

**Town of Swansboro
Board of Adjustment
Special Meeting Minutes
April 17, 2024**

Call to Order

The meeting was called to order at 5:34 pm. Board members in attendance were: Ralph Kohlmann, Wayne Mixon, Thomas Pieratti, Tom Cariker, Elaine Justice. John Fitzgerald was absent. The board had 1 ETJ vacancy.

Minutes

On a motion by Mr. Mixon, seconded by Mr. Pieratti, the minutes from the April 19, 2023, Special Meeting were unanimously approved.

Witnesses Sworn in

Planner Andrea Correll and Kirby Lee Everette Jr. were sworn in by Deputy Clerk Cuadro.

Business

Appeal of an Administrative Decision

Town Attorney Francis Rasberry reviewed that Kirby Lee Everette Jr. had filed an appeal of an administrative decision related to his property located at the corner of Walnut Street and Spring Street (tax pin number 536410369140) which was being used for the purpose of boat storage was in violation of Section 152.170 and 152.179 of the Town's Unified Development Ordinance.

Planner Correll introduced herself and shared that she had a master's degree with 36 years of Planning and Code Enforcement experience.

Planner Correll stated that on September 6, 2023, an anonymous written complaint was received by mail regarding a trailer storage on the lot at the corner of Walnut Street and Spring Street. In response to the violation, Planner Correll mailed a certified letter of violation on September 18, 2023. She further shared that in October of 2022, she called Mr. Everett and informed him that she did code enforcement by complaint and if she received a complaint, she would have to address the trailers on the vacant lot.

Planner Correll indicated that when she received the complaint she referred to the Unified Development Ordinance in Section 152.170 Establishment of Zoning Districts, and the purpose thereof (D) R-6SF, the purpose of this district shall be that only permitted structures shall be permitted in this district and Section 152.179 the Table of Permitted Uses (E) Districts in which particular uses were prohibited and were indicated by a blank. Docks, and piers (not commercially operated, with or without launching facilities) were a permitted use in R-6SF district. The primary purpose of the district was a dwelling.

In response to inquiries from the Attorney Rasberry, Planner Correll clarified the following:

- The notice of violation was mailed to Kirby Lee Everette Jr. and was also included in the agenda packet on page 37.
- In the notice of violation letter Section 152.170 Establishment of Zoning Districts, and the purpose thereof (D) R-6SF was referenced, and the purpose of this district was that only single-family structures were permitted.
- Per Section 152.179 (E) districts in which particular uses were prohibited were indicated by a blank in the Table of Permitted Uses.

- It was the town’s determination that based on Sections 152.170 and 152.179 that storage of trailers and boats were prohibited in a residential district on a vacant lot.
- On the notice of violation, Section 152.016 definitions of basic terms were included to clarify what uses boat/trailer would be permitted under.
- Boat/trailer storage was only permitted as an accessory use to a principal use and the property was a vacant lot with no residential structure.
- Accessory use was a use incidental to and located on the same lot as a principal use.
- As Town Planner she was involved in the enforcement of the zoning ordinance of the town jurisdiction.
- In the Towns’ residential districts, two accessory structures are allowed as well as the incidentals like a car or a boat.
- The parking of a boat or a trailer would be considered an accessory use to a residential use.
- An anonymous complaint was received by mail on a white typed piece of paper delivered to the Town Hall.
- It was not uncommon to receive complaints written in the same format or by phone without identifying themselves.
- Planner Corell felt confident that that she had enough experience with code enforcement.
- Larger municipalities hire zoning code enforcement officers that seek violations. Smaller towns like Swansboro process code enforcement violations by complaint.
- The recent text amendment to Section 152.016 Definitions to Basic Terms was updated because staff felt the definitions of “Marina” were left out during the 2018 update when the definition of “Docks” was added. This was not related to this case.
- The zoning district of B1 was Highway Business, and MI was Light Industrial, and the storage of boats and trailers was only permitted in B1 and MI zones.
- There were no civil penalties imposed for this violation on Mr. Everette.
- A photo of the violation was taken with a phone but after 30 days it was accidentally deleted.
- Pictures from the GIS/Google website captured violation in multiple years which are included in the agenda packet.
- When dealing with violations the Unified Development Ordinance was followed at all times.

Attorney Rasberry requested that Planner Correll read out loud the following sections of the Unified Development Ordinance:

- Section 152.011 subsections (A) and (B) no use or sale of land or buildings except in conformity with ordinance provisions. (page 2 of town attorney brief) attached herein as attachment A.
- Section 152.016 Accessory use, and Accessory Structure (page 4 of town attorney brief) attached herein as attachment A.

Attorney Swart submitted documents to Deputy Clerk Cuadro to enter into the record as evidence, attached herein as Attachment B. Town Attorney Rasberry requested to review the documents before they were submitted into the record, due to not being provided with the documents before the board meeting. Mr. Kohlmann granted his request.

Mr. Swart introduced himself as the attorney for the appellant Mr. Kirby Lee Everette Jr.

In response to cross-examination inquiries from Attorney Swart, Planner Correll clarified the following:

- She served as Planner with the Town of Swansboro from 2016 to 2019 and returned in October of 2022.
- Served as the Planner in Burgaw before relocating back to the Town of Swansboro.
- She was experienced with code enforcement on vacant lots in the residential districts.
- She did not have any reservations or uncertainties about the code enforcement issue regarding the vacant lot on Spring Street and Walnut Street.
- The violation letter expressed that the primary use of this property was a dwelling R-6SF.
- She expressed confidence in her decision and mentioned that she had discussed it with Attorney Swart prior to the Board of Adjustment meeting.
- Mr. Everette came to Town Hall in the fall of 2022 to obtain a permit for his dock. During that visit, she took the opportunity to inform Mr. Everette about the town's code enforcement process. The Town of Swansboro has a complaint-based code enforcement system. This meant that the town only takes action on violations when they receive a complaint from a concerned citizen. In this case, she stated that as of that date, they had not received any complaints about the trailers on Mr. Everette's vacant lot. She made it clear that if they were to receive a complaint about the trailers, they would be required to send out a notice of violation. She believed that Mr. Everette understood the situation and the town's code enforcement process.
- A courtesy call was made by her to Mr. Everette to notify him that the violation letter was mailed.
- Prior to the phone call she only had one conversation with Mr. Everette about the trailers on his vacant lot and that was in the fall of 2022.
- In the Fall of 2022 Mr. Everette explained to her that the jet ski trailers belonged to his brother-in-law. He was informed at that time that he could not use his vacant lot as storage for others.
- She was aware of the violation and expressed to Mr. Everette that the town only did code enforcement by complaint in the fall of 2022.
- An anonymous complaint letter was received, and it was included in the agenda packet.
- The anonymous letter was truly anonymous and she nor anyone else knew who sent it. It came in the mail to the front office, and it was hand delivered to her on a white typed paper with the date.
- She was unaware of what type of motivation the person had when they mailed the anonymous letter to Town Hall.
- There was a requirement for the Planner to investigate any complaint whether it was anonymous, or not. It does not matter if the letter was signed or not.
- North Carolina General Statue 160D had different methods on the code enforcement process.
- Having previously worked as a Planner from 2016 to 2019 and lived in the area she walked around the area frequently.
- Prior to September 2023 there had not been any violations on a vacant lot.

- The outline of the code enforcement process was addressed in the notice of violation and was provided when Mr. Swart made a public records request.
- It was implied in the Unified Developmental Ordinance that you can maintain on a residential lot an accessory use to a dwelling, examples were a car or a boat.
- In the Table of Permitted Uses Section 152.179 (E) districts in which particular uses were prohibited were indicated by a blank.
- The Planner's responsibility was to review the code and interpret it.
- There would not be a notice of violation for a garden because it was not a structure.
- There was no indication of whether Mr. Everette was using the lot for commercial storage.
- When a complaint letter was received a notice of violation was mailed.
- She did not imply that Mr. Everette was operating a boat storage. She defined what was storage and marina to give him an example of what was clearly in the ordinance.

In response to further inquiries from Attorney Raspberry, Planner Correll clarified the following:

- It was the Clerks responsibility to maintain records from the municipality as well as the boards, and those records were public records.
- Anonymous letters were public records.

In response to inquiries from the board, Planner Correll clarified the following:

- In the Table of Permitted Uses 152.180 Note 7 Accessory Uses and Structures, it outlined the specific rules and regulations for what types of uses and structures were allowed.
- Section 152.016 Definitions to Basic Terms defines "Accessory Structure".
- Regarding the definitions of accessory use and accessory structure, it was the use that was being discussed. The use of storage, trailers, and boats was not in the Table of Permitted Uses or in the definitions and that was where her decision was based.

Mrs. Justice stated that she does not believe the way the ordinance was written takes away Swansboro's right to interpret boats, and boat trailers as being part of the culture.

Attorney Raspberry did not have any objection to the documents provided by Attorney Swart to be entered into the record. Attorney Raspberry also entered into the record; certified copies of each ordinance provision in their entirety attached herein as Attachment C. Attorney Swart had no objection to entering those items into the record.

Attorney Swart requested that Mr. Everette of 305 Walnut Street be allowed to speak. In response to inquiries by Attorney Swart, Mr. Everette clarified the following:

- He confirmed that he was the owner of the Walnut St and Spring Street vacant lot and had received the notice of violation from the town.
- The trailers were moved from his lot after he received the notice of violation.
- No fees had ever been charged to anyone to park their trailers on his lot.
- His brother-in-law parked his trailer on his lot after he was told not to and was asked to remove it two days later.
- He stated that he had parked his trailers on the lot for at least the last 12 years.

- The lot had always been well kept.
- He never received any complaints from his neighbors about parking the trailers on his lot.

In response to inquiries by board, Mr. Everette clarified the following:

- Three of his boats remain at the pier and the trailers were parked in his vacant lot.
- In order to store his trailers, he had to drive two hours from Swansboro to his other residence in Rocky Mount.
- The boat trailers were used only when he needed them, the boats were docked at the pier.
- He confirmed that he had continuously parked his trailers on the vacant lot since purchasing it in 2012.

Mr. Kohlmann read Section 152.049 of the Town Unified Development Ordinance, for the board as captured below.

§ 152.049 BURDEN OF PROOF IN APPEALS AND VARIANCES.

(A) When an appeal is taken to the Board of Adjustment in accordance with § 152.030(C), the administrator shall have the initial burden of presenting to the board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

(B) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in § 152.046, as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

(Ord. 2005-03, passed 3-15-2005)

Mr. Cariker stated that a complaint had been made and the town had to address it. It did not matter how long Mr. Everette had been parking the trailers on his vacant lot. This was a violation of the town's UDO. The town had zoning for a reason.

Mr. Kohlmann further stated that the UDO was clear on what was allowed. Section 157.179 clearly states that it was prohibited. The Table of Permitted Uses under the R6SF zoning district was blank, therefore parking his boat trailers there as storage was prohibited making it a violation of the zoning area.

Mrs. Justice thanked Planner Correll for her service to Swansboro and stated that she appreciated her honest interpretation as a Planner. She furthermore stated that she did not consider this violation to be a storage violation. In her opinion, the trailers were parked there intermittently and would like the Board of Commissioners to address the zoning ordinance in the future.

On a motion by Mr. Mixon, seconded by Mr. Kohlmann, the appeal was denied, and the administrative decision was upheld in relation to the boat storage violation on a vacant lot

located at the corner of Walnut Street and Spring Street further identified as tax pin number 536410369140 and was in violation of Sections 152.170 and 152.179 of the Unified Development Ordinance. The motion passed 4:1.

Ayes: Mr. Kohlmann, Mr. Cariker, Mr. Mixon, Mr. Pieratti

No: Mrs. Justice

Adjournment

On a motion by Mr. Kohlmann, seconded by Mr. Cariker, the meeting was adjourned at 8:04pm.

QUASI-JUDICIAL HEARING OF APRIL 17, 2024

BEFORE THE TOWN OF SWANSBORO, N.C. BOARD OF ADJUSTMENT

APPEAL OF ADMINISTRATIVE INTERPRETATION (N.C.G.S. 160D-405; UDO Sec. 152.045)

RE: NOTICE OF ZONING VIOLATION SEPTEMBER 18, 2023 - PROPERTY AT WALNUT AND SPRING STREET

TOWN'S HEARING BRIEF AND MEMORANDUM OF LAW

BACKGROUND AND PROCEDURAL SUMMARY. In response to a written complaint, Town Planner Andrea Correll conducted inspections of the property located at the corner of Walnut and Spring Streets, a vacant lot located inside the corporate limits (the "subject property"). The subject property is zoned *R-6SF-Residential*. Ms. Correll observed on multiple occasions that boats and boat trailers were parked on the property, and accordingly issued to the property owner, Mr. Everette Kirby Lee, Jr. (the "owner") a Notice of Zoning Violation ("NOV") dated September 18, 2023. As required by statute, the NOV was certified-mailed to the owner and indicated as received. The Owner filed an appeal of Ms. Correll's determination in accordance with all legal requirements.

QUESTION PRESENTED: IS THE PARKING AND STORAGE OF BOATS AND/OR TRAILERS ON A VACANT LOT ZONED R-6F-RESIDENTIAL A VIOLATION OF UDO 152.170 (ZONING DISTRICTS) AND 152.179 (TABLE OF PERMITTED USES)?

STATEMENT OF THE TOWN'S POSITION, AND APPLICABLE LAW.

Extent of review. In hearing this appeal, the Board "...shall determine contested facts and make its decision within a reasonable time (and)...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..." (N.C.G.S. 160D-406. *Quasi-judicial procedure.*) The Board also determines if the decision is legally erroneous, which involves the legal interpretation of relevant UDO provisions. (N.C.G.S. 160D-1402(j) *Review in the nature of certiorari.*)

Facts not disputed; An issue of legal interpretation. In this case the relevant facts seem to be largely not in dispute. Indeed, Exhibit B to the Notice of Appeal filed by legal counsel for the owner, Mr. John Swart, states in paragraph 2 the following: "*Mr. Everette purchased the subject vacant lot ... on February 12, 2012.... and since that time has continuously parked and placed thereon at various times a variety of personally owned boat trailers, boats on trailers, and utility trailers for more than 11 years...*" (emphasis added).

As the underlying facts appear to be admitted, the issue for the Board seems exclusively one of law, specifically, the interpretation of relevant provisions of the UDO. Laws and principles applicable to the interpretation of municipal ordinances are the same as those applicable to the interpretation of statutes by the Courts ¹. In determining whether the ordinances were correctly interpreted and applied by the Town, the Board's review is *de novo*, meaning that the Board need not defer to the Town Planner's interpretation, and may freely substitute its own interpretation, with consideration given to all applicable provisions of the Town's ordinances, N.C. Statutes, and case law ².

Relevant UDO provisions include the following excerpts:

§ 152.170 ESTABLISHMENT OF ZONING DISTRICTS, AND THE PURPOSE THEREOF.

For the purpose of this chapter, the Town of Swansboro and its extraterritorial jurisdiction is divided into the following classes of zones:

- (A) R6SF - Residential. The purpose of this district shall be that only single-family structures shall be permitted in this district.*

§ 152.179 TABLE OF PERMITTED/SPECIAL USES.

(A) Districts in which particular uses are a permitted use by right are indicated by "P"...

(C) Districts in which particular uses are reviewed for compliance by the Town Planner are indicated by "US". See § 152.212, Use Standards, for details of each use standard.

(E) Districts in which particular uses are prohibited are indicated by a blank.

The Table of Permitted/Special Uses shows the following zoning districts where boat/trailer storage are allowed:

Docks, piers: All zoning districts except MHS-15SF and M1

Marinas: B1, B2, B3B, B2HDO

Storage Warehouse, including mini-storage: B1 (highway, business, subject to Use Standards) and M1 light industrial)

§ 152.011 NO USE OR SALE OF LAND OR BUILDINGS EXCEPT IN CONFORMITY WITH ORDINANCE PROVISIONS.

(A) Subject to §§ 152.085 through 152.091 (Nonconformities), no person may use, occupy, or sell any land or buildings or authorize or permit the use, occupancy, or sale of land or buildings under his control except in accordance with all of the applicable provisions of this chapter...

...For purposes of this section, the "use" or "occupancy" of a building or land relates to anything and everything that is done to, on, or in that building or land.

Boat/Trailer storage permitted only as an accessory use. Boat and trailer storage is allowed in Single Family districts, but in only one circumstance, that is, as an Accessory Use to an established Principal Use. That is not the situation at the subject property. There is no residential structure on the lot. There is no individual living there. There is no residence serving as the principal use; therefore, boat storage is not permitted as an *"incidental and subordinate"* accessory use affording *"comfort and convenience"* to the principal residence, being quoted from the cited definitions, below:

152.016 Definitions of Basic Terms

USE, PRINCIPAL. The purpose for which land or structures thereon are designed, arranged, or intended to be occupied or used; or for which it is occupied, maintained, rented, or leased.

PRINCIPAL BUILDING. A building in which the principal use of the lot is conducted and said building is situated as related to the requirements of this chapter. In no way shall a camper or travel trailer be considered a PRINCIPAL BUILDING.

ACCESSORY USE. A use incidental to and located on the same lot as a principal use.

ACCESSORY STRUCTURE. A use or structure on the same lot with, but of a nature customarily incidental and subordinate to the principal use or structure and which contributes to the comfort, convenience, or necessity of occupants, business, or industry in the principal building or use being served...

Section 152.180, *NOTES TO THE TABLE OF PERMITTED/SPECIAL USES*, contains the following additional provisions regarding accessory uses and structures:

Note 7. Accessory uses and structures.

(1) Accessory uses or structures is a use or a structure on the same lot with, but of a nature customarily incidental and subordinate to the principal use or structure and which contributes to the comfort, convenience, or necessity of occupants, business or industry in the principal building or use being served. No tent, mobile home, camper, travel trailer, nor any other temporary, portable, or removable trailer, container, vehicle, or structure of any kind may be considered an accessory use or accessory structure, whether or not the wheels, axles, and/or tongue have or has been removed and whether or not that any container, structure, or vehicle as described herein has been placed on a foundation, except as hereinafter described. Provided, however, that structures such as storage sheds, garden sheds, and similar structures shall be considered accessory buildings, even though they may be capable of being lifted or disassembled and removed from the property. Further provided, that a trailer, tent, or similar container, structure, or vehicle may be placed on property on a temporary basis for promotional or other business or charitable related purposes, but such use shall not continue for more than six months.

(2) No accessory building or use may be erected or installed on any lot where a principal building does not exist...

The ordinance is unambiguous and fair notice of the prohibition is given. The Owner's attorney has contended that the UDO does not contain any clear prohibition of the conduct or activity comprising the violation. Mr. Swart correctly states that any ambiguities or errors in the regulation should by law be construed in favor of the free use of property. However, as noted above, the cited sections of the UDO address expressly where parking and storage of boats and trailers are allowed – and where they are not allowed. As is typical, zoning ordinances specify and establish lawful uses through a table of permitted uses, not by a table or listing of all prohibited uses. Obviously, a comprehensive list of all uses not allowed in each zoning district would be impossible. Such is not legally required to provide fair and legally sufficient notice of the ordinance prohibition ³.

A variance is not authorized. The parking and storage of boats and trailers on a vacant residential lot is not permitted as a standalone, or principal, use of such lot. The applicable ordinance provisions are unconditional, straightforward, and consistent with the overall intent of the UDO.

Further, the Town respectfully contends that the Board lacks the legal authority to permit exceptions to the plain language of the UDO. As the Board is aware, a "use variance" by a Board of Adjustment is not authorized. *"No change in permitted uses may be authorized by variance."* G.S.160D-405(d). The owner has contended that a relatively small number of boats and/or trailers have been regularly stored on the lot; that such uses are not on a commercial, or for-charge, basis; and that such storage uses are limited to friends, family, or the owner. The specific facts of this case may be regarded as compelling. After all, boat and trailer storage are common practices in residential zoning districts, and probably in the immediate neighborhood. Nonetheless, any carve-out, or exception, from the clear and unconditional prohibition of boat/trailer parking on the vacant lot, is a legislative matter. This would be solely within the authority of the Board of Commissioners.

Respectively submitted,

The Town of Swansboro

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FOOTNOTES TO HEARING BRIEF AND MEMO:

1. *Town of Midland v. Harrell*, 385 N.C. 365 (N.C. Supreme Court, 2023)
2. *Morris Communications v. Bessemer City Board of Adjustment*, 365 N.C. 152 (2011)
3. See Owens, *Regulating Land Uses Not Specifically Mentioned in a Zoning Ordinance*, Coates Canons NC Local Government Law, UNC School of Government, November 17, 2015.
4. Rules of Statutory and Ordinance Construction:
 - The principal consideration in interpreting an ordinance is to give effect to the intent of the legislative body. *Coastal Ready-Mix Concrete v. Bd. Of Comm'rs*, 299 N.C. 620 (1980)
 - Terms specifically defined in an ordinance are to be interpreted as defined. Otherwise, the clear, plain language that is used in an ordinance controls its meaning. *High Rock Lake Partners v. N.C. Department of Transportation*, 366 N.C. 315 (2012)
 - Ordinances should be considered as a whole. All terms within an ordinance should be considered, and all should be considered as a whole. *Nash-Rocky Mount Board of Education v. Rocky Mount Board of Adjustment*, 169 N.C. App. 587 (2005)
 - An ordinance should be interpreted in a manner which avoids absurd or paradoxical results. *Young v. Whitehall Co.*, 229 N.C. 360 (1948)

STATE OF NORTH CAROLINA

BEFORE THE SWANSBORO
BOARD OF ADJUSTMENT

TOWN OF SWANSBORO

IN THE MATTER OF THE TOWN)
OF SWANSBORO)

Vs.)

APPELLANT'S MEMORANDUM

KIRBY LEE EVERETTE, JR.)
(APPELLANT))
_____)

This matter comes before the Town of Swansboro Board of Adjustment (BOA) regarding the appeal of Kirby Lee Everette. Jr. (hereinafter "Kip") from a Notice of Violation issued by Andrea Correll, Swansboro Town Planner (hereinafter "Ms. Correll") dated September 18, 2023, which was served on Kip on or about September 26, 2023 (see attached Exhibit 1).

On October 23, 2023, Kip, by and through his attorney John P. "Jack" Swart, timely and properly filed and served an appeal to the Notice of Violation and paid the \$400.00 fee as required (see Exhibit 2).

Facts

The facts of this matter are fairly straight forward. Kip purchased the vacant lot located at the corner of Walnut and Spring Street on 2/14/2012 (hereinafter "the Lot") which lot was directly across Spring Street from his house and lot located on the opposite corner at 303 S. Water Street.

In September of 2014 Kip purchased the house and lot located at 404 S. Water Street and began renovations of that property that lasted over three (3) years before he moved there from 303 S. Walnut Street in 2018. Kip sold the house at 303 S. Walnut Street to Tim and Kendall

Ogren in March of 2020. The Lot is only approximately 180 feet from his residence at 404 S. Elm Street (see Exhibit A).

From the time Kip purchased the Lot in 2012 up until he received the Notice of Violation in September of 2023, Kip always kept various boats and boat trailers that he owned on the Lot without there ever being any objection or complaint voiced as to this use of his Lot (see Exhibits 3B-J). He meticulously maintained the Lot and never placed any junk trailers or boats on the Lot.

On September 26, 2023, Kip received the Notice of Violation (Exhibit 1) which we learned thereafter was in response to an anonymous complaint dated September 3, 2023 and received by the Town on September 6, 2023 (see attached Exhibit 5).

Response to Notice of Violation

The Notice of Violation (hereinafter “the NOV”) is interesting in that it does not concisely cite a single provision of the Swansboro Unified Development Ordinance (hereinafter “the UDO”) that Kip has allegedly violated by keeping his own trailers and boats on his own lot.

The first sentence of the NOV states his property is “being used as a boat storage yard”. One’s immediate response is to see if there is anything in the UDO about “boat storage yards”. There is no definition that applies (see Exhibit 6, Definitions). There is nothing under that heading in the Table of Permitted Uses.

However, there is a definition of a “Vehicle Storage Lot” which is defined as “a lot for the purpose of outdoor commercial storage of boats, trailers, camper trailers, travel trailers and other similar recreational vehicles...”. Obviously this does not apply to Kip’s situation because his use is not commercial. Interestingly, this use applies only to boats on trailers and not just trailers. The NOV then goes on to suggest that his “vacant lot is intended for single family residential uses” and then cites UDO §152.170. Establishment of Zoning Districts, and the

Purpose Thereof which with respect to R6SF-Residential states “The purpose of this district shall be that only single-family structures shall be permitted in this district”. If and when Kip decides to build a structure on the Lot, he agrees it will have to be for a single family. He fully understands that he can not build a gas station or a quadraplex on the Lot, the prevention of such uses being clearly the intent that motivated inclusion of this provision in the UDO. The intent surely was not to keep boats, boat trailers, RVs, or golf carts out of the district. You can not walk a block in that district without seeing these things stacked up around the single-family structures.

The NOV then describes a couple of places where you can keep a boat. One is Docks, Piers (not commercially operated) which are defined as a “fixed or floating structure... used for the purpose of berthing buoyant vessels”. That might work for boats, but sure would not be a place to park a trailer. And there is no suggestion that Kip is violating the UDO by operating a dock on his land-locked vacant lot.

The NOV then goes on to quote the UDO definition of a marina. Oddly enough, at the time the anonymous complaint was received by the Town on September 6, 2023, there was no definition of a Marina. The definition quoted in the NOV was not adopted until September 11, 2023 (see attached Exhibit 7), only seven (7) days before the NOV was drafted. It is unclear whether it is alleged that Kip is violating the UDO by illegally operating a Marina on his land-locked vacant lot, but it seems clear that “marina” as defined pertains to a commercial enterprise for “docking, mooring, berthing or storage of marine vessels that also include, but are not limited to, a wide variety of accessory uses such as boat fuel sales, sales of boating supplies and equipment, boating related services, laundries, boat repair and rental, storage racks and dry storage of boats”. There is no mention of boat trailers. As the evidence shows, Kip rarely and only for relatively short periods of time ever parked boats on the Lot. To the extent it may be

suggested that Kip's non-commercial use of the Lot became violative of the UDO as a consequence of adding thereto the definition of "marina" (which is denied), he would clearly be "grand-fathered". Again, there can be no plausible argument that Kip is in violation of the UDO by keeping his own boats and trailers on his own Lot.

The burden of proving the existence of a violation of the UDO is on the Town. Frazier v. Town of Blowing Rock 286 NC App 570; 882SE2d 91 (2022).

Our appellate courts have long held that a real property owner is lawfully entitled to the "free use of property" and that zoning ordinances are in "derogation of the common law right to private property" and therefore must be strictly construed to limit such derogation in favor of the owner. Byrd v. Franklin County 368 NC 409; 778SE2d 324 (2003).

Nowhere in the UDO is there any "explicit mention" that will "clearly place the public on notice" as to how use of Kip's Lot for keeping his own trailers/boats is to be classified.

The Town now seems to place its reliance on the notion that the keeping of boats and boat trailers constitutes an "Accessory Use" (defined as "a use incidental to and located on the same lot as a principal use". (See Exhibit 6 and Exhibit 8, Table of Permitted Uses and Notes). This claim was not made in the NOV. In Note 7 (§ 152.180 Notes to the Table of Permitted/Special Uses Exhibit 8) it provides that "Accessory uses or structures is a use or structure on the same lot with, but of a nature customarily incidental and subordinate to the principal use or structure and which contributes to the comfort, convenience, or necessity of occupants, business or industry in the principal building or use being served".

Without mentioning boats or trailers, the Town apparently takes the position that all the boats and trailers piled up in yards and driveways in the R6SF district are "accessory uses" and because they are accessory uses they can only be kept on residential lots that have a house.

However, Kip's boats and trailers are not "accessory uses" because he is not "an occupant" of a "principal" building being served. Therefore, that places the inquiry back to square one (1) – there is no "explicit mention" within the UDO that clearly puts the public (including Kip) on notice that he can not put his own boats and trailers on his own Lot.

The Town has also suggested that Kip may be running an illegal Storage, Warehouse, Including Mini Storage (another claim not made in the NOV) (see Exhibit 8, Table of Permitted/Special Uses). Their reliance is on § 152.212 Use Standards, section (V) (Exhibit 9) which states that this use is allowed only in B(1) zone and provides "Requirements for open storage of recreational and dry storage of pleasure boats of the type customarily maintained by persons for their personal use...". The provision then goes on to set forth a full page and a half of detailed requirements including screening, building set-backs, separation between buildings, parking lot requirements, drainage requirements, location of signs, size of signs, security/management plan, etc., etc.

Interestingly there is no definition of this use, but there are definitions of Storage, Warehouse, and Mini-Storage (see Exhibit 6) that strongly suggest this use and the associated requirements pertain to commercial enterprises like Casper's or Dudley's, and not to a guy like Kip who only wants to keep a couple of his own trailers and occasionally his own boats on his own Lot. I also point out that there is no mention of keeping boat trailers as part of such use an enterprise (if you look around Dudley's and Casper's you will not see many, if any, boat trailers). It is also worth mentioning that this provision was added by amendment on May 22, 2023 and no similar provision was included in prior UDO codifications.

It seems as if our anonymous complainer is a person offended by the sight of boats or boat trailers. Maybe he, she, they should move somewhere other than Swansboro and into a

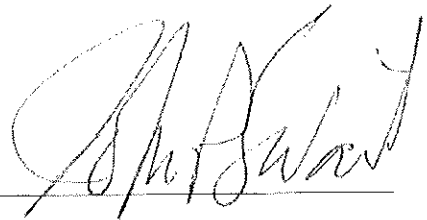
gated community with tons of restrictive covenants. It might be supposed that this complaint is tantamount to an attempt to impose “defacto restrictive covenants” onto Kip’s Lot. “Zoning regulations are not a substitute for private restrictive covenants”. If “anonymous” believes that Kip’s use of his Lot to keep his own trailers/boats is offensive and unreasonable, their remedy is an action in nuisance. Dobo at 9.

It is unfortunate that a single complaint in eleven (11) years from an anonymous individual whose motives may never be known has resulted in such a waste of time effort and money.

Kip’s neighbors obviously disagree with “anonymous”. Please take a moment to look at the letters of support attached as Exhibit 4 that voice the thoughts and opinions of those closest to the issues raised in this matter.

For the reasons stated herein, Appellant respectfully requests that the Notice of Violation be dismissed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John P. Swart", written over a horizontal line.

John P. Swart, attorney for Appellant

TOWN OF SWANSBORO, NORTH CAROLINA

CODE OF ORDINANCES

2023 S-19 Supplement contains:

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State legislation current through 2023 North Carolina Legislative Service, Pamphlet No.

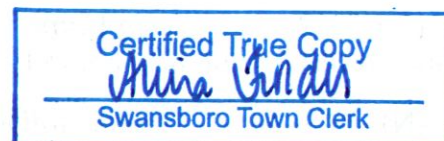
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§ 152.170 ESTABLISHMENT OF ZONING DISTRICTS, AND THE PURPOSE THEREOF.

For the purpose of this chapter, the Town of Swansboro and its extraterritorial jurisdiction is divided into the following classes of zones:

(A) *CON - Conservation*. The Conservation District is established as a district in which only partial development of land may occur. The regulations of this district are intended to protect the floodplain and estuarine areas and permitted uses shall be in conformity with the uses listed in this chapter, subject to the appropriate state and federal laws. This district shall apply to those areas above mean high water which may be covered by marsh and are protected by the Coastal Area Management Act and appropriate federal laws.

(B) *RA - Residential/Agricultural*. The purpose of this district shall be to set aside and protect those lands which are primarily suited for agriculture, agricultural-related uses of woodlands.

(C) *R6 - Residential*. The purpose of this district shall be to provide for single-family up to and including multi-family structures and recreational purposes. This district shall provide areas for apartments, townhouses, PUDs, and PRDs.

(D) *R6SF - Residential*. The purpose of this district shall be that only single-family structures shall be permitted in this district.

(E) *R8SF - Residential*. The purpose of this district shall be that only single-family structures shall be permitted in this district.

(F) *R10SF - Residential*. The purpose of this district shall be that only single-family residential structures shall be permitted in this district.

(G) *R15SF - Residential*. The purpose of this district shall be that only single-family residential structures shall be permitted in this district.

(H) *R20SF - Residential*. The purpose of this district shall be that only single-family residential structures shall be permitted in this district.

(I) *R40SF - Residential*. The purpose of this district shall be that only single-family residential structures shall be permitted in this district.

(J) *MHP - Mobile Home Park*. The purpose of this district shall be to provide an area for mobile home owners to rent or to buy an area in which to put a mobile home for the purpose of inhabiting it. Mobile home sales are not permitted in this district.

(K) *MHS - Mobile Home Subdivision*. The purpose of this district is for the division of land into lots primarily designed for mobile home usage but adaptable in many cases to other residential uses.

(L) *MHS-15SF - Mobile Home Subdivision 15 Single Family*. The purpose of this district is for the division of land into lots primarily designed for mobile home usage, but adaptable in many cases to other residential uses with a minimum of 15,000 square feet each.

(M) *MHS-O - Mobile Home Subdivision Overlay*. The purpose of this district shall be to provide for additional consistency, control, and flexibility in areas zoned "Mobile Home Subdivision".

(N) *O/I - Office and Institutional*. The O/I Office and Institutional District is defined as certain land uses with structures that provide office space for professional services and for certain institutional functions and residential accommodations, usually medium or high-density in nature. The district is normally small and may include older homes undergoing conversion. This district is usually situated between business and residential districts, and the regulations are designed to permit development of the permitted functions and still protect and be compatible with nearby residential districts. All O/I Office and Institutional Districts, with a total area of less than four acres, shall serve as transitional zones between high intensity and low intensity land uses.

(O) *G/E - Governmental/Educational*. The purpose of this district shall be to provide zoning districts in which federal, state, and local governmental services as well as private and public primary, secondary, and post-secondary educational purposes may be located. It is not intended that uses in the nature of child day care be permitted in this district even though tutoring or other school assistance may be offered in conjunction with the day care. In addition, it is recognized that existing governmental uses often provide opportunities for the location of telecommunications antennas to the mutual advantage of the vendors of telecommunications services and the general public, i.e., water towers and emergency services facilities.

(P) *B1 - Highway Business*. The purpose of this district shall be to provide for the proper grouping and development of roadside business uses, and for uses not basically related to central or neighborhood business areas.

(Q) *B2 - General Business*. The purpose of this district shall be to provide for the proper grouping and development of those uses which are related to central or neighborhood business districts. Such uses might include shopping centers and retail uses.

(R) *B2HDO - B2 Historic District Overlay*. The purpose of the B-2 Historic District Overlay is to provide for a mixture of permitted and special uses that are consistent in protecting and preserving the heritage of the Town's historic business district while providing a wide range of retail and professional services to local residents and visitors. The uses listed within this district are intended to compliment the historic nature of the downtown district while protecting the integrity of adjacent residential neighborhoods.

(S) *MI - Light Industrial*. The purpose of this district shall be to establish areas for offices, warehousing, and other light industries located on tracts of land where the operations involved do not detract from the development potential of nearby properties (refer to § 152.180(LL), Note 38 for development standards).

(T) *B-3 - Traditional Business*. The purpose of Traditional Business District is to provide for a district with the characteristics of traditional business areas, including relatively high density retail development and pedestrian-oriented design, mixed with office and residential development located

primarily on the upper stories of buildings . This district is designed to create a high degree of business vitality, social connectivity, commercial interaction, walk-ability, and aesthetic appeal . Such districts should be located and established so that most development is located on low-speed streets and/or within planned off-street nodes, with thoroughfares located only on the perimeter of the district. Upper story residential uses are encouraged in the district, and the location of higher density residential development adjacent to this district is appropriate.

(U) *PUD - Planned Unit Development* . The purpose of this district is to provide for office , institutional, governmental, residential, commercial, and/or projects involving a combination of these uses located on land under unified control, planned as a whole, and developed as a single development or in a programmed series of units or stages of development according to comprehensive and detailed plans.

(V) *CZ - Conditional Zoning Districts*. Conditional zoning districts may be created as parallel districts for each of the general zoning districts in this section. Each conditional zoning district shall be designated on the zoning map and other official documents by combining the designation of its parallel zoning district with the suffix, "(CZ)", for example B-2(CZ). Applications for conditional rezoning shall follow the process as outlined in Note 1 of § 152.180.

(Ord. 2005-O3, passed 3-15-2005; Am. Ord. passed 6-8-2005; Am. Ord. passed 9-20-2005; Am. Ord. passed 8-17-2010; Am. Ord. passed 11-22-2016; Am. Ord. 2019-O4, passed 4-23-2019; Am. Ord. 2021-O3, passed 5-24-2021)

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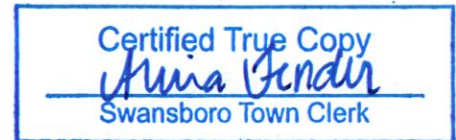
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§ 152.016 DEFINITIONS OF BASIC TERMS.

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this chapter.

ACCESS EASEMENT. An easement which grants the right to cross property.

ACCESSORY STRUCTURE. A use or structure on the same lot with, but of a nature customarily incidental and subordinate to the principal use or structure and which contributes to the comfort, convenience, or necessity of occupants, business, or industry in the principal building or use being served. No temporary storage unit (as defined in § 152.016) shall be considered an accessory use or structure. However, structures which have been manufactured to resemble permanent structures, such as storage sheds, garden sheds, and similar structures shall be considered accessory uses or structures, even though they may be capable of being lifted or disassembled and removed from the property. There are no regulations on the number and/or location of accessory buildings located on property used for bona fide farm purposes.

ACCESSORY USE. A use incidental to and located on the same lot as a principal use .

ADDITION IN FLOOD INSURANCE STUDY AREA (to an existing building). An extension or increase in the floor area or height of a building or structure. Additions to existing buildings shall comply with the requirements for new construction , unless (1) the addition, renovation, or reconstruction to any building that was constructed prior to the initial Flood Insurance Study for that area, and (2) the addition, renovation, or reconstruction does not equal 50% of the present market value of the structure . Where a fire wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and must comply with the standards for new construction .

ADMINISTRATIVE DECISION. Decisions made in the implementation, administration, or enforcement of development regulation s that involve the determination of facts and the application of objective standards. These are sometimes referred to as ministerial decisions or administrative determinations.

ADMINISTRATIVE HEARING. A proceeding to gather facts needed to make an administrative decision .

ADMINISTRATOR. The Administrator for the Town of Swansboro or his designee. The person or persons responsible for enforcement of the Unified Development Ordinance.

ADULT CARE HOME. An assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents, either directly or, for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered by designated, trained staff. **ADULT CARE HOMES** that provide care to two to six unrelated residents are commonly called family care homes .

ADULT ESTABLISHMENT Definitions.

(1) **ADULT ARCADE.** An establishment where, for any form of consideration, one or more motion picture projectors, slide projectors, or similar machines for viewing by five or fewer persons each are used to show films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas .

(2) **ADULT BOOKSTORE.** An establishment that has as a substantial portion of its stock-in-trade and offers for sale, for any form of consideration, any one or more of the following: 1) books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas ; or 2) instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities .

(3) **ADULT BUSINESS.** Any business, activity, club, or other establishment which permits any employee, member, patron, or guest on its premises to exhibit any specified anatomical areas before any other person or persons .

(4) **ADULT CABARET.** A nightclub, bar, restaurant, or similar establishment that regularly features live performances that are characterized by the exposure of specified anatomical areas , or films, motion pictures, video cassettes, slides, or other photographic reproductions in which a substantial portion of the total presentation time is devoted to the showing of material that is characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas .

(5) **ADULT MOTION PICTURE THEATER.** An establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas .

(6) **ADULT THEATER.** A theater, concert hall, auditorium, or similar establishment characterized by activities featuring the exposure of specified anatomical areas or by special sexual activities.

(7) **MASSAGE.** Manipulating of body muscles or tissues by rubbing, stroking, kneading, or tapping by hand or mechanical device and the masseuse typically exposes specific anatomical areas.

(8) **MASSAGE, BUSINESS.** Any establishment or business wherein massage is practiced including establishments commonly known as health clubs, physical fitness centers, and massage parlors where the masseuse typically exposes specific anatomical areas.

(9) **SEXUAL ENCOUNTER ESTABLISHMENT.** An establishment other than a hotel, motel, or similar establishment offering public accommodations which, for any form of consideration, provides a place where two or more persons may congregate, associate, or consort in connection with specified sexual activities. This definition does not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in sexual therapy.

(10) **SEXUALLY ORIENTED BUSINESS.** Any business, activity, club, or other establishment, within which the exhibition, showing, rental, or sale of materials distinguished or characterized by an emphasis on material depicting, describing, or exhibiting specified anatomical areas or relating to specified sexual activities is permitted. Regulated businesses shall include, but are not limited to: adult arcades, adult bookstores, adult motion picture theaters, adult theaters. Specified sexual activities, massage parlors, and adult cabarets are prohibited.

(11) **SPECIFIED ANATOMICAL AREAS.** As used herein, specified anatomical areas means and includes any of the following: 1) less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areola; or 2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(12) **SPECIFIED SEXUAL ACTIVITIES.** As used herein, specified sexual activities means and includes any of the following:

- (a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (b) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (c) Masturbation, actual or simulated; or
- (d) Excretory functions as part of or in connection with any of the activities set forth in divisions (a) through (c) of this definition.

AGRICULTURAL - LIVESTOCK. The use of land for dairying, pasturage, animal and poultry husbandry, and the necessary accessory uses. Intensive livestock operations as defined by this chapter are excluded.

AGRICULTURAL - OTHER THAN LIVESTOCK. The use of land for the production of cash grains, field crops, vegetables, fruits and nuts, and for horticulture and floriculture.

AIRPORT. Any area of land which is used for landing and takeoff of aircraft, and appurtenant land or structures used or intended for airport buildings.

AIRPORT HAZARD. Any structure or object of natural growth located on or in the vicinity of a public airport, or any use of land near such airport, which obstructs the airspace required for the flight of aircraft in landing or takeoff at such airport or is otherwise hazardous to such landing or takeoff of aircraft.

ALLEY. A strip of land, owned publicly or privately, set aside primarily for vehicular service access to the rear or side of properties otherwise abutting a street.

ALTERATIONS. Shall include the following:

- (1) Any addition to the height or depth of a building; and
- (2) Any change in the location of any of the exterior walls of a building.

AMUSEMENT.

(1) **AMUSEMENT INDOOR.** The provision of entertainment or games for the general public that is in a wholly enclosed building , including but not limited to a movie theater, play house, music venue, bowling alley, roller or ice-rink, billiards, pool and related amusements.

(2) **AMUSEMENT OUTDOOR.** Including but not limited to amphitheaters, driving ranges, miniature golf, water parks and amusement parks.

ANIMAL AQUACULTURE. A business primarily engaged in the farm raising of aquatic animals (except finfish and shellfish) including alligator, algae, frog, seaweed, or turtle production, and/or the farm raising of aquatic plants.

ANIMAL UNIT. A unit of measurement developed by the U.S. Environmental Protection Agency that is used to compare different types of animal operations.

ANTENNA. Equipment designed to transmit or receive electronic signals.

APARTMENT. A room or unit of one or more rooms, each of which have kitchen facilities, and are designated or intended to be used, as an independent unit, on a rental basis.

APPROPRIATE SCREENING. Screening that is suitable to satisfy the purpose for which screening is intended.

APPROVAL AUTHORITY. The Board of Commissioners of the Town of Swansboro, the Board of Adjustment , Planning Board , or other board or official designated by this chapter as authorized to grant the specific zoning or land use permit or approval that constitutes a site specific development plan .

AREAS OF ENVIRONMENTAL CONCERN (AEC). Areas of an environmentally sensitive nature designated by the North Carolina Coastal Resources Commission as required under the Coastal Area Management Act of 1974.

ASSEMBLY. A joining together of completely fabricated parts to create a finished product.

ASSISTED LIVING RESIDENCE. Any group housing and services program for two or more unrelated adults, by whatever name it is called, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. The Department of Health and Human Services may allow nursing service exceptions on a case-by-case basis. Settings in which services are delivered may include self-contained apartment units or single or shared room units with private or area baths. Assisted living residences are to be distinguished from nursing homes subject to provisions of G.S. §131E-102. Effective October 1, 1995, there are two types of assisted living residences: adult care homes and group homes for developmentally disabled adults. Effective July 1, 1996, there is a third type, multi-unit assisted housing with services .

AUCTION SALES. A public sale where items are sold one by one, each going to the last and highest of a series of competing bidders.

AUTOMOBILE GRAVEYARD. Any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, dismantled, or inoperable motor vehicles and which are currently not being restored to operation, regardless of length of time which individual motor vehicles are stored or kept at said establishment or place of business. All such businesses must be registered with the N.C. Department of Revenue.

AUTOMOBILE OFF-STREET PARKING (COMMERCIAL LOT). Any building or premises, except a building or premises described as a private garage , used for the storage of motor vehicles for the public or private businesses.

AUTOMOBILE WASH or AUTOMATIC CAR WASH. A lot on which motor vehicles are washed or waxed, either by the patron or by others, using machinery specifically designed for the purpose.

B&B/SELF-CONTAINED COTTAGE. Attracts guests who prefer greater privacy and seclusion. Cottages are often adjacent to a larger B&B or country inn . Such inns are often constructed in out of the way places where the inn (s) itself is the primary attraction.

BED AND BREAKFAST ACCOMMODATIONS, AND INNS. A business containing guest rooms or suites designed and intended to be rented or hired out for short term lodging by paying guests and which may provide meals to such guests. **BED AND BREAKFAST ACCOMMODATIONS AND INNS** do not include hotels and motels , healthcare facilities, boarding houses, group homes, halfway houses, hostels, rescue missions, personal or corporate guest homes, condominiums , or apartments .

BELFRY. A belfry (also known as a bell tower) is a separate structure - or a part of a building - in which bells are hung. Interior improvements shall consist of only those forms of access and safe standing areas essential to ringing and maintenance of the bells.

BEST MANAGEMENT PRACTICES (BMP). As it relates to stormwater plan, a structural or nonstructural management based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

BLOCK. The land lying within an area bounded on all sides by streets , railroads, public parks , bodies of water, or a combination thereof.

BOARD OF ADJUSTMENT. A semi-judicial body composed of representatives from the Town of Swansboro and its extraterritorial jurisdiction which is given certain powers under and relative to this chapter.

BOARD OF COMMISSIONERS. The governing body of the Town of Swansboro.

BOARDINGHOUSE. A rooming house or a structure which contains four or more rooms, each of which have no kitchen facilities, and are designed or intended to be used for residential occupancy on a rental basis.

BONA FIDE FARM.

(1) Includes the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in G.S. § 106-581.1 and § 160D-903.

(2) For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:

(a) A farm sales tax exemption certificate issued by the Department of Revenue;

(b) A copy of the property tax listing showing that the property is eligible for participation in the present-use value program pursuant to G.S. § 105-277.3;

(c) A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return; or

(d) A forest management plan.

BOTTLING PLANTS. A bottling company is a commercial enterprise whose output is the bottling of beverages for distribution. This may include franchisees of corporations who distribute the beverage in a specific geographic region and/or companies who also bottle other local beverages such as regional beers or wines.

BUFFER. An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff

and filtering of pollutants. The **BUFFER** is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams and rivers.

BUFFER STRIP. A solid planted strip composed of deciduous and/or evergreen trees, or dense shrubs which is being established and maintained by the owners .

BUILDABLE AREA. The portion of a lot remaining after required setbacks have been made.

BUILDING, DETACHED. A building having no party or common wall with another building except an accessory building .

BUILDING, FRONT OF. The linear length of building facing a public street right-of-way or a legal private road.

BUILDING, HEIGHT OF. The vertical distance from grade to the highest finished roof surface in the case of flat roofs or to a point from the average grade around the building (five feet out) to the highest roof mean height.

BUILDING LINE. A line located a minimum horizontal distance from the right-of-way line of a street or property line parallel thereto between which no building or parts of a building may be erected, altered, or maintained except as otherwise provided herein.

BUILDING, MAIN. A building in which the principal use of the lot on which the building is situated is conducted.

BUILDING MARKER. A sign indicating the name of a building and data and incidental information about its construction, which sign is cut into a masonry surface, or made of bronze or other permanent material.

BUILDING SETBACK LINE. A line establishing the minimum allowable distance between the principal building and the street or highway right-of-way line when measured perpendicularly or radially thereto from the foundation wall. Covered patios, porches, and carports, whether enclosed or unenclosed, shall be considered as part of the principal building and shall not project into the required yard . Unenclosed, uncovered decks may project into the required yard up to 55% of the required setback .

BUILDING SITE. Any lot , or portion thereto, of a parcel of land upon which a building or buildings may be erected in conformance with the provisions contained herein.

BUILT-UPON AREA. Shall include that portion of a development project that is covered by impervious or partially impervious cover including buildings , pavement, gravel roads, recreation facilities (e.g., tennis courts), and the like. (Note: wooden slatted decks and the water area of a swimming pool are considered pervious.)

CALENDAR QUARTER. Each of the following time periods shall be deemed to be a "calendar quarter" for purposes of this chapter: January 1 through March 31, April 1 through June 30; July 1 through September 30; and October 1 through December 31.

CAMPGROUND SUBDIVISION. An area subdivided into lots for the temporary location of recreational vehicles, campers, tents, or travel trailers but not for manufactured homes and permanent structures.

CEMETERY, PUBLIC. Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbarium, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of such cemetery.

CERTIFICATE OF OCCUPANCY/COMPLIANCE. A statement signed by the Administrator setting forth that the building , structure, or use complies with the zoning ordinance and any applicable construction codes, and that the same may be used for the purposes stated herein.

CIRCULATION AREA. That portion of the vehicle accommodation area used for access to parking or loading areas or other facilities on the lot . Essentially, driveways and other maneuvering areas (other than parking aisles) comprise the circulation area.

CLEAR-CUTTING. The alteration and/or improvement of a site when it results in the removal of regulated trees in excess of 15 per acre and causes the loss of forestland.

CLOSE FAMILIAL RELATIONSHIP. A spouse, parent, child, brother, sister, grandparent, or grandchild. This term also includes step, half, and in-law relationships.

CLUSTER DEVELOPMENT. The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project. This term includes nonresidential development as well as single-family residential subdivisions and multi-family developments that do not involve the subdivision of land.

CLUSTERED DETACHED SINGLE-FAMILY DWELLINGS. A dwelling in which the lot size may be reduced, but the unit is not attached to another unit.

CODE ENFORCEMENT OFFICIAL. The person , official, and his authorized representatives, whom the Town Board of Commissioners have designated as their agents for the administration and enforcement of the town building codes.

COLLECTOR STREET. A street whose principal function is to carry traffic between cul-de-sac , local, and sub-collector streets , and streets of higher classification, but which may also provide direct access to abutting properties.

CO-LOCATION. The installation of wireless antennas or small wireless facilities on, under, or within existing wireless towers, utility poles, water towers, buildings, and other structures. The term does not include the installation of new utility poles or wireless support structures.

COMMERCIAL USE. Refer to §§ 152.179 and 152.180, Table of Permitted Uses for definition of allowed commercial uses.

COMMON AREA(S). All areas, including private streets , conveyed to an owners' association within a development , or owned on a proportional undivided basis in a condominium development .

COMMUNITY. A group of people who live in the same area (such as a neighborhood). For the purposes of meeting the requirement of the community meetings before public hearing for a conditional zoning district , the area shall be defined as a one mile radius from the center of the applicant's proposed request.

COMPOSTING FACILITY. A facility in which only stumps, limbs, leaves, grass, and untreated wood collected from land clearing and landscaping operations are deposited.

COMPREHENSIVE PLAN. The comprehensive plan, CAMA land-use plan, small area plans, neighborhood plans, transportation plan, capital improvement plan, and any other plans regarding land use and development that have been officially adopted by the Board of Commissioners .

CONCEALED WIRELESS TELECOMMUNICATIONS FACILITY. A structure that is fabricated in a manner that aesthetically masks its appearance as a communication facility that is installed within or on an existing structure. Examples include church steeples, bell towers, light standard, signs, utility poles, flag poles, building facades , water tanks, and other structures which conceal telecommunication antennas and equipment from visibility. A communications tower shall not be considered a concealed wireless telecommunication facility.

CONDITIONAL ZONING DISTRICT (CZ). A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.

CONDOMINIUM. A dwelling unit in which the ownership of the occupancy rights to the dwelling unit is individually owned or for sale to an individual and such ownership is not inclusive of any land.

CONSERVATION RESERVATION. The owner of the tract of land agrees that the land shall remain in a vegetated or natural state and that no use shall be made of the tract that would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation. There shall be no dredging or removal of loam, peat soil, rock, or other mineral substances from the surface of the tract, and the surface use shall remain intact for agricultural, forest, or outdoor recreational purposes only. Other than permanent structures necessary to further the use of said tract for agriculture, forest, or outdoor recreational purposes, no building, public road, sign, or billboard shall be allowed to remain above the ground. All surface use of said tract shall be carried on in such a manner as to allow the land and water areas to remain predominantly in their natural state. This conservation easement shall run with the land and shall be binding upon the grantee, its successors in title, and all subsequent owners of this parcel of land.

CONTRACTOR, GENERAL. One who is engaged in one or more aspects of building construction and/or land development through a legal agreement.

CONTRACTOR, TRADES. One who accomplishes work or provides facilities under contract with another and specifically engages in a specialized trade, such as plumbing, heating, wiring, sheet metal, and roofing work, and the like.

CONVENIENCE STORE. A commercial establishment that is traditionally a corner grocery store; could include the sale of grocery items, includes the quick pick-up of milk and bread, and the like. Such a commercial establishment can also include the sale of gasoline, but not the repair of automobiles. Such an establishment shall be predominantly for the sale of grocery items and gasoline.

CORNER LOT. A lot abutting upon two or more streets at their intersections.

COUNTRY CLUBS, PRIVATE OR PUBLIC. Establishments primarily engaged in operating golf courses (except miniature) and/or other recreational facilities that are known as country clubs. These establishments often provide food and beverage services, equipment rental services, and sports instruction services.

COUNTRY INN. A B&B Inn that serves at least one meal in addition to breakfast and operates a restaurant for guests and the public. **COUNTRY INNS** range in size from six to 30 rooms. Such inns are often constructed in out of the way places where the inn itself is the primary attraction.

COURSE. A continuous horizontal layer of similarly-sized building material one unit high, usually in a wall. The term is almost always used in conjunction with unit masonry such as brick, cut stone, or concrete masonry units ("concrete block").

CRATING SERVICES. Establishments primarily engaged in packing, crating, and otherwise preparing goods for transportation.

CUL-DE-SAC. A street with one end open to traffic and the other end of which is permanently terminated by a vehicular turnaround.

CUPOLA. A small ornamental structure, normally dome-shaped or spherical in shape, placed on the top of a larger roof or dome, primarily for the purpose of architectural embellishment. **CUPOLAS** may include "lanterns", structures which have small windows to illuminate areas below.

CURTAIN WALL. A continuous, uniform foundation enclosure constructed of brick or concrete blocks and that is unpierced except for required ventilation and access.

CUSTOMARY HOME OCCUPATION. Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Provided further that no mechanical

equipment is installed or used except as is normally used for domestic or professional purposes, and that not over 25% of the total floor space of any structure is used for the occupation. No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven off site, such as a service repair truck, delivery truck, and the like.

DAY CARE FACILITY (CHILD/GROUP). Any child care arrangement that provides day care on a regular basis for more than four hours per day for more than five children aged 13 and younger at one time. Child/group day care includes programs for children known as nursery schools , day nurseries, child care centers, play groups, day care centers for school age children, after school programs, infant day care centers, cooperative day care centers, and head start programs.

DAY CARE FACILITY (ADULT). The provision of group care and supervision in a place other than their usual place of abode on a less than 24-hour basis to adults who may be physically or mentally disabled. The following are exempt from this definition:

- (1) Those that care for three people or less;
- (2) Those that care for two or more persons , all of whom are related by blood or marriage to the operator of the facility; and
- (3) Those that are required by other statutes to be licensed by the Department of Health and Human Services.

DECISION-MAKING BOARD. A governing board , planning board, board of adjustment, historic district commission, or other board assigned to make quasi-judicial decision s.

DEDICATION. A gift by the owner , or a right to use of land for a specified purpose or purposes. Because a transfer of property rights is entailed, dedication must be made by written instrument, and is completed with an acceptance.

DEMOLITION LANDFILL. A sanitary landfill that is limited to receiving stumps, limbs, leaves, concrete, brick, wood, uncontaminated earth or other solid wastes as approved by the North Carolina Division of Environmental Management, and permitted by that agency.

DETENTION FACILITIES. A facility approved to provide secure confinement and care for juveniles. Detention facilities include state and locally administered detention homes, centers, and facilities.

DETERMINATION. A written, final, and binding order, requirement, or determination regarding an administrative decision .

DEVELOPER. A person , including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.

DEVELOPMENT. Unless the context clearly indicates otherwise, the term means any of the following:

- (1) The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure;
- (2) The excavation, grading, filling, clearing, or alteration of land;
- (3) The subdivision of land as defined in G.S. § 160D-802; or
- (4) The initiation or substantial change in the use of land or the intensity of use of land.

DEVELOPMENT AGREEMENT. An agreement entered into between the Board of Commissioners and a developer to better structure and manages development approval s for large scale, multiple-phase developments to ensure their integration into local capital facilities programs. A

DEVELOPMENT AGREEMENT is subject to the approval of a Conditional Zoning (CZ) .

DEVELOPMENT APPROVAL. An administrative or quasi-judicial approval that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals including plat approvals, permits issued, development agreements entered into, and building permits issued. Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals attach to and run with the land.

DEVELOPMENT PLAN, PHASED. A plan which has been submitted to the town by a landowner for phased development which shows the type and intensity of use for a specific parcel or parcels.

DEVELOPMENT PLAN, SITE SPECIFIC. A plan which has been submitted to the county by a landowner describing the type and intensity of the proposed land uses for a specific parcel or parcels of property.

DEVELOPMENT REGULATION. A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, State Building Code, or any other regulation, local act or charter that regulates land use or development.

DIMENSIONAL NONCONFORMITY. A nonconforming situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or buildings and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.

DISPLAY SURFACE AREA. Sign area which shall be measured by including the entire area that forms the extreme limits of the writing, representation, emblem, or other display, forming a square, rectangle, triangle, circle, or other shape as appropriate together with architectural details including the background and borders.

DISTRIBUTION CENTERS. A building where a set of products is warehoused often with refrigeration which is stocked with products to redistribute to retailers or wholesalers.

DOCKS, PIERS (Commercially operated with or without launching facilities). A fixed or floating structure without launching facilities, including moorings, used for the purpose of berthing buoyant vessels on a commercial basis. A commercial dock may exist independently or as an incidental part of a marina, boat livery, or boat yard.

DOCKS, PIERS (Not commercially operated, with or without launching facilities). A fixed or floating structure, including moorings, used for the purpose of berthing buoyant vessels and which does not produce income, and does not serve as an inducement to renting, purchasing, or using accompanying facilities.

DRAINAGE EASEMENT. An easement which grants the right of water drainage to pass in open channels or enclosed structures.

DRAINAGEWAY. Any natural or man-made channel that carries surface runoff from precipitation.

DRIVE-IN (eating or drinking facility). An establishment that provides employee curb service or accommodations through special equipment or facilities for the ordering of food or beverages from a vehicle.

DRIVEWAY. That portion of the vehicle accommodation area that consists of a travel lane bounded on either side by an area that is not part of the vehicle accommodation area.

DWELLING. Any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used. The term does not include any transient

residence or recreational vehicle if used solely for a seasonal vacation purpose.

DWELLING, FOUR FAMILY. A building arranged or designed to be occupied by four families living independently from each other.

DWELLING, MULTIPLE FAMILY. A building or portion thereof used or designed as residence of five or more families living independently of each other.

DWELLING, SINGLE FAMILY. A building arranged or designed to be occupied by one family .

DWELLING, THREE FAMILY. A building arranged or designed to be occupied by three families living independently from each other.

DWELLING, TOWNHOUSE. A single-family attached dwelling situated on its own individual lot , generally within a development containing drives, walks, and open space in common areas. Ownership is passed in fee-simple subject only to party wall rights by agreements set forth in the restrictive covenants.

DWELLING, TWO FAMILY. A building arranged or designed to be occupied by two families living independently from each other.

EASEMENT. A grant by the property owner for use by the public, a corporation, or person (s) of a strip of land for specified purposes.

EASEMENT, EXCLUSIVE ACCESS. An easement which serves only one single-family dwelling and its uninhabited accessory structures . Exclusive easements serve only lots without public water and sewer.

EFFECTIVE DATE OF THE ARTICLE. Whenever this chapter refers to the effective date of this chapter, the reference shall be deemed to include the effective date of any amendments to this chapter as originally adopted.

ELECTRONIC GAMING OPERATIONS. A business activity or enterprise, whether a principal, partial, or accessory use , in which people utilize electronic machines, including but not limited to computers and gaming terminals, to conduct games of chance (including sweepstakes), and in which cash, merchandise, or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by playing electronic games or by predetermined odds. This term includes, but is not limited to internet cafes, internet sweepstakes, cyber cafes, or electronic game parlors in which individuals normally gain access to games of chance, with prize distributions, through the purchase of internet time, telephone cards, or other means of qualification.

EVIDENTIARY HEARING. A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation .

EXISTING DEVELOPMENT. Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this chapter based on at least one of the following criteria:

- (1) Substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project; or
- (2) Having an outstanding valid building permit as authorized by the General Statutes (G.S. §153A-344.1 and G.S. §160A-385.1); or
- (3) Having expended substantial resources (time, labor, money) and having an approved site specific or phased development plan as authorized by the General Statutes (G.S. §153A-344.1 and G.S. §160A-385.1).

EXISTING LOT (LOT OF RECORD). A lot which is part of a subdivision , a plat of which has been recorded in the office of the Onslow County Register of Deeds prior to the adoption of this chapter, or a lot described by metes and bounds, the description of which has been so recorded with the Onslow County Register of Deeds.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets , and either final site grading or the pouring of concrete slabs).

EXTRATERRITORIAL JURISDICTION (ETJ). That portion of the Swansboro planning jurisdiction that lies outside of the corporate limits of the Town of Swansboro as allowed by G.S. §160A-360.

FABRICATION. The processing and/or assemblage of various components into a complete or partially completed commodity. Fabrication related to stamping, cutting, or otherwise shaping the processed materials into useful objects. The refining aspects of manufacturing and other initial processing of basic raw materials such as metal, ore, lumber, and rubber, and the like, are included.

FAÇADE. Generally one exterior side of a building , usually, but not always, the front facing a public or private street .

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.

FAMILY. One or more persons , or groups of two or more persons , living together and interrelated by bonds of marriage or legal adoption occupying the whole part of a dwelling as a separate housekeeping unit with a common and single set of culinary facilities. The persons thus constituting a **FAMILY** may also include two additional guests who occupy rooms for which compensation may or may not be paid. Any group of persons not so related but inhabiting a single housekeeping unit shall be considered to constitute one family for each five persons exclusive of domestic employees, contained as one group.

FAMILY CARE HOME. A home with support and supervisory personnel that provides room and board, personal care, and habilitation services in a family environment for not more than six resident persons with disabilities. As provided in G.S. § 160D-907, a person with disabilities is a person with a temporary or permanent physical, emotional, or mental disability, including, but not limited to, mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances, and orthopedic impairments, but does not include mentally ill persons who are dangerous to others as defined in G.S. § 122C-3(11)b.

FAMILY FOSTER HOME. The private residence of one or more individuals who permanently reside as members of the household and who provide continuing full-time foster care for a child or children who are placed there by a child placing agency or who provide continuing full-time foster care for two or more children who are unrelated to the adult members of the household by blood, marriage, guardianship, or adoption.

FENCE (PROTECTIVE). A structure of wood, stone, brick, block, steel, or other metal extending from the surface of the ground to a minimum height of six feet, and of such materials and construction which creates a physical barrier (refer to § 152.196(E)).

FINE ARTS. Individual art pieces, not mass-produced, consisting of one or more of the following: paintings, drawings, etchings, sculptures, ceramics, inlays, needlework, knitting, weaving and/or craftwork of leather, wood, metal or glass.

FLEA MARKET. A commercial operation held on a regular periodic basis and patronized by individual entrepreneurs who transport a variety of merchandise to a common geographical area for the purpose of sale or trade to the general public. This definition does not include sporadic and infrequent yard sales held in residential areas.

FLEXIBLE LOT DEVELOPMENT. A development option utilized on an area of land under unified control, to be developed as a single entity for a number and variety of dwelling and/or commercial units, according to a master plan which is approved at the time that a conditional zoning or a special use is obtained. In return for greater flexibility in site design requirements, **FLEXIBLE LOT DEVELOPMENTS** are expected to: deliver community designs that include items such as low impact design principles or other implementation that preserve environmental resources; provide above average open space amenities, incorporate creative design in the layout of buildings, open circulation; coordinate and unify design elements of the project, including building materials, signage and architectural compatibility; assure compatibility with surrounding land uses and neighborhood character; and provide greater efficiency in the layout and provision of roads, utilities and other infrastructure.

FLOOR. The top surface of an enclosed area in a building (including basement), e.g., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

FLOOR AREA (GROSS). The sum of the gross horizontal areas of the several floors of a building measured from the exterior face of the exterior walls, or from the centerline of a wall separating two buildings, but not including interior parking spaces/loading spaces for motor vehicles.

FLOOR AREA (NET). The total of all floor areas of a building, excluding stairwells and elevator shafts, utility and equipment rooms, restrooms, interior vehicular parking or loading, and basements when not used for human habitation or service to the public.

FOOD SALES, FOOD TRUCK. Sales of food and/or beverages from a mobile food truck, trailer, or other vehicle.

FOOD SALES, PUSH CART. Sales of ready-to-consume food and/or beverages, such as hotdogs, ice cream, soft drinks, and snacks, from a mobile push cart, capable of being propelled by a single person and with no motorized self-propelled capability.

FOSTER CARE. The continuing provision of the essentials of daily living on a 24-hour basis for dependent, neglected, abused, abandoned, destitute, orphaned, undisciplined, or delinquent children or other children who, due to similar problems of behavior or family conditions, are living apart from their parents, relatives, or guardians in a family foster home or residential child-care facility. The essentials of daily living include but are not limited to shelter, meals, clothing, education, recreation, and individual attention and supervision.

FRONTAGE. All property abutting one side of a street measured along the street line.

FRONTAGE ROAD. A local street or road that is parallel to a full or partial access controlled facility and functions to provide vehicular access to adjacent land.

GARAGE, PRIVATE. A building or space used as an accessory to or a part of the main building permitted in any residential district, that provides storage space for motor vehicles and in which no business, occupation, or service for profit is in any way conducted.

GATE. A door or other device attached to a fence which, when opened, provides a means of ingress and egress of persons and things for which it was intended, and which, when closed, forms a continuous barrier and screen as a part of the fence to which it is attached.

GOVERNING BOARD. The Town of Swansboro Board of Commissioners.

GRADE. A reference plane representing the average of finished ground level adjoining the building at all exterior walls. When the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or between the building and a point six feet (1,829 mm) from the building, whichever is closer to the building.

HABITABLE FLOOR. Any floor for living purposes, which includes working, sleeping, eating, cooking, or recreation, or any combination thereof. A floor used only for storage is not a **HABITABLE FLOOR**.

HANDICAPPED PERSON. A person with a temporary or permanent physical, emotional or mental disability including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances, or orthopedic impairments, but not including mentally ill persons who are dangerous to others as defined in G.S. §122-58.2(1)b.

HAZARDOUS MATERIAL. Any substance listed as such in SARA §302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or §311 of CWA (oil and hazardous substances).

HISTORIC BUILDING CONTRIBUTING. A structure determined to have been constructed during the period of significance of the Swansboro Historic District.

HISTORIC BUILDING NON-CONTRIBUTING. A structure NOT constructed during the period of significance of the Swansboro Historic District.

HISTORIC STRUCTURE. Any structure that is: (a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places; (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified (1) by an approved state program as determined by the Secretary of Interior, or (2) directly by the Secretary of Interior in states without approved programs.

HOME OCCUPATION. An accessory use of a dwelling unit for gainful employment which: a) is clearly incidental and subordinate to the use of the dwelling unit as a residence; b) is carried on solely within the main dwelling and does not alter or change the exterior character or appearances of the dwelling ; c) is created and operated as a sole proprietorship; and d) is not over 25% of the total floor area or 400 square feet, whichever is less, of any dwelling used for home occupation.

HOMESTAY, HOST HOME. A one- to four-bedroom, owner -occupied establishment in a private home where the business of paying guests is secondary to its use as a private residence.

IMPERVIOUS SURFACE. Any surface which in whole or in part restricts or prevents the natural absorption of water into the ground. Such surfaces may include, but not be limited to, compacted earth, gravel, concrete, asphalt, or other paving material, and all area covered by buildings or structures.

IMPERVIOUS SURFACE RATIO. The algebraic ratio calculated to determine the percentage of open land versus built-upon area on any tract (s) of land used for the purpose of actual or anticipated residential or nonresidential development .

IMPROVEMENTS. The addition of any building , accessory building , parking area , loading area, fence , wall, hedge, lawn or mass planting (except to prevent soil erosion) to a lot or parcel of property.

INDOOR RECREATION. A commercial establishment or private club that could include the following: pool halls, video arcades, bowling alleys, gyms and exercise studios, and other similar uses.

INDUSTRIAL DEVELOPMENT. A nonresidential development that requires an NPDES permit for an industrial discharge and/or requires the use of or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning, or developing any product or commodity, or as described by the Zoning Ordinance.

INDUSTRIAL USES. Refer to § 152.179, Table of Permitted Uses, for definition of allowed **INDUSTRIAL USES**.

INFILL DEVELOPMENT. The use/reuse of land within a built-upon area for further construction, it focuses on the reuse and repositioning of existing buildings and sites with the optimization and utilization of existing infrastructure (water, sewer, roads, and the like).

INN. See **BED AND BREAKFAST ACCOMMODATIONS, AND INNS**.

INTENSIVE LIVESTOCK OPERATIONS. Any enclosure, pen, feedlot, building , or group of buildings intended to be used or actually used to feed, confine, maintain, or stable cattle, horses, sheep, goats, turkeys, chickens, swine, or any combination thereof, with at any time a total of 100 animal units present, where their dietary needs are met primarily by means other than grazing.

INTERMEDIATE CARE FACILITY. Facilities licensed pursuant to Article 2 of Chapter 122C of the General Statutes for the purpose of providing health and habilitative services based on the developmental model and principles of normalization for persons with mental retardation, autism, cerebral palsy, epilepsy, or related conditions.

ITINERANT MERCHANT. A person , other than a person who owns or operates an established retail store in the Town of Swansboro, or within its extraterritorial jurisdiction area, who transports an inventory of goods to a building , vacant lot , or other location in the Town of Swansboro and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. (unless the person is excepted by other provisions of this chapter).

(1) Provided, however, the definition of an **ITINERANT MERCHANT** shall not include a bona fide resident of the Town of Swansboro or its extraterritorial zoning jurisdiction area who, in conjunction with any other bona fide resident(s) conducts a sale of used household furnishings, clothing, decorations, or similar items in the manner commonly described as a "yard sale" or "garage sale", upon the residential premises of one or more of such bona fide residents, no more than once in any calendar quarter .

(2) Provided further, that this definition shall not be construed to prohibit the owner or operator of an established retail store from selling his or her usual inventory on a sidewalk, parking, or other similar area immediately adjacent to his or her store more than once in any calendar quarter .

(3) Provided, however, that this section shall not apply to itinerant merchants duly authorized by the sponsoring agency of any event or exhibition show duly permitted pursuant to the terms of §§ 152.170 through 152.180 during such event or exhibition show.

(4) Provided further, that this section shall not apply to a person licensed and/or approved to sell agricultural or horticultural products, handmade products, artwork, or other products within a municipally-operated public market.

JAIL. A municipal or county operated facility designed for the holding of individuals for trial, contempt, or punishment when the period is not to exceed 180 days.

JUNK. Old, scrapped, ruined, or discarded copper, brass, iron, rags, rope, appliances, wood, batteries, automobiles, trash, machinery, structures, or similar materials or parts thereof, which are not used for their original purpose.

JUNK YARD. The use of more than 300 square feet of any lot where junk , waste, discarded or salvage material are bought, sold, exchanged, stored, baled, disassembled or handled including but not limited to automobile wrecking yards, house wrecking, structural steel material and equipment, but not including the purchase or storage of used furniture or used cars in operable condition.

KENNEL. An establishment where dogs are bred, raised, boarded, trained, sold, or exchanged. For the purpose of this chapter, any parcel of land upon which four or more dogs over three months are

kept at any one time shall be considered as being used as a kennel.

LANDFILL. A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A, Article 9 of the N.C. General Statutes. For the purpose of this chapter, this term does not include composting facilities .

LANDOWNER. The holder of the title in fee simple. Absent evidence to the contrary, the county tax records shall be utilized to determine who is a landowner. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his or her agent or representative for the purpose of making applications for development approvals.

LARGE OPEN SPACE. Shall include public or private golf courses, bodies of water greater than ten acres, rivers or the floodplain of FEMA (Federal Emergency Management Administration) class streams, or public or private tracts of land permanently dedicated to open space use with an area greater than ten acres.

LEGISLATIVE DECISION. The adoption, amendment, or repeal of a regulation or an applicable local act . The term also includes the decision to approve, amend, or rescind a development agreement.

LEGISLATIVE HEARING. A hearing to solicit public comment on a proposed legislative decision.

LEVEE. A man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

LEVEE SYSTEM. A flood protection system which consists of a levee , or levees , and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

LEVEL OF SERVICE. As described in the 1965 Highway Capacity Manual, indicates how well traffic moves on a particular highway facility or through a specific intersection. There are six levels of servicing ranging from A through F. Level of service A indicates generally free movement. Level E represents maximum capacity of the facility. Level F indicates congestion. Level of Service C is considered the design level of service, representing a stable traffic flow and a relatively satisfactory travel speed.

LIGHTING ORDINANCE DEFINITIONS.

(1) **CUT-OFF FIXTURE.** An outdoor light fixture shielded or constructed in such a manner that no more than 2.5% of the total light emitted by the fixture is projected above the horizontal plane of the fixture.

(2) **FLOOD LAMP.** A form of lighting designed to direct its output in a specific direction with a reflector formed from the glass envelope of the lamp itself. Such lamps are so designated by the manufacturers and are typically used in residential outdoor area lighting.

(3) **FLOOD LIGHT.** A form of lighting designed to direct its output in a diffuse, more or less specific direction, with reflecting or refracting elements located external to the lamp.

(4) **FOOTCANDLE (FC).** A quantitative unit measuring the amount of light cast onto a given point, measured as one lumen per square foot.

(5) **FULL CUTOFF FIXTURE.** An outdoor light fixture shielded or constructed in such a manner that it emits no light above the horizontal plane of the fixture.

(6) **GLARE.** The effect produced by a light source within the visual field that is sufficiently brighter than the level to which the eyes are adapted, to cause annoyance, discomfort, or loss of visual performance and ability.

(7) **IESNA.** The Illuminating Engineering Society of North America, a non- profit professional organization of lighting specialists that has established recommended design standards for various lighting applications.

(8) **INTERNAL REFRACTIVE LENS.** A glass or plastic lens installed between the lamp and the sections of the outer fixture globe or enclosure. Refractive refers to the redirection (bending) of the light as it goes through the lens, softening and spreading the light being distributed from the light source thereby reducing direct glare .

(9) **LIGHT SOURCE.** The element of a lighting fixture that is the point of origin of the lumens emitted by the fixture.

(10) **LUMEN.** A quantitative unit measuring the amount of light emitted by a light source .

(11) **MAINTAINED FOOTCANDLES.** Illuminance of lighting fixtures adjusted for a maintenance factor accounting for dirt build-up and lamp output depreciation. The maintenance factor used in the design process to account for this depreciation cannot be lower than 0.72 for high pressure sodium and 0.64 for metal halide and mercury vapor.

(12) **MEDIUM BASE.** The size of lamp socket designed to accept a medium or Edison base lamp.

(13) **OUTDOOR SPORTS FIELD.** An area designed for active recreation, whether publicly- or privately-owned, including but not limited to baseball/softball diamonds, soccer fields, football fields, golf courses and ranges, tennis courts, racetracks, and swimming pools .

(14) **OUTDOOR PERFORMANCE AREA.** An area permanently dedicated to the public presentation of music, dance, theater, media arts, storytelling, oratory, or other performing arts, whether publicly- or privately-owned, including but not limited to amphitheaters and similar open or semi-enclosed structures.

(15) **SEMI-CUTOFF FIXTURE.** An outdoor light fixture shielded or constructed in such a manner that it emits no more than 5% of its light above the horizontal plane of the fixture, and no more than 20% of its light ten degrees below the horizontal plane of the fixture.

(16) **VEHICULAR CANOPY.** A roofed, open, drive-through structure designed to provide temporary shelter for vehicles and their occupants while making use of a business' services.

(17) **WALL PACK.** A type of light fixture typically flush-mounted on a vertical wall surface.

(18) **WIDE-BODY REFRACTIVE GLOBE.** A translucent lamp enclosure used with some outdoor fixtures to provide a decorative look (including but not limited to acorn- and carriage light-style fixtures). "Wide-body" refers to a wider than average size globe (greater than 15.75" in diameter). "Refractive" refers to the redirection (bending) of the light as it goes through the lens, rendering the light fixture more effective. **WIDE-BODY REFRACTIVE GLOBES** are intended to soften and spread the light being distributed from the light source thereby reducing direct glare .

LOADING AND UNLOADING AREA. That portion of the vehicle accommodation area used to satisfy the requirements of §§ 152.290 through 152.296. It provides space for bulk pickups and deliveries, scaled to delivery vehicles and accessible to such vehicles at all times even when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking space .

LOCAL ACT. As defined in G.S. § 160A-1(5), an act of the General Assembly applying to one or more specific cities by name, or to all cities within one or more specifically named counties. **LOCAL ACT** is interchangeable with the terms **SPECIAL ACT**, **PUBLIC-LOCAL ACT**, and **PRIVATE ACT**.

LOCAL STREET. A street whose primary function is to provide access to abutting properties.

LOT. A parcel of land, of any size, occupied or capable of being occupied by a principal building together with its accessory buildings, including the open space required under the terms of this chapter.

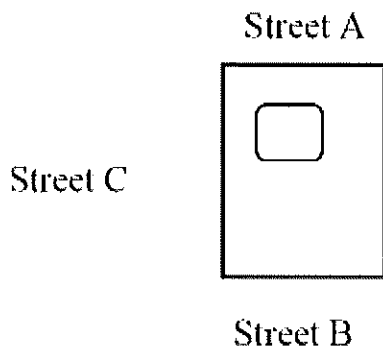
LOT AREA. The total area circumscribed by boundaries of a lot except that when the legal instrument creating a lot shows the boundary of the lot extending into a public street or private right-of-way, then the lot boundary for purposes of computing the lot area shall be the street right-of-way line, or if the right-of-way line cannot be determined, a line running parallel to and 30 feet from the center of the traveled portion of the street.

LOT, CORNER. A parcel of land having frontage on more than one street (road) which abuts an intersection of those streets (roads).

LOT COVERAGE. The portion of a lot covered by building (s) and/or structure(s).

LOT, DEPTH. The distance measured in the mean direction of the side lines of the lot from the midpoint of the front line to the midpoint of the opposite lot line.

LOT, DOUBLE FRONTAGE. A lot having frontage on two parallel or approximately parallel streets that is accessible from both of the streets. In residential zoning districts, the front yard shall be established by the primary entrance to the primary structure (Street A in diagram). The rear yard shall be the opposite of the front yard (Street B in diagram). If a double frontage lot is on the corner, then the additional street frontage shall be established as a corner side yard (Street C in diagram).



LOT, FLAG. A lot that is composed of a narrow 'flagpole' strip extending from the street and much wider 'flag' section lying immediately behind a lot or lots having the required street frontage for a conventional lot. In the case of a **FLAG LOT**, the lot line at the end of the flag pole lying generally parallel to the street to which the flagpole connects shall be considered to be the front lot line for setback purposes.

LOT, INTERIOR. A lot other than a corner lot.

LOT LINE. Any boundary of a parcel of land.

LOT LINE, FRONT. Any boundary line of a lot running along a street right-of-way line.

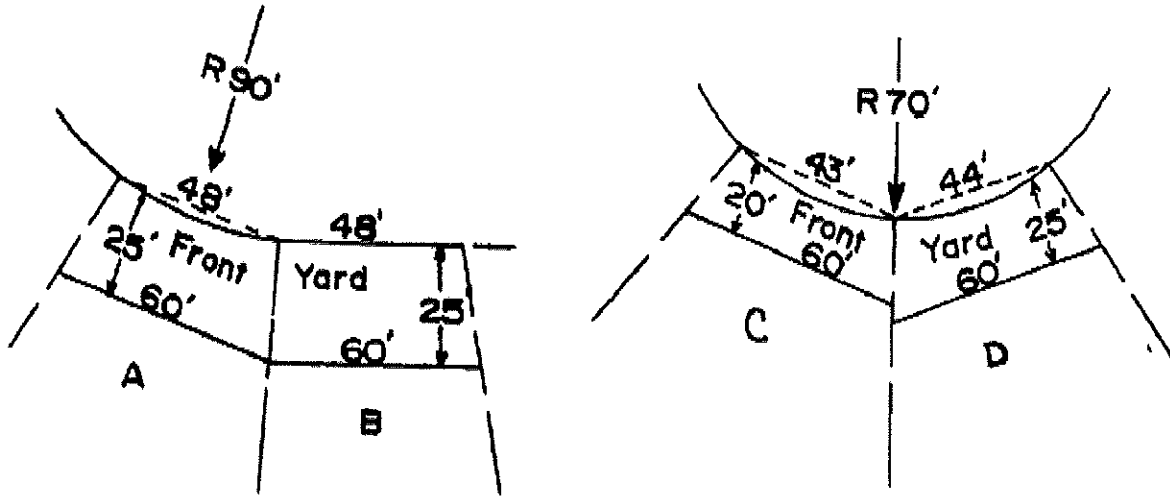
LOT LINE, REAR. The property line(s) which is (are) opposite the front property line. If no property line is deemed to be opposite the front property line and no minimum building line exists on the final plat to establish a rear lot line, then there shall be no rear lot line; however, the rear yard setback shall be maintained from the point of the front line. The rear yard minimum building line shall be a line perpendicular to a straight line connecting said apex and the midpoint on the front lot line.

LOT LINE, SIDE. A boundary line which is not defined as a front or rear lot line.

LOT OF RECORD. A lot of any size which is part of a subdivision, a plat of which has been recorded in the office of the Register of Deeds of Onslow County prior to the adoption of this chapter,

or a lot described by metes and bounds, or by adjoining property owners, the description of which has been so recorded prior to the adoption of this chapter.

LOT WIDTH. Width of a regular lot shall be determined by measurement across the rear of the required front setback, provided however that width between side lot lines at the points where they intersect the street line shall not be less than 80% of the required minimum lot width, except in the case of lots on the turning circles of cul-de-sacs or at points of street curvature where the radius at the right-of-way line and intersecting the foremost points of the side lot lines is less than 90 feet, in which case the 80% requirement shall not apply. The following diagrams indicate the relationships involved:



(1) Lot "taper" permissible at 90' curve radius (A) or along straight street (B), with required front setback depth 25', required lot width 60' (street line 80% of lot width or measured at rear of required front yard).

(2) Lots with lines radial to a curved street line with curve radius less than 90' (in this case 70') need not comply with 80% rule. Lot C shows application with 20' front setback, D with 25' applies in turning circles of cul-de-sacs, or at sharp bends in streets.

(3) On corner lots and through lots, width requirements shall be considered met if the regular lot has one frontage meeting such requirements and contains a buildable area of width, depth, and area at least equivalent to that remaining on a rectangular interior lot of minimum dimensions required in this district.

LOW IMPACT DEVELOPMENT (LID). The planning, design, construction, and management of a development site to protect, or restore, the natural hydrology (the scientific study of the properties, distribution, and effects of water on the earth's surface) of the site so that the overall integrity of the watershed is protected.

MAJOR REPAIRS AND RENOVATIONS OF PROPERTIES WHERE A NONCONFORMING SITUATION EXISTS. Work estimated to cost more than 50% of the tax value of the structure (within the current tax year) to be repaired or renovated and are repairs renovations completed within a 12 month period not required by the partial or total destruction of a structure as outlined in § 152.088(E).

MAJOR SUBDIVISIONS. A subdivision involving eight or more lots.

MAJOR THOROUGHFARE STREET. Major thoroughfares consist of interstate, other freeway, expressway, or parkway links, and major streets that provide for the expeditious movement of high volumes of traffic within and through urban areas.

MANUFACTURED HOME.

(1) As defined by G.S. § 143-145(7), a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein.

(2) **MANUFACTURED HOME** includes any structure that meets all of the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 *et seq.*

(3) For manufactured homes built before June 15, 1976, **MANUFACTURED HOME** means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semi-permanent foundation having a measurement of over 32 feet in length and over eight feet in width. **MANUFACTURED HOME** also means a double-wide manufactured home, which is two or more portable manufactured housing units designed for transportation on their own chassis that connect on site for placement on a temporary or semi-permanent foundation having a measurement of over 32 feet in length and over eight feet in width.

MANUFACTURED HOME LOT. A piece of land within a manufactured home park whose boundaries are delineated in accordance with the requirements of the ordinance.

MANUFACTURED HOME PARK PLAN. A plan of a proposed manufactured home park, prepared by the developer , and presented to the Town of Swansboro Planning Board for approval.

MANUFACTURED HOME/RECREATIONAL VEHICLE PARK PERMIT. A permit issued by the Administrator authorizing the manufactured home park or recreational vehicle park in accordance with a park plan approved by the Swansboro Planning Board and, if applicable, the Onslow County Health Department, Environmental Health Section. (Not to be confused with a building permit).

MANUFACTURED HOME/RECREATIONAL VEHICLE SPACE. A plot of land within a MH/RV park designed for the accommodation of a single manufactured home /recreational vehicle.

MANUFACTURED HOME/RECREATIONAL VEHICLE STAND. That portion of the manufactured home/recreational vehicle space designed for and used as the area occupied by the MH/RV proper.

MANUFACTURED HOME SPACE. Any parcel of ground within a manufactured home park designated for the exclusive use of one manufactured home .

MANUFACTURED OFFICE BUILDING/CLASSROOM. A structure transportable in one or more sections and built on a permanent chassis designed to be used as an office or classroom. The structure shall be connected to the appropriate sanitary and electrical facilities and met the regulations as set forth in the North Carolina Building Code. Provisions pertaining to a manufactured building foundation and anchorage of the manufactured building to the foundation shall be met as required by the North Carolina Building Code. If the structure does not have a permanent foundation, all skirting and curtain wall requirements must be met. Manufactured office buildings and classrooms are not permitted unless specifically allowed by this chapter.

MARGINAL ACCESS STREET. A service street that runs parallel to a major thoroughfare , minor thoroughfare , or collector street which, for purposes of safety, provides access to abutting properties and separation of through traffic.

MASSAGE, THERAPEUTIC. Manipulating of body muscles or tissues by rubbing, stroking, kneading, or tapping by hand or mechanical device by persons properly accredited by The American Massage Therapy Association or equivalent and in good standing with that accrediting body at the time the massage is administered.

MASSAGE, THERAPEUTIC BUSINESS. Any establishment or business wherein approved therapeutic massage is practiced including establishments commonly known as health clubs and physical fitness center; and therapeutic massage clinics owned in conjunction with other business such as beauty parlors, YMCA, and swim clubs. All advertising shall include the terminology "Therapeutic Massage".

MEAN SEA LEVEL. The average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this chapter, the term is synonymous with National Geodetic Vertical Datum (NGVD).

MINIMUM REQUIREMENTS. All sizes, setbacks, and other requirements of this chapter are minimum requirements and may be increased.

MINOR SUBDIVISIONS. A subdivision involving seven lots or less.

MINOR THOROUGHFARE STREET. Minor thoroughfares collect traffic from collector, sub collector, and local streets and carry it to the major thoroughfare system. Minor thoroughfares may be used to supplement the major thoroughfare system by facilitating movement of moderate volumes of traffic within and through urban areas and may also serve abutting property.

MIXED USE. Any development, or even a single building, that blends a combination of residential, commercial, cultural, institutional, or industrial uses, where those functions are physically and functionally integrated.

MODULAR HOME. A detached residential dwelling unit designed for transportation after off-site fabrication on flatbed trucks or trailers. At the site, a modular home must be placed on a permanent foundation, and heating and cooling systems, plumbing fixtures, and electrical appliances must be installed before being occupied.

MORE INTENSIVE USE. A use that will have a greater impact on the surrounding area than the previous use, including activities which generate more traffic, require more employees or service deliveries, or utilize more square footage than the previous use existing on the site.

MOTEL, HOTEL, CONDO. Any building, group of buildings, or portion of a building on same property containing six or more guest rooms intended or designed to be used, rented, or hired out to be occupied for sleeping purposes by guests.

MULTI-PHASE DEVELOPMENT. A development containing 25 acres or more that is submitted for site plan approval for construction to occur in more than one phase and is subject to a master development plan with committed elements showing the type and intensity of use of each phase.

MULTI-UNIT ASSISTED HOUSING WITH SERVICES. An assisted living residence in which hands-on personal care services and nursing services which are arranged by housing management are provided by a licensed home care or hospice agency, through an individualized written care plan. The housing management has a financial interest or financial affiliation or formal written agreement which makes personal care services accessible and available through at least one licensed home care or hospice agency. The resident has a choice of any provider, and the housing management may not combine charges for housing and personal care services. All residents, or their compensatory agents, must be capable, through informed consent, of entering into a contract and must not be in need of 24-hour supervision. Assistance with self-administration of medications may be provided by appropriately trained staff when delegated by a licensed nurse according to the home care agency's established plan of care. Multi-unit assisted housing with services programs are required to register with the Division of Facility Services and to provide a disclosure statement. The disclosure statement is required to be a part of the annual rental contract that includes a description of the following requirements:

- (1) Emergency response system;

(2) Charges for services offered;

(3) Limitations of tenancy;

(4) Limitations of services;

(5) Resident responsibilities;

(6) Financial/legal relationship between housing management and home care or hospice agencies;

(7) A listing of all home care or hospice agencies and other community services in the area;

(8) An appeals process; and

(9) Procedures for required initial and annual resident screening and referrals for services.

Continuing care retirement communities , subject to regulation by the Department of Insurance under Chapter 58 of the General Statutes, are exempt from the regulatory requirements for multi-unit assisted housing with services programs.

NAICS MANUAL, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM MANUAL. A book put out by the federal government which classifies establishments by the type of activity in which they are engaged. Uses listed in this chapter are classified according to ICS groupings.

NATIONAL GEODETIC VERTICAL DATUM (NGVD). As corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

NEW CONSTRUCTION.

(1) Any development occurring on property utilized for governmental, commercial, or residential subdivision purposes for which a building permit is required.

NEW MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets , and either final site grading or the pouring of concrete slabs) is completed on or after the effective date of this chapter.

NONCONFORMING LOT. A lot that met all legal requirements when it was platted or otherwise recorded, but which does not comply with the minimum lot area or minimum lot width requirements of this chapter, or a subsequent amendment hereto, for the zoning district in which it is located.

NONCONFORMING STRUCTURE. A building or structure that met all legal requirements when constructed but which does not comply with this chapter or amendment hereto.

NONCONFORMING USE. Any legally existing use that met all legal requirements when it was first established which fails to comply with the provisions of this chapter or a subsequent amendment hereto, for the zoning district in which it is located.

NONCONFORMITY. Any use, building , structure, or lot which was lawful at the time it was constructed or established but which fails to comply with one or more of the applicable regulations or standards of this chapter or a subsequent amendment hereto, for the zoning district in which it is located.

NONRESIDENTIAL DEVELOPMENT. All development other than residential development , agriculture, and silvaculture.

NURSERY SCHOOL. See **DAY CARE FACILITIES (CHILD).**

NURSING HOME. A facility, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the licensee. A **NURSING HOME** is a home for chronic or convalescent patients, who, on admission, are not as a rule, acutely ill and who do not usually require special facilities such as an operating room, X- ray facilities, laboratory facilities, and obstetrical facilities. A **NURSING HOME** provides care for persons who have remedial ailments or other ailments, for which medical and nursing care are indicated; who, however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision.

OFFICE. Any room, studio, clinic, suite or building wherein the primary use is the conduct of a business such as accounting, correspondence, research, editing, administration or analysis; or the conduct of a business by professionals such as engineers, architects, land surveyors, artists, musicians, lawyers, accountants, real estate brokers, insurance agents, dentists or physicians, urban planners, and landscape architects. For the purpose of this chapter, an **OFFICE** shall not involve manufacturing, fabrication , production, processing , assembling, cleaning, testing, repair, or storage of materials, goods, and products; or the sale and/or delivery of any materials, goods, or products which are physically located on the premises.

OFFICIAL MAPS OR PLANS. Any maps or plans officially adopted by the Board of Commissioners as a guide for the development of the Town of Swansboro, consisting of maps, charts, and/or texts.

OPEN SPACE. An area (land and/or water) generally lacking in manmade structures and reserved for the enjoyment of residents of a Planned Unit Development , cluster development , or other group project. Common open spaces may contain accessory structures , and improvements necessary or desirable for religious, education, non-commercial, recreational, or cultural uses.

OPERATING PERMIT. A permit issued by the Administrator to a manufactured home park or travel trailer park owner or operator upon the completion of a manufactured home park or travel trailer park which conforms to the requirements of this chapter.

OWNER. A holder of any legal or equitable estate in the premises, whether alone or jointly with others, and whether in possession or not.

OWNER'S ASSOCIATION. An organization of homeowners or property owners owning real property, residing, or operating a business within a particular subdivision or development whose major purpose is to maintain and provide community facilities, services, or land for common use of the residents or property owners of the subdivision or development .

PARAPET. A wall-like barrier at the edge of a roof, terrace, balcony, or other structure. Where extending above a roof, it may simply be the portion of an exterior wall that continues above the line of the roof surface, or may be a continuation of a vertical feature beneath the roof such as a fire wall or party wall.

PARK (PUBLIC). An area for recreation and/or parking owned and operated by a public entity.

PARK (SEMI-PUBLIC). An area for recreation and/or parking owned and operated by a housing complex, a property owner's association , or a non-profit organization.

PARK MODEL RECREATIONAL VEHICLE. A manufactured home typically built in accordance with the construction requirements of HUD National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §§5401 *et seq.*, but because of their limited size they are not required to be labeled by the HUD manufacturing housing program. Since these park model type units are not under the jurisdiction of the HUD program, they are labeled and sold as recreational vehicles.

PARKING AREA, AISLES. A portion of the vehicle accommodation area consisting of lanes providing access to parking spaces.

PARKING LOT. An area not within a building where motor vehicles may be stored for the purposes of temporary, daily, or overnight off-street parking.

PARKING SPACE, OFF STREET. For the purpose of this chapter, an off-street parking space shall consist of a space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room.

PEDDLER. Any person who transports goods from place to place and sells or offers for sale the goods, or who, without traveling from place to place, sells or offers for sale any goods from any vehicle or device; provided that any person who separates the acts of sale and delivery for the purpose of evading the provisions of this chapter shall be deemed a peddler.

PERSON. Any individual, firm, corporation, association, club, co-partnership, society, or any other organization.

PLANNED UNIT DEVELOPMENT. An office , institutional, governmental, residential, commercial, and/or projects involving a combination of these uses located on land under unified control, planned as a whole, and developed as a single development or in a definitely programmed series of units or stages of development according to comprehensive and detailed plans, with a program for the provision, operation, and maintenance of any areas, improvements , and facilities provided for the common use of the occupants or users of the development .

PLANNING AND DEVELOPMENT REGULATION JURISDICTION. The geographic area within which the town may undertake planning and apply its development regulations.

PLANNING BOARD. A body appointed by the Swansboro Board of Commissioners and the Onslow County Board of Commissioners to perform duties as specified in G.S. § 160D-301. The Onslow County Board of Commissioners shall only appoint extraterritorial jurisdiction members.

PLANT NURSERIES. Establishments primarily engaged in growing trees, shrubs, other plants, seeds, and bulbs are classified as agricultural. However, establishments for the sale of lawn and garden maintenance equipment and fertilizers are considered a non-agricultural use.

PLAT. A map or plan of a parcel of land which is to be, or has been subdivided, or any existing parcel of land.

PLAT, FINAL. The final map of all or a portion of a subdivision or site, showing the boundaries and location of lots , streets , easements , and any other requirements of § 152.351, which is presented for town approval and subsequent recordation in the Onslow County Register of Deeds Office.

PLAT, PRELIMINARY. A map indicating the proposed layout of the subdivision or site showing lots , streets , water, sewer, storm drainage, and any other requirements of § 152.351, which is presented for preliminary approval.

PORTABLE STORAGE CONTAINERS OR STRUCTURES. Any portable or removable container or structure, including by way of illustration but not limitation, transport trailers, cargo trailers, storage trailers, mobile temporary storage units, semi-trailers (whether with or without tandem axles and wheels), shipping containers, and any similar container or structure whether or not wheels, axles, and tongue have or has been removed and whether or not the container or structure has been placed on a foundation. The term **PORTABLE STORAGE CONTAINERS OR STRUCTURES** shall not apply to structures which have been manufactured to resemble permanent structures including by way of illustration but not limitation such structures as storage sheds, and garden sheds, even though they may be capable of being lifted or disassembled and removed from the property.

PRINCIPAL BUILDING. A building in which the principal use of the lot is conducted and said building is situated as related to the requirements of this chapter. In no way shall a camper or travel trailer be considered a **PRINCIPAL BUILDING**.

PRIVATE CLUB/LODGE. A structure or use owned or leased by a private club, offering membership use of the structure for social occasions. Examples could include Knights of Columbus, Masonic Lodges, Shriners, and the like. Such a club/lodge structure could be used for meeting rooms, classes, and social functions such as dances, weddings, receptions, and the like. This does not include a night club open to the general public.

PRIVATE DRIVE. A vehicular travelway not dedicated or offered for dedication as a public street , providing access to parking lot (s) for two or more principal buildings in a group housing development .

PRIVATE SEWER. A system which provides for collection and/or treatment of wastewater from a development , or property, and which is not maintained with public funds.

PRIVATE STREET. A vehicular travelway not dedicated or offered for dedication as a public street , but resembling a cul-de-sac or a local street by carrying traffic from a series of driveways to the public street system. The platting of such streets requires a Subdivision Streets Disclosure Statement in accordance with G.S. §136-102.6.

PRIVATE WATER. A system which provides for the supply and/or distribution of potable water for use by a development , project, or owner , and which is not operated or maintained by a government organization or utility district.

PROCESSING. Any operation changing the nature of material or material's chemical composition or physical properties; does not include operations described as fabrication .

PROPERTY CLEARING. The removal of regulated trees from undeveloped property for the purpose of timber sales, value enhancement, or other no developmental purposes.

PROTECTED AREA. The area adjoining and upstream of the critical area of the WS IV watershed. The boundaries of the protected area are defined as within five miles of and draining to the normal pool elevation of the reservoir or to the ridgeline of the watershed; or within ten miles upstream; and draining to the intake located directly in the stream or river or to the ridgeline of the watershed; or within ten miles upstream; and draining to the intake located directly in the stream or river or to the ridgeline of the watershed.

PROTECTED/REGULATED TREE. A tree measuring 18 inches at circumference-at-breast height.

PROTECTED TREE, APPLICANT. A developer , contractor or land-clearing agent desiring to remove or prune one or more protected trees .

PROTECTED TREE, CIRCUMFERENCE-AT-BREAST HEIGHT (CBH). The diameter circumference-at-breast height is the standard measure of tree size, and is a tree trunk diameter circumference measured in inches at a height of 4-1/2 feet above the ground. If a tree splits into multiple trunks below 4-1/2 feet, then each trunk is measured as a separate tree. A tree, which splits into multiple trunks above 4-1/2 feet, is measured as a single tree at 4-1/2 feet above ground. If the number is not a whole number round down to the whole number (example 18.8" CBH would become 18" CBH).

PROTECTED TREE, PERMIT. A signed application of the required permit(s) by the Administrator giving permission to act upon a request relating to clearing land or removing protected trees .

PROTECTED TREE, PRUNING. A process of removing limbs from a protected tree of 18" circumference measured at the tree circumference-at-breast height of 4-1/2 feet above the ground.

PROTECTED TREE, TAPED OR MARKED. A protected tree not permitted to be removed during construction and so marked with tape or a band of brightly colored orange paint and stipulated on the submit tree layout survey map to be included with the required permitting process.

PROTECTED TREE, TREE PROTECTION AND LANDSCAPING ADVISORY COMMITTEE (TPLAC). The Tree Protection and Landscaping Advisory Committee (TPLAC) is a committee

appointed by the Town Board of Commissioners to provide information and consultation on tree protection and landscaping advice to residents of the Town citizens, builders, contractors, developers , and assist the Town staff.

PUBLIC BUILDING. Public buildings shall include local, state, or federal government office facilities, including libraries and post offices .

PUBLIC CLUB/LODGE. A facility owned by local, county, state, or federal government which is utilized for meeting rooms, classes, and social functions such as dances.

PUBLIC SEWAGE DISPOSAL SYSTEM. An approved sewage disposal system serving two or more connections including county, municipal, and sanitary district sewage systems located and constructed according to specifications of the County Health Officer in consultation with the Division of Health Services - Department of Human Resources and the Division of Environmental Management - Department of Environment and Natural Resources.

PUBLIC STREET. A dedicated public right-of-way for vehicular traffic which: 1) has been accepted by the Town of Swansboro or the NCDOT for maintenance; or 2) is not yet accepted but in which the roadway design and construction have been approved under public standards for vehicular traffic.

PUBLIC WATER SUPPLY SYSTEM. An approved water supply system serving 15 or more connections including county, municipal, and sanitary district water systems designated to serve particular subdivisions at full development and constructed to specifications of the County Health Officer in consultation with the Division of Health Services - Department of Human Resources and the Division of Environmental Management - Department of Environment and Natural Resources.

QUASI-JUDICIAL DECISION. A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permit s, certificates of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board .

QUEUING. To form in or be part of a line or file while waiting to be served.

RADIO/TELEVISION TRANSMITTING. Any public or private facility which sends out radio or television signals by electromagnetic waves.

RECREATIONAL VEHICLE PARKS. Any single parcel of land upon which two or more recreational vehicles, occupied for sleeping purposes, are located regardless of whether or not a charge is made for such purposes. **RECREATIONAL VEHICLE PARKS** are referred to in this chapter as **RV PARK(S)**.

REDEVELOPMENT. To develop a building site again. To restore, revitalize and/or renovate buildings , building sites , and neighborhoods. For the purposes herein, it shall also mean repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the "start of construction " of the improvement .

REFERENCE FEATURE. The receding edge of a bluff or eroding frontal dune or, if such a feature is not present the normal highwater line or the seaward line of permanent vegetation if highwater line cannot be identified.

REHABILITATION FACILITY. A public or private inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent, professional supervision.

REMEDY A VIOLATION. To bring the structure or other development into compliance with state or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development .

REPETITIVE LOSS. Flood-related damages sustained by a structure on two separate occasions during a ten year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25% of the market value of the structure before the damages occurred.

RESERVATION. An obligation shown on a plat to keep property free from development for a stated period of time or indefinitely. It is not a dedication nor a conveyance.

RESIDENTIAL CHILD-CARE FACILITY. A staffed premise with paid or volunteer staff where children receive continuing full-time foster care .

RESIDENTIAL DEVELOPMENT. Buildings for residence such as attached and detached single-family dwellings , apartment complexes, condominiums , townhouses , cottages, and the like, and their associated outbuildings such as garages, storage buildings , gazebos, and the like, and customary home occupations .

RESIDENTIAL FAMILY CHILD CARE HOME. A use program or arrangement conducted in and about a residence, in which no more than two children less than 13 years old, who do not reside where the care is provided, receive care on a regular basis of at least once a week for more than four hours but less than 24 hours per day from the resident of such property, the resident being a person or persons other than their guardians or full-time custodians, and being persons not related to them by birth, marriage, or adoption. Provided, however, that the exceptions enumerated in G.S. §110-86 as it is presently written or may be hereafter amended are hereby incorporated herein by reference and similarly excluded from this definition.

RETAIL PLANT NURSERIES/LAWN & GARDEN STORES. Establishments primarily engaged in selling trees, shrubs, other plants, seeds, bulbs, mulches, soil conditioners, fertilizers, pesticides, garden tools, and other garden supplies to the general public. These establishments primarily sell products purchased from others.

RETAIL STORE. A single building , property, activity, or portion thereof, the principle use or purpose of which is the sale of goods, products, or materials directly to the consumer. This includes, but is not limited to: antique stores, apparel and accessory sales, art gallery/sales, automobile parts and accessory sales, automobile/trailer/truck sales and rental, boat and accessories (retail sales), building supplies, bulk mail and packaging sales, carpet and rug sales, consignment shop, electrical appliance sales and service, floor covering sales, food sales , fuel sales, glass, groceries and convenience stores , jewelry store, paint and wallpaper sales, paper product sales, pet stores, pharmacies, plant sales, recreational vehicle sales, retail fish market, soap and cosmetic sales, sporting goods store, variety, gift and hobby supply sales, video rental. It does not include restaurants, service establishments, or amusement establishments.

REVERSE FRONTAGE LOT. A continuous lot of the same depth as the width of a block , accessible from only the minor of the two streets upon which it fronts.

RIGHT-OF-WAY. An interest in land to the town which provides for the perpetual right and privilege of the town, its agents, franchise holders, successors, and assigns to construct, install, improve, reconstruct, remove, replace, inspect, repair, maintain, and use a public street , including related and customary uses of street rights-of-way such as sidewalks, bike paths, landscaping, mass transit facilities, traffic control, traffic control devices and signage, power lights, sanitary sewer, storm water drainage, water supply, cable television, electric power, gas, and telephone transmission and related purposes in, upon, over, below, and across the rights-of-way.

SALVAGE/JUNKYARD. The use of more than 600 square feet of any lot which is maintained, operated, or used for storing, keeping, buying, or selling junk regardless of the length of time that junk is stored or kept, or for maintenance or operation of an automobile graveyard . Salvage/ junk shall not be stacked/stored to a level higher than seven feet above ground level.

SALVAGE OPERATION. The reclamation, dismantling, or storage of pre-used commodities, junk , and similar material for the purposes of resale, processing , distribution, or deposition.

SANITARY LANDFILL. A facility for disposal of solid waste on land in a sanitary manner in accordance with Article 9 of Chapter 130A and as amended. (G.S. §130A-294, as amended.)

SCHOOL. Any public or private institution for teaching.

SEPTIC TANK SYSTEM. A ground absorption sewage treatment and disposal system consisting of a septic tank and a nitrification field, necessary pipelines, conduits, pump stations, and other appurtenances required for proper collection, distribution, treatment, disposal, operation, and performance, or any other system approved by the Health Department.

SERVICE STATION. A building or lot where gasoline, oil, grease, and automotive accessories are supplied and dispensed to a motor vehicle trade.

SETBACK. The distance between the minimum building line and the street right-of-way line; and where no street right-of-way is involved, the property line shall be used in establishing the setback.

SETBACK, FRONT. Any setback from a street or road.

SETBACK, INTERIOR. A setback from any property line not alongside a street .

SETBACK, REAR. A setback from an interior property line lying on the opposite side of the lot from the front street setback .

SETBACK, SIDE. Any interior property line setback other than a rear setback or front setback .

SETBACK, SIDE CORNER. A street setback on a corner lot other than a front setback . For purposes of this chapter, the Administrator shall determine which setback is the front setback .

SHEAR WALLS. Generally reinforced concrete or reinforced concrete masonry walls that are positioned in the building at grade level to assist in carrying the loads of the building to the footing. (Ref. FEMA, *Elevated Structures and Coastal Construction Manual*).

SHOPPING CENTER. A development containing retail stores , restaurants, service establishments, and/or other similar permitted uses that are planned, organized, and managed to function as a whole. A **SHOPPING CENTER** has common parking, pedestrian movement, architectural elements, ingress and egress, signage, and landscaping. A **SHOPPING CENTER** is used or is intended to be used for the sale of goods and services to the public.

SIGHT DISTANCE AREA, HORIZONTAL. The area formed by extending lines from the point of intersection of intersecting streets along the centerline of such streets for a distance of 40 feet and connecting the ends of such lines by a straight line to form the base for a triangle. Each of the two sides of the triangle will be 40 feet in length.

SIGHT DISTANCE AREA, VERTICAL. The area between three feet and ten feet above the horizontal area measured from the level of the point of intersection of the centerlines of the intersecting streets .

SIGHT DISTANCE EASEMENT. An easement which grants to the Town of Swansboro the right to maintain unobstructed view across property located at a street intersection.

SIGHT TRIANGLE. A required sight line at all intersections whether road, highway, street , or driveway which shall remain clear of obstructions.

SIGN, ABANDONED. A sign shall be considered abandoned when the business or other activity or firm which such sign advertises is no longer in operation, or does not have a current business license in effect.

SIGN, ANIMATED. Any sign which flashes, revolves, rotates, or swings by mechanical means, or which uses a change of lighting to depict action, or to create a special effect or scene.

SIGN, AREA OF. Sign area shall be computed by the smallest square, triangle, rectangle, circle, or combination thereof, which will encompass the entire sign including lattice work, frame, or supports incidental to its decoration. In computing the area, only one side of a double-face sign structure shall be considered. Unless copy is not the same on both sides, then both sides should be calculated as area of sign.

SIGN, AWNING. A structure, as of canvas, stretched over a frame as a covering from weather which is extended over a window(s). This includes any skirt attached to the awning.

SIGN, BANNER. A temporary sign of light weight fabric or similar material which is rigidly mounted to a pole or a building by a rigid frame at two or more edges. National, state, municipal, the official flag of any institution or business, or "open" flags shall not be considered banners.

SIGN, BILLBOARD (OFF-PREMISES). Any sign supported by uprights or other means and is permanent which advertises an establishment, service, commodity, good, or entertainment sold or offered on premises other than where the sign is located.

SIGN, CANOPY. Any sign which is a part of or attached to a canopy or other fabric-like or plastic protective structure which is extended over a door(s) or entranceway. This includes any skirt attached to the canopy. A marquee is not a canopy.

SIGN, CONSTRUCTION. A sign on a construction site during the period of construction on which is printed or written the name of the owner , developer , contractor, architect, planner, engineer, or development title.

SIGN, COPY. All words, letters, numbers, figures, characters, art work symbols, or insignia that are used on a display surface area .

SIGN, DIRECTIONAL. A sign used to direct a person or persons toward a specific place, event, or activity located on the same property as the directional sign.

SIGN, DIRECTORY. A sign listing the types of businesses or other activities located within a complex, a building , a group of buildings , or primary business district.

SIGN, ELECTRONICALLY CONTROLLED MESSAGE. A sign on which the copy changes automatically on a lampbank, such that the message or display does not run continuously in the travel mode. These signs are not considered flashing signs .

SIGN, FLASHING. A type of animated sign which contains an intermittent, blinking, scintillating, or flashing light source , or which includes the illusion of intermittent or flashing light, or an externally mounted intermittent light source . An electronic changeable copy sign is not a flashing sign.

SIGN, FREESTANDING. A sign that is attached to, erected on, or supported by a structure such as a pole, mast, or frame and that is not itself an integral part of or attached to a building or other structure having a principal function other than the support of a sign.

SIGN, GOVERNMENTAL. Any sign erected by or on behalf of a governmental body to post a legal notice, identify public property, convey public information, and direct or regulate pedestrian or vehicular traffic.

SIGN, HEIGHT. The vertical distance measured from the ground elevation where the sign is located, to the highest point of the sign except as follows: when the ground elevation is different from the

elevation of an adjacent road, the height of a sign shall be measured from the road elevation of the adjacent road at the edge of the pavement.

SIGN, HOME OCCUPATION. A sign used to advertise a business conducted entirely within a dwelling or its accessory building and carried on by the resident(s).

SIGN, MARQUEE. Any permanent roof-like structure projecting beyond a building or extending along and projecting beyond the wall of the building , generally designed and constructed to provide protection from the weather.

SIGN, MOBILE. A sign not exceeding 80 square feet of sign area which may be moved from one location to another, is not permanently affixed to the ground, and is differentiated from a "portable sign " in that it may be equipped for transportation by motor vehicle or other mechanical means. Trailer signs are considered to be **MOBILE SIGNS**.

SIGN, MONUMENT. A type of freestanding sign that is detached from a building and having a support structure that is a solid-appearing base constructed of a permanent material, such as concrete block or brick.

SIGN, MULTIPLE USES. A sign stating the name of a group development and the tenants within the development .

SIGN, ON-PREMISES. A sign which publicizes and directs attention to a profession, commodity, activity, product, service or entertainment conducted, sold or offered upon the premises where such sign is located.

SIGN, POLITICAL CAMPAIGN. Any sign announcing the names of candidates for public office or relating to national, town, county, or state referenda or other political issues.

SIGN, PORTABLE. Any sign designed to be moved without mechanical means.

SIGN, PROJECTING. Any sign which is end mounted or otherwise attached to an exterior wall of a building which forms an angle with said wall.

SIGN, REAL ESTATE. A sign which advertises the sale, rent, or lease of property.

SIGN, ROOF. A sign that is erected, constructed, or maintained above the roof of any building .

SIGN, SAFETY. A sign warning the general public of a potentially hazardous condition.

SIGN, SUBDIVISION. A sign identifying either a planned residential development (PRD) or a planned unit development (PUD) per town ordinance.

SIGN, TEMPORARY. A display, informational sign, banner , or other advertising device constructed of cloth, canvas, fabric, wood, or other nondurable material, with or without a structural frame (including banners), and intended for a limited period of display, including decorative displays for holidays or public demonstrations.

SIGN, WALL. A sign which is attached to a wall or facade of a building or canopy.

SIGN, WINDOW. Any sign which is attached to the outside of any window which advertises a product, service, announcement, or special sales of the business. The business name, whether inside or outside of window, will be classified as a window sign.

SITE PLAN. A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review. A site plan approval based solely upon

application of objective standards is an administrative decision and a site plan approval based in whole or in part upon the application of standards involving judgement and discretion is a quasi-judicial decision . A site plan may also be approved as part of a conditional zoning decision.

SITE-SPECIFIC VESTING PLAN. A plan describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. The plan may be in the form of, but not be limited to, any of the following plans or approvals: a planned unit development plan, a subdivision plat, a site plan , a preliminary or general development plan, a special use permit , a conditional zoning, or any other development approval as may be used by the town. Unless otherwise expressly provided, the plan shall include the approximate boundaries of the site; significant topographical and other natural features affecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways.

SIXTY (60) YEAR SETBACK. A distance equal to 60 times the average annual long-term recession rate at a site, measured from the reference feature .

SMALL WIRELESS FACILITY. A wireless facility where 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. Other wireless equipment associated with the facility shall have a cumulative volume of no more than 28 cubic feet.

SPECIAL USE PERMIT. 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 judgement 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.

SPIRE. A tall pyramidal, polygonal, or conical structure (such as a church steeple) rising from a tower, turret, or roof and terminating in a point.

SPOIL. Earth, rock, or other materials excavated or dredged from a drainage course.

STORAGE. The deposition of commodities or items for the purposes of future use or safekeeping.

STORAGE, SELF-SERVICE. A building consisting of individual, small, self-contained units that are leased or owned for the storage of goods and wares.

STORM DRAINAGE FACILITIES. The system of inlets, conduits, channels, ditches, and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

STORMWATER RUNOFF. The direct runoff of water resulting from precipitation in any form.

STREET. A public or private thoroughfare which affords access to abutting property and is recorded as such in the Office of the Register of Deeds.

STREET, PRIVATE. A dedicated or undedicated private right-of-way which affords access to abutting properties and requires a subdivision streets disclosure statement in accordance with G.S. §136-102.6.

STREET, PUBLIC. A dedicated and accepted public right-of-way which affords the principal means of access to abutting properties for vehicular traffic.

STREET, RIGHT-OF-WAY. A strip of land occupied or intended to be occupied by a travelway for vehicles and also available, with the consent of the appropriate governmental agency, for installation and maintenance of sidewalks, traffic control devices, traffic signs, street name signs, historical marker

signs, water lines, sanitary sewer lines, storm sewer lines, gas lines, power lines, and communication lines.

STRIP CENTER. A retail complex consisting of stores or restaurants in adjacent spaces in one long building , typically having a narrow parking area directly in front of the stores fronting a highway.

SUBDIVIDER. Any person , firm, corporation, or duly authorized agent who subdivides or develops any land deemed to be a subdivision as herein defined.

SUBDIVISION. The division of land for the purpose of sale or development as specified in G.S. § 160D-802:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the town as shown in its subdivision regulations;
- (2) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors;
- (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal or exceed the standards of the town, as shown on its subdivision regulations; and
- (5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under G.S. Ch. 29.

SUBSTANTIALLY IMPROVED EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. Where the repair, reconstruction, rehabilitation, or improvement of the streets , utilities, and pads equal or exceeds 50% of the value of the streets , utilities, and pads before the repair, reconstruction, or improvement commenced.

SWIMMING POOL. Any structure, basin, chamber, hot tub, spa, or tank containing an artificial body of water having a depth at any point of more than 18 inches and intended for swimming, diving, or recreational bathing.

TECHNICAL REVIEW COMMITTEE. A committee consisting of the town's administrative staff to assist and advise the full membership of the Planning Board in all matters relating to the development . The committee may expand to include State and local agencies such as the NCDOT and ONWASA for review of water and sewer infrastructure.

TELECOMMUNICATION TOWER, CO-LOCATION. The location of multiple antennas on a single telecommunication tower.

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 is primarily assembled at a location other than its site of installation, is limited to one occupant who shall be the mentally or physically impaired person, has no more than 300 gross square feet, and complies with all applicable provisions of the State Building Code and G.S. § 143-139.1(b).

TEMPORARY RESIDENTIAL STORAGE UNITS. Any portable or removable container, including by way of illustration but not limitation, storage trailers and mobile temporary storage units, intended to be used for a period not to exceed 30 days, unless a 30 day extension is granted by the Administrator . The term "portable storage containers " shall not apply to structures which have been manufactured to resemble permanent structures including by way of illustration but not limitation such structures as

storage sheds and garden sheds, even though they may be capable of being lifted or disassembled and removed from the property.

THOROUGHFARE, MAJOR. Consist of interstate, other freeway and expressway links, and major streets that provide for the expeditious movement of volumes of traffic within and through urban areas.

THOROUGHFARE, MINOR. Important streets in the urban system and perform the function of collecting traffic from local access streets and carrying it to the major thoroughfare system by facilitating a minor through traffic movement and may also serve abutting property.

TOWNHOUSE. A single-family dwelling unit constructed in a series or group of attached units with property lines separating such units. The minimum number of **TOWNHOUSES** attached to each other shall be two and the maximum number shall be six.

TOXIC SUBSTANCE. Any substance or combination of substances (including disease causing agents) which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their offspring or other adverse health effects.

TRACT. A piece of land whose boundaries have been described or delineated by a legal instrument or map recorded in the office of the Onslow County Register of Deeds.

TRANSIENT VENDOR. Any person who engages in a temporary business of selling and delivering goods and who, for this purpose, uses or occupies any building or premises; provided, that no person shall be relieved from complying with the provisions of this chapter merely by conducting a transient business in association with any permanently established merchant.

TRANSPORTATION NETWORK. For the purposes of developing a Traffic Impact Study, the **TRANSPORTATION NETWORK** is considered the link between streets, roads, highways, non-highway systems such as pedestrian and bicycle travel ways, transit systems and all modes of transportation that moves goods, people and services located within the Town of Swansboro and ETJ. The network shall include but not be limited to private, town and NCDOT maintained infrastructure.

TREE, REGULATED. The subsurface roots, crown, and trunk of:

(1) Any self-supporting woody perennial plant such as a large shade or pine tree, which usually has one main stem or trunk, and has a measured caliper as follows:

(a) Hardwood tree - eight inches, such as oak, maple, and the like;

(b) Pine tree - 12 inches, such as a long leaf pine;

(2) Any small flowering tree, such as dogwood, with a measured caliper of at least four inches; and

(3) Any tree having several stems or trunks, such as crepe myrtle, and at least one defined stem or trunk with a measured caliper of at least three inches.

USE-BY-RIGHT. A use which is listed as an unconditionally permitted activity in this chapter.

USE, PRINCIPAL. The purpose for which land or structures thereon are designed, arranged, or intended to be occupied or used; or for which it is occupied, maintained, rented, or leased.

USE, SPECIAL. A use permitted in a zone only after specific findings by the Board of Commissioners.

USEABLE WALL AREA. The frontal exterior wall surface area of a building, tenant space, or structure that excludes doors.

VEGETATION. Evergreen trees, including but not limited to white pine, evergreen shrubs, red tipped photinia, wax myrtle, or other plants which reach a height of at least six feet at maturity.

VEHICLE STORAGE LOT. A lot for the purpose of outdoor commercial storage of boats on trailers, personal watercraft on trailers, camper trailers, travel trailers, and other similar recreational vehicles, not to include "temporary storage units" and not to include self-propelled vehicles designed for operation on land.

VESTED RIGHT. The right to undertake and complete the development and use of property under the terms and conditions of an approval secured as specified in G.S. § 160D-108 or under common law.

VETERINARY OFFICE/HOSPITAL. A treatment facility for small companion animals. Overnight indoor housing of small companion animals shall only be allowed for short term medical monitoring.

WAREHOUSE. A building or compartment in a building used and appropriated by the occupant for the deposit and safekeeping or selling of his own goods at wholesale , and/or for the purpose of storing the goods of others placed there in the regular course of commercial dealing and trade to be again removed and reshipped.

WAREHOUSE, MINI. Small cubicles linked together in a single building or row of buildings for the purpose of renting storage space, usually on a temporary basis, and shall in this chapter be considered as "storage , warehouse ".

WATER DEPENDENT STRUCTURE. Any structure for which the use requires access to or proximity to or siting within surface waters to fulfill its basic purpose, such as boat ramps at houses, docks, and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots , and commercial boat storage areas are not **WATER DEPENDENT STRUCTURES**.

WATER TABLE (ARCHITECTURAL). A masonry architectural feature that consists of a projecting course that deflects water running down the face of a building away from lower courses or the foundation. A **WATER TABLE** may be found near the base of a wall or at a transition between materials, such as from stone to brick.

WEDDING CHAPEL. A business other than a legal court or church principally for the performance of weddings and which is licensed for that purpose.

WHOLESALE. The sale of a commodity for resale to the public for direct consumption.

WIRELESS TELECOMMUNICATION FACILITIES. A wireless support facility including, but not limited to, radio and television transmission towers or similar utilities, microwave towers, and mobile telephone or radio towers, and their associated equipment to include radio transceivers, antennas, wires, coaxial or fiber- optic cable, and regular and backup power supplies. This term shall not include radio transmission facilities for use by ham radio operators or two-way local radio facilities for business or governmental purposes that are under 100 feet in height and that, at a height of 50 feet above the base, have a maximum horizontal measurement of 18 inches nor shall it include any tower erected by a public authority for public safety or emergency service communication purposes.

YACHT, SAILING, AND FISHING CLUBS. Private clubs whose membership is composed of persons with a specific interest in boating, sailing, fishing, or similar marine-related activities.

YARD. A required open space other than a court, on a lot , unoccupied and unobstructed from the ground upward except as otherwise provided in this chapter.

YARD, FRONT. An open space on the same lot with a principal building , a yard extending the full width of the lot and situated between the front line of the lot and the building projected to the side lines of the lot . Where a lot abuts more than one street , the Administrator shall determine the **FRONT YARD** for purposes of this chapter.

YARD, REAR. An open space on the same lot with the principal building , a yard extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the side line of the lot .

YARD, REQUIRED. Refer to the definition of **YARD**.

YARD, SIDE. An open space on the same lot with the principal building , a yard situated between the building and the side lot line , and extending from the rear line of the front yard and the front line of the rear yard .

YARD, STREET. Any front or side yard which is adjacent to a public or private street right-of-way line.

ZERO LOT LINE DWELLING. A detached single-family dwelling on a lot with a side yard requirement on one side of the lot .

ZONING COMPLIANCE. A certification by the Administrator or his authorized agents that a course of action to use or occupy a tract of land or a building , or to erect, install or alter a structure, building or sign situated in the jurisdiction of the town, fully meets the requirements of this chapter.

ZONING MAP AMENDMENT OR REZONING. An amendment to a zoning regulation to change the zoning district that is applied to a specified property or properties. The term does not include the initial adoption of a zoning map by a local government or the repeal of a zoning map and re-adoption of a new zoning map for the entire planning and development regulation jurisdiction , nor updating the zoning map to incorporate amendments to the names of zoning districts made by zoning text amendments where there are no changes in the boundaries of the zoning district or land uses permitted in the district. It does not include the initial application of zoning when land is added to the territorial jurisdiction of a local government that has previously adopted zoning regulations, as well as the application of overlay zoning districts or conditional zoning districts.

ZONING PERMIT. A permit issued by the Administrator or his authorized agents that permits the applicant to use or occupy a tract of land or a building ; or to erect, install or alter a structure, building or sign situated in the jurisdiction of the town that fully meets the requirements of this chapter.

(Ord. 2005-O3, passed 3-15-2005; Am. Ord. 2005-O8, passed 7-19-2005; Am. Ord. passed 9-20-2005; Am. Ord. passed 8-14-2006; Am. Ord. passed 3-18-2008; Am. Ord. 2010-O6, passed 2-16-2010; Am. Ord. 2010-O14, passed 5-18-2010; Am. Ord. passed 6-15-2010; Am. Ord. 2010-O20, passed 7-20-2010; Am. Ord. passed 8-17-2010; Am. Ord. passed 1-18-2011; Am. Ord. passed 6-21-2011; Am. Ord. passed 7-19-2011; Am. Ord. passed 12-18-12; Am. Ord. 2013-O9, passed 3-19-2013; Am. Ord. 2013-O13, passed 5-21-2013; Am. Ord. 2013-O15, passed 7-16-2013; Am. Ord. 2014-O9, passed 4-15-2014; Am. Ord. passed 7-15-2014; Am. Ord. passed 5-24-2016; Am. Ord. passed 7-22-2016; Am. Ord. passed 7-26-2016; Am. Ord. 2016-O11, passed 9-13-2016; Am. Ord. 2017-O1, passed 1-10-2017; Am. Ord. passed 2-28-2017; Am. Ord. passed 4-25-2017; Am. Ord. 2018-O1, passed 1-9-2018; Am. Ord. 2019-O4, passed 4-23-2019; Am. Ord. 2020-O3, passed 6-8-2020; Am. Ord. 2020-O6, passed 8-10-2020; Am. Ord. 2021-O3, passed 5-24-2021; Am. Ord. 2021-O7, passed 7-26-2021; Am. Ord. 2021-O8, passed 8-23-2021; Am. Ord. 2022-O6, passed 4-11-2022; Am. Ord. 2022-O4, passed 5-23-2022)

TOWN OF SWANSBORO, NORTH CAROLINA

CODE OF ORDINANCES

2023 S-19 Supplement contains:

Local legislation current through Ord. 2023-O11, passed 7-24-23; and

State legislation current through 2023 North Carolina Legislative Service, Pamphlet No. 4

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§ 152.180 NOTES TO THE TABLE OF PERMITTED/SPECIAL USES.

(A) *Note 1. Conditional Zoning Districts .*

(1) Conditional zoning districts are zoning districts in which the development and use of the property is subject to site-specific conditions imposed as part of the legislative decision creating the zoning district.

(2) A conditional zoning district allows particular uses to be established only in accordance with specific standards and conditions pertaining to each individual development project. Some land uses are of such a nature or scale that they have significant impacts on both the immediately surrounding area and on the entire community. There are also circumstances in which a general district designation allowing such a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of these regulations, the adopted land use plan, adopted area plans and other long range plans. The review process established in this division provides for the accommodation of such uses by a reclassification of property into a conditional zoning district , subject to specific conditions which ensure compatibility of the use with the use and enjoyment of neighboring properties. A conditional zoning district is generally not intended for securing early zoning for a proposal, except when that proposal is consistent with an approved district or area plan or the proposal can demonstrate that public infrastructure needed to serve the development will be made available within a reasonable time period. A separate master plan approval process as described in this division may be utilized only when a proposal is a component of a development project that is the subject of a development agreement between Town of Swansboro and a developer pursuant to G.S. §§ 160D-1001 through 160D-1012.

e. Encouraging quality urban design and environmentally sensitive development by allowing increases in base densities when the increases can be justified by superior design or the provision of additional amenities such as public and/or private open space .

4. In return for greater flexibility in site design requirements, flexible lot developments are expected to: deliver exceptional quality community designs that preserve critical environmental resources; provide above- average open space amenities, incorporate creative design in the layout of buildings, open and circulation; coordinate and unify design elements of the project, including building materials, signage and architectural compatibility; assure compatibility with surrounding land uses and neighborhood character; and provide greater efficiency in the layout and provision of roads, utilities and other infrastructure. The Conditional Zoning District process shall not be used as a means of circumventing the town's adopted zoning and development regulations for routine developments .

5. *Uses allowed.* Flexible lot development may contain any or all of the uses specified in the approved Master Plan, provided the uses are consistent with the town's Land Use Plan. A wide range of uses is possible in flexible lot development , and the specific uses allowed may be different in each development approved through the Conditional Zoning District process. All uses that are set out in an approved Master Plan shall be treated as permitted uses within the development, except that uses which are prohibited shall not be permitted within the development.

6. *Certain mixed uses allowed.*

a. Mixed use developments are encouraged and allowed in flexible lot developments through the Conditional Zoning District process only as specified in this chapter. Mixed use development may occur by having retail or commercial uses located in the same building (e.g., retail or office space on ground floor , and residential above) or by having non-residential uses located in different buildings sited on the same lot or parcel (e.g., office building located on the same parcel as a freestanding residential structure).

b. Mixed use developments shall be designed, located and oriented on the site so that non-residential uses are directly accessible to residents of the development . For the purposes of this section, directly accessible shall mean pedestrian and vehicular access by way of improved sidewalks, paths, greenways and streets that do not involve leaving the development or using a major thoroughfare . Directly accessible does not necessarily mean that non-residential uses need to be located in a particular location, but that the siting of the uses considers the accessibility of the residential component of the development to the non-residential use.

7. Flexible lot development approved through a Conditional Zoning District shall be subject to all applicable overlay district regulations, all applicable environmental regulations, and all applicable general regulations, unless otherwise waived or modified by the town in the terms of the approved master plan. In case of any conflict between a specific regulation set forth in this chapter and the UDO and town code of ordinances, the regulation in this section shall apply unless otherwise expressly allowed.

8. Notwithstanding division (A)(2)(b)7. of this section, in no case shall the Board of Commissioners waive or modify the following standards for a proposed flexible lot development :

a. All overlay district requirements and standards;

b. Ownership requirements for any open space , buffers or streetscapes unless otherwise permitted in the UDO; Stormwater control and erosion and sedimentation control requirements;

9. *Other applicable standards (minimum).*

a. *Emergency access.* Any building established as part of a flexible lot development which cannot properly be served by emergency or service vehicles from an abutting street shall be made accessible to the vehicles by a paved driveway having a roadbed width of not less than 20 feet, exclusive of parking spaces.

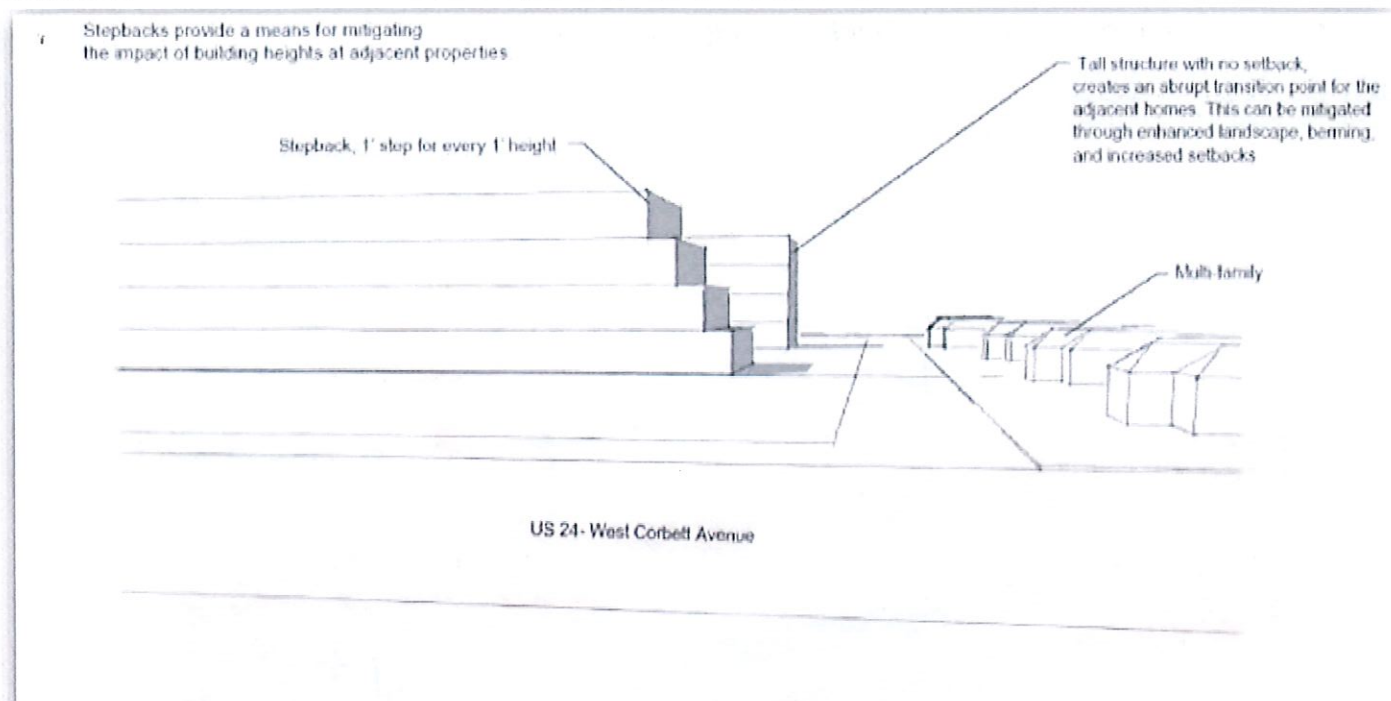
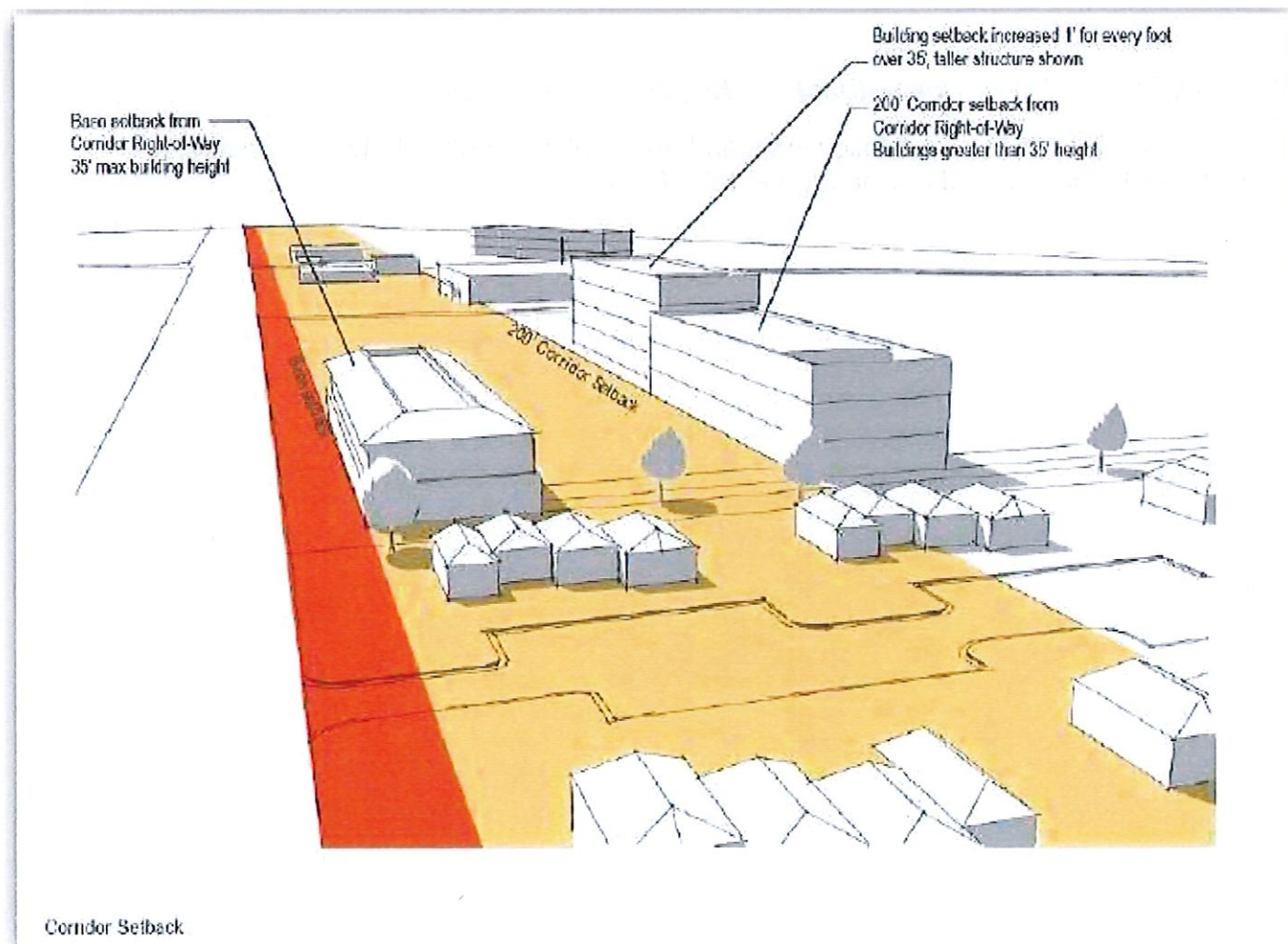


Figure 152.180.2 (Use of Stepbacks for Height Modification)

ii. *Corridor setback*. In requesting the use of Flexible lot development along the Highway 24/Corbett Street corridor, no structure within 200 feet from the corridor right-of-way shall exceed the 35 foot town-wide height requirement. See Figures 152.180.3 and 152.180.4.



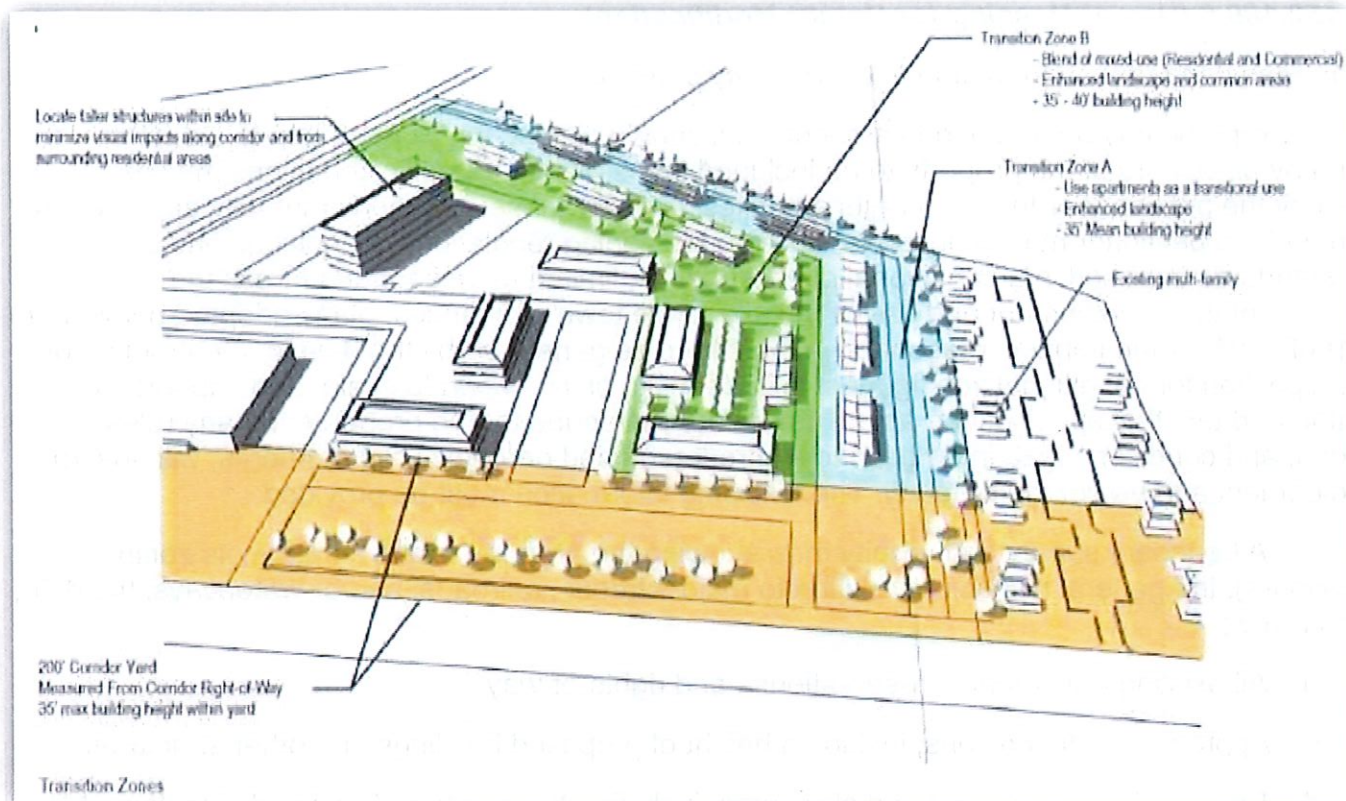
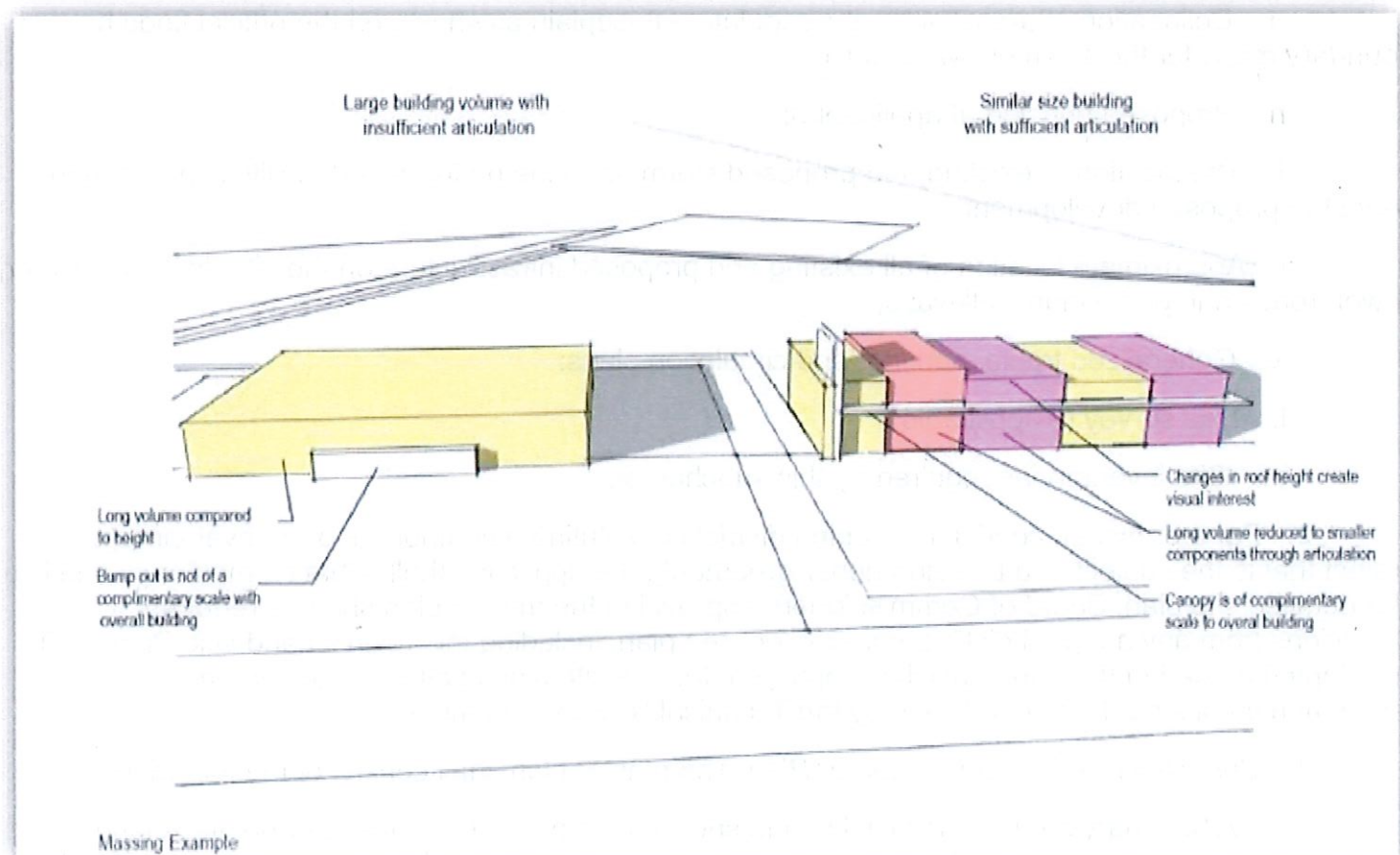


Figure 152.180.5 (Use of Transition Zones for Height Modification)

iv. *Massing.* A single, large, dominant building mass shall be avoided. Where large structures are required, mass should be broken up through the use of setbacks, projecting and recessed elements, and similar design techniques. See Figure 152.180.6.



b. A conceptual land area plan showing the location of all major land use types and the proposed maximum square footage for each use.

c. Maximum building heights shall be delineated on the conceptual land area plan.

d. The plan shall indicate all external access points.

e. The plan shall indicate proposed buffers.

f. Generalized open space areas and stormwater facilities shall be indicated.

g. The applicant shall submit a text narrative indicating how the proposed plan conforms to conditions of any adopted area plan, corridor plan, or other long-range plan, including town's adopted Land Use Plan.

h. A traffic impact analysis shall be submitted based on the generalized land uses proposed. Maximum trip generation impacts shall be established as part of the plan.

i. Conditions in the Master Plan. In some cases, the ability to implement or strictly follow the approved Master Plan conditions can be problematic (i.e., conditions requiring specimen trees to be preserved, but the trees have subsequently died due to natural causes following the approval). In those cases, the Town Manager shall implement the condition in a way that most closely meets its original intent.

4. *Submittal requirements - Site Plan.* Once the conditional zoning and master plan have been approved, the applicant may submit a site plan for approval in accordance with this article. The site plan shall be accompanied by the following information:

a. The applicant shall submit a text narrative indicating how the proposed site plan conforms to the adopted master plan.

b. For phased projects, the submitted site plan shall show the generalized location of vehicular and pedestrian accesses to additional phases.

5. The Town Manager has the authority to waive any application requirement where the type of use or scale of proposal makes providing that information unnecessary or impractical.

6. In the course of evaluating the application, the Town Manager, Planning Board or Board of Commissioners may request additional information from the applicant. This information may include the following:

a. Proposed screening, buffers and landscaping over and above that required in §§ 152.252 through 152.544, as well as proposed treatment of any existing natural features;

b. Existing and general proposed topography, at two foot contour intervals;

c. The location of significant trees on the subject property;

d. Scale of buildings relative to abutting property and/or general development area;

e. Building elevations and exterior features of proposed development ;

f. Proposed number and location of signs;

g. Any other information needed to demonstrate compliance with this subchapter;

7. The site plan and any supporting text shall constitute part of the petition for all purposes under this subchapter.

(d) *Required community meetings before public hearing.* Before a public hearing may be held on a petition for a conditional zoning district , the petitioner must file in the office of the Town Clerk a written report of at least two community meetings held by the petitioner. The community meeting shall

2. If a petition is approved, only those uses and structures indicated in the approved petition and site plan or land use area indicated on the master plan shall be allowed on the subject property. A change of location of the structures may be authorized pursuant to subsection division (A)(2)(h) of this section, Alterations to Approval. The changes to the site plan layout will not increase the number of structures.

3. Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the zoning maps by the appropriate district designation. The zoning shall be identified by the same designation as the underlying general district followed by the letters "CZ" (for example "B-2 (CZ)").

4. No permit shall be issued for any development activity within a conditional zoning district except in accordance with the approved petition and site plan for the district.

5. Any violation of the approved site plan or any rules, regulations and conditions for the district shall be treated the same as any other violation of this chapter and shall be subject to the same remedies and penalties as any such violation.

6. The Town Manager shall have the delegated authority to approve minor amendments to an approved plan that do not involve a change in the uses permitted or the density of the overall development. The Town Manager shall have no authority to amend the conditions of approval of a petition. The standard for approving or denying such a requested change shall be that the change does not significantly alter the plan and that the change does not have a significant impact on abutting properties. Any decision must be in writing stating the grounds for approval or denial.

7. The Town Manager, however, shall always have the discretion to decline to exercise the delegated authority either because he or she is uncertain about approval of the change pursuant to the standard or because a rezoning petition for a public hearing and Board of Commissioners consideration is deemed appropriate under the circumstances. If the Town Manager declines to exercise this authority, then the applicant can only file a rezoning petition for a public hearing and Board of Commissioners decision.

8. Any request for an administrative amendment shall be pursuant to a written letter, signed by the property owner, detailing the requested change. Upon request, the applicant must provide any additional information that is requested. Upon an approval of an administrative amendment, the applicant must file a sufficient number of copies of a revised site plan as deemed necessary by the Town Manager.

(h) *Alterations to approval.* Except as provided in division (A)(2)(I) of this section, changes to an approved petition or to the conditions attached to the approved petition shall be treated the same as amendments to these regulations or to the zoning maps and shall be processed in accordance with the procedures in this article. Any changes that would be considered major changes herein shall be subject to this division.

(i) *Review of approval of a conditional zoning district.*

1. It is intended that property shall be reclassified to a conditional zoning district only in the event of firm plans to develop the property. Therefore, no sooner than three years after the date of approval of the petition, the Planning Board may examine the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval.

2. If the Planning Board determines that progress has not been made in accordance with the approved petition and conditions, the Planning Board shall forward to the Board of Commissioners a report which may recommend that the property be rezoned to its previous zoning classification or to another district.

(B) *Note 2.* The use standards (US) identified in the table of permitted uses can be found throughout the notes section below.

accessory structure , whether or not the wheels, axles, and/or tongue have or has been removed and whether or not that any container, structure , or vehicle as described herein has been placed on a foundation, except as hereinafter described. Provided, however, that structures such as storage sheds, garden sheds, and similar structures shall be considered accessory buildings, even though they may be capable of being lifted or disassembled and removed from the property. Further provided, that a trailer, tent, or similar container, structure , or vehicle may be placed on property on a temporary basis for promotional or other business or charitable related purposes, but such use shall not continue for more than six months.

(2) No accessory building or use may be erected or installed on any lot where a principal building does not exist. No lot shall have in excess of two accessory buildings unless it is identified as a bona fide farm . No accessory structure or swimming pool is allowed in the front yard or on a double frontage lot unless authorized by special use permit .

(H) *Note 8. Adult establishments* . Shall be a permitted use in the MI district provided that the following conditions are met:

(1) No adult establishment shall be located within 1,000 feet of any other adult establishment .

(2) No adult establishment shall be located closer than 1,000 feet from the lot line of any school , church, public park , or from the lot line of any district zoned residential, mobile home park, or mobile home subdivision .

(3) All distance provided in this section shall be measured by following a straight line from the nearest point of the lot line of the lot on which the adult establishment is proposed to the nearest point of the lot line of the lot on which an adult establishment is located, or to the nearest point of the lot line of any school , church, public park , residential district, mobile home park district, or mobile home subdivision district.

(I) *Note 9. Automobile service stations* .

(1) Automobile service stations shall be a permitted use in B1, PUD district.

(2) Automobile service stations located within the town shall have no gasoline or oil pump located within 12 feet of any street right-of-way line. Outside the town, no such pump shall be located within 15 feet of any street right-of-way line.

(J) *Note 10. Reserved.*

(K) *Note 11. Dry cleaning and laundry establishments.* Such establishments shall be permitted when only oil, gas, or electricity is used for heat. Screening and filtering devices shall be used to prevent the emission of smoke, dust, fumes, odors, or steam into the atmosphere.

(L) *Note 12. Skirting and curtain wall requirements for manufactured homes* . All manufactured homes to be placed within Swansboro's planning and zoning jurisdiction shall have skirting placed around the base prior to the issuance of a certificate of occupancy. The skirting shall be a continuous, uniform enclosure constructed of vinyl, masonry material, or metal fabricated for such purpose and that is unpierced except for required ventilation or access. For all manufactured homes, one row of ventilation ports, eight-inch by 16-inch, shall be provided every ten feet, and one access opening with a door that is between 18 inches and 42 inches in height and between 24 inches and 60 inches in width. All existing manufactured homes within Swansboro's planning and zoning jurisdiction prior to the effective date of this provision which have no skirting or curtain wall shall be required to have skirting installed within 18 months following adoption of this chapter. All existing manufactured homes within Swansboro's planning and zoning jurisdiction prior to the effective date of this provision having a continuous uniform enclosure around the base which serves as skirting shall be considered existing nonconforming, and will be exempt from the specific requirements of this note. All skirting performed after the effective date of this amendment will be done in accordance with Section 47.7 of the State of

(2) And provided, furthermore, the home occupations listed above shall be permitted subject to the following limitations:

(a) No exterior display of products;

(b) No mechanical equipment shall be installed or used except such that is normally used for domestic or professional purposes and which does not cause noises or other interference in radio and television reception;

(c) No accessory buildings or outside storage shall be used in connection with the home occupation ; Not over 25% of the total floor area or 500 square feet, whichever is less, shall be used for a home occupation ;

(d) Only one employee may be employed by the home occupation who is not a resident of the dwelling .

(P) *Note 16.* Reserved.

(Q) *Note 17. Mobile construction site office , temporary.* Shall be a permitted use and are limited to the following:

(1) *Minimum lot area :* none.

(2) *Parking:* one space for each person employed in the office at any given time during a 24 hour period.

(3) *Requirements:* a certificate of occupancy/compliance may be issued for a manufactured office building for use as a temporary field office for contractors by the Swansboro Building Inspector or his authorized agents if the manufactured office building :

(a) And the structure under construction are located on the same property;

(b) Is not moved to the site more than 30 days prior to construction and is not removed later than 30 days after construction has been completed;

(c) Is not used for any other purpose other than that connected with on-site construction;

(d) Is justified by the size and nature of the construction project;

(e) Is to be used for a period not to exceed 18 months;

(f) Is utilized only incidental to on-site construction during daylight hours and not for residential living quarters;

(g) Is parked in a location approved in advance by the supervision of Building Inspector or his authorized agents;

(h) Sanitary facilities are connected with an approved sewer system;

(i) Electrical facilities are connected in compliance with regulations as set forth in the North Carolina Building Code.

(R) *Note 18. Recreational vehicles.* Recreational vehicles occupied for human habitation and intended for permanent residential use must be placed in an approved manufactured home or recreational vehicle park . However, temporary residential use may occur in cases where the recreational vehicle is secondary to a primary residential use, and when construction or repair of a single family home occurs. Two general restrictions for either temporary residential use shall apply, as well as specific restrictions and limitations for each. The general restrictions and limitations are as follows: (1) R6, R6SF, R8SF, R20SF, or O-I zoning is required; (2) Location of the recreational vehicle shall be in the rear yard, unless evidence can be provided to the Administrator that size constraints or other factors prevent rear yard location. The specific restrictions and limitations are as follows: (1)

(2) Alteration services including tailoring shops, shoe repair, jewelry repair, bicycle repair, optical repair of glasses, and other similar services;

(3) Bars and taverns;

(4) Barber and beauty shops;

(5) Bus terminal;

(6) Clinic services, medical and dental;

(7) Funeral homes and mortuaries;

(8) Opticians and optical supply sales;

(9) Restaurants including outdoor dining facilities so long as the seating is located on the principal property with the restaurant;

(10) Amusement , indoor and outdoor; and

(11) Bakeries, candy stores, ice cream, coffee shops, and the like.

(12) Service establishment stores are limited to a building footprint of 5,000 square feet in size.

(Y) *Note 25. Clubs/lodges.* Including but not limited to meeting places of fraternal organizations such as Masons, Rotary, Knights of Columbus, Elks, and others. Pools and gyms are allowed in these clubs/lodges.

(Z) *Note 26. Parks and playgrounds, semi-public.* Site plans are required and must be submitted to the Administrator .

(1) *Minimum lot area* . See § 152.195, Table of Yard , Area, and Height Requirements.

(2) *Buffering.* As specified in §§ 152.525 through 152.544.

(3) Plans are required and must show:

(a) *Structures:* location of buildings and sign, and size of sign.

(b) *Circulation:* proposed points of ingress and egress, and pattern of internal circulation.

(c) *Parking: layout of parking spaces.* Space shall be equivalent to one percent of the total land area. Parking area available along park roads or private drives may be used to fulfill requirement.

(d) *Lighting:* lighting plan, inclusive of wattage and illumination. Refer to §§ 152.500 through 152.512.

(e) *Drainage:* if required by the Administrator , proposed provision for storm drainage (including retention pond facilities, when applicable).

(f) *Proposed use areas:* including playgrounds, playing fields, dog parks, swimming pools /swimming areas, fishing areas, walking/biking trails, and the like.

(4) *Other requirements.* The Planning Board and Board of Commissioners may provide additional requirements as it deems necessary in order to make the proposed project more compatible with adjacent areas and existing or proposed traffic patterns. The following additional conditions shall apply:

(a) *Public facilities.* All public facilities must meet the NC Accessibility Code, all ADA Standards, and OSHA Standards.

(b) *Restrooms.* Two buildings with male/female facilities per three acres or portion thereof permitted; number of stalls shall be per the NC Building Code.

(1) No open storage allowed.

(2) The boundaries of the entire site shall be buffered in accordance with this chapter

(3) Lighting shall be prohibited except for minimum lighting that may be required for security purposes.

(BB) *Note 28. Reserved.*

(CC) *Note 29. Bed and breakfast accommodations, and inns .* Bed and breakfast accommodations, and inns include only legitimate lodging businesses available for public reservation and use, although there may be an owner or manager room or living quarters on the premises. Such businesses must:

(1) Possess a current, town-approved packet for a bed and breakfast accommodation or inn ;

(2) Possess any health department licenses or permits that may be applicable;

(3) Provide, if requested by the town, evidence that lodging is being offered and advertised for public use and is available for same;

(4) Provide evidence, if requested by the town and subject to an audit of documents, that the premises are in actual use for paid short term lodging of guests.

(DD) *Note 30. Food sales, push cart/food truck.* A zoning permit is required prior to the establishment of a push cart or food truck on any property within the jurisdiction of the town. The permit application must include the following information, documentation and acknowledgments by the vendor, and must be submitted at least three business days prior to the vendor occupying the property:

(1) List of the proposed location(s) of the cart/truck and duration for each location proposed. Vendors will be allowed in the zoning districts shown in the Table of Uses when the property is identified as being within the Traditional Town Center, Suburban Town Center, or Employment/Light Industrial land use designation as identified within the 2019 CAMA Land Use Plan on the Future Land Use Map;

(2) The appropriate fee as established by the town schedule of fees;

(3) Push carts and food trucks may operate under an annual permit or may obtain a permit for a one- day event when not subject to the exemptions found in Chapter 112;

(4) Push carts and food trucks must be located on private property and not within any street right-of-way. Evidence of property ownership or written permission from the property owner for the proposed location(s) must be submitted;

(5) Push carts and food trucks must be set back at least 50 feet from the right-of-way of NC Highway 24;

(6) Any push cart or food truck must be located at least 100 feet from the main customer entrance of any restaurant or outdoor dining area, and at least 50 feet from any other permitted push cart or truck;

(7) Food trucks and push carts may not occupy any handicap parking space;

(8) Hours of operation are limited to 7:00 a.m. to 10:00 p.m. daily;

(9) Any food truck or trailer must display a valid license plate;

(10) A copy of a Health Department inspection/score or a certificate issued by the Department of Agriculture must be provided;

(11) Proof of insurance must be submitted;

all of the specified requirements;

(13) These regulations shall not apply to construction trailers, dumpsters or recycling equipment.

(GG) *Note 33. Temporary residential storage units* . Residential storage units are permitted if the following conditions are met:

(1) Storage units will be permitted for a period up to 30 days unless a 30 day extension is granted by the Administrator ;

(2) A maximum of two storage units are allowed per site;

(3) Units may be located in the driveway or yard outside of the front yard setback of the property;

(4) A permit is required and must be obtained prior to the installation of any storage unit. A site plan is required to show the location of the unit;

(5) Units shall not exceed a width of eight feet, height of eight feet, or length of 16 feet;

(6) These regulations shall not apply to construction trailers or dumpsters.

(HH) *Note 34. Mobile construction site containers*. Temporary construction site containers are allowed on the premises for which there is an active building permit if the following conditions are met:

(1) Containers must be used for storage purposes only;

(2) Containers located in residential districts must be located in the driveway or side or rear yard within the required setbacks of the property. Containers located in commercial or other zoning districts must be located in the side or rear yard and must meet all setback requirements;

(3) Containers must be removed once the construction activity has concluded or if the building permit has expired or otherwise become void.

(II) *Note 35. Manufactured home sales*. A certificate of occupancy/compliance may be issued for a manufactured office building for use as a manufactured home sales office if the manufactured building meets the following criteria:

(1) Sanitary facilities are connected with an approved sewer system;

(2) Electrical facilities are connected in compliance with regulations as set forth in the North Carolina Building Code;

(3) Provisions pertaining to a manufactured home foundation and anchorage of the manufactured building to the foundation are met as required by the North Carolina Building Code ; and

(4) All skirting and curtain wall requirements must be met per Note 12.

(JJ) *Note 36. School , elementary or secondary and related uses*. A certificate of occupancy/compliance may be issued for a manufactured office building for use as a classroom by a public or private school or for a school administrative office if the manufactured building meets the following criteria:

(1) Sanitary facilities are connected with an approved sewer system;

(2) Electrical facilities are connected in compliance with regulations as set forth in the North Carolina Building Code;

(3) Provisions pertaining to a manufactured home foundation and anchorage of the manufactured building to the foundation are met as required by the North Carolina Building Code; and

(4) All skirting and curtain wall requirements must be met per Note 12.

(c) *Landscaping.* Landscaping shall comply with the standards of §§ 152.525 through 152.544 except that variations from these standards may be permitted where it is demonstrated that the proposed landscaping sufficiently buffers uses from each other, ensures compatibility with land uses on surrounding properties, creates attractive streetscapes and parking areas, and is consistent with the urban design objectives and/or character of the area. Where the property abuts in residential zoning district a double Type C buffer yard must apply (see Table 152.528-1.) Natural forests with heavy underbrush may be utilized instead of a type C planting when approved by the Town Planner.

(d) *Building form.* As provided for in §§ 152.555 through 152.561 building design and compatibility, construction and reconstruction of buildings in a manner that achieves a visually desirable environment is essential in achieving innovative land planning and design concepts. In addition to standards provided herein there are additional requirements for any modification in height, setbacks and lot dimensions as required in the underlying zoning district:

1. *Stepback.* Stepbacks can provide mitigation to views along the corridor by providing relief of the vertical mass. Stepbacks provide a vertical transition between adjacent properties visually reducing the perceived scale of a building in comparison to its surrounding context. An additional building setback of one foot for every requested one foot of height shall be required above the town's 35 feet requirement, (e.g., if the developer request is for 45 feet, an additional ten feet setback would be required). See Figure 152.180.3 titled (Use of Corridor Setback for Height Modification).

2. *Corridor setback.* In requesting the use of flexible lot development along the Highway 24/Corbett Avenue corridor, no part of any structure within 200 feet from the corridor right-of-way shall exceed the 35 feet town-wide requirement. See Figures 152.180.2 through 152.180.6

(e) *Height.* Consideration for height modification shall be reviewed using the techniques as provided in divisions 1. and 2. below. In no case shall any building height exceed 45 feet.

1. *Stepback.* Stepbacks can provide mitigation to views along the corridor by providing relief of the vertical mass. Stepbacks provide a vertical transition between adjacent properties visually reducing the perceived scale of a building in comparison to its surrounding context. An additional building setback of one foot for every requested one foot of height shall be required above the town's 35 feet requirement, (e.g., if the developer request is for 45 feet, an additional ten-foot setback would be required).

2. *Corridor setback.* In requesting the use of flexible lot development along the Highway 24/Corbett Avenue corridor, no part of any structure within 200 feet from the corridor right-of-way shall exceed the 35-foot town-wide requirement. See Figures 152.180.2 through 152.180.6.

(MM) *Note 39. Family care homes.*

(1) As provided by G.S. § 160D-907, family care homes shall be deemed a residential use of property for zoning purposes and shall be a permissible use in all residential districts. No family care home, its owner, or operator shall be required to obtain, because of the use, a special use permit or variance from any such zoning regulation. Family care homes shall not be located within a one-half mile radius of any existing family care home.

(2) Family care homes shall be deemed a residential use of property for the purposes of determining charges or assessments imposed by local governments or businesses for water, sewer, power, telephone service, cable television, garbage and trash collection, repairs or improvements to roads, streets, and sidewalks, and other services, utilities, and improvements.

(NN) *Note 40. Temporary family health care structures.* Temporary family health care structures are permitted as an accessory use in all single-family residential zoning districts on lots zoned for single-family detached dwellings subject to the following:

(1) The temporary family health care structure is placed on the property of the residence and is used to provide care for the mentally or physically impaired person as certified in writing by a physician

TOWN OF SWANSBORO, NORTH CAROLINA

CODE OF ORDINANCES

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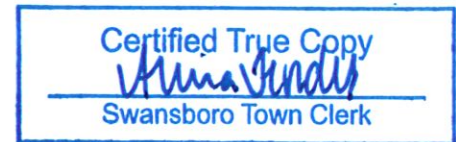
State legislation current through 2023 North Carolina Legislative Service, Pamphlet No. 4

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§ 152.179 TABLE OF PERMITTED/SPECIAL USES.

(A) Districts in which particular uses are a permitted use by right are indicated by "P." Uses with certain conditions may include a reference to a footnote to this table.

(B) Districts in which particular uses are a special use upon approval of the Town Board of Commissioners are indicated by "S". See the Table of Regulations for Special Uses , § 152.211, for details of each special use .

(C) Districts in which particular uses are reviewed for compliance by the Town Planner are indicated by "US". See § 152.212, Use Standards, for details of each use standard.

(D) Districts in which particular uses are a minor special use upon approval of the Town Board of Adjustments are indicated by "MS". See the Table of Regulations for Special Uses , § 152.211, for details of each minor special use.

(E) Districts in which particular uses are prohibited are indicated by a blank.

(F) Any land use listed in the Table of Permitted Uses that incorporates or utilizes a drive-in facility must have its site design plan and proposed traffic circulation and parking plan approved by the Town of Swansboro. Those plans must be approved prior to construction of the drive-in facility.

(G) Minimum zoning district area (acreage) requirements are defined in § 152.170, Establishment of Zoning Districts and the Purpose Thereof.

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(Ord. passed 3-15-2005; Amended 6-08-2005; Am. Ord. 2005-O8, passed 7-19-2005; Am. Ord. 9-20-2005; Am. Ord. 2006-11, passed 4-18-2006; Am. Ord. passed 6-20-2006; Am. Ord. passed 9-18-2007; Am. Ord. 2008-O4, passed 2-19-2008; Am. Ord. 2009-O6, passed 4-21-2009; Am. Ord. passed 1-19-2010; Am. Ord. 2010-O6, passed 2-16-2010; Am. Ord. 2010-O14, passed 5-18-2010; Am. Ord. passed 6-15-2010; Am. Ord. passed 11-16-2010; Am. Ord. passed 1-18-2011; Am. Ord. passed 6-21-2011; Am. Ord. passed 7-19-2011; Am. Ord. 2011-O26, passed 8-16-2011; Am. Ord. passed 2-19-2013; Am. Ord. 2013-O9, passed 3-19-2013; Am. Ord. passed 5-21-2013; Am. Ord. passed 6-12-2013; Am. Ord. 2014-O9, passed 4-15-2014; Am. Ord. passed 1-26-2016; Am. Ord. passed 3-22-2016; Am. Ord. passed 7-26-2016; Am. Ord. 2016-O11, passed 9-13-2016; Am. Ord. 2016-O14, passed 10-25-2016; Am. Ord. passed 11-22-2016; Am. Ord. 1-10-2017; Am. Ord. passed 2-28-2017; Am. Ord. 2019-O4, passed 4-23-2019; Am. Ord. 2020-O6, passed 8-10-2020; Am. Ord. 2021-O3, passed 5-24-2021; Am. Ord. 2021-O7, passed 7-26-2021; Am. Ord. 2023-O6, passed 5-22-23; Am. Ord. 2023-O9, passed 7-24-23)

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

PERMITTED/ SPECIAL USES	CON	RA	R6	R6SF	R8SF	R10SF	R15SF	R20SF	R40SF	PUD ^b	MHP	MHS	MHS- 15SF	MHS-O ^c	O/I	G/E	B1 ^d	B2 ^e	B3 ^f	B2HDO ^g	MI ^h
Pest or termite control services																	US				P
Pet cremation																					P
Photography, commercial										P					P		P	P	P	P	
Portable storage containers or structures (see note 32, § 152.180)															P	P	P	P			P
Post office										P					P		P	P	P		
Pottery and related products, sales																	P	P	P	P	
Precision instrument manufacturing (see § 152.180, note 38)																	US				P
Printing and reproduction establishments																	P	P	P		P
Private recreation club		P	P	P	P	P	P	P	P	P	P	P	P	P			P				
Production of glass products from purchased glass (see § 152.180, note 38)																					P
Production of manufactured housing and wood buildings (see § 152.180, note 38)																					P
Public and private utility facilities (see note 27, § 152.180)																	P	P		P	
Public utility stations & substations	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Public utility workshops & storage				P												P	P				P
Radio & television studio activity without associated tower										P					P		P				P
Radio & television transmitting	P	P	P	P	P	P	P	P	P		P	P		P		P	P				P
Recreation or amusement conducted for profit, not otherwise listed										MS					MS		MS	MS	MS		
Recreational vehicles (see note 18, § 152.180)			P	P	P	P	P	P	P		P	P		P							
Recreational vehicle sales																	P				
Refrigerated warehousing (see § 152.180, note 38)																	P				P
Rehabilitation facility		P	P												P						
Remote off-street parking															US		US	US	US	US	
Research facilities, including manufacturing incidental to same (see § 152.180, note 38)																	P				P
Residential child care facility								P													
Residential family child care home		P	P	P	P	P	P	P	P		P	P	P	P							
Restaurants (including take-out-only establishments)										P							P	P	P	P	
Retail fish markets																	P	P		P	

PERMITTED/ SPECIAL USES	CON	RA	R6	R6SF	R8SF	R10SF	R15SF	R20SF	R40SF	PUD ^b	MHP	MHS	MHS- 15SF	MHS-O ^c	O/I	G/E	B1 ^d	B2 ^e	B3 ^f	B2HDO ^g	MI ^h
Retail merchandise sales (greater than 5,000 sq. ft.)										MS							MS	MS			
Retail merchandise sales (less than 5,000 sq. ft.)										P							P	P	P	P	
Retail or service, not otherwise listed																	P				
Riding school or commercial stable		P																			
Salvage and recovery yards (see note 19, § 152.180)																					
Sanitary landfill		MS																			
Sawmill or planing mills		MS																			
School, business or commercial															P	P	P	P			
School, elementary or secondary & related uses (see note 36, § 152.180)		P	P			P	P	P	P	P					P	P	P	P			
School, trade or vocational															P	P	P	P			P
Service establishments (see note 24, § 152.180)																			P	P	
Shopping centers																	P		P		
Sign painting and fabrication shop																	P				P
Stone manufacturing facility primarily engaged in cutting, shaping and finishing marble, granite and other stone (see § 152.180, note 38)																					P
Storage or baling of scrap paper, iron, bottles, rags, or junk																					P
Storage, warehouse, including mini storage																	US				P
Swimming pools (private/noncommercial) (see note 20, § 152.180)		P	P	P	P	P	P	P	P		P	P	P	P			P				
Swimming pools (public/commercial) (see note 20, § 152.180)		MS	MS			MS	MS	MS	MS	MS	MS		MS			MS	MS	MS			
Tattoo/piercing parlor																	P				
Taxicab office or stand																P	P			P	P
Telephone exchange operations										P					P		P	P		P	P
Temporary family health care structures (see § 152.180, note 40)		P	P	P	P	P	P	P	P			P	P	P	P		P	P			
Temporary residential storage units (see note 33, § 152.180)		P	P	P	P	P	P	P	P	P	P	P	P	P							
Textile manufacturing (see § 152.180, note 38)																					P
Theaters, indoor										P					P		P		P		
Theaters, outdoor																	P				
Therapeutic massage business																	P	P		P	

[illegible]

PERMITTED/ SPECIAL USES	CON	RA	R6	R6SF	R8SF	R10SF	R15SF	R20SF	R40SF	PUD ^b	MHP	MHS	MHS- 15SF	MHS-O ^c	O/I	G/E	B1 ^d	B2 ^e	B3 ^f	B2HDO ^g	MI ^h
Wood products, manufacture (see § 152.180, note 38)																					P
Yacht, sailing, and fishing clubs		S	S			S	S	S	S			S		S			P	P		P	
^(a) See § 152.180(B) Note 2. ^(b) See § 152.180(C) Note 3. ^(c) See § 152.180(D) Note 4. ^(d) See § 152.180(E), (F) Notes 5, 6. ^(h) See § 152.180(LL) Note 38.																					

(Ord. passed 3-15-2005; Amended 6-08-2005; Am. Ord. 2005-O8, passed 7-19-2005; Am. Ord. 9-20-2005; Am. Ord. 2006-11, passed 4-18-2006; Am. Ord. passed 6-20-2006; Am. Ord. passed 9-18-2007; Am. Ord. 2008-O4, passed 2-19-2008; Am. Ord. 2009-O6, passed 4-21-2009; Am. Ord. passed 1-19-2010; Am. Ord. 2010-O6, passed 2-16-2010; Am. Ord. 2010-O14, passed 5-18-2010; Am. Ord. passed 6-15-2010; Am. Ord. passed 11-16-2010; Am. Ord. passed 1-18-2011; Am. Ord. passed 6-21-2011; Am. Ord. passed 7-19-2011; Am. Ord. 2011-O26, passed 8-16-2011; Am. Ord. passed 2-19-2013; Am. Ord. 2013-O9, passed 3-19-2013; Am. Ord. passed 5-21-2013; Am. Ord. passed 6-12-2013; Am. Ord. 2014-O9, passed 4-15-2014; Am. Ord. passed 1-26-2016; Am. Ord. passed 3-22-2016; Am. Ord. passed 7-26-2016; Am. Ord. 2016-O11, passed 9-13-2016; Am. Ord. 2016-O14, passed 10-25-2016; Am. Ord. passed 11-22-2016; Am. Ord. 1-10-2017; Am. Ord. passed 2-28-2017; Am. Ord. 2019-O4, passed 4-23-2019; Am. Ord. 2020-O6, passed 8-10-2020; Am. Ord. 2021-O3, passed 5-24-2021; Am. Ord. 2021-O7, passed 7-26-2021; Am. Ord. 2023-O6, passed 5-22-23; Am. Ord. 2023-O9, passed 7-24-23)