this article. When a fixture

fails to comply, the code enforcement officer 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. The remedies set out in article XI of this chapter shall also apply to this section.

(Code 1988, § 11-6.04; Ord. No. 02-09-023, pt. I, 9-3-2002; Ord. No. 2012-12-01, art. III, pt. I, 12-4-2012)

Sec. 36-167. Parking, storage, or use of recreational equipment.

Recreational equipment parked or stored in any location shall not be used for living, sleeping, or housekeeping purposes.

(Code 1988, § 11-6.05; Ord. No. 2007-07-01, art. IV, 8-7-2007)

Sec. 36-168. Temporary uses.

The following temporary uses are permitted uses notwithstanding other restrictions of this article:

- (1) 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 within which such office is located. Any such temporary use must be terminated no more than 30 days from the date that 80 percent of the lots or residences within that subdivision are sold.
- (2) Temporary construction offices may be permitted in any district to provide on-site offices for the management and security of construction projects only. Any such temporary use must be terminated no more than 30 days from the date that construction is completed.
- (3) 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. No advertising signage is permitted on such storage units. 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.
- (4) 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.
- (5) Temporary family health care structures.
 - a. The following definitions apply in this section:

1. Activities of daily living—Bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting, and eating.
 2. Caregiver—An individual 18 years of age or older who (i) provides care for a mentally or physically impaired person and (ii) is a first- or second-degree relative of the mentally or physically impaired person for whom the individual is caring.
 3. First- or second-degree relative—A spouse, lineal ascendant, lineal descendant, sibling, uncle, aunt, nephew, or niece and includes half, step, and in-law relationships.
 4. Mentally or physically impaired person—A person who is a resident of this State and who requires assistance with two or more activities of daily living as certified in writing by a physician licensed to practice in this State.
 5. Temporary family health care structure—A transportable residential structure providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person that (i) is primarily assembled at a location other than its site of installation, (ii) is limited to one occupant who shall be the mentally or physically impaired person, (iii) has no more than 300 gross square feet, and (iv) complies with applicable provisions of the State Building Code and G.S. 143-139.1(b). Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.
- b. The town shall consider a temporary family health care structure used by a caregiver in providing care for a mentally or physically impaired person on property owned or occupied by the caregiver as the caregiver's residence as a permitted accessory use in any single-family residential zoning district on lots zoned for single-family detached dwellings.
 - c. The town shall consider a temporary family health care structure used by an individual who is the named legal guardian of the mentally or physically impaired person a permitted accessory use in any single-family residential zoning district on lots zoned for single-family detached dwellings in accordance with this section if the temporary family health care structure is placed on the property of the residence of the individual and is used to provide care for the mentally or physically impaired person.
 - d. Only one temporary family health care structure shall be allowed on a lot or parcel of land. The temporary family health care structures under subsections (b) and (c) of this section shall not require a special use permit or be subjected to any other local zoning requirements beyond those imposed upon other authorized accessory use structures, except otherwise provided in this section. Such temporary family health care structures shall comply with all setback requirements that apply to the primary structure and with any maximum floor area ratio limitations that may apply to the primary structure.

- e. Any person proposing to install a temporary family health care structure shall first obtain a permit from the town. The fee shall be \$100.00 for the initial permit with an annual renewal fee of \$50.00. The town may not withhold a permit if the applicant provides sufficient proof of compliance with this section. The applicant shall provide evidence of compliance with this section on an annual basis as long as the temporary family health care structure remains on the property. The evidence may involve the inspection by the town of the temporary family health care structure at reasonable times convenient to the caregiver, not limited to any annual compliance confirmation and annual renewal of the doctor's certification.
- f. Notwithstanding subsection (i) of this section, any temporary family health care structure installed under this section shall connect to any water, sewer (including septic system or other wastewater treatment), and electric utilities serving the property and shall comply with all applicable state law, local ordinances, and other requirements, including article 11 of G.S. ch. 160D, as if the temporary family health care structure were permanent real property.
- g. No signage advertising or otherwise promoting the existence of the temporary health care structure shall be permitted either on the exterior of the temporary family health care structure or elsewhere on the property.
- h. Any temporary family health care structure installed pursuant to this section shall be removed within 60 days in which the mentally or physically impaired person is no longer receiving or is no longer in need of the assistance provided for in this section. If the temporary family health care structure is needed for another mentally or physically impaired person, the temporary family health care structure may continue to be used or may be reinstated on the property within 60 days of its removal, as applicable.
- i. The town may revoke the permit granted pursuant to subsection (e) of this section if the permit holder violates any provision of this section or G.S. 160A-202. The Town may seek injunctive relief or other appropriate actions or proceedings to ensure compliance with this section or G.S. 160A-202.

(Code 1988, § 11-6.06; Ord. No. 05-04-04, art. III, 5-3-2005; Ord. No. 2013-09-01, art. III, 9-3-2013; Ord. No. 2021-07-04 , art. III, pt. I, 7-6-2021)

Sec. 36-169. Access to main thoroughfares.

Due to the limited amount of land available within the zoned areas of the town for major thoroughfare rights-of-way and the traffic hazard involved in frequent entrances and exits from a major thoroughfare, it is the intent of this section to keep driveways and street intersections along main thoroughfares to a minimum. In any district established by this chapter where a corner lot abutting U.S. Highway 158, NC 12, or Dogwood Trail (east and north-south), also abuts any other dedicated public right-of-way, such right-of-way shall be used for access, rather than the major thoroughfare, unless an access way cannot be established due to topography, waterways, nonnegotiable grades or other similar conditions.

(Code 1988, § 11-6.07; Ord. No. 06-08-03, art. III, 10-3-2006)

Sec. 36-170. Electrical and communication service.

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. Existing distribution lines that are in place overhead on the effective date of this regulation may be extended only if placed underground. Transformers and enclosures containing switches, meters, capacitors, etc., may be pad mounted as an exception to the aforementioned.

(Code 1988, § 11-6.08; Ord. No. 2011-04-01, art. III, pt. II, 4-5-2011)

Sec. 36-171. Lot disturbance and stormwater management.

Subject to the requirements of G.S. 160A-417(b), if applicable, in all town zoning districts, including all areas within the extraterritorial jurisdiction, no grading, filling, or other alteration of the topography or elevation of any unimproved lot, or demolition and clearing of improved property, nor any manmade change to any improved real estate resulting in the discharge of stormwater onto adjacent property and requiring a building permit, shall be undertaken prior to the issuance of a lot disturbance-stormwater management permit by the zoning administrator.

- (1) All applications for lot disturbance and stormwater management 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 showing the actual dimensions and shape of the lot, and showing the surveyed pre-disturbance ground elevation at the corners of the proposed structure referenced to mean sea level. The application shall also describe the disturbance or development activity which is proposed for the lot. The application and accompanying survey shall be sufficiently detailed for the zoning administrator to confirm that following construction of the proposed improvements the property will retain all stormwater generated by a one and one-half inch rain event and will not adversely affect any stormwater management system previously constructed by the town or on adjacent properties. No fill material may be re-distributed or placed on a lot in the rear or side setback areas unless the final horizontal-to-vertical slope is equal to or less than 3:1. This shall be calculated from the finished final grade to the rear and side property lines. The burden shall be on the applicant to make such a showing, and the zoning administrator, in his discretion, may request reasonable additional information to make a decision on the application.
- (2) Upon inspection, the zoning administrator 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. The zoning administrator 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 said lot. The zoning administrator may modify an existing lot disturbance and stormwater management permit requirement during the construction process.

- (3) The zoning administrator 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 one and one-half inch rain event. All required stormwater improvements shall be maintained in a manner that ensures that the improvements will continue to satisfy all applicable requirements in the issued permit. When required by the zoning administrator, a certification executed by the person duly authorized by the state to prepare such plans attesting to compliance with all applicable stormwater requirements shall be shown on the survey.

(Code 1988, § 11-6.09; Ord. No. 2006-09-02, art. V(6.09), 11-28-2006; Ord. No. 2011-01-01, art. VIII, pt. VI, 1-4-2011; Ord. No. 2012-04-02, art. III, pt. I, 4-3-2012; Ord. No. 2018-01-01, art. III, pt. I, 1-9-2018; Ord. No. 2019-11-01, art. III, pt. II, 11-6-2019)

Sec. 36-172. Sexually oriented businesses.

- (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:
 - (1) According to the studies referenced above, sexually oriented businesses tend to lend themselves to ancillary unlawful and unhealthy activities that are uncontrolled by the operators of the establishments. Further, without a reasonable regulation there is no mechanism to make owners of these establishments responsible for the activities that occur on their premises.
 - (2) 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.
 - (3) 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.

- (4) 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.
- (5) 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.
- (6) 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.
- (7) 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.)
- (8) 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.
- (9) 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.
- (10) 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.
- (11) 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.
- (12) 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.

- (13) 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:

"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.)

- (14) 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.
- (15) 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.
- (16) 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.
- (17) 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.
- (18) 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.

(19) 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) of this section, all sexually oriented businesses, as defined in section 36-57, are prohibited.

(Code 1988, § 11-6.10)

Sec. 36-173. Buffers and landscaping requirements.

(a) *Intent.* The intent of this article 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 artificial light glare 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.
- (5) Increasing compatibility between abutting land uses and public rights-of-way by providing landscaping screening and buffers.

This section establishes requirements for buffers between commercial zones and residential zones and for all ~~conditional~~ special uses. It also establishes requirements for landscaping on all sites other than one- and two-family dwelling units. Sites undergoing redevelopment shall be required to comply with this article.

(b) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

- (1) *Fence* is as conventionally known except that the outside surface of the fence facing the adjacent property shall be the finished surface. The fence shall be coordinated with the finishes of other construction facilities on the site. For the purposes of this section, fence does not include chainlink fences with opaque inserts or split rail fences.
- (2) *Height* is measured from the proposed average ground surface elevation immediately adjacent to the buffer.

- (3) *Opaque* excludes all visual contact screened by the buffer between the commercial site interior to the buffer and the abutting lands except that the lowest one foot of height may allow visual contact. The opaque portion of a buffer shall be opaque yearround.
 - (4) *Redevelopment* includes any change of use or site plan amendment requiring approval by the town.
 - (5) *Soil berm* is constructed of clean, suitable, native or borrowed soil material. The finished slopes shall not exceed 1:3 (rise:run).
- (c) *Buffers*. Where a commercial use or zone abuts a residential zone, or where a ~~conditional~~ special use is planned in a residential zone, a buffer of dense vegetative planting or natural vegetation is required. The buffer area shall be a mixture of various trees and shrubs with a minimum width of 20 feet with two staggered rows of planting material placed ten feet on centers that are a minimum of three feet in height when installed and are expected to achieve a height of six feet within three years. Suitable plant types shall be those recommended for the coastal area, by the department of agriculture, which can be expected to reach a mature growth of eight to ten feet. The vegetation plan shall be approved by the town council. Buffers to be permitted in the town shall consist of berms, fencing and/or vegetation.
- (1) There shall be three types of buffers:
 - a. Type A buffer: An opaque, vegetative buffer of a minimum width of 20 feet that will reach a height of six feet in three years. The buffer may include a stabilized soil berm not more than 50 percent of the required height.
 - b. Type B buffer: An opaque buffer consisting of a fence screened on the outside by vegetation. The top of the fence shall have a height of not less than six feet. The buffer minimum width shall be ten feet. The buffer may include a stabilized soil berm not more than 50 percent of the required height. The screening vegetation shall be a minimum of 50 percent opaque and shall reach a height of six feet in three years.
 - c. Type C buffer: A 50 percent opaque vegetation screening buffer of a minimum width of five feet that will reach a height of three feet in two years. The buffer may include a stabilized soil berm as part of, or all of, the required height. The buffer shall include evergreen trees planted not more than 20 feet on centers and these trees shall reach a height of six feet in three years. A list of acceptable plant species for each buffer type shall be established and maintained by the planning board.
 - (2) The buffers required by this section shall conform to type A or type B where a commercial zone abuts a residential zone. Type C buffers are required along site perimeters abutting public or private rights-of-way. Buffering requirements in ~~conditional~~ special uses shall be determined on a case-by-case basis as part of the landscaping plan.

- (3) Unless specified otherwise in the various district regulations, buffers within the commercial zones and abutting residential zones shall not interfere with access and use of public utility facilities.
 - (4) Buffer details, including vegetation type and size and fence details, shall be submitted as part of the site plan for planning board review and for approval by the town council. Plants shall be selected for the hardiness, growth potential and suitability to the particular site. Plants should be drought- and salt-tolerant or provisions shall be made for irrigation.
 - (5) Aboveground structures, accessory to the principal use of the site including, but not limited to, dumpsters, dumpster screens, sheds, parking and driveways, shall not be located in the buffer, except for access where such driveways may transverse the buffers, where such driveways have been reviewed by the planning board and approved by the town council.
 - (6) Buffer design and construction shall include provisions necessary for maintaining the buffer or removal and replacement of elements of the buffer.
 - (7) Where off-street parking is provided between the building line and the street right-of-way line or any business use, a buffer strip of at least five feet in width shall be provided.
- (d) *Landscaping.* Landscaping plans of the intended development shall be submitted and approved prior to the preliminary landscaping plan and shall be submitted to the planning board not later than 14 days from its next meeting.
- (1) *Preliminary landscape plan.* 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 the existing use as determined by the code enforcement officer.
 - (2) *Final landscape plan.* A final landscape plan shall be submitted as part of the application for a building permit.

Preliminary landscape plans and final landscape plans shall contain information specified in the instructions provided by the town and will be approved by the planning board and the town council.

- (e) *Maintenance.*
- (1) Buffers shall be maintained to meet the criteria of this section. Maintenance of buffers is a continuing condition of the site plan approval and a condition of compliance therewith and occupancy thereof.
 - (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. 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.

(Code 1988, § 11-6.11; Ord. No. 02-09-022, pt. I, 9-3-2002)

Sec. 36-174. Screening natural gas facilities.

Any aboveground appurtenances, facilities or structures (except buildings which are occupied and governed by other provisions of this chapter), constructed as a part of a natural gas utilities system within the town for the production, transmission, distribution and sale of gas, shall be screened with vegetative buffers as follows:

- (1) All appurtenances, facilities or structures shall not be visible from ground level to a point eight feet above ground level.
- (2) Buffers shall consist of trees or shrubs as described in section 36-173(c)(1).
- (3) Plants shall be of a size and planted at such intervals that they will reach full maturity and/or provide the full screening required herein within three years from the date of the completion of construction of such appurtenance, facility or structure.
- (4) The franchisee for such natural gas utility system shall keep, replace and maintain the vegetative buffer required herein such that at all times, the vegetation is alive and, after the first three years, the full eight foot buffer is at all times in place.
- (5) Failure to comply with the terms of this section allows, in addition to any other remedies available under the provisions of this Code, the town to plant or replace such vegetative buffer to comply with the terms of this section, with all costs thereof being charged to the franchisee.

(Code 1988, § 11-6.12; Ord. No. 05-05-02, art. III, 6-24-2005)

Sec. 36-175. Wireless telecommunications sites, facilities and towers.

- (a) *Definitions.* The following definitions shall apply to all portions of the town Code relating to the use or construction of any portion of a wireless telecommunications site within the town.
 - (1) *Antenna:* Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.
 - (2) *Applicable codes:* The North Carolina State Building Code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization together with state or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

- (3) *Application*: A request that is submitted by an applicant to a city for a permit to collocate wireless facilities or to approve the installation, modification, or replacement of a utility pole, city utility pole, or wireless support structure.
- (4) *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.
- (5) *Building permit*: An official administrative authorization issued by the town prior to beginning construction consistent with the provisions of G.S. 160A-417.
- (6) *City rights-of-way*: A rights-of-way owned, leased, or operated by a city, including any public street or alley that is not a part of the state highway system.
- (7) *City utility pole*: A pole owned by a city in the city rights-of-way that provides lighting, traffic control, or a similar function.
- (8) *Collocation*: The placement, installation, maintenance, modification, operation, or replacement of wireless facilities on, under, within, or on the surface of the earth adjacent to existing structures, including utility poles, city utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes. The term "collocation" does not include the installation of new utility poles, city utility poles, or wireless support structures.
- (9) *Communications facility*: The set of equipment and network components, including wires and cables and associated facilities used by a communications service provider to provide communications service.
- (10) *Communications service*: Cable service as defined in 47 U.S.C. § 522(6), information service as defined in 47 U.S.C. § 153(24), telecommunications service as defined in 47 U.S.C. § 153(53), or wireless services.
- (11) *Communications service provider*: A cable operator as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider.
- (12) *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.
- (13) *Equipment compound*: An area surrounding or near the base of a wireless support structure within which a wireless facility is located.
- (14) *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.
- (15) *Geographic antenna coverage area*: The general vicinity within which an antenna serves the transmission requirements of a cellular or other broadcasting network.
- (16) *Land development regulation*: Any ordinance enacted pursuant to G.S. ch. 160A, art. 19, pt. 3E.

- (17) *Micro wireless facility*: A small wireless facility that is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.
- (18) *Monopole*: A slender self-supporting telecommunications tower consisting of a single pole.
- (19) *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.
- (20) *Small wireless facility*: A wireless facility that meets both of the following qualifications:
- a. Each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than six cubic feet.
 - b. All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For purposes of this sub subdivision, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, or other support structures.
- (21) *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.
- (22) *Substantial modification*: The 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.
- a. 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.
 - b. 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.

- c. Increasing the square footage of the existing equipment compound by more than 2,500 square feet.
- (23) *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.
- (24) *Tower, short telecommunications*: A telecommunications tower with a height that is less than 70 feet.
- (25) *Tower, tall telecommunications*: A telecommunications tower with a height that is 70 feet tall or greater up to a height of 195 feet tall.
- (26) *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.
- (27) *Utility pole*: A structure that is designed for and used to carry lines, cables, wires, lighting facilities, or small wireless facilities for telephone, cable television, electricity, lighting, or wireless services.
- (28) *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.
- (29) *Wireless facility*: Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, wires, coaxial or fiber optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term shall not include any of the following:
 - a. The structure or improvements on, under, within, or adjacent to which the equipment is collocated.
 - b. Wireline backhaul facilities.
 - c. Coaxial or fiber optic cable that is between wireless structures or utility poles or city utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.
- (30) *Wireless infrastructure provider*: Any person with a certificate to provide telecommunications service in the state who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures for small wireless facilities but that does not provide wireless services.
- (31) *Wireless provider*: A wireless infrastructure provider or a wireless services provider.
- (32) *Wireless services*: Any services, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using wireless facilities.

- (33) *Wireless services provider*: A person who provides wireless services.
 - (34) *Wireless support structure*: A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole or a city utility pole is not a wireless support structure.
 - (35) *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.
- (b) *Requirements for wireless telecommunications sites, new wireless support structures or substantial modification of wireless support structures*. All wireless telecommunications sites, new wireless support structures or substantial modification of wireless support structures located within the town must comply with all of the following requirements:
- (1) *Safety standards*. 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:
 - (a) Federal Communications Commission standards, rules and regulations;
 - (b) Federal Aviation Administration standards, rules and regulations; (c) N.C.G.S. 160-400.50 et seq.;
 - (d) The North Carolina Building Code;
 - (e) 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.
 - (2) Use guidelines and dimensional requirements.
 - (a) *Permissible uses*. Wireless telecommunications sites and facilities shall only be permitted as follows:
 - 1. As an accessory use to an existing primary use that is not a dwelling.
 - 2. As a collocation of wireless facilities upon an existing permitted wireless telecommunications site.
 - (b) *Collocation*.
 - 1. Collocation of new antennas, wireless facilities and other equipment on an existing wireless support structure or structures within the applicant's search ring shall be required whenever reasonably feasible. Collocation is not reasonably feasible if an applicant can show it is technically or commercially impractical for the applicant to collocate or if the owners of all of the telecommunication towers within the applicant's search ring where

collocation would be technically practical are unwilling to enter into a contract for such use at fair market value.

2. 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.
3. 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) *Location.*

1. 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.
2. 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.

(d) *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.
- (e) *Permitted structures.* Stand alone wireless support structures and pole-like stealth structures shall be monopoles. 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. Wireless support structures using other designs, including, but not limited to guyed towers and lattice type towers shall not be permitted.
- (f) *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 subsection 36-175(2)(a) is maintained.
 2. The base of a wireless support structure shall be located at least one foot from the nearest property line for every one foot of proposed height. 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 set backs and/or reduce the setback requirement from this 1:1 setback ratio to a setback of one-third of the height of the proposed structure. 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:
 - i. No dwelling unit is located or can be constructed within the fall zone of the wireless support structure; or
 - ii. 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.

3. When stealth structures are incorporated within or upon an existing or otherwise permitted structure, the setbacks associated with the structure shall apply.
 4. 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.
- (g) *General aesthetics.*
1. Telecommunication towers, wireless facilities, accessory equipment structures and equipment compounds shall be constructed and maintained to minimize visual obtrusiveness in color and finish. Stealth structures shall be consistent with the overall appearance of the town and of the area of town in which they are located.
 2. 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.
 3. Outdoor storage of equipment or related items shall be prohibited at all wireless telecommunication sites.
 4. Electrical and telephone lines serving a wireless telecommunication site shall be installed underground from the point of existing service.
 5. Sound emissions, such as alarm bells, buzzers and the like, shall not be permitted. Nothing contained herein shall prohibit the reasonable use of emergency generators at wireless telecommunications sites.
- (h) *Fencing.* 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. Such fences may be equipped with anti-climbing devices. The gate into the fenced area shall be located so that it is not easily visible from a street or adjacent property.
- (i) *Screening/landscaping and buffers.*
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 above excluding the gate. 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. 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. The town council may

waive or modify this requirement where existing trees, vegetation and/or structures provide suitable screening and buffering.

(j) *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 for lighting described in 2. above, all lighting at a wireless telecommunications site shall be shielded and shall comply with the provisions for outdoor lighting contained in section 36-166.

(k) *Signage.* Wireless telecommunication sites shall not display signage, logos symbols or any messages of a commercial or non-commercial nature except for legal notices, identifications, directional and informational signs erected or required by governmental bodies, public utilities or civic associations with the approval of town council;. A 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. This provision shall not preclude the applicant from posting any additional signage required by federal or state law.

(c) *Collocation and eligible facilities requests of wireless support structures.*

- (1) The town may not deny and shall approve any eligible facilities request as provided in this section.
- (2) 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.
- (3) For all collocations and eligible facilities request, an application is required.
- (4) 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. 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. 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. An application is deemed complete on resubmission if the additional materials cure the deficiencies indicated.

- (5) The town shall issue a written decision approving an eligible facilities request application within 45 days of such application being deemed complete. 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.
- (6) 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. The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of a collocation application. 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. The fee imposed by the town for the review of the application may not be used for either of the following:
 - (a) Travel expenses incurred in a third-party's review of a collocation application.
 - (b) Reimbursement for a consultant or other third party based on a contingent fee basis or results-based arrangement.
- (d) *Application requirements.* 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 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) For wireless telecommunications sites only, 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. If an applicant contends that collocation on an existing structure is not reasonably feasible he shall submit documentation that (1) collocation is technically or commercially impractical; or (2) the owner of the telecommunication tower is unwilling to enter into a contract for such use at fair market value. 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. 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) 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.
- (3) For wireless telecommunications sites only, documentation that Federal Aviation Administration's minimum lighting standards have been met for the wireless telecommunications site.
- (4) For wireless telecommunications sites only, documentation that the proposed wireless telecommunications site will comply with all applicable FCC rules and regulations.
- (5) 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.
- (6) 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.
- (7) For wireless telecommunications sites only, 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.
- (8) 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.
- (9) 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.
- (10) 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.

- (11) For wireless telecommunications sites only, 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.
 - (12) For wireless telecommunications sites only, 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.
 - (13) For wireless telecommunications sites only, a memorandum of understanding regarding removal of abandoned structures and equipment located at the proposed wireless telecommunication site. Any wireless telecommunications site that is not operated for 180 continuous days in a 12-month period shall be considered abandoned. 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. Failure to remove abandoned equipment will result in its removal by the town at the owner's expense. 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.
 - (14) Any other documentation necessary to ensure compliance with this section as well as applicable federal and state laws.
- (e) *Review process.* 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 other than small wireless facilities.
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.
- (a) *Consultants.* 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. The town may impose additional reasonable and cost based fees for costs incurred should an applicant amend its application. On request, the amount of the consultant charges incorporated into the permit or application fee shall be separately identified and disclosed to the applicant. The fee imposed by the town for review of the application may not be used for either of the following:

- (i) Travel time or expenses, meals, or overnight accommodations incurred in the review of an application by a consultant or other third party.
 - (ii) Reimbursements for a consultant or other third party based on a contingent fee basis or a results-based arrangement.
- (b) *Conditions.* The town council may place reasonable conditions on the issuance of a ~~conditional~~ special 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. The town may condition approval of an application for a new wireless support structure on the provision of documentation prior to the issuance of a building permit establishing the existence of one or more parties, including the owner of the wireless support structure, who intend to locate wireless facilities on the wireless support structure. The town shall not deny an initial land-use or zoning permit based on such documentation.
- (c) *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.
- (f) *Annual review.* Any person who holds a zoning or ~~conditional~~ special use permit issued pursuant to this section shall annually submit an application for a renewal permit.
- (1) *Procedure.* In order for a zoning or ~~conditional~~ special use permit to remain valid, a renewal permit must be issued within 365 days of the issuance of the certificate of occupancy related to the initial permit or of the date of the issuance of the previous annual renewal permit. The application for a renewal permit must be received no less than ten days prior to nor more than 30 days prior to the date a renewal permit must be issued. Upon review of the application and determination of the applicant's compliance with the annual review requirements of this section the town's code enforcement and inspections department shall issue a renewal permit for an additional 365-day period. A permit holder's renewal application packet must include all of the following:
- a. A renewal application fee in the amount set by the town.

- b. A complete renewal application presented on a form prepared and provided by the town's code enforcement and inspections department.
 - c. Documentation consisting of a certificate of insurance verifying the continued existence of general liability insurance coverage meeting or exceeding the requirements of section 36-175(c)(3)j. during the time period that the renewal permit will be valid.
 - d. Documentation signed and sealed by a state registered engineer indicating that all structures and equipment have remained in compliance with all local, state, and federal requirements, including but not limited to, the requirements of this ordinance at the time the original permit was issued and any requirements or conditions stated in the original permit.
- (2) *Noncompliance.* Upon a permit holder's failure to submit a timely renewal application or the permit holder's failure to otherwise comply with this section the previously issued permit and/or renewal permit shall be suspended upon reaching the date that a renewal permit must be issued. Once suspended, the permit shall remain suspended until the permit holder submits an application and a review of the application by the town's code enforcement and inspections departments determines that the permit holder has complied with the annual review requirements of this section. Upon such a showing, the town shall issue a renewal permit for an additional 365-day period. If a suspension continues for more than 30 days, the permit holder's existing permit and/or renewal permit(s) shall expire.
- (g) *Validity of permits.* A ~~conditional~~ special 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.
 - (h) *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.
 - (i) *Small wireless facilities.* The collocation and use of small wireless facilities, including micro wireless facilities, by wireless service providers shall be governed by this section. Small wireless facilities meeting the requirements of this section are a permitted use in all town zoning districts.
- (1) *Applications and permits.* Applicants must obtain a permit to collocate a small wireless facility.
- a. *Application requirements:* The application must affirmatively show that the proposed small wireless facilities meet: (i) the town's applicable codes; (ii) town Code provisions or regulations that concern public safety, objective design standards for decorative utility poles, city utility poles, or reasonable and

nondiscriminatory stealth and concealment requirements, including screening or landscaping for ground mounted equipment; (iii) public safety and reasonable spacing requirements concerning the location of ground mounted equipment in a right-of-way; or (iv) the historic preservation requirements in G.S. 160A- 400.52(i).

- b. *Attestation requirement:* An application must include an attestation that the small wireless facilities shall be collocated on the utility pole, city utility pole, or wireless support structure and that the small wireless facilities shall be activated for use by a wireless services provider to provide service no later than one year from the permit issuance date, unless the town and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.
- c. *Completeness of application:* A permit application shall be deemed complete unless the town provides notice otherwise in writing to the applicant within 30 days of submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.
- d. *Procedure for processing:* The permit application shall be processed on a nondiscriminatory basis and shall be deemed approved if the town fails to approve or deny the application within 45 days from the time the application is deemed complete or a mutually agreed upon time frame between the town and the applicant.
- e. *Permit denials and resubmissions:* An application may only be denied for failure to meet the requirements of this section. If an application is denied, the town must
 - (i) document the basis for a denial, including the specific code provisions on which the denial was based and
 - (ii) send the documentation to the applicant on or before the day the town denies an application. The applicant may cure the deficiencies identified by the town and resubmit the application within 30 days of the denial without paying an additional application fee. The town shall approve or deny the revised application within 30 days of the date on which the application was resubmitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial.
- f. *Consolidated applications:* An applicant seeking to collocate small wireless facilities at multiple locations within the town shall be allowed at the applicant's discretion to file a consolidated application for no more than 25 separate facilities and receive a permit for the collocation of all the small wireless facilities meeting the requirements of this section. The town may remove small wireless facility collocations from a consolidated application and treat separately small wireless facility collocations (i) for which incomplete information has been provided or (ii) that are denied. The town may issue a separate permit for each collocation that is approved.

- g. *Time for commencement and activation of collocation:* The permit may specify that collocation of the small wireless facility shall commence within six months of approval and shall be activated for use no later than one year from the permit issuance date, unless the town and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.
- h. *Application fees:* The town may charge an application fee that shall not exceed the lesser of (i) the actual, direct, and reasonable costs to process and review applications for collocated small wireless facilities; (ii) the amount charged by the town for permitting of any similar activity; or (iii) \$100.00 per facility for the first five small wireless facilities addressed in an application, plus \$50.00 for each additional small wireless facility addressed in the application. In any dispute concerning the appropriateness of a fee, the town has the burden of proving that the fee meets the requirements of this subsection.
- i. *Technical consulting fees:* The town may impose a technical consulting fee for each application, not to exceed \$500.00, to offset the cost of reviewing and processing applications required by this section. The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of an application. The town may engage an outside consultant for technical consultation and the review of an application. The fee imposed by the town for the review of the application shall not be used for either of the following:
 - (1) Travel expenses incurred in the review of a collocation application by an outside consultant or other third party.
 - (2) Direct payment or reimbursement for an outside consultant or other third party based on a contingent fee basis or results based arrangement.

In any dispute concerning the appropriateness of a fee, the town has the burden of proving that the fee meets the requirements of this subsection.

- j. *Removal of abandoned facilities:* A wireless services provider shall remove an abandoned wireless facility within 180 days of abandonment. Should the wireless services provider fail to timely remove the abandoned wireless facility, the town may cause such wireless facility to be removed and may recover the actual cost of such removal, including legal fees, if any, from the wireless services provider. For purposes of this subsection, a wireless facility shall be deemed abandoned at the earlier of the date that the wireless services provider indicates that it is abandoning such facility or the date that is 180 days after the date that such wireless facility ceases to transmit a signal, unless the wireless services provider gives the town reasonable evidence that it is diligently working to place such wireless facility back in service.
- k. *Routine maintenance and replacement:* No application, permit or fees are required for (i) routine maintenance; (ii) the replacement of small wireless facilities with small wireless facilities that are the same size or smaller; or (iii) installation,

placement, maintenance, or replacement of micro wireless facilities that are

suspended on cables strung between existing utility poles or city utility poles in compliance with applicable codes by or for a communications service provider authorized to occupy the city rights-of-way and who is remitting taxes under G.S. 105-164.4(a)(4c) or G.S. 105-164.4(a)(6). The town may require production of sufficient information to make the determination that no application, permit or fees are required under this section.

1. *Other permits not precluded:* Nothing in this section shall prevent the town from requiring other town permits for work that involves excavation, affects traffic patterns, or obstructs vehicular traffic in the city rights-of-way.
- (2) *Use of town rights-of-way.* Wireless providers may use town rights-of-ways in accordance with this section. Wireless providers may use Department of Transportation rights-of-way pursuant to lawful authorization from the Department of Transportation.
 - a. *Collocation of small wireless facilities:* Subject to the requirements of subsection 36-175(i)(1), a wireless provider may collocate small wireless facilities along, across, upon, or under any town rights-of-way.
 - b. *Utilities and poles within rights-of-way:* A wireless provider may place, maintain, modify, operate, or replace associated utility poles, city utility poles, conduit, cable, or related appurtenances and facilities along, across, upon, and under any town rights-of-way. The placement, maintenance, modification, operation, or replacement of utility poles and city utility poles associated with the collocation of small wireless facilities, along, across, upon, or under any town rights-of-way shall be subject only to review or approval under subsection 36-175(i)(1) if the wireless provider meets all the following requirements:
 - (1) Each new utility pole and each modified or replacement utility pole or city utility pole installed in the rights-of-way shall not exceed 50 feet above ground level.
 - (2) Each new small wireless facility in the rights-of-way shall not extend more than ten feet above the utility pole, city utility pole, or wireless support structure on which it is collocated.
 - c. *Application required to place or modify utility poles in rights-of-way:* A wireless provider shall apply to place utility poles in the city rights-of-way, or to replace or modify utility poles or city utility poles in the public rights-of-way, to support the collocation of small wireless facilities. The town shall accept and process the application in accordance with the provisions of subsection 36-175(i)(1), applicable codes, and other local codes governing the placement of utility poles or city utility poles in the town rights-of-way, including provisions or regulations that concern public safety, objective design standards for decorative utility poles or city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including those relating to screening or landscaping, or public safety and reasonable spacing requirements. The application may be submitted in conjunction with the associated small wireless facility application.

- d. *Installation of new poles in residential zoning districts:*
- (1) No new utility pole may be installed for the principal use of wireless facilities if a pole exists within 20 feet of a desired location.
 - (2) The minimum distance of a new pole from any residential structure shall be at least 150 percent of the pole height and shall not be located directly in front of any residential structure or vacant lot located in a residential zoning district.
 - (3) Along streets and within subdivisions where there are no existing utility poles (all underground utilities), wireless facilities may be attached to street lights in the public right-of-way.
 - (4) New poles may not be erected in a residential area solely for wireless communication equipment attachment unless the applicant has demonstrated it cannot reasonably provide service by:
 - i. Installing poles outside of the residential area;
 - ii. Attaching equipment to existing poles within the right-of-way; or
 - iii. Installing poles in rights-of-way not contiguous to parcels used for single family residential purposes.
- e. *Rights-of-way use to comply with other requirements:* Applicants for use of a city rights-of-way shall comply with chapter 28 undergrounding requirements prohibiting the installation of above ground structures in the town's rights-of-way without prior approval. In no instance in an area zoned single family residential where the existing utilities are installed underground may a utility pole, city utility pole, or wireless support structure exceed 40 feet above ground level, unless the town grants a waiver or variance approving a taller utility pole, city utility pole, or wireless support structure.
- f. *Rights-of-way charges:* The town may assess a rights-of-way charge for use or occupation of the rights-of-way by a wireless provider, subject to the restrictions set forth under G.S. 160A-296(a)(6). In addition, charges authorized by this section shall meet all of the following requirements:
- (1) The rights-of-way charge shall not exceed the direct and actual cost of managing the city rights-of-way and shall not be based on the wireless provider's revenue or customer counts.
 - (2) The rights-of-way charge shall not exceed that imposed on other users of the rights-of-way, including publicly, cooperatively, or municipally owned utilities.
 - (3) The rights-of-way charge shall be reasonable and nondiscriminatory.

The town may provide free access to town rights-of-way on a nondiscriminatory basis in order to facilitate the public benefits of the deployment of wireless services.

- g. *Consent required for use of private property:* No person may place, maintain, modify, operate, or replace a privately owned utility pole or wireless support structure or to collocate small wireless facilities on a privately owned utility pole, a privately owned wireless support structure, or other private property without the consent of the property owner.
- h. *Damages to rights-of-way:* Wireless providers shall repair all damage to a town rights-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support structures, city utility poles, or utility poles and to return the rights-of-way to its functional equivalence before the damage. If the wireless provider fails to make the repairs required by the town within a reasonable time after written notice, the town may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs. The town may maintain an action to recover the costs of the repairs.
- i. *Approval under section relates only to small wireless facility:* The approval of the installation, placement, maintenance, or operation of a small wireless facility does not authorize the provision of any communications services or the installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in the rights-of-way.

(Ord. No. 2009-08-01, pt. VII, 1-5-2010; Ord. No. 2013-07-01, art. III, pt. II, 7-16-2013; Ord. No. 2014-04-02, art. III, pt. V, 4-1-2014; Ord. No. 2018-03-01, art. III, pt. I, 3-6-2018; Ord. No. 2018-06-02, art. III, pt. I, 6-5-2018)

Editor's note(s)—Ord. No. § 2018-03-01, art. III, pt. I, adopted Mar. 6, 2018, amended the title of § 36-175 from wireless telecommunications sites and towers to wireless telecommunications sites, facilities and towers.

Sec. 36-176. Wind energy facilities.

- (a) *Definitions.* The following definitions shall apply to all portions of the Town Code relating to the use or construction of wind generation facilities within the town:

Applicant is the person or entity filing an application under this section.

Dwelling, single-family is a detached building designed for or occupied exclusively by one family.

Facility owner is the entity or entities having controlling or majority equity interest in the wind energy facility, including their respective successors and assigns.

Occupied building is 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.

Public road is a full passage right-of-way.

Structure is anything constructed or erected, the use of which requires location on the ground, or attachment to something having location on the ground.

Vegetation line means 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.

Wind generation facility is 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.

Wind power is the conversion of wind energy into another form of energy.

Wind turbine or *windmill* is a wind energy conversion system that converts wind energy into electricity.

Wind turbine height is the distance measured from the lowest adjacent grade to the highest point of the structure, including any attachments, such as a turbine rotor, or tip of the turbine blade when it reaches its highest elevation.

(b) *Permit requirements.*

- (1) Wind generation facilities shall only be permitted as follows:
 - a. Wind generation facility as an accessory use to a structure in the RS-1, RS-8, RS-10, R-1, G&I, and C zoning districts.
 - (i) No more than one free standing wind generation facility as an accessory use to a structure; or
 - (ii) No more than one attached wind generation facility as an accessory use to a structure.
 - b. For properties that are divided by a street or canal and are under the same ownership, the wind generation facility shall be located on the same side of the street or canal which the structure receiving power from the wind generation facility is located.
- (2) No wind generation facility shall be constructed unless a permit has been issued to the facility owner that approves construction of the facility under this article.
- (3) Any physical modification to an existing and permitted wind generation facility that materially alters the size and/or type of wind turbine or other equipment shall require a permit modification under this article. Like-kind replacements shall not require a permit modification.

(c) *Dimensional and design requirements.*

(1) *Height requirements.*

- a. Wind generation 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.

(2) *Setback requirements.*

- a. The base of all wind generation facilities shall be located at least one foot from the nearest property line for every one foot of proposed height.
 - (i) For rear setback requirements for oceanfront properties, the base of the wind generation facility shall be located at least one foot from the vegetation line for every one foot of proposed height.

(3) *Noise and vibration requirements.*

- a. Noise shall be in compliance with the standards established in section 22-3 of the Town Code.
- b. No vibration shall be detectable at adjacent property lines.

(d) *Installation.*

- (1) Free standing wind generation facilities shall be a self supporting monopole; and installation and design of the wind generation facility shall be site specific and conform to applicable industry standards, including those of the American National Standards Institute.
- (2) All structural, electrical, and mechanical components of the wind generation 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 generation facilities shall be constructed to withstand sustained winds of at least 130 miles per hour.
- (4) All wind generation 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 generation facilities shall be constructed according to the local electric service provider's standards for power disconnect and grid connections.
- (6) The visual appearance of wind generation facilities shall at a minimum:
 - a. Be finished with a neutral color (not white);
 - b. Not be artificially lighted; and
 - c. Not display advertising (including flags, streamers or decorative items), except for identification of the turbine manufacturer or facility owner. One identification

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.

(e) *Application requirements.*

- (1) An application shall not be deemed complete until all of the following required items have been submitted:
 - a. A narrative describing the proposed wind generation facility, including an overview of the project;
 - b. The proposed total rated capacity of the wind generation facility;
 - c. Documentation signed and sealed by a North Carolina registered engineer that the wind generation facility can withstand sustained winds of at least 130 miles per hour;
 - d. 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;
 - e. A site plan showing the location of all structures and properties, demonstrating compliance with the applicable setback requirements;
 - f. Certification of compliance with applicable local, state, and federal regulations;
 - g. Other relevant information as may be reasonably requested by the Town of Southern Shores to ensure compliance with the requirements of this section;
 - h. Signature of the applicant.
 - (2) 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.
 - (3) Changes to the approved application that do not materially alter the initial site plan may be approved administratively.
 - (4) The town council may place reasonable conditions on the issuance of a ~~conditional~~ special 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.
- (f) *Validity of permits.* A ~~conditional~~ special 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.

(Ord. No. 2011-04-01, art. III, pt. IX, 4-5-2011; Ord. No. 2012-04-01, art. III, pt. I, 4-3-2012)

Sec. 36-177. Temporary emergency zoning accommodations.

In the event of an emergency declaration applicable within the town's jurisdiction and issued by the United States, the State of North Carolina, or Dare County, or the Town of Southern Shores pursuant to G.S. 166A-19.22, the mayor may authorize the town manager or his designee to exercise their discretion to allow for reasonable temporary accommodations in town zoning regulations consistent with and furthering the purposes of the emergency declaration and in the interests of public health, safety and welfare, including the economic prosperity of the community. Such temporary accommodations shall not extend beyond the termination of the declaration of emergency or the end of the circumstances under the declaration causing the need for accommodations whichever is shorter. All temporary accommodations must be ceased within five days of the expiration of the temporary accommodation. The official designated to manage requests for accommodations may adopt reasonable procedures and requirements to apply for, analyze and provide temporary emergency permits for the accommodations. Temporary emergency accommodations shall not be deemed to constitute a change or modification of the underlying use of the applicable property, to affect any existing nonconforming situations on the property or to create any vested rights. Violation of the provisions of a temporary emergency accommodations permit shall constitute a zoning violation.

(Ord. No. 2020-07-01 , art. III, pt. II, 7-21-2020)

Sec. 36-178. Manufactured homes.

- (a) *Generally.* A manufactured home on an individual lot shall comply with the following requirements:
 - (1) It shall be occupied only as a single-family dwelling;
 - (2) It shall not be used solely for the purposes of storage;
 - (3) 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;
 - (4) It shall maintain a minimum width of 16 feet;
 - (5) It shall be oriented with the longest axis parallel to the lot frontage, to the maximum extent practicable;
 - (6) Towing apparatus, wheels, axles, and transporting lights shall be removed;
 - (7) With the exception of temporary health care structures, 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;
 - (8) It shall include stairs, porches, entrance platforms, ramps, and other means of entrance and exit that are installed or constructed in accordance with the standards set by the North Carolina State Building Code. They shall be attached to the primary structure and anchored in accordance with all local, state, and federal requirements;

- (9) 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.
- (10) It shall maintain a roof pitch with a minimum vertical rise of at least three feet for each 12 feet of horizontal run;
- (11) It shall include a roof finished with a class C or better roofing material that is commonly used in standard residential construction;
- (12) It shall provide an eave projection of no less than six inches and not greater than the other town requirements for eaves, which may include a gutter; and
- (13) Shall also comply with the requirements established in chapter 16, flood damage prevention.

(Ord. No. 2021-05-04 , art. III, pt. II, 5-4-2021)

Editor's note(s)—Ord. No. 2021-05-04 , art. III, pt. II, adopted May 4, 2021, set out provisions intended for use as § 36-177. Inasmuch as there were already provisions so designated, said section has been codified herein as § 36-178 at the discretion of the editor.

Secs. 36-179—36-201. Reserved.

ARTICLE VII. SCHEDULE OF DISTRICT REGULATIONS²

Sec. 36-202. RS-1 single-family residential district.

- (a) *Intent.* The 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. In order to meet this intent, the density of population in the district is managed by establishment of minimum lot sizes, building setback and height limits, parking regulations and maximum occupancy limits for single-family residences used as vacation cottages.
- (b) *Permitted uses.* The following uses shall be permitted by right:
 - (1) Detached single-family dwelling and vacation cottages provided that such residential structure shall not be: (i) advertised to accommodate, designed for, constructed for or

²Editor's note(s)—Regulations limiting the use of buildings and land and the bulk and arrangement of buildings within the various districts established by this article are hereby adopted for Southern Shores, North Carolina. These district regulations may be amended as provided in article XIV of this chapter.

actually occupied by more than 14 overnight occupants when used as a vacation cottage; or
(ii) have a maximum septic capacity sufficient to serve more than 14 overnight occupants.

- (2) Customary accessory buildings and structures including, but not limited to, swimming pools, tennis courts, and garages, provided no dwelling unit is located in the accessory structure. Accessory beach access walks, ramps, and steps shall not exceed four feet in width. Accessory ocean dune platforms shall not exceed 200 square feet.
- (3) Home occupations and home based businesses as regulated in article VIII of this chapter.
- (4) Town-owned or leased facilities.
- (5) Piers and docks, only when accessory to a building for which a building permit has been obtained.
 - a. Piers and docks must be permitted by all applicable local, state, and federal agencies having jurisdiction.
 - b. The activity associated with the pier or dock must be permitted by the zoning district where the pier or dock is anchored.
 - c. 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.
 - d. Only one pier or dock is permitted per building site.
- (6) Estuarine bulkheads must be permitted by all applicable local, state, and federal agencies having jurisdiction.
- (7) Community beach access including ocean dune platforms, and associated seating areas, walks, ramps and stairs. Such community beach access may be up to six feet in width and must be permitted by all applicable local, state, and federal agencies having jurisdiction.
- (8) Collocations and eligible facilities requests in compliance with section 36-175(c).
- (c) ~~Conditional~~ Special uses permitted. The following uses are permitted, subject to the requirements of this district and such additional regulations and requirements as may be imposed by the town council, as provided in article X of this chapter:
 - (1) Community recreation facilities, including boat launching areas, tennis courts, community centers, libraries, picnic areas, bathing beaches, and concessions integral thereto, provided that there is no open commercial activity, and no sign other than a directional sign is allowed.
 - (2) Fire stations.
 - (3) Governmental emergency medical evacuation facilities.
 - (4) Child day care, small home.

- (5) Swimming lessons, subject to all applicable state and local regulations, training, experience and licensing requirements for swimming pools, swimming lessons, lifeguards and swimming instructors shall be met.
 - a. No swimming lesson shall be conducted earlier than 8:00 a.m. nor later than 6:00 p.m.
 - b. Any need for additional parking generated by the conduct of swimming lessons shall be met by off-street parking.
- (6) Wireless telecommunications sites in compliance with section 36-175.
- (7) Wind generation facility, in compliance with the requirements of section 36-176.
- (d) *Dimensional requirements.*
 - (1) Minimum lot size: 20,000 square feet.
 - (2) Minimum lot width: 100 feet (measured at the building setback line).
 - (3) Minimum front yard (setback): 25 feet.
 - (4) Minimum side yard (setback).
 - a. Minimum side yard setback shall be 15 feet;
 - b. An additional five-foot side yard adjacent to the street is required for a corner lot;
 - c. Minimum side yard setback shall be 15 feet for swimming pools.
 - (5) Minimum rear yard (setback): 25 feet.
 - (6) Maximum allowable lot coverage.
 - a. Maximum allowable lot coverage shall be 30 percent, except for town-owned facilities and fire stations;
 - b. Maximum allowable lot coverage shall be 85 percent for town-owned facilities and fire stations.
 - c. Gravel walkways shall not contribute to lot coverage.
 - d. Open-slatted decks that allow water to penetrate through to pervious material, not exceeding a total of 25 percent of the total footprint area of a permitted single-family dwelling on the same lot, shall not contribute to lot coverage.
 - e. Those allowances and/or exemptions listed in subsection d. of this paragraph (6) shall be available only upon presentation of a survey with all applicable requirements including plan certification, for a lot disturbance and stormwater management permit as described in subsection 36-171(3) of the Town Code of Ordinances.

In the case of an oceanfront a lot where the boundary is the Atlantic Ocean, only that portion of the lot area landward of the first line of stable natural vegetation (as defined by CAMA) shall be used for the calculation of lot coverage as it pertains to impervious surface limits included in the maximum allowable lot coverage constraints.

(7) Height.

- a. Maximum building height shall be 35 feet, measured from the average of the existing, undisturbed grade at the building corners. If the average of the existing, undisturbed grade at the corners of the building is less than eight feet above mean sea level, the maximum building height may be measured from up to eight feet above mean sea level.
- c. For properties that are in a VE flood zone, maximum building height shall be 35 feet measured from the average of the corners of original grade (fill is regulated by FEMA).

(8) Maximum size of single-family dwelling: single-family dwellings shall not exceed 6,000 square feet of enclosed living space.

(Code 1988, § 11-7.01; Ord. No. 01-10-016, pt. II, 10-2-2001; Ord. No. 02-06-019, pt. I, 6-25-2002; Ord. No. 05-08-02, art. V, 11-1-2005; Ord. No. 06-05-01, art. III, § 1, 6-6-2006; Ord. No. 2007-05-01, art. IV, 6-5-2007; Ord. No. 2009-08-01, pt. I, 1-5-2010; Ord. No. 2011-04-01, art. III, pt. III, 4-5-2011; Ord. No. 2014-04-02, art. III, pt. I, 4-1-2014; Ord. No. 2016-01-04, art. III, pt. 2, 1-22-2016; Ord. No. 2017-09-01, art. III, pt. I, 9-5-2017; Ord. No. 2017-12-02, art. III, pt. II, 12-5-2017; Ord. No. 2018-09-01, art. III, pt. I, 9-5-2018; Ord. No. 2019-05-02, art. III, pt. 2., 5-7-2019; Ord. No. 2019-11-01, art. III, pt. III, 11-6-2019; Ord. No. 2021-05-03, art. III, pt. I, 5-4-2021)

Sec. 36-203. RS-8 multifamily residential district.

- (a) *Intent.* The 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.
- (b) *Permitted uses.* The following uses shall be permitted by right:
 - (1) Detached single-family dwelling.
 - (2) Duplexes.
 - (3) Multifamily dwellings.
 - (4) Customary accessory buildings including, but not limited to, swimming pools, tennis courts, and garages, provided no dwelling unit is located in the accessory structure.
 - (5) Home occupations and home-based businesses as regulated in article VIII of this chapter.
 - (6) Town-owned or leased facilities.
 - (7) Piers and docks, only when accessory to a building for which a building permit has been obtained.
 - a. Piers and docks must be permitted by all applicable local, state, and federal agencies having jurisdiction.

- b. The activity associated with the pier or dock must be permitted by the zoning district where the pier or dock is anchored.
 - c. 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.
 - d. Only one pier or dock is permitted per building site.
- (8) Estuarine bulkheads must be permitted by all applicable local, state, and federal agencies having jurisdiction.
- (c) ~~Conditional~~ *Special uses permitted*. The following uses are permitted subject to the requirements of this district and such additional regulations and requirements as may be imposed by the town council as provided in article X of this chapter:
- (1) Churches.
 - (2) Fire stations, schools and other public buildings.
 - (3) Community recreation facilities, including boat launching areas, golf courses, tennis courts, community centers, libraries, bathing beaches, picnic areas, and concessions integral thereto, provided that there is no open commercial activity, and no sign other than a directional noncommercial sign is allowed.
 - (4) Wind generation facility, in compliance with the requirements of section 36-176.
- (d) *Dimensional requirements*.
- (1) Minimum lot size.
 - a. Minimum lot size for single-family detached residence shall be 20,000 square feet.
 - b. Minimum lot size for a duplex shall be 20,000 square feet.
 - c. For multifamily dwellings, the minimum lot size must be served by an approved public or community sewage disposal system; 7,500 square feet for the first dwelling unit, and 5,151 square feet for each additional dwelling unit.
 - d. Minimum lot size for a large home shall be 20,000 square feet.
 - (2) Minimum lot width: 75 feet (measured at the building setback line).
 - (3) Minimum front yard (setback): 25 feet.
 - (4) Minimum side yard (setback).
 - a. Minimum side yard setback shall be 15 feet;
 - b. An additional five-foot side yard adjacent to the street is required for a corner lot;
 - c. Minimum side yard setback shall be 15 feet for swimming pools.
 - (5) Minimum rear yard (setback): 20 feet.

- (6) Maximum allowable lot coverage by principal use and all accessory structures: 40 percent. In the case of a lot where the boundary is the Atlantic Ocean, only that portion of the lot area landward of the first line of stable natural vegetation (as defined by CAMA) shall be used for the calculation of lot coverage as it pertains to impervious surface limits included in the maximum allowable lot coverage constraints.
 - a. Open-slatted decks that allow water to penetrate through to pervious material, not exceeding a total of 25% of the total footprint area of a permitted single-family dwelling on the same lot, shall not contribute to lot coverage;
 - b. Those allowances and/or exemptions listed in sub-section a. of this paragraph (6) shall be available only upon presentation of a survey with all applicable requirements including plan certification, for a Lot Disturbance and Stormwater Management Permit as described in Sec. 36-171 (3) of the Town Code of Ordinances.
- (7) Height.
 - a. Maximum building height shall be 35 feet, measured from the average of the existing, undisturbed grade at the building corners. If the average of the existing, undisturbed grade at the corners of the building is less than eight feet above mean sea level, the maximum building height may be measured from up to eight feet above mean sea level.
- (8) 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. 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.
- (9) Maximum size of single-family dwelling: Single-family dwellings shall not exceed 6,000 square feet of enclosed living space.

(Code 1988, § 11-7.02; Ord. No. 01-10-016, pt. II, 10-2-2001; Ord. No. 2007-05-01, art. V, 6-5-2007; Ord. No. 2011-04-01, art. III, pt. IV, 4-5-2011; Ord. No. 2016-01-04, art. III, pt. 3, 1-22-2016; Ord. No. 2017-12-02, art. III, pt. III, 12-5-2017; Ord. No. 2019-11-01 , art. III, pt. IV, 11-6-2019; Ord. No. 2021-05-03 , art. III, pt. II, 5-4-2021)

Sec. 36-204. RS-10 residential district.

- (a) *Intent.* The 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. In order to meet this intent, the density of population in the district is managed by establishment of minimum lot sizes, building setback and height limits, parking regulations and maximum occupancy limits for single-family residences used as vacation cottages.

- (b) *Permitted uses.* The following uses shall be permitted by right:
- (1) Detached single-family dwelling and vacation cottages provided that such residential structure shall not be: (i) advertised to accommodate, designed for, constructed for or actually occupied by more than 14 overnight occupants when used as a vacation cottage; or (ii) have a maximum septic capacity sufficient to serve more than 14 overnight occupants.
 - (2) Home occupations and home based businesses as regulated in article VIII of this chapter.
 - (3) Piers and docks, only when accessory to a building for which a building permit has been obtained.

- a. Piers and docks must be permitted by all applicable local, state, and federal agencies having jurisdiction.
 - b. The activity associated with the pier or dock must be permitted by the zoning district where the pier or dock is anchored.
 - c. 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.
 - d. Only one pier or dock is permitted per building site.
- (4) Estuarine bulkheads must be permitted by all applicable local, state, and federal agencies having jurisdiction.
- (c) ~~Conditional~~ *Special uses permitted*. The following uses are permitted subject to the requirements of this district and additional regulations and requirements imposed by the town council as provided in article X of this chapter:
- (1) Churches.
 - (2) Community recreation facilities, including boat launching areas, golf courses, tennis courts, community centers, libraries, picnic areas, bathing beaches, and concessions integral thereto, provided that there is no open commercial activity, and no sign other than a directional noncommercial sign is allowed.
 - (3) Group development residential.
 - a. Minimum lot size.
 - 1. Minimum lot size for single-family detached residence shall be 3,000 square feet.
 - 2. Minimum lot size for townhouse shall be 3,000 square feet.
 - b. Minimum lot width: ten feet.
 - c. Minimum front yard: zero feet.
 - d. Minimum side yard: zero feet.
 - e. Minimum rear yard: zero feet.
 - f. Maximum allowable lot coverage: 100 percent.
 - g. Height.
 - 1. Height, top plate, for single-family and townhouse shall be 26 feet.
 - 2. Height, maximum: 35 feet.
 - h. 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. The width of a road and its right-of-

way along such boundary may be included as part, or all, of the 50-foot separation zone.

- i. Minimum living space: 1,000 square feet of enclosed living space.
- j. Common area/open space: minimum 9,000 square feet of common area/open space per platted lot.

(4) Wind generation facility, in compliance with the requirements of section 36-176.

(d) *Dimensional requirements.*

(1) Minimum lot size for single-family detached residence shall be 20,000 square feet.

(2) Minimum lot width: 75 feet (measured at building setback line).

(3) Minimum front yard (setback): 25 feet.

(4) Minimum side yard (setback).

- a. Minimum side yard setback shall be 15 feet;
- b. An additional five-foot side yard adjacent to the street is required for a corner lot;
- c. Minimum side yard setback shall be 15 feet for swimming pools.

(5) Minimum rear yard (setback): 25 feet.

(6) Maximum allowable lot coverage: 30 percent. In the case of an oceanfront lot where the boundary is the Atlantic Ocean, only that portion of the lot area landward of the first line of stable natural vegetation (as defined by CAMA) shall be used for the calculation of lot coverage as it pertains to impervious surface limits included in the maximum allowable lot coverage constraints.

- a. Open-slatted decks that allow water to penetrate through to pervious material, not exceeding a total of 25% of the total footprint area of a permitted single-family dwelling on the same lot, shall not contribute to lot coverage;
- b. Those allowances and/or exemptions listed in sub-section a. of this paragraph (6) shall be available only upon presentation of a survey with all applicable requirements including plan certification, for a Lot Disturbance and Stormwater Management Permit as described in Sec. 36-171 (3) of the Town Code of Ordinances.

(7) Height.

- a. Maximum building height shall be 35 feet, measured from the average of the existing, undisturbed grade at the building corners. If the average of the existing, undisturbed grade at the corners of the building is less than eight feet above mean sea level, the maximum building height may be measured from up to eight feet above mean sea level.

(8) 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. The width of a road and its right-of-way along

such boundary may be included as part, or all, of the 50-foot separation zone.

- (9) Maximum size of single-family dwelling: single family dwellings shall not exceed 6,000 square feet of enclosed living space.

(Code 1988, § 11-7.03; Ord. No. 01-10-016, pt. II, 10-2-2001; Ord. No. 2007-05-01, art. VI, 6-5-2007; Ord. No. 2011-04-01, art. III, pt. V, 4-5-2011; Ord. No. 2016-01-04, art. III, pt. 4, 1-22-2016; Ord. No. 2019-05-02, art. III, pt. 3., 5-7-2019; Ord. No. 2019-11-01 , art. III, pt. V, 11-6-2019; Ord. No. 2021-05-03 , art. III, pt. III, 5-4-2021)

Sec. 36-205. R-1 low-density residential district.

- (a) *Intent.* The 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. In order to meet this intent, the density of population in the district is managed by establishment of minimum lot sizes, building setback and height limits, parking regulations and maximum occupancy limits for single-family residences used as vacation cottages.
- (b) *Permitted uses.* The following uses shall be permitted by right:
- (1) Detached single-family dwelling and vacation cottages provided that such residential structure shall not be: (i) advertised to accommodate, designed for, constructed for or actually occupied by more than 14 overnight occupants when used as a vacation cottage; or (ii) have a maximum septic capacity sufficient to serve more than 14 overnight occupants.
 - (2) Customary accessory buildings including, but not limited to, swimming pools, tennis courts, and garages, provided no dwelling unit is located in the accessory structure.
 - (3) Home occupations and home-based businesses as regulated in article VIII of this chapter.
 - (4) Town-owned or leased facilities.
 - (5) Piers and docks, only when accessory to a building for which a building permit has been obtained.
 - a. Piers and docks must be permitted by all applicable local, state, and federal agencies having jurisdiction.
 - b. The activity associated with the pier or dock must be permitted by the zoning district where the pier or dock is anchored.
 - c. 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.
 - d. Only one pier or dock is permitted per building site.
 - (6) Estuarine bulkheads must be permitted by all applicable local, state, and federal agencies having jurisdiction.
 - (7) Collocations and eligible facilities requests in compliance with section 36-175(c).
- (c) *Conditional Special uses permitted.* The following uses are permitted, subject to the requirements of this district and additional regulations and requirements imposed by the town council, as provided in article X of this chapter:
- (1) Churches.
 - (2) Fire stations, schools and other public buildings.

- (3) Community recreation facilities including boat launching areas, tennis courts, community centers, libraries, picnic areas, bathing beaches, and concessions integral thereto, provided that there is no open commercial activity and no sign other than a directional sign is allowed.
 - (4) Country club.
 - (5) Child day care, small home.
 - (6) Wireless facilities on publicly owned water towers, with the approval of the public entity which owns the water tower in compliance with the requirements and conditions of section 36-175.
 - (7) Wireless telecommunications sites in compliance with section 36-175.
 - (8) Wind generation facility in compliance with the requirements of section 36-176.
 - (9) Manufactured homes in compliance with the requirements of section 36-178.
- (d) *Dimensional requirements.*
- (1) Minimum lot size.
 - a. Minimum lot size for all uses other than country club shall be 20,000 square feet.
 - b. For country club, the minimum lot size shall be 150 acres.
 - (2) Minimum lot width: 100 feet (measured at building setback line).
 - (3) Minimum front yard (setback): 25 feet.
 - (4) Minimum side yard (setback).
 - a. Minimum side yard setback for all other uses shall be 15 feet;
 - b. An additional five-foot side yard adjacent to the street is required for a corner lot;
 - c. Minimum side yard setback for fire stations shall be ten feet when adjacent to town-owned property or a town right-of-way;
 - d. Minimum side yard setback shall be 15 feet for swimming pools.
 - (5) Minimum rear yard (setback).
 - a. Minimum rear yard setback for all other uses shall be 25 feet;
 - b. Minimum rear yard setback for fire stations shall be zero feet from town-owned property.
 - (6) Maximum allowable lot coverage.
 - a. Maximum allowable lot coverage shall be 30 percent, except for town-owned facilities and fire stations;
 - b. Maximum allowable lot coverage shall be 85 percent for town-owned facilities and fire stations; and
 - c. Maximum allowable lot coverage shall be 40 percent for school facilities.

- d. Open-slatted decks that allow water to penetrate through to pervious material, not exceeding a total of 25% of the total footprint area of a permitted singlefamily dwelling on the same lot, shall not contribute to lot coverage;
- e. Those allowances and/or exemptions listed in sub-section d. of this paragraph (6) shall be available only upon presentation of a survey with all applicable requirements including plan certification, for a Lot Disturbance and Stormwater Management Permit as described in Sec. 36-171 (3) of the Town Code of Ordinances.

In the case of an oceanfront lot where the boundary is the Atlantic Ocean, only that portion of the lot area landward of the first line of stable natural vegetation (as defined by CAMA) shall be used for the calculation of lot coverage as it pertains to impervious surface limits included in the maximum allowable lot coverage constraints.

(7) Height.

a. For uses other than country club, school facilities and churches:

1. Maximum building height shall be 35 feet, measured from the average of the existing, undisturbed grade at the building corners. If the average of the existing, undisturbed grade at the corners of the building is less than eight feet above mean sea level, the maximum building height may be measured from up to eight feet above mean sea level.

b. For country club use and churches, principal building only:

1. Maximum building height shall be 65 feet, measured from the average of the existing, undisturbed grade at the building corners. If the average of the existing, undisturbed grade at the corners of the building is less than eight feet above mean sea level, the maximum building height may be measured from up to eight feet above mean sea level.

c. For school facilities:

1. Maximum building height shall be 55 feet, measured from the average of the existing, undisturbed grade at the building corners. If the average of the existing, undisturbed grade at the corners of the building is less than eight feet above mean sea level, the maximum building height may be measured from up to eight feet above mean sea level.

(8) Multiple primary buildings: may have multiple primary buildings on site provided these buildings are connected by covered breezeways or walkways.

(9) Maximum size of single-family dwelling: single-family dwellings shall not exceed 6,000 square feet of enclosed living space.

(Code 1988, § 11-7.04; Ord. No. 01-10-016, pt. II, 10-2-2001; Ord. No. 02-11-024, pts. I, II, 11-6-2002; Ord. No. 04-02-02, art. II, § 1, 3-2-2004; Ord. No. 04-10-01, art. IV, § 1, 11-17-2004; Ord. No. 06-05-01, art. III, § 2, 6-6-2006; Ord. No. 2007-05-01, art. VII, 6-5-2007; Ord. No. 2009-08-01, pt. II, 1-5-2010; Ord. No. 2011-04-01, art. III, pt. VI, 4-5-2011; Ord. No. 2014-04-02, art. III, pt. II, 4-1-2014; Ord. No. 2016-01-04, art. III, pt. 5, 1-22-2016; Ord. No. 2017-12-02, art. III, pt. IV, 12-5-2017; Ord. No. 2018-07-02, art. III, pt. IV, 7-10-2018; Ord. No. 2019-05-02, art. III, pt. 4., 5-7-2019; Ord. No. 2019-11-01, art. III, pt. VI, 11-6-2019; Ord. No. 2021-05-03, art. III, pt. IV, 5-4-2021; Ord. No. 2021-05-04, art. III, pt. I, 5-4-2021)

Editor's note(s)—Ord. No. 2021-05-04, art. III, pt. I, adopted May 4, 2021, set out provisions intended for use as § 36-203(c)(9). For purposes of classification, and at the town's direct, these provisions have been included as § 36-205(c)(9).

Sec. 36-206. Southern Shores zoning ordinance—Government and institutional district.

- (a) *Intent.* The government and institutional zoning 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.
- (b) *Permitted uses.* The following uses are permitted by right:
 - (1) Governmental offices, office buildings, and meeting rooms.
 - (2) Town authorized uses of town-owned facilities.
 - (3) Police stations.
 - (4) Other town-owned facilities.
 - (5) Residential uses which comply with the requirements of section 36-202, the RS-1 single-family residential district.
 - (6) Offices for nonprofit entities qualified under section 501(c)(3) of the Internal Revenue Code. Notwithstanding other provisions of the Southern Shores Town Ordinances, the following shall apply to permitted uses under this section: handicapped accessibility shall be provided.
 - (7) Collocations and eligible facilities requests in compliance with section 36-175(c).
- (c) ~~*Conditional*~~ *Special uses permitted.* The following uses are permitted subject to the requirements of this district and such additional regulations and requirements as may be imposed by the town council as provided in article X of this chapter:
 - (1) Community recreation facilities, including golf courses, tennis courts, community centers, libraries, picnic areas, and concessions integral thereto, provided that there is no open commercial activity, and no sign other than a directional noncommercial sign is allowed.
 - (2) Wireless telecommunications sites in compliance with section 36-175.
 - (3) Wind generation facility in compliance with the requirements of section 36-176.
- (d) *Dimensional requirements.*
 - (1) Minimum lot size: 10,000 square feet.
 - (2) Minimum lot width: 50 feet (measured at the building setback line).
 - (3) Minimum front yard (setback): 25 feet.
 - (4) Minimum side yard (setback).
 - a. Minimum side yard setback shall be ten feet;
 - b. An additional five-foot side yard adjacent to the street is required for a corner lot;

- c. Minimum side yard setback shall be 15 feet for swimming pools.

- (5) Minimum rear yard (setback): 25 feet.
- (6) Maximum allowable lot coverage.
 - a. Maximum allowable lot coverage shall be 30 percent, except for town-owned facilities and fire stations;
 - b. Maximum allowable lot coverage shall be 85 percent for town-owned facilities and fire stations.
 - c. Open-slatted decks that allow water to penetrate through to pervious material, not exceeding a total of 25% of the total footprint area of a permitted singlefamily dwelling on the same lot, shall not contribute to lot coverage;
 - d. Those allowances and/or exemptions listed in sub-section d. of this paragraph (6) shall be available only upon presentation of a survey with all applicable requirements including plan certification, for a Lot Disturbance and Stormwater Management Permit as described in Sec. 36-171 (3) of the Town Code of Ordinances.
- (7) Height.
 - a. Maximum building height shall be 35 feet, measured from the average of the existing, undisturbed grade at the building corners. If the average of the existing, undisturbed grade at the corners of the building is less than eight feet above mean sea level, the maximum building height may be measured from up to eight feet above mean sea level.

(Ord. No. 2007-09-02, art. V, 9-4-2007; Ord. No. 2009-08-01, pt. III, 1-5-2010; Ord. No. 2011-04-01, art. III, pt. VII, 4-5-2011; Ord. No. 2014-04-02, art. III, pt. III, 4-1-2014; Ord. No. 2019-11-01 , art. III, pt. VII, 11-6-2019)

Sec. 36-207. C general commercial district.

- (a) *Intent.* The C district is established to provide for the proper grouping and development of commercial facilities to serve permanent and seasonal residents.
- (b) *Permitted uses.* The following uses shall be permitted by right:
 - (1) Offices, including such uses as:
 - a. Business.
 - b. Financial.
 - c. Governmental.
 - d. Medical and professional.
 - (2) Retail stores, including such uses as:
 - a. Antiques.
 - b. Books.

- c. Cameras.
- d. Candy.
- e. Clothing.
- f. Craft goods.
- g. Delicatessens.
- h. Drugs.

- i. Flowers.
 - j. Food stores.
 - k. Gifts.
 - l. Hardware.
 - m. Health and beauty aids.
 - n. Hobby goods.
 - o. Household appliances.
 - p. Jewelry.
 - q. Leather goods.
 - r. Magazines.
 - s. Medical supplies.
 - t. Music and musical instruments.
 - u. Office supplies.
 - v. Sporting goods.
 - w. Tobacco products.
 - x. Toys.
 - y. Video rentals.
 - z. Wines.
- (3) Service establishments, including such uses as:
- a. Banks.
 - b. Barbershops and beauty shops.
 - c. Business service—copying, photocopying and computer services.
 - d. Churches.
 - e. Dry cleaning and laundry pickup stations.
 - f. Funeral homes.
 - g. Indoor motion picture theaters.
 - h. Pharmacy, with or without a drive-through facility.
 - i. Radio and television broadcasting studios (excluding transmitter sites).
 - j. Shoe repair.
- (4) Detached single-family dwellings, two-family (duplexes) dwellings, multifamily dwellings, and accessory buildings, according to the density and dimensional requirements of the RS-8

multifamily residential district. For multifamily dwellings, the lot coverage shall not exceed 40 percent.

- (5) Town-owned or leased facilities.
- (6) Planned unit developments in accordance with article IX of this chapter.
- (7) Parking lots and sewage treatment drainfields, when located on a lot which is adjacent to and adjoins real property in an adjacent municipality, upon which a principal building or use has been approved by the municipality, and to which the parking lot and sewage treatment drainfields are necessary or incidental.
- (8) Collocations and eligible facilities requests in compliance with section 36-175(c).
- (9) Estuarine bulkheads must be permitted by all applicable local, state and federal agencies having jurisdiction.
- (10) Event facilities.
 - a. Customer parking requirements for event facilities shall be one space for each 150 square feet of floor area;
 - b. A septic permit must be obtained from the county health department to accommodate the maximum number of attendees permitted.
 - c. Food preparation shall meet all local and state requirements.
 - d. All events in which alcohol is to be served shall not be held until an approved state ABC permit has been issued.
 - e. All events shall be in compliance with all Town Code requirements, including the town noise ordinance.
- (11) Produce stands. The retail sale of fruits, vegetables, plants, and other agricultural and horticultural products subject to the following requirements:
 - a. All stands shall meet the yard requirements for the C general commercial district;
 - b. No sales shall be conducted between 8:00 p.m. and 7:00 a.m.;
 - c. No additional lighting shall be allowed;
 - d. All stands shall comply with all applicable Dare County Health Department requirements and N.C. Dept. of Agriculture requirements;
 - e. Only one stand per lot shall be allowed;
 - f. When located on a lot with fifty (50) or more existing parking spaces, no additional parking spaces will be required. When located on a lot with fewer than fifty (50) existing parking spaces, a minimum of three (3) off-street parking spaces shall be provided. When located on a vacant lot, parking spaces shall be provided on an adjacent lot with existing parking spaces that is under same ownership;
 - g. One freestanding sign not exceeding 32 square feet in area or 6 feet in height shall be allowed.

- h. If applicable, a building and/or electrical permit shall be obtained;
 - i. The display, storage and/or sale area shall not impede vehicular or pedestrian traffic and parking;
 - j. On-site garbage or trash receptacles must be provided and properly maintained at all times;
- (c) ~~Conditional~~ Special uses. The following uses shall be permitted as a ~~conditional~~ special use, subject to the requirements of this district; shall be subject to conditions and modifications relating to impacts on adjacent properties, transportation and transportation systems, transportation interconnectivity, stormwater, utilities and telecommunications facilities (including capacity), vegetation and other elements of the natural environment, noise, hours of operation, and other factors that the town council finds applicable; and additional regulations and requirements imposed by the town council, as provided in article X of this chapter:
- (1) Restaurants without a drive-through facility or with a drive-through facility, provided:
 - a. Restaurants with a drive-through facility shall not exceed 2,500 square feet.
 - b. The location of the drive-through facility is a minimum of 100 feet from any residentially zoned property.
 - c. It allows for stacking of a minimum of six cars.
 - (1.5) Drive-through facility or establishment (small), provided:
 - a. Drive-through facility or establishment (small) shall not exceed 2,500 square feet.

- b. The location of the drive-through facility is a minimum of 100 feet from any residentially zoned property.
 - c. It allows for stacking of a minimum of six cars.
 - d. Lot shall have frontage along US Hwy 158.
- (2) Veterinary clinic, provided that all boarding runs and kennels are in an enclosed, heated, and air conditioned building.
- (3) Child day care center, subject to other requirements of this chapter and provided the following conditions are met:
- a. The facility shall adhere to the minimum requirements of and be licensed by the state department of human resources.
 - b. Pickup and dropoff areas shall be provided separate from the drive aisle. The pickup and dropoff areas shall be designed so that no child is required to cross the parking lot or any other traffic areas.
- (4) Sewage system effluent disposal subsurface drainfields and repair areas, under the following conditions:
- 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 36-163(2)h (parking lot planting), 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.
- (5) Group development of town-owned or leased facilities.
- (6) Group development of commercial buildings, provided:
- a. 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.
- (7) Garden center/nursery, provided:
- 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.
- (8) Wireless telecommunications sites in compliance with section 36-175.
- (9) Wind generation facility in compliance with the requirements of section 36-176.
- (10) Ice vending structure (automated).
- a. May only be an accessory use to a shopping center.
- (11) Mixed use group development of commercial and residential buildings, provided:
- a. 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.
 - c. Lot shall be serviced by an existing community wastewater treatment facility permitted by NC DEQ DWR.
 - d. Residential density shall be limited to RS-8 District allowances as established within Sec. 36-203(a).
 - e. A minimum of 25 percent and no more than 40 percent lot coverage of the net parcel area can be associated with building footprints containing residential uses and the required parking for residential uses.
 - f. Minimum front yard (setback): 25 ft.
 - g. Minimum side yard (setback): 15 ft. An additional five-foot-yard adjacent to the street is required for a corner lot.
 - h. Minimum rear yard (setback): 20 ft.
 - i. Maximum building height shall be 35 feet, measured from the average of the existing, undisturbed grade at the building corners.
 - j. No building or other facility (such as parking spaces, incinerators, trash collection areas, etc.) shall be located nearer than 50 feet to boundaries of residential districts.
 - k. Where a mixed use group development abuts a residential zone, a buffer of dense vegetative planting or natural vegetation is required (see requirements in Section 36-207(d)(8)).
- (d) *Dimensional requirements.*

- (1) Minimum lot size: Commercial lots shall be of sufficient size to meet requirements of the Dare County Health Department, to provide adequate siting for structures, and to provide parking, loading and maneuvering space for vehicles as required by section 36-163. In addition, a visual buffer strip is required where a commercial use or zone abuts a residential zone.
- (2) Minimum front yard: 25 feet.
- (3) Minimum side yard: ten feet. No side yard required if commercial building constructed with a common wall. An additional five-foot-yard adjacent to the street is required for a corner lot.
- (4) Minimum rear yard: 20 feet.
- (5) Maximum allowable lot coverage by principal use and all accessory structures shall be 60 percent except as allowed under the following conditions:
 - a. Commercial lots shall be allowed the use of permeable pavement as defined by the NCDENR Stormwater BMP Manual ("Manual"). Employment of this permeable solution shall be granted the Built Upon Area (BUA) Credit as specified in the Manual.
 - b. Group Developments which incorporate the use of permeable pavement as outlined above 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.
- (6) Height:
 - a. a. Maximum building height shall be 35 feet, measured from the average of the existing, undisturbed grade at the building corners. If the average of the existing,

undisturbed grade at the corners of the building is less than eight feet above mean sea level, the maximum building height may be measured from up to eight feet above mean sea level.

- (7) No building or other facility (such as parking areas, incinerators, trash collection areas, etc.) shall be located nearer than 50 feet to boundaries of residential districts.
- (8) Where a commercial use or zone abuts a residential zone, a buffer of dense vegetative planting or natural vegetation is required. 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. 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. Vegetation plan to be approved by the town council.
- (9) All uses and improvements for commercial facility(ies) 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 36-26, Rules governing the interpretation of district boundaries.
- (10) Maximum size of single-family dwelling: Single-family dwellings shall not exceed 6,000 square feet of enclosed living space.

(Code 1988, § 11-7.10; Ord. No. 01-10-016, pt. II, 10-2-2001; Ord. No. 01-11-018, pt. I, 11-5-2001; Ord. No. 05-04-03, art. IV, 5-3-2005; Ord. No. 07-01-01, art. III, 2-6-2007; Ord. No. 2009-08-01, pts. IV, V, 1-5-2010; Ord. No. 2011-04-01, art. III, pt. VIII, 4-5-2011; Ord. No. 2011-12-01, art. III, pt. III, 12-6-2011; Ord. No. 2012-02-01, art. III, pt. III, 2-7-2012; Ord. No. 2013-03-01, art. III, pt. III, 3-5-2013; Ord. No. 2014-04-02, art. III, pt. IV, 4-1-2014; Ord. No. 2016-01-01, art. III, pt. II, 1-22-2016; Ord. No. 2016-01-02, art. III, pt. II, 1-22-2016; Ord. No. 2016-01-03, art. III, pt. I, 1-22-2016; Ord. No. 2016-01-04, art. III, pt. 6, 1-22-2016; Ord. No. 2018-05-02, art. III, pt. III, 6-5-2018; Ord. No. 2019-11-01, art. III, pt. VIII, 11-6-2019)

Sec. 36-208. OSW ocean and sound waters district.

- (a) *Intent.* The 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.
- (b) *Permitted uses.*
 - (1) Swimming, boating, sailing, fishing, and other active and passive noncommercial recreational activities.
 - (2) Piers and docks, only when accessory to a building for which a building permit has been obtained.

- a. 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.
 - b. The activity associated with the pier or dock must be permitted by the zoning district where the pier or dock is anchored.
 - c. 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.
 - d. Only one pier or dock is permitted per building site.
- (3) Customary accessory uses and structures, including estuarine bulkheads, are subject to the conditions and limitations of subsection (b) of this section, and provided further that no living space is provided in any accessory structure.
- (c) *Prohibited uses.*
- (1) Signs of all types.
 - (2) Floating homes.
 - (3) Any use which is not listed as a permitted or ~~conditional~~ special use.
- (Code 1988, § 11-7.11)

Sec. 36-209. Prohibited uses in all districts.

- (a) The following uses shall be prohibited in all districts:
- (1) Alcohol and drug detoxification, rehabilitation, and treatment facilities;
 - (2) Asphalt and concrete plants;
 - (3) Bail bond services;
 - (4) Bed and breakfasts;
 - (5) Bus, truck, and transportation terminals, yards, and parking lots;
 - (6) Campgrounds;
 - (7) Concentrated animal feeding operations;
 - (8) Crematoriums (human and animal);
 - (9) Dormitories and residence halls;
 - (10) Drug paraphernalia;
 - (11) Electronic gaming operations;
 - (12) Explosives, ammunition, fireworks, or gunpowder manufacture;
 - (13) Fat rendering, or production of fats and oils from animal or vegetable; products by boiling or distillation;

- (14) Fraternity and sorority houses;
- (15) Garbage, offal, or animal reduction and processing;
- (16) Gasoline pumps and sales;
- (17) Halfway houses;
- (18) Hazardous materials handling or storage;
- (19) Hospitals;
- (20) Hotels/resorts;
- (21) Jails and prisons;
- (22) Jetpack rentals;
- (23) Junk yards, scrap yards, and salvage facilities;
- (24) Landfills;
- (25) Manufacturing, processing, assembly and other industrial facilities;
- (26) Motor vehicle body and paint establishments;
- (27) Motor vehicle dealerships;
- (28) Motor vehicle washing establishments;
- (29) Night clubs;
- (30) Nitrogenous tankage, fish meal or manufacture, of any fertilizer materials carrying an objectionable odor;
- (31) Nursing homes;
- (32) Outdoor advertising or billboards except where prohibition is preempted by state or federal law;
- (33) Outdoor shooting ranges;
- (34) Package treatment plant wastewater disposal systems that discharge to surface waters;
- (35) Pawn shops;
- (36) Satellite dish farms;
- (37) Sexually oriented businesses;
- (38) Shooting ranges;
- (39) Slaughterhouses;
- (40) Smoke and vapor shops;
- (41) Solar Energy farms;
- (42) Storage or processing of radioactive or infectious waste;

- (43) Tattoo, body piercing, and body art establishments;
 - (44) Taxi and pedicab storage and dispatch; or
 - (45) Use of a boat, houseboat, or other floating structure as a temporary or permanent residence (this shall not prevent the overnight occupancy of a vessel temporarily moored while in transit on navigable waters).
- (b) *Classification and review of unlisted uses.* The zoning administrator shall determine whether or not an unlisted use is substantially similar to an already defined use category or use type. A proposed use will not be denied solely because it is not included in this section. An unlisted use will be denied if the zoning administrator determines that the unlisted use is substantially similar to a use which is expressly prohibited. The zoning administrator shall use the following factors as a guideline when classifying a new or unlisted use to determine if such use is classified in a manner consistent with other similar uses in the zoning jurisdiction of the town:
- (1) Consistency with the stated intent of the zoning district;
 - (2) Consistency with the adopted vision statement and policies of the town's land use plan;
 - (3) Density of development (number of units, square footage, etc.);
 - (4) Intensity of use consistent with the zoning district in which the use is to be located;
 - (5) Type of activity associated with the use;
 - (6) Number of customers and length of stay;
 - (7) Generation of pedestrian and vehicular traffic;
 - (8) Potential impacts such as noise, light, odor, etc.;
 - (9) Public safety;
 - (10) Environmental effects; and
 - (11) Negative impacts on adjacent land uses.
- (c) If the zoning administrator rejects a proposal for a use that is not clearly prohibited, then the zoning administrator will:
- (1) Ensure that the citizen is provided with a copy of the interpretation in writing;
 - (2) Inform the citizen of the right to appeal the decision to the board of adjustment, as specified in section 36-366 of this chapter, appeals of administrative decisions; and
 - (3) Advise the applicant on the requirements for the preparation of a proposed zoning text amendment for consideration by the planning board and town council allowing policy-makers to determine whether the proposed use should be an allowable use in the district or not. Financial responsibility for a proposed zoning text change shall be on the applicant.

(Ord. No. 2021-05-05 , art. III, pt. II, 5-4-2021)

Secs. 36-210—36-238. Reserved.

ARTICLE VIII. HOME OCCUPATION/HOME-BASED BUSINESS REGULATIONS

Sec. 36-239. Requirements apply to conduct.

The requirements set forth in this article shall apply to the conduct of home occupations and home-based businesses in Southern Shores.

(Ord. No. 2007-05-01, art. VIII, 6-5-2007)

Sec. 36-240. General standards.

- (a) The town adopts these standards and regulations to regulate the conduct of a business within the confines of their 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) Home occupations/home-based businesses are permitted in any residential dwelling unit subject to the following provisions:
 - (1) 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.
 - (2) 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.
 - (3) No business storage or warehousing of material, supplies or equipment shall be permitted outside of the primary dwelling unit.
 - (4) No toxic, explosive, flammable, combustible, corrosive, etiologic, radioactive or other restricted materials, as may be regulated by the state department of environment, health, and natural resources, division of solid and hazardous materials, shall be used or stored on the site in quantities greater than is reasonable and customary for any residential unit.
 - (5) No display of products shall be visible from the street.
 - (6) A home occupation or home-based business shall be subject to all applicable licenses, permits and business taxes.

(Ord. No. 2007-05-01, art. IX, 6-5-2007)

Sec. 36-241. Permitted use.

- (a) Home occupation/home-based business use of residential property permits very limited activities in a residential dwelling, provided:
 - (1) Such activities do not impact or detract from the residential character of the neighborhood.
 - (2) The business inside the dwelling unit shall not exceed 25 percent of habitable space of the primary residential structure.
- (b) A home occupation shall be deemed an accessory use, and no further approval shall be required, provided the use meets the standards of this section.

(Ord. No. 2007-05-01, art. X, 6-5-2007)

Sec. 36-242. Prohibited characteristics.

No home occupation or home-based business shall be permitted that does any of the following:

- (1) Requires internal or external alterations inconsistent with the residential use of the building or the land.
- (2) Requires additional parking over and above that of residential use.
- (3) Is a nuisance, or creates a hazard to persons or property.

(Ord. No. 2007-05-01, art. XI, 6-5-2007)

Secs. 36-243—36-262. Reserved.

ARTICLE IX. PLANNED UNIT DEVELOPMENT³

Sec. 36-263. Planned unit development (PUD) concept.

- (a) *Definitions.* A tract of land of at least five acres in area, under single, corporate, firm, partnership, or association ownership, planned and developed as an integral unit, in a single development operation or a definitely programmed series of development operations, and according to an approved outlined development plan and a preliminary site plan, and which is a departure from the strict requirements relating to lot sizes, setback lines and yard

³Editor's note(s)—The special regulations which are established in this article are intended to provide a means of regulating development which achieves flexibility of design, the integration of mutually compatible uses, and optimum land planning with greater efficiency, convenience, and amenity than the procedures and regulations under which it is permitted as of right under conventional zoning requirements.

spaces, but which does maintain zoning district density requirements. Only residential uses shall be allowed in a planned unit development.

- (b) *Intent.* Upon application and upon approval of detailed site, use, building and development plans, the town council may permit establishment of planned development in areas which are suitable with respect to location, size and physical character for development as units. Suitability of such tracts for the planned development proposed shall be determined primarily by reference to the goals and objectives of the land use plan, by the physical characteristics of the site, and by the nature of the surrounding development. The following shall apply:
 - (1) Within planned unit developments, regulations adapted to such unified planning and development are intended 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, and to promote economical and efficient land use, a higher level of amenities, appropriate and harmonious variety in physical development, creative design, and an improved living and working environment.
 - (2) Planned unit development will only be considered in the multifamily zoning districts.
- (c) *Relation of PUD regulations to general zoning, subdivision or other regulations.* Where there are conflicts between the special PUD provisions of this article and general zoning, subdivision or other regulations or requirements, these special regulations shall apply in PUDs, unless the town council shall find in the particular case:
 - (1) That these provisions do not serve public purposes to a degree at least equivalent to general zoning, subdivision or other regulations or requirements;
 - (2) That actions, designs or solutions proposed by the applicant do not satisfy public purposes to at least an equivalent degree; or
 - (3) It is specifically provided, however, that where dwelling unit density, floor area and similar ratios have been established by these regulations, the council shall not act in a particular case to alter these ratios.

Except as indicated above, the procedures and requirements set forth in this article and in guides and standards adopted as a part of these regulations for a particular planned unit development shall apply in the approved PUD and to issuance of any permits required.

- (d) *Where permitted.* Planned unit developments may hereafter be established where tracts suitable in location and character for the uses and structures proposed are to be planned and developed as units, according to the requirements and procedures set forth herein. PUDs shall be appropriately located with respect to intended functions, to the pattern and timing of development existing or proposed in the comprehensive 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.
- (e) *Procedures on PUD approval.* Applications for PUD approval shall be submitted to the planning board. Material submitted with the application, or on request by the planning board

or town council, shall include all plans, maps, studies and reports which may reasonably be required to make the determinations called for in the particular case, with sufficient copies for necessary referrals and records. More specifically, all of the following shall be required:

- (1) 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.
- (2) 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.
- (3) An overall preliminary development plan which shall show:
 - a. Proposed major vehicular and pedestrian circulation systems;
 - b. Proposed land uses including residential densities and nonresidential uses;
 - c. Proposed plans and regulations for major reservations of land for parks, playgrounds, and other public uses or facilities;
 - d. Relationship to existing land uses in the surrounding areas.
- (4) 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:
 - a. It shall be conveniently accessible to all residents of the development.
 - b. It shall be made available in its improved state, as set forth on the site development plan, in accordance with an approved time schedule.
 - c. 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.
 - d. Provisions to ensure its continuing availability shall be included in the deed to each parcel to be served by such common area.
 - e. Such other information as may be required by the planning board or the council to determine the impact of the proposed development on the town.
- (f) *Approval of site development plans.* No building permit shall be issued in such development unless and until the planning board and town council shall have approved site development plans and reports for the development as a whole, or stages or portions thereof, deemed satisfactory in relation to total development. No structure or use other than as indicated in approved site development plans and reports shall be permitted. Approval of site development plans and reports shall be based on:
 - (1) Compliance with regulations applying at the time the land was proposed for PUD, including applicable provisions of the subdivision regulations, unless conflicting with

these regulations, and related capital improvement requirements of the town, as regards construction of physical improvements and bonding thereof, and such specific modifications as were made by the town council in the approved action; or

- (2) Compliance with regulations applying currently, at the option of the applicant. Upon approval of site development plans and reports, building permits shall be issued in the same manner as for building permits generally, provided that any requirements concerning the order or location in which building permits are to be issued in the particular development shall be observed. Except as provided in subsection (g) of this section, final plans and reports approved shall be binding on the applicant and any successors in interest so long as planned development status applies to the land.
- (g) *Changes in approved site development plans.* After review of the 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 comprehensive plan in effect at such time, provided that the applicant may elect to proceed in accord with the regulations and comprehensive plan currently in effect. Changes other than as indicated in this subsection shall be made only by a new PUD application.
- (h) *Public hearings permissible but not mandatory in connection with site development plans.* Action in connection with approval of site development plans or changes in approved plans not requiring ordinance amendment are administrative, and do not require public notice and hearing but the planning board and town council may hold such hearings as deemed desirable in connection with such action.
- (i) *Expiration of time limits on PUD.* 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:
 - (1) PUD approval for the entire area be continued with revised time limits;
 - (2) PUD approval to be continued for part of the area with revised time limits, and the remainder returned to conventional zoning control; or
 - (3) PUD approval be removed from the entire project.

Such recommendations shall include proposals for appropriate action with respect to any legal instruments, dedications, contributions or guarantees in the case.

(Code 1988, § 11-9.01)

Sec. 36-264. Development plan review procedure.

All development plans for PUDs will proceed as provided by section 36-300, for processing ~~conditional~~ special use permits, with additional steps as outlined below:

- (1) *Preapplication conference (sketch plan proposal).*

- a. On request by applicants, members of the planning board and the zoning administrator shall meet with applicants to review the original application, including the developer's report, if submitted, and the sketch plan of the proposed planned unit development. The purpose of such pre-hearing conferences shall be to assist in bringing the report, if submitted, and the sketch plan as nearly as possible into conformity with these or other land development regulations applying in the case, and to define special variations from application of the regulations, which would otherwise apply, which seem justified in view of equivalent services of the public purposes of such regulations.
 - b. In the course of such pre-hearing conferences, any recommendation for changes shall be recorded, in writing, and shall become part of the record in the case.
 - 1. All such recommendations shall be supported by stated reasons for the proposal for change.
 - 2. Applicants may, in writing, indicate their agreement to such recommendations, or their disagreement.
 - 3. If there is disagreement, applicants shall, in writing, indicate their reasons therefor.
 - 4. Responses by applicants shall also be included in the record.
 - c. 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.
 - 1. All sketch plans submitted shall be drawn to appropriate scale.
 - 2. All sketch plans shall show the locations of all lots, streets, drives, off-street parking areas and other pertinent features, together with building locations, if appropriate.
 - d. Developer may submit preliminary plats in lieu of sketch development plans.
- (2) *Consideration and recommendation by the planning board.*
- a. Following the preapplication conference, the planning board shall review the applications for planned unit development, including sketch plan and report or preliminary subdivision plat, if submitted in lieu thereof, together with written or sketched changes left unresolved after the preapplication conference.
 - b. The planning board, or its representative, when appropriate, shall seek the advice of the county health department, state department of transportation or other agencies as necessary, to accomplish a complete review of any development plans.
 - c. Whenever the planning board determines that the characteristics of a proposed development should be modified to protect the occupants of such development, or the public interest, the board may recommend reasonable modifications in

building location, driveway location or design, location of recreation areas or open spaces, lot sizes or other essential elements of any development plan.

- d. The planning board will recommend approval, or denial, of PUD applications. In its action, the planning board will reflect its views upon issues left unresolved in the preapplication conference.
 - e. As required by the terms of this article, the planning board shall forward its recommendations to the town council in accordance with ~~conditional~~ special use permits.
- (3) *Public hearing and approval by the town council as required.*
- a. A public hearing, as provided by ordinance for rezoning hearings, may be advertised and held before the town council for any planned unit development proposed to be established in any appropriate zoning district.
 - b. The town council may approve such application in accord with PUD and general regulations; may include specific modifications of PUD and general regulations, as recommended by the planning board; may return the application to the planning board for further consideration of specific suggested changes; or may deny the application.
 - c. Upon approval of the town council, the developer is required to submit final detailed plans of the proposed PUD to the planning board, as provided in subsection (4) of this section.
- (4) *Final approval of detailed plan by the planning board.*
- a. Following approval of a proposed planned unit development (PUD) sketch plan, and the approval of all required rezoning actions, if any, by the town council, a detailed plan for the PUD shall be submitted to the planning board by the developer; provided a preliminary subdivision plat may be submitted in lieu of detailed plan proposals, if necessary information is submitted with such plan to show proposed building locations or other features.
 - b. Review of a detailed plan proposal or preliminary subdivision plats, if submitted in lieu thereof, shall follow procedures established in the town subdivision regulations for all developments, including those proposing private streets, private common open spaces or private lot access easements.
- (5) *Issuance of building permits by the building inspector.*
- a. When a detailed development plan or preliminary subdivision plat has been approved by the planning board, and approved by the town council if required, it shall be so certified to the building inspector.
 - b. Building permits shall be issued by the building inspector only for improvements and developments on a planned unit development site which conforms to the approved development plan or subdivision plat.

(Code 1988, § 11-9.02; Ord. No. 2011-04-01, art. III, pt. IX, 4-5-2011)

Sec. 36-265. Planned unit development standards and requirements.

All planned unit developments shall conform to the following standards and requirements:

- (1) *Minimum size of site.* A planned unit development site shall not be less than five acres in size.
- (2) *Maximum unit density.*
 - a. The maximum unit density in any PUD shall not exceed the density, per net acre, of the zoning district in which it is located.
 - b. Net acreage is the total area proposed for the development minus any area used for roads, off-street parking and loading facilities, buffer areas, 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. All computations under this subsection shall be within .05 acres accuracy.
- (3) *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 with a development plan approved by the planning board and the town council.
- (4) *Minimum buffer required.*
 - a. 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. Provided, such 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.
 - b. 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.
- (5) *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 design standards established by this article.
- (6) *Preservation of noteworthy features.* In all planned unit developments, to the maximum degree reasonably practicable, 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, either as portions of public sites and open spaces, or in such other form as to provide amenity to the neighborhood.
 - a. 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.

- b. Such removal may be prohibited if the amenity of adjacent property, or the amenity of the general neighborhood, is adversely affected.

(Code 1988, § 11-9.03)

Sec. 36-266. Uses permitted.

Uses permitted, to be established in a special planned unit development, shall only be residential uses.

(Code 1988, § 11-9.04)

Secs. 36-267—36-295. Reserved.

ARTICLE X. ADMINISTRATION AND ENFORCEMENT

Sec. 36-296. Administration and enforcement.

The town manager, or his designee, shall administer and enforce this chapter and may be provided with the assistance of such other persons as the town council may direct. The town manager, or his designee, shall have all necessary authority to administer and enforce this zoning chapter, including the ordering, in writing, of the remedying of any condition found in violation of this chapter, and the bringing of legal action to ensure compliance with this chapter, including injunction, abatement, or other appropriate action or proceeding.

(Code 1988, § 11-10.01; Ord. No. 2011-01-01, art. VIII, pt. VIII, 1-4-2011)

Sec. 36-297. Building and zoning permits required; time limitations for site plans and building permits.

- (a) The following provisions pertaining to time limitations to obtain building and zoning permits, and to commence, continue and complete construction, shall apply in all cases in which site plan approval is required, unless otherwise provided for in section 36-304. Subsection (a)(4) of this section, pertaining to site plan extensions, shall not apply in instances where a landowner has been granted a vested right pursuant to section 36-304.
 - (1) *Building and zoning permits required.* No building or other structure shall be erected, moved, added to, or structurally altered, without a permit issued by the building inspector and zoning administrator. No building or zoning permit shall be issued except in conformity with the provisions of this article. A zoning permit, if required, shall be issued by the zoning administrator prior to the issuance of a building permit. A fee for building permits and zoning permits is required which shall be in accordance with a regularly adopted fee schedule of the town.

- (2) *Time limitation to obtain building permit and zoning permit.* Upon final approval of a site plan by the town council, the building inspector and zoning administrator may issue a building permit and zoning permit within 180 days from the date of such approval, provided that all other requirements are met. If a building permit and zoning permit are not issued within 180 days from the date of final approval of the site plan, the site plan expires and the applicant must submit a new site plan, conforming to the then current provisions of the zoning chapter and all other applicable ordinances, for review by the planning board and town council and pay the applicable fees.
 - (3) *Time limitation to commence and continue construction.* 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 the approval of that site plan shall expire. If, after commencement, the work is discontinued for a period of 12 months, the building permit, zoning permit, and site plan shall immediately expire. 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.
 - (4) *Time limitation to complete construction.* If the work authorized by any building permit, issued in accordance with an approved site plan, is started but not prosecuted to completion within 18 months of the date of issuance of the building permit and zoning permit, the approval of that site plan shall expire and the building permit and zoning permit shall be revoked. 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. 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.
- (b) As an alternative to subsections (a)(2), (3) and (4) of this section, a developer 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 and upon a subsequent finding by the town council that the delay in construction has been due to circumstances beyond the control of the developer, and that an extension of the approval of the site plan will not be detrimental to the health, safety and general public welfare, and will be in harmony with the spirit and intent of the town zoning ordinance, the town council may extend the approval of the site plan for up to 90 days. 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 G.S. 160A-418 and G.S. 160A-382, the applicant will be required to purchase a new building permit and zoning permit. 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 ordinance and pay the applicable fees.

(Code 1988, § 11-10.02; Ord. No. 2011-01-01, art. VIII, pt. IX, 1-4-2011)

Sec. 36-298. Health department approval.

The building inspector 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 by the department of environmental health.

(Code 1988, § 11-10.03)

Sec. 36-299. Application for building permits, zoning permits and site plan requirements.

(a) *Single-family detached and duplex residences.*

- (1) Applications for building permits and zoning permits shall be accompanied by duplicate site and/or building plans as required by the planning and code enforcement department to accurately describe the work proposed drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The site plan shall also include the present owner's name; present and proposed lot coverage in square feet and as a percentage; the lot, block and section number of the parcel, flood zone per FEMA; required open yard zoning setback lines, and; applicable coastal development area of environmental concern (AEC) regulatory features and lines. 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. The application shall include such other information as lawfully may be required by the building inspector, zoning administrator, and other code enforcement staff, including existing or proposed building or alteration; existing or proposed uses of the building and land; and the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot and on nearby lots; elevations of finished floors; and such other matters as may be necessary to determine conformance with and provide for the enforcement of this section. Applications for principal dwellings or accessory garages with associated driveways shall show the driveway as it extends from the front property line through the public or private right-of-way to the edge of the improved roadway.
- (2) One copy of the plans shall be returned to the applicant by the building inspector and zoning administrator, after they shall have marked such copy "Reviewed for Code Compliance." A copy of the plans, similarly marked, shall be retained by the planning and code enforcement department.
- (3) 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. The construction of a pool, concrete driveway or bulkhead requires issuance of a building permit.

(b) *All uses other than one- and two-family dwelling units.*

- (1) Site plans must be reviewed by the planning board and approved by the town council before a building permit and zoning permit for construction may be issued.
- (2) Site plan requirements. Twelve copies of the site plan shall be submitted no later than 30 days prior to the planning board meeting at which the plan is to be reviewed. All plans shall be prepared, stamped and endorsed by a state registered engineer, surveyor or architect, or other person duly authorized by the state to prepare such plans. All plans shall contain at least the following information:
 - a. *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.
 - b. *Existing features information.*
 1. Streets showing the type and width of pavement, curbs and sidewalks.
 2. Topographic features of the lot and existing grades for the lot, streets, storm drainage, etc.
 3. All underground utilities and facilities.
 4. All existing buildings and structures.
 5. Wetlands as certified by the U.S. Army Corps of Engineers or their authorized agent.
 6. Flood zone, base flood elevation, and map reference, as determined by the latest FEMA flood insurance rate map, with the notation "flood zones subject to change by FEMA."
 - c. Site improvements, show all proposed site improvements including, but not limited to:
 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 under this chapter, pertaining to zoning.
 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 proposed 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, pertaining to zoning, 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 treatment and disposal.*
- a. No proposed site plan shall be accepted by the town, as part of an application for approval or conditional approval by the planning board, without written tentative approval of the proposed sewage treatment and disposal facilities by the department of environmental health or the state department having jurisdiction.
 - b. No proposed site plan shall be accepted by the town, as part of an application for approval or conditional approval by the planning board, without written tentative approval of the proposed water distribution facilities by the water department or the state department having jurisdiction.
- (4) The planning board may recommend approval, conditional approval or rejection of any proposed site plan. Upon completion of review, the planning board will transmit their recommendations to the town council. The town council may approve, approve with specific requirements or disapprove any site plan. A rejected site plan may be resubmitted, in accordance with this section, when redrafted to meet the specifications of this article and upon payment of a plan review fee.
- (5) *Site plan amendments.*
- a. Following town council's final site plan approval, minor changes or amendments to the approved site plan may be approved by the zoning administrator upon written application if the site plan as amended will otherwise meet the requirements for approval. All other changes or amendments to an approved site plan must be approved by the town council after review by the planning board in the same manner required for the initial review of a site plan.
 - b. Changes or amendments to an approved site plan may be considered minor if, in the discretion of the zoning administrator, they have no substantial impact on neighboring properties or the general public and do not prevent the spirit and intent of a condition of the prior approval or the requirements of the zoning ordinance from being met. If, in the zoning administrator's sole discretion, the zoning administrator cannot clearly determine whether a change or amendment qualifies as minor or upon the written request of the applicant, the changes or amendments to a site plan shall be considered by the town council after review by the planning board in the same manner required for the initial review of a site plan.
- (6) 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, county regional water system.
 - g. Septic tank or other wastewater treatment approval by the department of environmental health or other appropriate permitting agencies.
- (7) Inspections of sites involving public rights-of-way and inspections of any on-site construction shall be made by the town.

(Code 1988, § 11-10.04; Ord. No. 04-03-01, art. II, § 1, 6-1-2004; Ord. No. 2006-07-04, art. III, 9-5-2006; Ord. No. 2006-09-02, art. VI, 11-28-2006; Ord. No. 2011-01-01, art. VIII, pt. X, 1-4-2011; Ord. No. 2012-01-01, art. III, pt. I, 1-3-2012)

Sec. 36-300. Application for permit for ~~conditional~~ special uses.

The town council may approve permits for ~~conditional~~ special uses in the zoning districts where such ~~conditional~~ special uses are specified by this article. Applications for permits under article IX of this chapter, pertaining to planned unit development, shall also be processed under the procedures of this article. The town council may impose such reasonable and appropriate conditions and safeguards upon these ~~conditional~~ special use permits as to ensure that the spirit and intent of this article is preserved.

- (1) Written application for a ~~conditional~~ special use permit shall be submitted to the planning board no later than 30 days prior to the planning board meeting at which the plan is to be reviewed. Such written application shall indicate the section of this article under which a permit is being sought, and shall contain the information required by the appropriate section and such other information as may be required, to ensure compliance with this article.
- (2) The written 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~~ special use application. 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 county tax supervisor. The town council shall hold a public hearing and shall give written notice, including the date and time of a public hearing at which the application will be considered, to the owners as contained in said listing. Notice shall be sent by certified mail to the last address of such owners as appears on the list supplied by the applicant. Notice shall be given at least ten days in advance of such public hearing by a legal advertisement placed in a newspaper having general circulation in the county. Notice of these hearings shall be posted on the property concerned for at least ten days prior to the public hearing.
 - b. The planning board shall review the application for a ~~conditional~~ special 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.
- (3) In instances where a property owner seeks to obtain a vested right, pursuant to section 36-304, a public hearing shall be held by the town council. The town council shall give

written notice by certified mail including the date and time of the public hearing to the owner of the property or his agent for which the vested right is sought. Notice shall be given at least ten days in advance of such public hearing by a legal advertisement placed in a newspaper having general circulation in the county. Notice of these hearings shall be posted on the property concerned for at least ten days prior to the public hearing.

- (4) Any party may appear in person, or by agent or attorney.
- (5) Before they may grant any ~~conditional~~ special 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 the town chapter pertaining to zoning, subdivision chapter, and all other applicable ordinances.
 - 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 the chapter and additionally required by the town council as authorized by the chapter.
 - c. That the use will not materially endanger the public health and safety if located where proposed and developed according to the plan submitted.
 - d. That the use as proposed will not overburden the town volunteer fire department fire-fighting capabilities and the county water supply capacity to the town, as said facilities and capabilities will exist on the completion date of the ~~conditional~~ special use for which the application is made.
- (6) In granting any ~~conditional~~ special 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~~ special use permit is granted, shall be deemed a violation of this article and punishable under article XI of this chapter. Upon final approval of a site plan by the town council, the building inspector, upon proper application, shall issue a building permit within 180 days from the date of such approval, provided that all other requirements are met. 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 must submit a new site plan, conforming to the then current provisions of the zoning chapter and all other applicable ordinances, for review by the planning board and town council and pay the applicable fees. If any of the conditions of approval or any part of them should be held invalid or void, the entire permit shall be void immediately.

(Code 1988, § 11-10.05; Ord. No. 04-03-01, art. II, § 2, 6-1-2004)

Sec. 36-301. Certificate of compliance required.

No land shall be used or occupied and no building hereafter structurally altered, erected or moved shall be used or its use changed until a certificate of compliance shall have been issued by

the building inspector stating that the building and/or the proposed use thereof complies with the provisions of this article. A like certificate shall be issued for the purpose or renewing, changing or extending a nonconforming use. A record of all certificates shall be kept on file in the office of the building inspector.

(Code 1988, § 11-10.06)

Sec. 36-302. Violation.

If the building inspector or zoning administrator shall find that any of the provisions of this article 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. He shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; or take any other action authorized by this article to ensure compliance with or to prevent violations of its provisions.

(Code 1988, § 11-10.07; Ord. No. 2011-01-01, art. VIII, pt. XI, 1-4-2011)

Sec. 36-303. Fees.

All site plans, development plans, plats or other plans required to be presented by this article for approval by the town shall be accompanied by a filing fee. This filing fee shall be payable to the town and shall be due and payable upon submission of the site plan, plan or plat, with the exception of SPD-C plans which shall be paid upon the submission of the individual development site plans within the SPD-C district. The fee required by this section shall be the amount specified in the regularly adopted fee schedule for the town.

(Code 1988, § 11-10.08)

Sec. 36-304. Vested right.

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. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan. The town council may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Landowners seeking vested rights shall fully comply with all provisions stated herewith, and G.S. 160A-385.1, as amended.

(1) Establishment.

- a. Any property owner wishing to establish vested rights shall make their intentions known, in writing, to the town at the time of submittal of the site specific development plan. If the town is not notified, in writing, at the time of submittal of a site specific development plan, then the application shall proceed in

accordance with section 36-299 for permitted uses or section 36-300 for ~~conditional~~ special uses.

- b. Property owners electing to pursue the vested rights option will be subject to review procedures as specified in section 36-300, pertaining to application for building permits for ~~conditional~~ special uses, and hence forth, the project under consideration for vested rights will be processed as a ~~conditional~~ special use, subject to all conditions, specifications, procedures, and required findings as outlined in section 36-300. If the option for granting of vested rights is successfully exercised, such rights will be specified and issued as part of the ~~conditional~~ special use permit.
- c. A vested right may be established only for uses that are currently permitted by right or by ~~conditional~~ special use permits in the appropriate zoning district.

(2) *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 the chapter pertaining to zoning.
- c. Upon issuance of a building permit, the provisions of G.S. 160A-418 and 160A-422 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.

(3) *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:
 - 1. With the written consent of the affected landowner;
 - 2. 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;
 - 3. 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;

4. 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
 5. 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 article shall prevent the town from amending this chapter, pertaining to zoning, or the official map in such 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 overlay zoning, which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations, which are general in nature and 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 chapter provisions governing nonconforming situations or uses.

(4) *Miscellaneous provisions.*

- a. A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a 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 (date)."
- c. In the event that G.S. 160A-385.1 is repealed, this section shall be deemed repealed and the provisions hereof no longer effective.

- d. This section shall be effective October 1, 1991, and shall only apply to site specific development plans for which a vested right has been applied for and obtained on or after October 1, 1991.

(Code 1988, § 11-10.09)

Secs. 36-305—36-326. Reserved.

ARTICLE XI. PENALTY

Sec. 36-327. Enforcement.

- (a) As provided by G.S. 160A-389, 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 to prevent the unlawful action or use, to restrain, correct, or abate any violation, to prevent the occupancy of the building, structure, or land or to prevent any illegal act, conduct, business, or use in or about the premises.
- (b) The town shall have 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 article as provided in G.S. 160A-175(a), (c)—(g) and 160A-389, as amended.

(Code 1988, § 11-11.01)

Sec. 36-328. Penalties for violation.

Any violation of this chapter shall subject the offender to remedies prescribed in section 1-6.

(Code 1988, § 11-11.02)

Secs. 36-329—36-359. Reserved.

ARTICLE XII. BOARD OF ADJUSTMENT⁴

Sec. 36-360. Planning board to act as board of adjustment.

By the adoption of this article, the town abolishes the previously established board of adjustment and designates the town planning board established under chapter 24, article II to

⁴Editor's note(s)—Ord. No. 2014-04-01, art. III, adopted Apr. 1, 2014, amended art. XII in its entirety to read as herein set out. Former Art. XII, §§ 36-360—36-363, pertained to similar subject matter, and derived from Code 1988, §§ 11-12.01—11-12.04; Ord. No. 02-06-020, pt. I, adopted June 25, 2002; Ord. No. 04-03-01, art. II, § 3, adopted June 1, 2004; and Ord. No. 2011-01-01, art. VIII, pt. XII, adopted Jan. 4, 2011.

perform the duties of a board of adjustment as provided in this article. The term "board" when used in this article shall be construed to mean the planning board while performing the duties of board of adjustment under this article. The planning board may perform the duties of a board of adjustment under this article at meetings contemporaneously with other duties or it may hold separate meetings solely for the purpose of performing the duties of a board of adjustment.

(Ord. No. 2014-04-01, art. III, 4-1-2014)

Sec. 36-361. Alternate members.

Each alternate member serving on behalf of any regular member has all the powers and duties of a regular member.

(Ord. No. 2014-04-01, art. III, 4-1-2014)

Sec. 36-362. Meetings of the board of adjustment.

- (a) *Generally.* All meetings of the board shall be held at a regular place and shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, an indication of that fact. Any party may appear in person or be represented by an attorney.
- (b) *Notices.* Notice of hearings conducted pursuant to this article shall be mailed to: (i) the person or entity whose appeal, application, or request is the subject of the hearing; (ii) to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; (iii) to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and (iv) to any other persons entitled to receive notice as provided by this chapter. In the absence of evidence to the contrary, the town may rely on the Dare County tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
- (c) *Burdens.* The burdens of production, persuasion and proof for all quasi-judicial decisions of the board lie with the applicant or appellant seeking such a decision.
- (d) *Fees.* A fee in accordance with the regularly adopted fee schedule of the town shall be paid to the town for each notice of appeal or variance application to cover the administrative expenses involved. A notice of appeal or variance application shall not be deemed complete and filed until such time as the associated fees have been paid. The time to file a completed notice of appeal or variance application and associated fee will be extended for 15 days to receive payment of the fee upon an applicant's timely submission of a notice of appeal or application for variance that is otherwise complete. No hearing will be scheduled before the board until a completed application and fee have both been received.

(Ord. No. 2014-04-01, art. III, 4-1-2014)

Sec. 36-363. Quorum.

A quorum of three members shall be seated and present in order to open a meeting of the board and to take action on non-quasi-judicial matters. In order to take action on a quasi-judicial matter the board must have a quorum of five members seated and present unless the appellant or applicant consents to moving forward with less than five members. For calculating a quorum to take action on a quasi-judicial matter, the number of members seated and present includes members who were seated at the opening of the meeting that have been disqualified from voting on the particular matter if there are no qualified alternates available to take the place of such members. In the event that a quorum cannot be met due to vacant positions or a lack of qualified members, the board may continue its meeting in order for absent members to become available and, if necessary, for the town council to make appointments filling vacant seats and/or to make appointments of temporary alternate members who can fulfill the board's duties.

(Ord. No. 2014-04-01, art. III, 4-1-2014)

Sec. 36-364. Voting.

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

(Ord. No. 2014-04-01, art. III, 4-1-2014)

Sec. 36-365. Powers and duties of the board of adjustment.

- (a) *Hearings authorized.* The board shall hear and decide requests for variances of the provisions of this chapter and appeals of decisions of administrative officials charged with enforcement of this chapter. The board shall follow quasi-judicial procedures when deciding appeals and requests for variances. The board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development that provides for the board to hear such matters.
- (b) *Oaths.* The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board, willfully swears falsely is guilty of a Class 1 misdemeanor.
- (c) *Subpoenas.* The board through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393, (d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in

nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

(d) *Continuances.* The board may grant a continuance to any party for good cause shown or upon the board's own motion. Requests for continuances should be made in writing, but may be made orally at a meeting of the board. The board chair may grant a continuance request prior to a meeting if the applicant or appellant makes a written request showing good cause. The chair may always defer ruling on such a request to allow for the decision to be made by the board.

(1) *Good cause.* Good cause for a continuance includes, but is not limited to:

(i) The official issuing the decision subject to an appeal is unavailable;

(ii) There is insufficient membership of the board seated and present to hear a matter;
or

(iii) If any party or the town would be unduly prejudiced by the presentation of matters not presented in a notice of appeal.

(2) *Renotification fees.* If notices of hearing have already been issued, the party granted a continuance is responsible for the administrative costs of noticing an additional hearing if such costs are incurred.

(e) *Rules of procedure.* The board may adopt from time to time such rules and regulations as it may deem necessary to carry into effect the provisions of this article. Where this article and the rules adopted by the board are in conflict, the provisions of this article prevail.

(Ord. No. 2014-04-01, art. III, 4-1-2014)

Sec. 36-366. Appeals of administrative decisions.

(a) *Administrative decisions.*

(1) *Defined.* 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. Administrative decisions include, but are not limited to: (i) permit issuance or denial, (ii) issuance of a notice of violation, warning citation or civil citation or (iii) issuance of a formal interpretation of a provision of this chapter.

(2) *Formal interpretation.* Only formal interpretations issued in accordance with this subsection are subject to being appealed as an administrative decision. 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. Advisory interpretations have no binding force or effect and there is no right to appeal advisory interpretations to the board.

- (i) *Request.* 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 must relate to a specific parcel of property, must be made in writing, must state all of the necessary facts to make the determination and must specifically state the ordinance provisions subject to the interpretation request. 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.
 - (ii) *Response.* Only the director of the town's planning and zoning department is authorized to issue a formal interpretation under this subsection. The director may in his/her discretion decide whether or not to respond to a request for a formal interpretation. A response to a request may only be made with the approval of the town manager. 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."
 - (iii) *Notice.* 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. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- (3) *Notice of decisions.* The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. 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 subsection (b)(3)(i).
- (b) *Appeals of administrative decisions.* The board 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:
- (1) *Who may appeal.* Any person who has standing under G.S. 160A-393(d) or the town may appeal an administrative decision to the board. 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 subsection (b)(3).
 - (2) *Form of appeal.* An appeal is taken by filing a notice of appeal with the town clerk. The notice of appeal shall state the grounds for the appeal. Each notice of appeal shall include a listing of the names and addresses of all of the persons listed in section 36-362(b) who are entitled to receive notice. 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.

- (3) *Time to appeal.* The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
- (i) 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.
- (4) *Duties of official who made decision.* No less than one week before an appeal is to be heard, the official who made the decision being appealed shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner. The official who made the decision being appealed shall be present at the hearing as a witness.
- (5) *Stay pending appeal.* An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board after notice of appeal has been filed that because of the facts stated in an affidavit: (i) a stay would cause imminent peril to life or property or
- (i) because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.
- (6) *Timing of hearing.* Subject to the provisions of subsection (b)(5) of this section, the board shall hear and decide the appeal within a reasonable time.
- (7) *Appeals in the nature of certiorari.* When hearing an appeal from an ordinance 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 G.S. 160A-393(k).

- (8) *Alternative dispute resolution.* The town and other parties to an appeal may agree to mediation in accordance with the applicable rules for mediated settlement conferences in superior court. If the parties agree to mediation, a hearing on the merits of the matter will be delayed until the regular board meeting following the mediation.
- (9) *Authority of the board.* The board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.
- (10) *Hearing on appeal.* The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

(Ord. No. 2014-04-01, art. III, 4-1-2014)

Sec. 36-367. Variances.

- (a) *Standards for granting a variance.* When unnecessary hardships would result from carrying out the strict letter of this chapter, the board shall vary any of the provisions of the ordinance upon a showing of all of the following:
 - (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
 - (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
 - (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
- (b) Under no circumstances shall the board of adjustment grant a variance to allow a use either expressly or by implication not permissible under the terms of this chapter in the district involved.
- (c) 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 1, section 1-6 of this Code.
- (d) Any other ordinance that regulates land use or development may specifically provide for variances consistent with the provisions of this subsection.

- (e) 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.
- (f) 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.
- (g) *Application requirements.* Each application for a variance must be in writing, accompanied by any associated administrative fee and shall include all of the following information:
 - (1) A listing of the specific section(s) and subsection(s) of this chapter that the applicant is seeking to vary.
 - (2) 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.
 - (3) A description of how the property can be used without the requested variance compared with how it could be used with the requested variance.
 - (4) A description of the unnecessary hardship which results from the strict application of this chapter.
 - (5) A description of the conditions that are peculiar to the property, such as location, size, or topography which cause the unnecessary hardship.
 - (6) 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.
 - (7) 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.
 - (8) A certification that the requested variance, if granted, will not allow an increase or extension of an existing nonconforming structure or use of land.
 - (9) 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.
 - (10) A listing of the names and addresses of all of the persons listed in section 36-362(b) 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.
- (h) In addition to the foregoing requirements, when considering a variance from chapter 16, section 16-4, (e) of this Code, flood damage prevention, the board shall follow the additional provisions of such article.
- (i) *Amendments.* 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:

- (1) 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
- (2) The amendment requested will be equal to or less of a variance than the previously granted variance.

(Ord. No. 2014-04-01, art. III, 4-1-2014)

Sec. 36-368. Appeals from decisions of the board of adjustment.

- (a) *Decisions of the board.* The board shall determine contested facts and make its decision within a reasonable time.
 - (1) *Basis for decision.* Every quasi-judicial decision of the board shall be based upon competent, material, and substantial evidence in the record.
 - (2) *Form of decision.* Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. In absence of specific board direction, the written decision will be prepared by the town via the clerk to the board after review by the town's attorney and board attorney and will be presented to the chair for execution if the chair deems it appropriate. The chair, in his/her discretion, may seek the approval of the board for all or any portion of a decision so prepared. Otherwise, the board 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.
 - (3) *Reasonable time.* The board 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. However, the determination of whether the board'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. The board'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 board. If the circumstances warrant, additional time may be reasonable to take a vote or make a final decision.
 - (4) *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.
 - (5) *How served.* The decision of the board 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. The person required to provide notice shall certify that proper notice has been made.

- (b) *Appeal to superior court.* 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 G.S. 160A-393. 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 (a)(4) of this section. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

(Ord. No. 2014-04-01, art. III, 4-1-2014)

Sec. 36-369. Impartiality of board of adjustment members.

A member of the board 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.

(Ord. No. 2014-04-01, art. III, 4-1-2014)

Secs. 36-370—36-384. Reserved.

ARTICLE XIII. DUTIES OF ZONING ADMINISTRATOR, BOARD OF ADJUSTMENT, COURTS AND TOWN COUNCIL AS TO MATTERS OF APPEAL⁵

Sec. 36-385. Duties.

It is the intention of this article that all questions arising in connection with the enforcement of this chapter shall be presented first to the code enforcement officer and that such questions shall be presented to the board of adjustment only on appeal from the code enforcement officer; and that from the decision of the board of adjustment recourse shall be had to courts as provided by law. It is further the intention of this article that the duties of the town council in connection with this chapter shall not include the hearing and passing upon disputed questions that may arise in connection with the enforcement thereof but that the procedure for determining such questions

⁵Editor's note(s)—Ord. No. 2011-01-01, pt. XV, adopted Jan. 4, 2011, amended the Code by changing the title of Art. XIII from "duties of building inspector, board of adjustment, courts and town council as to matters of appeal" to "duties of zoning administrator, board of adjustment, courts and town council as to matters of appeal".

1 shall be set out in this chapter, and that the duties of the town council in connection
2 with this chapter shall be only the duty of considering and passing upon any proposed
3 amendment or approving any ~~conditional~~ special use permit as provided by this
4 chapter.

5 (Code 1988, § 11-13.01; Ord. No. 05-04-03, art. V, 5-3-2005)

6
7 ...

8
9
10 **ARTICLE IV. Statement of Consistency with Comprehensive Plan and**
11 **Reasonableness.**

12
13 The Town’s adoption of this ordinance amendment is consistent with the Town’s adopted
14 comprehensive zoning ordinance, land use plan and any other officially adopted plan that
15 is applicable. For all of the above-stated reasons and any additional reasons supporting the
16 Town’s adoption of this ordinance amendment, the Town considers the adoption of this
17 ordinance amendment to be reasonable and in the public interest.

18
19 **ARTICLE V. Severability.**

20
21 All Town ordinances or parts of ordinances in conflict with this ordinance amendment are
22 hereby repealed. Should a court of competent jurisdiction declare this ordinance
23 amendment or any part thereof to be invalid, such decision shall not affect the remaining
24 provisions of this ordinance amendment nor the Zoning Ordinance or Town Code of the
25 Town of Southern Shores, North Carolina which shall remain in full force and effect.

26
27 **ARTICLE VI. Effective Date.**

28
29 This ordinance amendment shall be in full force and effect from and after the ____ day of
30 _____, 2022.

31
32
33 _____
Elizabeth Morey, Mayor

34 ATTEST:

35
36 _____
37 Town Clerk

38
39
40 APPROVED AS TO FORM:

41
42 _____
43 Town Attorney
44

1 Date adopted:

2

3 _____

4 Motion to adopt by Councilmember:

5 _____

6 Motion seconded by Councilmember:

7

8

Vote: ___AYES___NAYS