

AN ORDINANCE AMENDING THE KITTY HAWK TOWN CODE

WHEREAS, the North Carolina General Assembly adopted Chapter 160D to the NCGS; and

WHEREAS, chapter 160D consolidates former city- and county- enabling statutes for development regulations into a single unified chapter; and

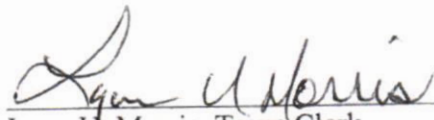
WHEREAS, municipalities are required to amend local ordinances to conform to this new law; and

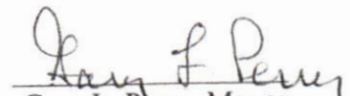
WHEREAS, the proposed text amendments bring Chapters 38. Subdivisions; and 42. Zoning, into conformance with NCGS 160D; and

WHEREAS, the Town Council of Kitty Hawk has found this amendment to be consistent with the Town's adopted CAMA Land Use Plan.

BE IT ORDAINED by the Town Council of Kitty Hawk that Chapters 38 and 42 of the Kitty Hawk Town Code be amended as indicated in the attached ordinances.

This ordinance amending the Kitty Hawk Town Code shall take effect the 6th day of April, 2021. Passed and adopted at a regular meeting held by the Town Council of Kitty Hawk the 6th day of April, 2021, with a 5 to 0 vote.

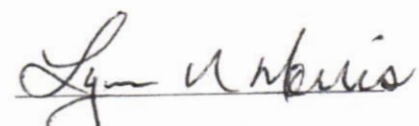

Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor

APPROVED AS TO FORM:

Casey Varnell, Town Attorney

The undersigned certifies that the forgoing official ordinance designated ORDINANCE AMENDMENT OF THE TOWN OF KITTY HAWK, NORTH CAROLINA was filed in the Kitty Hawk Ordinance Book on the 7th day of April, 2021, at 3 o'clock p.m.


Lynn U. Morris, Town Clerk

Chapter 38 - SUBDIVISIONS⁽¹⁾

Footnotes:

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Editor's note— Ord. No. 09-09, adopted Apr. 6, 2009, deleted the former Ch. 38, Art. I, §§ 38-1—38-13, Art. II, Div. 1, § 38-45, Div. 2, §§ 38-64—38-66, Div. 3, §§ 38-91—38-95, Div. 4, §§ 38-119—38-123, Art. III, §§ 38-145, 38-146, Art. IV, Div. 1, §§ 38-175—38-185, Div. 2, §§ 38-209—38-241 and enacted a new Ch. 38 as set out herein. The former Ch. 38 pertained to subdivisions. For a complete derivation of former Ch. 38 see the Code Code Comparative Table.

Charter reference— Planning jurisdiction, § 6-1.

ARTICLE I. - IN GENERAL

Sec. 38-1. - Definitions.

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

Building setback line means the line within a property defining the required minimum distance between any building and the adjacent right-of-way or lot.

Cul-de-sac or minor dead-end road means a road permanently terminated by a turn-around or dead-end.

Double-frontage lot means a lot with front and rear street frontage.

Easement means a grant by the property owner for use by the public or a person of a strip of land for specified purposes.

Flag lot or panhandle lot means a lot which has a narrow frontage on a street and a thin strip of land which provides access from the street right-of-way to a wider portion of the lot.

Group development means a development comprising two or more buildings, such as a group of apartments, and the land is not subdivided into customary streets and lots.

Lot means a portion of a subdivision or any other parcel of land intended as a unit for transfer of ownership or for development or both. The word "lot" includes the word "plot," "parcel" or "tract."

Marginal access road means a minor (service) road which parallels and is immediately adjacent to a primary road or highway, which provides access to the properties abutting it and which separates the abutting properties from high-speed vehicular traffic.

Minimum lot size means minimum lot area as required by the various zoning districts. Marsh and wetland areas, as determined by CAMA and/or CRC regulations, which are contiguous with estuarine waters, sounds and bays, and areas waterward of the oceanfront vegetation line, as determined by CAMA regulations, may not be used for the minimum lot size.

Official maps or plans means any maps or plans officially adopted by the town council as a guide for the development of the town.

Primary road means a road designed to carry heavy volumes of vehicular traffic.

Private street means a street that has not been dedicated to public use and for maintenance for the town.

Road means a dedicated right-of-way for vehicular traffic. The word "road" includes the word "street."

Secondary or collector road means a road designed to carry medium volumes of vehicular traffic, to provide access to the primary road system and to provide access to abutting properties.

Subdivider means any person who subdivides or develops any land deemed to be a subdivision.

Subdivision includes all divisions of a tract or parcel of land into two or more lots, building sites, or other division, for the purpose, whether immediate or future, of sale or building development, and includes all divisions of land involving the dedication of a new street or a change in existing streets.

(Ord. No. 09-09, (19-1), 4-6-2009)

Cross reference— Definitions and rules of construction generally, § 1-2.

State Law reference— Subdivision defined, G.S. ~~160A-376~~ **160D-802**.

Sec. 38-2. - Purpose.

The purpose of this chapter is to establish procedures and standards for the development and subdivision of real estate within the town in an effort to, among other things, insure proper legal description, identification, monumentation and recordation of real estate boundaries; further the orderly layout and appropriate use of land; provide safe, convenient, and economic circulation of vehicular traffic; provide suitable building sites which drain properly and are readily accessible to emergency vehicles; assure the proper installation of road and utilities; promote the eventual elimination of unsafe or unsanitary conditions arising from undue concentration of population and help conserve and protect the physical and economic resources of the town.

(Ord. No. 09-09, (19-2), 4-6-2009)

Sec. 38-3. - Scope.

This chapter shall govern all subdivisions of land lying within the corporate limits of the town.

(Ord. No. 09-09, (19-3), 4-6-2009)

Sec. 38-4. - Exemption.

The provisions of this chapter do not apply to any of the following:

- (a) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards established by this chapter.
- (b) The division of land into parcels greater than ten acres if no street right-of-way dedication is involved.
- (c) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation corridors.
- (d) The division of a tract of land in single ownership the entire area of which is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved, and where the resultant lots are equal to or exceed the standards established by this chapter.

(Ord. No. 09-09, (19-4), 4-6-2009)

State Law reference— Required exemptions, G.S. ~~160A-376~~ **160D-802(a)**.

Sec. 38-5. - Conflicts with zoning ordinance.

Should the requirements of this chapter conflict with those of chapter 42, the more stringent requirements shall prevail.

(Ord. No. 09-09, (19-5), 4-6-2009)

Sec. 38-6. - Compliance.

~~No person who is the owner or the agent of the owner of any land located within the territorial jurisdiction of the town shall subdivide his land in violation of this chapter or transfer or sell land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this chapter and recorded in the office of the county register of deeds. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from compliance with this chapter.~~

Any person who, being the owner or agent of the owner of any land located within the planning and development regulation jurisdiction of that local government, thereafter subdivides his land in violation of the regulation or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under such regulation and recorded in the office of the appropriate register of deeds, shall be guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty.

(Ord. No. 09-09, (19-6), 4-6-2009)

State Law reference— Penalties for transferring land lots in unapproved subdivisions, G.S. 160A-375 160D-807(a).

Sec. 38-7. - Compliance as prerequisite to building permit.

Where a permit is required for the construction of any building or other improvement, the permit shall not be issued unless and until the requirements of this chapter shall have been complied with and the final plat shall have been approved by the planning board.

(Ord. No. 09-09, (19-7), 4-6-2009)

Sec. 38-8. - Amendment procedure.

This chapter may be amended from time to time by the town council, **after a public hearing**, but no amendment shall become effective unless it shall have been proposed by or shall have been submitted to the planning board for review and recommendation. **Notice of such public hearing shall be given once a week in consecutive weeks, the first notice being not less than 10 days, and not more than 25 days before the scheduled hearing date in a newspaper having general circulation in the area.** The planning board shall have ~~45~~ **30** days within which to submit its report. If the planning board fails to submit a report within the specified time, it shall be deemed to have approved the amendment.

(Ord. No. 09-09, (19-8), 4-6-2009)

State Law reference— Amendments, G.S. 160A-364.

Sec. 38-9. - Exceptions.

The standards and requirements of this chapter may be modified by the planning board in the case of a plan and program for a complete group development, which in the judgment of the planning board provides adequate public spaces and improvements for the circulation, recreation, light, air and service needs of the tract fully developed and populated, and which also provides such covenants or other legal provisions as will assure conformity to and achievement of the plan.

(Ord. No. 09-09, (19-9), 4-6-2009)

Sec. 38-10. - Variances.

Where, because of topographical or other conditions peculiar to the site, strict adherence to the provisions of the regulations of this chapter would cause an unnecessary hardship, or it appears that the interest of the town would not be best served, the planning board may refer the matter to the town council and the town council may authorize a variance. Any variance thus authorized is required to be entered in writing in the minutes of the planning board and of the town council and the reasoning on which the departure was justified set forth.

(Ord. No. 09-09, (19-10), 4-6-2009)

Sec. 38-11. - Miscellaneous procedural rules for planning board; funding.

The town council and the planning board shall adopt from time to time and provide for the appropriate keeping of records, minutes and other proceedings held with respect to the planning board's responsibility under the terms of this chapter. The town council may provide for such budgetary requirements as may be necessary in the administration of this chapter.

(Ord. No. 09-09, (19-11), 4-6-2009)

Secs. 38-12—38-25. - Reserved.

ARTICLE II. - PLATTING PROCEDURES

DIVISION 1. - GENERALLY

Sec. 38-26. - Wetland review.

- (a) Each applicant seeking planning board review of any proposed subdivision, resubdivision, commercial site plan or multifamily dwelling development shall have the Corps of Engineers verify the location of all wetlands within the property boundaries and the location of the wetland perimeters (404 lines) as flagged by the applicant. Thereafter, three plats prepared by a registered surveyor or engineer shall be filed with the town depicting the boundaries of the wetlands as verified by the Corps or other designated responsible agency along with a written letter or other certification acceptable to the town that the Corps or other designated agency has verified the location of the wetlands as shown on the plats filed with the town.
- (b) The 404 or wetland plats shall be filed prior to or at the time the applicant files his application for planning board review. In the event any project contains wetlands and the applicant has not filed the wetlands plat with the town, then the time period for planning board review before town council review shall be automatically suspended and further planning board review forthwith terminated and deferred until the required plats are filed with the town with the appropriate certification.

- (c) Thereafter, planning board review shall be reinstated without the payment of an additional fee; however, all zoning and subdivision ordinance amendments adopted by the town council during said interim period shall apply in all respects to the applicant's site or development. Any amendments or modifications to the site plan or development plan under review required by zoning or subdivision ordinance amendments shall be incorporated into the site plan or development plan filed with the town before further review by the planning board. If planning board review is terminated under this section and not reinstated within six months of the date of termination, then the applicant's right to reinstate planning board review shall automatically cease and the planning board shall not review the project until the applicant has refiled his application with the town and paid the appropriate fee.
- (d) Each parcel of land to be divided with wetlands within the boundaries of the site shall have the following certificate of a registered surveyor or engineer printed on the plan:

Wetland Certification

"Lots within the subdivision contain wetland areas as defined by Federal law and regulated by the Corps of Engineers. The wetland areas as of (date) have been identified based upon the then current Federal rules and regulations as interpreted by the Corps of Engineers. WARNING: The wetland areas as well as the permitted uses of wetland areas may change with subsequent changes in the applicable rules and regulations or the interpretations of them by the Corps of Engineers."

(Ord. No. 09-09, (19-26), 4-6-2009)

Secs. 38-27—38-35. - Reserved.

DIVISION 2. - PREAPPLICATION REVIEW

Sec. 38-36. - Generally.

- (a) Prior to preliminary plat application, the subdivider may submit to the town planner or such other persons as may be designated by the town council, at least 20 days prior to a regularly scheduled meeting, ten copies of a sketch plan of the proposed subdivision. Included with the sketch plan shall be a sketch vicinity map showing the subdivision in relation to the surrounding area, including wetlands (as defined by federal law). At the meeting the proposed development is to be reviewed, the subdivider should discuss the proposed subdivision and become familiar with the regulations affecting the land to be subdivided.
- (b) Every applicant seeking planning board review of commercial and multifamily site plans and subdivision plans shall have a preplanning board review conference with the town planner for the purpose of reviewing and identifying any technical errors, mistakes, or unsatisfied zoning or subdivision ordinance standards shown on the map or plat under review. Any such errors, mistakes, or unsatisfied standards must be corrected and corrected plats resubmitted to the town planner before the application is placed on the planning board agenda.
- (c) Before acting on the preliminary plat, the planning board may request a report from the resident highway engineer, county school superintendent, U.S. Soil Conservation Service and other officials or agencies directly affected by the proposed development. Said reports shall certify compliance with or note deviations from the requirements of this article and include comments on other factors that bear upon the public interest. The board may require revisions to a subdivision plan; such revisions shall be delivered to the planner ten days prior to a regularly scheduled meeting.

(Ord. No. 09-09, (19-36), 4-6-2009)

Sec. 38-37. - Required information generally.

The subdivider shall submit to the town planner at least 20 days prior to the planning board's regularly scheduled meeting:

- (a) At least ten black or blueline prints of the proposed subdivision prepared in accordance with the requirements of divisions 2 and 3 of this article. Additional prints may be required by the planning board when deemed necessary.
- (b) Two signed statements describing the proposed use of the land and a draft of any protective covenants to be applied to the subdivision.

(Ord. No. 09-09, (19-37), 4-6-2009)

Sec. 38-38. - Preapplication specifications.

A simple sketch plan shall be drawn at an approximate scale of one inch to 200 feet and shall show the tentative street layout, approximate right-of-way widths, lot arrangements, drainage and utility easements, sites for schools, parks, churches, and other nonresidential uses, existing structures, watercourses, wooded areas, wetlands, number of acres devoted to each use, total acres, average lot sizes, approximate number of lots, and existing zoning both on the land to be subdivided and the land immediately adjacent to the proposed development.

(Ord. No. 09-09, (19-38), 4-6-2009)

Secs. 38-39—38-45. - Reserved.

DIVISION 3. - PRELIMINARY PLAT

Sec. 38-46. - Required information.

- (a) The preliminary plat shall be at a scale of one inch to 100 feet and shall be drawn on a sheet 18 inches by 24 inches or such other size as may be required for registration by the county register of deeds. The preliminary plat shall be prepared by an engineer or registered surveyor and land planner and shall show the following information:
 - (1) The location of existing and platted property lines, streets, buildings, watercourses, railroads, transmission lines, sewer, bridges, culverts and drainpipes, water mains, town limit lines and any other utility easements.
 - (2) The boundaries of the tract with bearings and distances.
 - (3) Wooded areas, marshes, and any other features which should be considered in development of the site.
 - (4) The names of the owners of adjoining property or subdivisions.
 - (5) The zoning classification, if any, both on the land to be subdivided and on adjoining lands.
 - (6) The proposed streets, street names, rights-of-way and pavement widths.
 - (7) The location of proposed utilities (sewer, water, gas, electricity, telephone, and fire hydrants) showing connections to existing systems or plans for individual water supply, sewage disposal, storm drainage, etc.
 - (8) Other proposed right-of-way easements, locations, widths and purposes.
 - (9) The proposed lot lines, lot and block numbers and approximate dimensions.
 - (10) The proposed minimum building setback lines.
 - (11) The proposed parks, school sites, or other public open spaces, if any.

- (12) The title, date, magnetic north point, and graphic scale.
- (13) The name of the owner, engineer or registered surveyor and land planner.
- (14) The following site data:
 - a. Acreage in total tract.
 - b. Acreage in park or other land usage.
 - c. Average lot size.
 - d. Total number of lots.
 - e. Lineal feet in streets.
- (b) Each subdivision preliminary plat of land with wetlands (as defined under the Federal Clean Water Act, as amended from time to time, and the rules and regulations published thereunder) within the subdivision shall have the following certificate of a registered surveyor or engineer printed on the plat:

Wetland Certification

"Lots within the subdivision contain 'wetland' areas as defined by Federal law and regulated by the Corps of Engineers. The wetland areas as of (date) have been identified based upon the then current Federal rules and regulations as interpreted by the Corps of Engineers. WARNING: The wetland areas as well as the permitted uses of wetland areas may change with subsequent changes in the applicable rules and regulations or the interpretations of them by the Corps of Engineers."

(Ord. No. 09-09, (19-46), 4-6-2009)

Sec. 38-47. - Installation of improvements.

Upon receiving approval or conditional approval of the preliminary plat from the planning board and the town council, and not prior to that time, the subdividers shall proceed to make the improvements required by this chapter and by the planning board.

(Ord. No. 09-09, (19-47), 4-6-2009)

Sec. 38-48. - Reports from other agencies.

Before acting on a preliminary plat the planning board may request a report from the resident highway engineer, the county school superintendent, and U.S. Soil Conservation Service, and other officials or agencies directly affected by the proposed development. The reports shall certify compliance with or note deviations from the requirements of this chapter and include comments on other factors which bear upon the public interest.

(Ord. No. 09-09, (19-48), 4-6-2009)

Sec. 38-49. - Failure of planning board to approve preliminary plat.

Should the planning board fail to act on the proposed subdivision within 65 days after the initial planning board meeting scheduled to discuss the submission, the subdivider, after complying with the requirements of the planning board, may seek preliminary approval at the next regularly scheduled meeting of the town council.

(Ord. No. 09-09, (19-49), 4-6-2009)

Sec. 38-50. - Planning board disapproval.

Should the planning board recommend disapproval or conditional approval of a preliminary plat, the reasons for such action shall be noted in the minutes of the board and reference shall be made to the specific sections of this chapter with which the preliminary plat does not comply, and the subdivider shall be so notified.

(Ord. No. 09-09, (19-50), 4-6-2009)

Secs. 38-51—38-60. - Reserved.

DIVISION 4. - FINAL PLAT

Sec. 38-61. - Generally.

The procedure for obtaining final plat approval is as provided in this division.

(Ord. No. 09-09, (19-61), 4-6-2009)

Sec. 38-62. - Submittal deadline; general form.

- (a) The subdivider shall submit to the town planner, within one year of the date of the preliminary plat approval by the town council and at least 20 days prior to the regularly scheduled meeting of the town council, at least 15 black or blue line prints and one reproducible print for the county tax supervisor.
- (b) The final plat shall be properly signed and executed as required for recording by the county register of deeds.

(Ord. No. 09-09, (19-62), 4-6-2009)

Sec. 38-63. - Contents.

The final plat shall be drawn with such ink and upon such material as may be approved by the town council and at the same scale and on the same sheet size as the preliminary plat and shall conform substantially to the preliminary plat as approved. The final plat shall constitute only that portion of the approved preliminary plat that the subdivider proposes to record and develop at the time; provided, however, that such portion conforms to all requirements of this chapter. The final plat shall be prepared by a registered surveyor and shall show the following information:

- (a) The right-of-way lines of all roads.
- (b) Lot lines and lot numbers.
- (c) Minimum building setback lines. A note on the plat must contain the minimum setback chart for the appropriate zoning district and the following statement:
"Minimum building setbacks may be subject to change and should be verified with a zoning official."
- (d) Reservations, easements, alleys and any areas to be dedicated to public use or sites for other than residential use with notes stating their purpose and any limitations.
- (e) Sufficient data to determine readily and reproduce on the ground, the location, bearing and length of every road line, lot line, boundary line, block line and building line, whether curved or straight, and including magnetic north point.

- (f) All dimensions to the nearest 0.01 of a foot and angles to the nearest second.
- (g) An accurate location and description of all monuments and markers. Where the map is the result of a survey, one or more corners shall, by a system of azimuths or courses and distances, be accurately tied to a monument of some United States or state agency survey system such as the United States Coast and Geodetic Survey System, where such monument is within 2,000 feet of said corner. Where the state grid system coordinates of said monument have been published by the state department of natural and economic resources, the coordinate of the referenced corner shall be computed and shown in X and Y coordinates on the map. Where such a monument is not available, the tie shall be made to some pertinent and permanent recognizable landmark or identifiable point.
- (h) The names of adjoining roads, subdivisions, and owners of adjoining properties.
- (i) The title, date, name and location of subdivision and graphic scale.
- (j) The name of subdivider, engineer or registered surveyor and land planner.
- (k) A disclosure statement noting, "approval of this subdivision does not guarantee septic approval on any individual lot."
- (l) Layouts of the following:
 - (1) Water.
 - (2) Gas.
 - (3) Sanitary sewer
 - (4) Storm drainage.
 - (5) Electricity.
 - (6) Telephone.
 - (7) Fire protection.
 - (8) Streets.

These layouts can be provided on the final plat or a separate site plan submitted by a surveyor or engineer.
- (m) Forms for final certifications. Certificates shall be lettered or rubber stamped on the final plat and shall be in a form required from time to time by the planning board, including but not limited to the following types of certificates:
 - (1) Certificate of ownership and dedication.
 - (2) Certificate of accuracy by engineer or surveyor.
 - (3) Certificate of approval by the county review officer.
 - (4) Certificate of approval by council (signed by the mayor).
 - (5) Certificate of wetlands. Each subdivision final plat of land with wetlands (as defined under the Federal Clean Water Act, as amended from time to time, and the rules and regulations published thereunder) within the subdivision boundaries shall have the following certificate of a registered surveyor or engineer printed on the plat:

Wetland Certification

"Lots within the subdivision contain wetland areas as defined by Federal law and regulated by the Corps of Engineers. The wetland areas as of (date) have been identified based upon the then current Federal rules and regulations as interpreted by the Corps of Engineers. WARNING: The wetland areas as well as the permitted uses of wetland areas

may change with subsequent changes in the applicable rules and regulations or the interpretations of them by the Corps of Engineers."

- (n) *Flood zones.* A note must be provided on the final plat documenting the current flood zone in which the property or properties are located. The boundary line must be drawn on the plat in situations where two or more flood zones intersect over the property or properties being surveyed.

(Ord. No. 09-09, (19-63), 4-6-2009; Ord. No. 10-13, 12-6-2010)

Sec. 38-64. - Approval procedure.

- (a) After its submission, the plat will be considered at the next regularly scheduled meeting of the town council.
- (b) The town council shall consider the final plat in light of the requirements of this chapter, the approved preliminary plat, and the recommendation of agents of the town, county or state. Should the town council disapprove the final plat, the reasons for such action shall be noted in the council's minutes and reference shall be made to the specific section of this chapter with which the plat does not comply, and the subdivider shall be so notified.

(Ord. No. 09-09, (19-64), 4-6-2009)

Sec. 38-65. - Recording.

- (a) Within six months after the final plat is approved by the town council, it must be recorded by the subdivider with the county register of deeds. Should the six-month time limit expire before the plat is recorded it must be resubmitted to the planning board for reprocessing. The register of deeds shall not file or record a plat of a subdivision located within the subdivision jurisdiction of the town until the plat has been approved by the town council. Without the approval of the town council, the filing or recording of a subdivision plat shall be null and void. No officer of the town shall order or direct the recording of a plat where such recording would be in conflict with this chapter.
- (b) The requirements in this chapter for approval by the planning board and the town council with respect to the recordation by the register of deeds of subdivision plat, shall not prohibit the register of deeds from recording plats presented to him of land in the town when such maps or plats are otherwise in proper form and do not involve the subdivision of real estate for residential or commercial use, such as plats of cemetery property, right-of-way plats of public utilities, water companies, boundary agreements and other maps of a similar nature other than real estate subdivisions.
- (c) Any plat of a division of land within the subdivision jurisdiction of the town which is exempt from the requirements of this chapter shall have a certificate of exemption lettered or rubber stamped on the plat to be recorded in the form approved by the planning board. The certificate shall be signed by the mayor. If the mayor is absent from the jurisdiction of the town or mentally or physically incapacitated, then the certificate of exemption shall be signed by the mayor pro tempore or the town clerk. No plat of a division of land excluded from this chapter shall be recorded without the certificate of exemption appearing thereon signed by the appropriate town official.
- (d) Prior to filing and recording the final approved subdivision plat with the register of deeds no structure or trailer shall be constructed, erected, placed upon or located on any lot or open space within the boundaries shown on the approved plat except for trailers placed temporarily on the property for use by the contractor in the construction of subdivision improvements required and approved by the town. This subsection shall not apply if the subdivision plat approval has expired and not been reinstated as provided by this chapter or if the subdivision plat approval has terminated for any reason, whether by act of the developer or the town.

(Ord. No. 09-09, (19-65), 4-6-2009)

Secs. 38-66—38-80. - Reserved.

ARTICLE III. - INSTALLATION OF PERMANENT REFERENCE POINTS AND REQUIRED IMPROVEMENTS

Sec. 38-81. - Permanent reference points.

Prior to the approval of the final plat permanent reference points shall have been placed in accordance with the following requirements:

- (a) *Subdivision corner tie.* At least one corner of the subdivision shall be designated by course and distance (tie) from a readily discernible reference marker.
- (b) *Monument.* Within each block of a subdivision at least two monuments designed as control corners shall be installed. The surveyor shall employ additional monuments when necessary. Monuments shall be constructed of concrete with steel reinforcing rods running their entire length, and shall be at least four inches in diameter or square and not less than three feet in length. Each monument shall have imbedded in its top or attached by a suitable means a metal plate of noncorrosive material and marked plainly with the point, the surveyor's registration number and the word "monument" or "control corner." A monument shall be set at least 30 inches in the ground with at least six inches exposed above the ground unless this requirement is impractical because of vehicular traffic or other factors.
- (c) *Property markers.* A steel or wrought iron pipe or equivalent not less than three-fourths inch in diameter and at least 30 inches in length shall be set at all corners including lot corners, except those located by monuments. A marker shall also be set at a point of curve, point of intersection, property corner, point of tangency, reference point and tangent points. Additional markers shall be placed at other points of importance.
- (d) *Accuracy.* Land surveys, except subdivision corner ties, shall be at an accuracy of at least 1:5,000.

(Ord. No. 09-09, (19-81), 4-6-2009)

Sec. 38-82. - Installation of improvements.

- (a) Before the town council shall approve the final plat for recording or any permits will be issued by the town, the subdivider shall have complied with the following requirements:
 - (1) *Roads.* Road right-of-ways shall be graded to 50 percent of the full width of the right-of-way, or a minimum of 20 feet or such other minimum as approved by the state department of transportation or article IV of this chapter. Road right-of-ways shall be properly drained and repaired with a proper base of approved material, properly disked and compacted to six inches and topped with one and one-half inches of compacted asphalt or other such material as may be approved. In the event a requirement of this paragraph conflicts with any requirement or standard of article IV of this chapter, then the standard or requirement set forth in article IV shall control and govern.
 - (2) *Utilities.* All public or private water and sewerage systems shall be installed and shall meet the requirements of the county health department or other governmental authorities having jurisdiction thereof.
 - (3) *Required preparation of land.* Land which the town council found to be unsuited for development due to improper drainage, topography, soil characteristics, groundwater elevation, susceptibility to flooding or failure to meet the criteria of G.S. ch. 130, art. 11 [130A-333 et seq.], as amended, shall not be subdivided unless adequate methods are utilized to correct the

unsuitable conditions. Any land-disturbing activity as defined in the Sedimentation Pollution Control Act of 1973 [G.S. 113A-50 et seq.], as amended, shall be accomplished in accordance with the requirements of that act. Any required land preparation must be completed prior to final plat approval.

- (4) ~~*Security for incomplete performance.*~~ If a subdivider has commenced required land preparation activities or has implemented an approved sedimentation and erosion control plan, or has planted ground cover or vegetation within a subdivision street right-of-way or within an area designated as a buffer, open space, green area or common area on the subdivision plat (hereinafter all such activities being referred to collectively and singularly as land preparation activities) which have not been completed, or the planted vegetation established, or the adequacy of the land preparation activities ascertained by the town at the time the subdivider submits the final subdivision plat for review and approval by the town, then the town may proceed with review and approval of the final plat, provided the completion and sufficiency of the uncompleted land preparation activities is secured as hereinafter provided.

The subdivider shall furnish the town with an original valid contract between the subdivider and a person or entity (hereinafter contractor) approved by the town for the cost of the work and material necessary to complete the land preparation activities including the reexecution of any work deemed unsatisfactory by the town and additional material. The price shall be a sum fixed for a term of one year. The town shall be designated as a third-party beneficiary of the contract with the right, but not the obligation, to enforce the contract should either the subdivider fail to complete the land preparation activities during the contract term or the town determine that the land preparation activities are inadequate to accomplish the purpose intended, then the town may require the subdivider to reexecute the plan or implement modifications to the plan which are reasonably necessary to complete the required land preparation activities.

In addition, the subdivider shall execute and deliver to the town a performance to twice the amount of the contract furnished the town for the land preparation activities or such other sum as the subdivider and the town mutually agree is adequate for completion of the land preparation activity. The bond shall be secured by a deed of trust creating a first lien encumbering one or more lots within the subdivision designated by the town. If the subdivider fails or refuses to complete the plan in accordance with this Code, the contract and the approval of the town, then the town shall notify the subdivider in writing of the deficiencies and specify the corrective measures necessary to complete the land preparation activities. The failure of the subdivider to implement and complete the corrective measures within 30 days of notification by the town shall constitute a default under the deed of trust and the bond or other instrument secured by the deed of trust, and the town may foreclose its lien as by law provided. After applying the proceeds of sale to the cost of sale, including trustee's fees and attorney's fees, the town may pay the contract amount (or such lesser sum necessary to correct the deficiencies if all of the work and material of the contract are not required) to the contractor in order to complete the land preparation activity. After completion of the land preparation activity, whether by the subdivider or the town, the balance of the foreclosure sale proceeds remaining with the trustee shall be disbursed to the grantor of the deed of trust or such other person designated in writing by the grantor thereof.

The form and content of the bond or agreement evidencing the obligation to be performed, the deed of trust and the contract must be approved by the town, which approval may be denied for any reason in the town's sole discretion. The town may select and obtain from a licensed North Carolina attorney an opinion verifying the first lien status of the deed of trust. The attorney's fees and costs for the title examination and report shall be paid by the subdivider to the town prior to final plat approval.

In lieu of the bond or agreement evidencing the obligation to be performed and secured by the deed of trust as provided above, the owner may deposit cash in the amount equal to twice the contract amount with the town to be held in escrow for the purposes set forth above. If the contractor fails and refuses to perform the contract and the subdivider fails to enforce the contract, then the town may use any remedies, whether in law or equity, to enforce the contract. All costs, fees and expenses incurred by the town enforcing such contract shall be paid by the subdivider to the town and the payment thereof shall be secured by the deed of trust. Such costs, fees and expenses shall be paid to the town from the proceeds

~~derived from the foreclosure sale of the lien of the deed of trust in addition to the sums paid by the town to complete the land preparation activities.~~

(4) *Performance guarantee.* Performance guarantees are required to assure successful completion of required improvements prior to the review of the final subdivision plat. For purposes of this section all of the following shall apply with respect to performance guarantees:

(b) The term "performance guarantee" shall mean any of the following forms of guarantee:

1. Surety bond issued by any company authorized to do business in this State.
2. Letter of credit issued by any financial institution licensed to do business in this State.
3. Other form of guarantee that provides equivalent security to a surety bond or letter of credit.

(c) The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgement by the Town that the improvements for which the performance guarantee is being required are complete. If the improvements are not complete and the current performance guarantee is expiring, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period until such required improvements are complete. A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are the subject of the performance guarantee or any extension. The form of any extension shall remain at the election of the developer.

(d) The amount of the performance guarantee shall be one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. Any extension of the performance guarantee necessary to complete required improvements be exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.

(e) The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.

(f) No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:

1. The local government to whom such performance guarantee is provided.
2. The developer at whose request or for whose benefit such performance guarantee is given.
3. The person or entity issuing or providing such performance guarantee at the request of or for the benefit of the developer.

- (b) Fire hydrant locations shall be shown on all pre- and final subdivision plats submitted to the town for review. Fire hydrants shall be spaced at an average distance of 500 feet along the subdivision street right-of-way at locations approved by the fire department and county water department. The fire hydrant shall be installed at the expense of the property owner and shall comply with the standards and specifications of the town and/or the state.

The fire hydrant shall be either a Centurion model manufactured by Mueller Co., Inc., Waterous Hydrant manufactured by Waterous Company, Inc., or another model hydrant as approved by the county water department.

The property owner shall install fire hydrant location markers pursuant to the standards of the fire department and paint the fire hydrant red with a reflectorized white top using paint approved by the county water department.

(Ord. No. 09-09, (19-82), 4-6-2009)

State Law reference— Authority to require improvements, etc., ~~G.S. § 160A-372~~ **160D-804**.

Secs. 38-83—38-100. - Reserved.

ARTICLE IV. - DESIGN STANDARDS

DIVISION 1. - GENERALLY

Sec. 38-101. - Generally.

In this article "planning board" includes any other agency, department, board or official designated by the town council to implement, supervise or control any portion or all of the requirements in this article. The provisions of this article are minimum requirements.

(Ord. No. 09-09, (19-101), 4-6-2009)

Sec. 38-102. - Design submittal and review requirements.

- (a) Prior to the preliminary plat approval, a street layout plan and street construction plan shall be prepared by a professional engineer and/or registered land surveyor and submitted to the planning board for approval.
- (b) The overall street layout plan shall show existing surface contour lines at two-foot intervals of elevation for the entire street, and shall show the proposed street elevations every 100 feet along the centerline. In situations where contour lines would not provide an accurate measure, the town can accept the submission of spot elevations with an adequate number of data points (to be determined by the planning staff in consultation with the town's engineer) to reasonably define the existing terrain.
- (c) The street construction plans shall, as a minimum, contain a plan, profile, and typical construction cross section for each street. The profile view shall contain existing elevation profiles on centerlines and each right-of-way line, and a proposed centerline profile.

(Ord. No. 09-09, (19-102), 4-6-2009)

Sec. 38-103. - Large tracts or parcels.

Where land is subdivided into larger parcels than ordinary building lots, such parcels shall be arranged so as to allow for the opening of future roads and logical further resubdivision.

(Ord. No. 09-09, (19-103), 4-6-2009)

Sec. 38-104. - Contour map.

A subdivider shall submit to the planning board a contour map of a specified interval or a grid survey on 200-foot grids or smaller as may be specified by the planning board to show natural drainage and improved street locations.

(Ord. No. 09-09, (19-104), 4-6-2009)

Sec. 38-105. - Lots.

- (a) The size, shape and orientation of lots for other than residential purposes, shall be such as the planning board deems appropriate for the type of development and use contemplated and shall be so stated in the deed or in protective covenants.
- (b) Residential lots shall comply with the following requirements:
 - (1) *Area.* Every lot shall contain an area equal to or greater than the minimum lot size of the zoning district in which the property is located. In addition, every lot shall have an area not less than the size required by the county health department for the installation of a well and/or sewage treatment system.
 - (2) *Lots shaped and filled.* Any lot shaped or filled must be approved as to quality and content by the county health department.
 - (3) *Orientation of lot lines.* Side lot lines shall be substantially at right angles or radial to street lines.
 - (4) *Minimum lot width.* Lots should have a minimum width of not less than 75 feet measured at the front building setback line. In no case shall a lot have less than 25 feet frontage on a cul-de-sac nor less than 50 feet frontage on other sections of public or private streets. Flag lot configurations are expressly prohibited.
- (c) All lots shall front upon a public or approved private road. Double frontage lots should be avoided.
- (d) All lots created pursuant to this chapter shall front on a paved public or private street constructed in accordance with the subdivision street pavement and construction standards of the town.

(Ord. No. 09-09, (19-105), 4-6-2009)

Sec. 38-106. - Easements.

Utility and other easements shall be provided as follows:

- (a) Utility easements centered on rear or side lot lines shall be provided where necessary and shall be at least ten feet in width.
- (b) A crosswalk easement of eight feet in width shall be provided when such is required by the planning board.
- (c) Where a subdivision is traversed by a watercourse, drainageway, channel, or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of such watercourse, and such further width of construction, or both, as will be adequate for the purpose. Parallel streets or parkways may be required in connection therewith.
- (d) Where a subdivision is adjacent to the Atlantic Ocean an easement for dune maintenance adjacent to the mean high water mark may be required or such other provisions as to dune maintenance may be required as may be approved by the planning board.
- (e) Lakes, ponds, creeks, and similar areas within the town will be accepted for maintenance only if such is recommended by the planning board and approved by the town council.
- (f) Telephone, electric and cable television service shall be installed underground.

(Ord. No. 09-09, (19-106), 4-6-2009)

Sec. 38-107. - Buffer strips.

A buffer strip of at least 50 feet in addition to the normal lot depth may be required adjacent to a limited-access highway or a commercial or industrial development. The strip shall be part of the platted lots, but shall have the following restriction lettered on the face of the plat.

"This strip reserved for the planting of trees or shrubs by the owners; the building of structures is prohibited."

(Ord. No. 09-09, (19-107), 4-6-2009)

Sec. 38-108. - Solid waste collection.

The planning board may require for each 25 lots or less an easily accessible site not exceeding 400 square feet to be reserved for the location of a solid waste container for use for public or private solid waste collection.

(Ord. No. 09-09, (19-108), 4-6-2009)

Sec. 38-109. - Private roads and reserve strips.

- (a) There may be private roads or reserve strips platted in subdivisions. The buyer shall be notified that the responsibility and maintenance of private roads or reserve strips will be the sole responsibility of the property owners. Private roads or reserve strips shall be set out in protective covenants, deeds, or on plats or any combination of those methods, and shall clearly state that the state, county or town will never be obligated to take over or maintain the road.
- (b) Private streets shall be designed and constructed to the town street standards and the developer shall submit the required test results to the town in order for the town to verify that the town street construction standards have been satisfied.
- (c) Private streets shall be permitted only in those subdivisions in which the developer and the developer's successors in interest have erected and provided for the continued maintenance of a sign visible from the street providing notice that the subdivision streets are private and maintained by the property owners. The sign must state that the state traffic laws may not be enforced on the private streets in the subdivision. The sign location must be designated on the subdivision plat submitted to the town for its approval.
- (d) Subdivisions with private streets shall have the following certificate placed on the subdivision plat filed with the county register of deeds:

"The streets in this subdivision are private. The property owners are responsible for maintaining and repairing the streets as well as paying the costs thereof. Municipal and other governmental services may be restricted or not be furnished to the property of owners using the private streets for access. With a few exceptions, the traffic laws of the State of North Carolina and the Town of Kitty Hawk are not enforceable on private streets."

(Ord. No. 09-09, (19-109), 4-6-2009)

Secs. 38-110—38-120. - Reserved.

DIVISION 2. - ROADS

Sec. 38-121. - Generally.

- (a) The design standards for roads in the subdivision jurisdiction of the town are as provided in this division. The standards and specifications of the state transportation department or any successor

agency thereto are adopted by reference. If there is a conflict between such state standards and specifications and the provisions of this division, the most stringent or restrictive standard shall prevail.

- (b) In this division the phrase "in accordance with" shall require that the applicable state department of transportation standards be met.
- (c) Written evidence of compliance with sections 38-123, 38-134 and 38-135 through 38-152 shall be furnished in the form required by the town council to the planning director and the town council prior to submitting the subdivision plat for final approval.

(Ord. No. 09-09, (19-121), 4-6-2009)

Sec. 38-122. - Existing roads and streets.

Any road or street existing prior to January 4, 1982 which has not been accepted by the town for the purpose of maintenance, repair and use by the citizens of the town shall first meet the following requirements (in addition to any other conditions imposed by the town council) prior to a developer or the citizens of the town petitioning the town to include a street or road in the town street system and accept the street or road for the purpose of repair, maintenance and general public use:

- (a) The road or street shall meet the minimum load-bearing capacity for type C sand-clay bases as prescribed and published by the state department of transportation.
- (b) Road shoulders shall either be stabilized and constructed or restored to meet all requirements set forth in this article. Drainage systems shall be constructed or restored to meet the requirements and specifications of this division. Vegetation shall be planted and topsoil placed where necessary to stabilize shoulders and minimize water and wind erosion.
- (c) Grass or plants growing within or on the paved portion of the road and the shoulders (or base if unpaved) shall be destroyed by environmentally safe means.
- (d) All potholes, broken edges and cracked sections must be patched and filled with additional asphalt.
- (e) The paved portion of the road shall be a minimum width consistent with the standards in sections 38-128 and 38-137 and shall be surfaced with one and one-half inches of SF 9.5A asphalt.
- (f) Road shoulders must be graded to prevent rainwater from pooling on the pavement.

(Ord. No. 09-09, (19-122), 4-6-2009)

Sec. 38-123. - Construction staking, inspection and testing requirements.

- (a) The developer shall obtain the services of a registered land surveyor or a professional engineer to stake the street alignment and elevations on the ground. These stakes shall be saved until the final pavement course is completed or offset stakes shall be provided by the developer.
- (b) The developer shall submit to the town independent laboratory test results of the following tests (as well as any other test results required by the town council from time to time) establishing that the street or road meets or exceeds the following standards before submitting the subdivision plat for final approval. Work which fails to meet the specifications and requirements will not be accepted by the town and shall be reconstructed or otherwise remedied as may be mutually agreed upon. Tests shall be conducted at the expense of the developer.

Construction Item	Inspection or Test

Completed aggregate base	Gradation check on course composite sample from every 325-foot section of street. Transverse stringline grade check from final elevation grade stakes every 200 feet.
Completed concrete base course, type HB and concrete surface course, type SF 9.5 and SF 9.5B	The greater of one test for compaction and thickness for every 250 linear feet of roadway, or minimum of two tests. The greater of one core sample test for gradation every 1,000 feet of roadway or minimum of two tests.
Core	The greater of one pavement sample for every 500 linear feet of roadway or a minimum of two cores. Test each core for compaction and thickness. Combine core samples as necessary to test asphalt content and gradation every 1,000 linear feet. Test results must be certified as meeting or exceeding NCDOT specifications.

- (c) Roads and streets constructed within the town which end in cul-de-sacs or which are dead-end streets, regardless of the length thereof, shall be subjected to all of the inspections and independent laboratory tests required by the ordinance in order to verify that the street or road meets or exceeds the standards of the town. The results of the inspections or tests shall be submitted to the town prior to submitting the subdivision plat for final approval.

(Ord. No. 09-09, (19-123), 4-6-2009)

Sec. 38-124. - Conformity to existing maps or plans.

The location and width of all proposed roads shall be in conformity with official plans or maps of the town and with existing or amended plans of the planning board.

(Ord. No. 09-09, (19-124), 4-6-2009)

Sec. 38-125. - Access to adjacent properties.

Where, in the opinion of the planning board, it is desirable to provide access to an adjoining property, proposed roads shall be extended by dedication to the boundary of such property and a temporary turn-around shall be provided.

(Ord. No. 09-09, (19-125), 4-6-2009)

Sec. 38-126. - Continuation of existing roads.

- (a) *Proposed road layout.* The proposed road layout shall be coordinated with the existing road system of the surrounding area and, where possible, existing principal roads shall be extended.
- (b) *Public or private street.* The street or street system within or on a plat of any division of land subject to this chapter shall be connected by a paved street with a public right-of-way or approved private street. Any new connecting street or unpaved existing connecting street or accessway shall be constructed and paved to town street standards.

- (c) *Development or PUD.* Any group development project or planned unit development subject to this chapter and/or chapter [42] shall be connected by a paved street with a public right-of-way or approved private street. Any new connecting street or unpaved existing connecting street or accessway shall be constructed and paved to town street standards. In such cases, the right-of-way width for the street can be less than the minimally required width as long as the actual paving width of the street complies.

(Ord. No. 09-09, (19-126), 4-6-2009)

Sec. 38-127. - Right-of-way widths.

Right-of-way widths shall be as shown on the major road plan and shall not be less than the following:

- (a) For primary roads, 80 feet.
- (b) For collector or secondary roads, 60 feet (or 50 feet with five-foot easement on lots fronting on road with easement specified in protective covenants or in deed).
- (c) For cul-de-sacs, minor dead-end roads or marginal-access roads, 30 feet.

(Ord. No. 09-09, (19-127), 4-6-2009)

Sec. 38-128. - Paving widths.

- (a) Where curbs and gutters are provided, the paving widths back to back of curbs shall be not less than the following:
 - (1) For primary roads and highways, 45 feet.
 - (2) For secondary or collector roads, 35 feet.
 - (3) For marginal-access roads, 28 feet.
 - (4) For cul-de-sacs or minor dead-end roads, 28 feet.
- (b) Where curbs and gutters are not provided, the paving widths shall not be less than the following:
 - (1) For collector or secondary roads, 20 feet.

(Ord. No. 09-09, (19-128), 4-6-2009)

Sec. 38-129. - Curves and tangents.

All curves, tangents, "K" values, minimum centerline radii, and other essential road design elements shall be designed in accordance with the standards found in the current edition or revision of the NCDOT publication Subdivision Roads - Minimum Construction Standards.

(Ord. No. 09-09, (19-129), 4-6-2009)

Sec. 38-130. - Intersections.

Road intersections shall be laid out as follows:

- (a) All roads shall intersect as nearly as possible at right angles and no road shall intersect at less than 60 degrees.

- (b) Intersections with a major road shall be at least 720 feet apart measured from centerline to centerline.
- (c) Property lines at road intersections shall be rounded with a minimum radius of 20 feet. At an angle of intersection of less than 75 degrees, a greater radius may be required.
- (d) Where a centerline offset (jog) occurs at an intersection the distance between centerlines shall be not less than 125 feet.

(Ord. No. 09-09, (19-130), 4-6-2009)

Sec. 38-131. - Turn-arounds in cul-de-sacs or permanent dead-end roads.

Any street with a length greater than 150 feet is required to have an approved turn-around having a traffic diameter of at least 90 feet and a right-of-way diameter of not less than 100 feet, an alternative turn-around layout per the standards of the adopted NC Fire Code, or other alternative layout approved by the fire code official.

(Ord. No. 09-09, (19-131), 4-6-2009)

Sec. 38-132. - Alleys.

Where alleys are provided for business access they shall be at least 20 feet in width. Alleys in residential developments shall be subject to the approval of the planning board. A dead-end alley shall have a turn-around with a diameter of not less than 80 feet.

(Ord. No. 09-09, (19-132), 4-6-2009)

Sec. 38-133. - Blocks.

Block lengths shall not exceed 1,400 feet nor be less than 400 feet. Where deemed necessary by the planning board, a pedestrian crosswalk of at least eight feet in width may be required.

(Ord. No. 09-09, (19-133), 4-6-2009)

Sec. 38-134. - Drainage.

- (a) The planning board or such other department or board designated by the town council shall review all drainage plans prior to granting preliminary approval of any subdivision plat, commercial site plan, or prior to accepting any existing street or road as part of the town road system.
- (b) All storm drainage shall be adequate to prevent flooding on private property from storm runoff of the design frequency and duration. The minimum design frequency and duration shall be consistent with the stormwater management standards found in chapter 12, article VI, stormwater management, but may be increased at the direction of the town council or such other department or board as the town council shall designate.
- (c) Subsurface drainage shall be adequate to maintain a stable subgrade. The typical cross sections for local residential streets and local collector streets are based upon stormwater infiltration into the natural site soils beyond the paved surface and aggregate shoulders. In cut sections, a swale or ditch shall be provided for this purpose and to provide stormwater storage in the event stormwater runoff or accumulation exceeds the infiltration capacity of the site soils. During construction, the contractor shall not introduce fines (clays and silts) into the surface of the area adjoining the construction site.

- (d) In the flat low-lying areas of the town, where the seasonal high water table is within two feet of the ground surface, the finished centerline elevation of the street surface shall be a minimum of two feet above the seasonal high water table.
- (e) Certain areas of the town are substantially void of vegetation and are characterized by shifting wind-blown sands. The Duneland, Newhan, Newhan-Corrolla Complex, Duneland-Newhan Complex and Newhan-Urban Complex soils constitute these areas. The areas and the characteristics of these soils are defined and discussed in the most recent soil survey data compiled by the USDA, Natural Resources Conservation Service. In these areas, the entire street right-of-way outside the aggregate shoulders shall be stabilized as follows:

(1) *Planting.*

Planting Mixture	Rate
Hatteras American Beachgrass (interplant with five to ten percent Sea Oats and/or Bitter Panicum)	One healthy stem/hill on one-foot centers
Sea Oats	One healthy stem/hill on one-foot centers
Weeping Lovegrass and Bahia Grass	Five pounds per 1,000 sq. ft.
Sod, with the provision of an irrigation system.	

(2) *Planting dates.*

Planting Mixture	Dates
American Beachgrass	November—March
Sea Oats or Bitter Panicum	March—June
Weeping Lovegrass/Bahia	March—June
No plantings July and August; establish temporary cover September 1 with Italian Rye; plant permanent cover Beachgrass November 1.	

(3) *Fertilization.*

Date	1st Year	2nd Year	Subsequent Years

March 15	—	10 lbs, 10-10-10*	10 lbs, 10-10-10*
April 15	15 lbs, 10-10-10*	—	—
June 15	4 lbs, Ammonium Nitrate*	—	—
September 1	4 lbs, Ammonium Nitrate*	3 lbs, Ammonium Nitrate*	—
<i>Sea oats and Bitter Panicum</i>			
April 15	—	[10] lbs, 10-10-10*	10 lbs, 10-10-10*
May 1	15 lbs, 10-10-10*	—	—
June 15	4 lbs, Ammonium Nitrate*	—	—
July 1	—	3 lbs, Ammonium Nitrate*	—
August 1	4 lbs, Ammonium Nitrate*	—	—

*All rates are pounds per 1,000 square feet.

- (4) *Mulch.* Do not mulch Beachgrass, Sea Oats or Bitter Panicum. Hydromulching or treated straw may be used with Lovegrass/Bahia combination. This vegetation shall be planted, placed, repaired, maintained and permanently established prior to the acceptance of the final plat by the town. If necessary to establish vegetation, the planning board shall approve areas of topsoil placement. When planning the location of streets through shifting sand areas, care shall be taken in designating the street alignment and horizontal grade so as to avoid steep dunes and to avoid extreme cuts and fills of more than a few feet.
- (f) The flat low-lying areas of the town are the marsh zones and shrub zones discussed in the most recent soil survey data compiled by the USDA, Natural Resources Conservation Service.

(Ord. No. 09-09, (19-134), 4-6-2009; Ord. No. 10-08, 9-7-2010)

Sec. 38-135. - Bridges.

Bridges shall be built in accordance with the state department of transportation rules, regulations and specifications.

(Ord. No. 09-09, (19-135), 4-6-2009)

Sec. 38-136. - Pavement design.

- (a) The following are minimum base and surface specifications after compacting where appropriate:
 - (1) Poor to fair subgrade soil types shall be excavated and replaced with good subgrade soil types prior to beginning construction of the road or street.
 - (2) Roads and streets shall be constructed only on good subgrade soil types with six inches of ABC and two inches of SF 9.5A.
 - (3) Any other pavement design must be reviewed and approved by the planning board or such other board or department as designated by the town council.
 - (4) No base course shall be placed on muck, pipe clay, organic matter or other unsuitable material.
- (b) Other base courses such as various cement-treated materials may be used in lieu of those shown above. These materials shall be of sufficient thickness to provide equivalent strength. However, any design other than those shown above must be approved prior to use.
- (c) All materials shall meet the requirements set forth in the state standard specifications for roads and structures.

(Ord. No. 09-09, (19-136), 4-6-2009)

Sec. 38-137. - Special provisions for local residential subdivision streets.

- (a) In this section "local residential subdivision street" means a cul-de-sac or loop street that is less than 2,500 feet in length, and any street less than one mile in length which does not connect thoroughfares and does not collect traffic from more than 100 dwelling units or residential lots or any combination thereof.
- (b) A rural residential lane is a subdivision street or road over which access is provided to not more than ten dwellings or buildable lots and which cannot become a part of a larger circulation system due to existing land surface or water features, wetland areas, or any existing manmade structure or structures that make connection of the rural residential lane to a larger street or road system impractical. Where such features or conditions exist, the planning board may recommend and the town council may approve or disapprove the use of the rural residential lane within the subdivision. A street designated as a rural residential lane shall not thereafter be connected to another street other than the street or road providing access to the subdivision as shown on the approved subdivision plat. No more than ten single-family residential dwellings shall be constructed upon lots fronting on or accessed over such rural residential lane.
 - (1) A rural residential lane shall have the following minimum standards:
 - a. A right-of-way width of not less than 30 feet;
 - b. An all-weather paved surface of not less than 18 feet; an all-weather paved surface does not include gravel or other un-bound aggregate;
 - c. Compacted stone shoulders of not less than two feet.
 - (2) All residential subdivision street standards not inconsistent with paragraph (1) above shall apply to rural residential lanes.
- (c) The following are minimum requirements for local residential subdivision streets:
 - (1) *Terrain classifications.* The terrain classifications are as follows:
 - a. Level: Cross slope range of 0 percent to 8 percent.

- b. Rolling: Cross slope range of 8.1 percent to 15 percent.
- c. Hilly: Cross slope over 15 percent.

	Level	Rolling	Hilly
Minimum shoulder width			
Shoulder section	4 ft.	4 ft.	4 ft.
Shoulder width between 4 ft. to 6 ft. shall be approved by the town planner considering adjacent land characteristics.			
Design speed	25 mph	25 mph	20 mph
Minimum sight distance on vertical curves	200 ft.	150 ft.	110 ft.
Minimum centerline radius	200 ft.	200 ft.	150 ft.
Superelevation of curves	Not allowed		
Maximum grade	6%	9%	12%

Street Geometrics	Level	Rolling	Hilly
K = Rate of vertical curvature for minimum sight distance	28	18	10

Formula for determination of length of vertical curve required to provide minimum sight distance.

$[L = KA]$
L = Length of vertical curve in feet
K = Rate of vertical curvature in feet per percent of A
A = Algebraic difference in grades in percent

Minimum cul-de-sac radius right-of-way	60 ft.	60 ft.	Not allowed
Edge of pavement	40 ft.	40 ft.	Not allowed

(Ord. No. 09-09, (19-137), 4-6-2009)

Sec. 38-138. - Special provisions for local residential collector streets.

- (a) In this section "local residential collector street" means a street which serves as the connecting street system between local residential streets and a thoroughfare system. Collector streets collect traffic from 100 to 400 dwelling units and/or residential lots.
- (b) The following provisions apply to local residential collector streets:
- (1) *Terrain classifications.* The terrain classifications are as follows:
- Level: Cross slope range of 0 percent to 8 percent.
 - Rolling: Cross slope range of 8.1 percent to 15 percent.
 - Hilly: Cross slope over 15 percent.

	Level	Rolling	Hilly
Minimum shoulder width			
Shoulder section	4 ft.	6 ft.	6 ft.
Design speed	35 mph	25 mph	25 mph
Minimum sight distance on vertical curves	250 ft.	200 ft.	150 ft.
Minimum centerline radius	250 ft.	230 ft.	150 ft.
Minimum superelevation rate for minimum radius	Not allowed		
Maximum grade	6%	9%	12%

Street Geometrics	Level	Rolling	Hilly

K = Rate of vertical curvature for minimum sight distance	45	28	18
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Formula for determination of length of vertical curve required to provide minimum site distances:

$[L = KA]$
L = Length of vertical curve in feet
K = Rate of vertical curvature in feet per percent of A
A = Algebraic difference in grades in percent

(Ord. No. 09-09, (19-138), 4-6-2009)

Sec. 38-139. - Thoroughfare roads.

In subdivisions in which a thoroughfare is planned by the developer, the subdivision plan will be forwarded to the traffic engineering branch for review by appropriate personnel of the state division of highways.

(Ord. No. 09-09, (19-139), 4-6-2009)

Sec. 38-140. - Industrial or commercial access roads.

The minimum construction standards for industrial access roads or for commercial shopping centers and apartment complexes will be reviewed individually. The construction standards for pavement design will be in line with anticipated traffic volume.

(Ord. No. 09-09, (19-140), 4-6-2009)

Sec. 38-141. - Street intersections.

- (a) Streets shall be laid out so as to intersect as nearly as possible at right angles, and no street shall intersect any other street at an angle less than 75 degrees.
- (b) The minimum sight distance when connecting new local residential streets or residential collector streets to existing state-maintained secondary roads is 70 feet along (secondary road right-of-way) and ten feet along the residential street right-of-way.
- (c) The minimum sight distance for new local residential streets and residential collector street intersections not under stop conditions is 90 feet along the centerline of each street. With stop

conditions, the sight distance requirement will be the same as provided in subsection (b) of this section.

- (d) Intersections of two local access streets, a local access street and a collector street, and two collector streets shall conform to the detail and diagram set forth in exhibit B attached to Ord. No. 81-4A, which exhibit is adopted by reference. The intersections of local subdivision streets or local collector streets with a major street shall conform to the diagram and detail set forth on exhibit C attached to Ord. No. 81-4A, which exhibit is adopted by reference.

(Ord. No. 81-4A, 1-4-82; Ord. No. 09-09, (19-141), 4-6-2009)

Sec. 38-142. - Driveway connections.

Residential driveway connections to local access streets and local collector streets shall conform to the following standards and details as set forth in the diagram attached to Ord. No. 81-4A designated exhibit D, which exhibit is adopted by reference. An approved culvert of a minimum diameter of 15 inches shall be required for all driveway crossings of swales or ditches.

(Ord. No. 81-4A, 1-4-82; Ord. No. 09-09, (19-142), 4-6-2009)

Sec. 38-143. - Additional requirements for cul-de-sacs.

In addition to all other requirements, cul-de-sacs on local access streets and local collector streets shall conform to the specifications and details set forth in exhibit E attached to Ord. No. 81-4A, which exhibit is adopted by reference.

(Ord. No. 81-4A, 1-4-82; Ord. No. 09-09, (19-143), 4-6-2009)

Sec. 38-144. - Site preparation and grading.

- (a) Site preparation and grading is required. This work includes clearing and grubbing the street right-of-way within the grading limits, and grading the roadbed to conform to the proposed profile and the standard typical cross section.
- (b) Clearing and grubbing shall be accomplished in accordance with the requirements of the state department of transportation standard specifications for roads and streets (department of transportation standard specification), section 200—Clearing and grubbing.
- (c) Grading shall be accomplished in accordance with the requirements of DOT standard specification, section 225—Roadway excavation and section 235—Embankment.

(Ord. No. 09-09, (19-144), 4-6-2009)

Sec. 38-145. - Subgrade stabilization.

- (a) Stabilization materials shall be aggregate, cement, asphalt materials, soils, or other materials with demonstrated merit. All subgrade material shall conform to state standard specifications of 95 percent compacted moisture content. All subgrade material shall be tested by a certified laboratory.
- (b) When cement is used as a stabilizing material, the amount of cement used and the degree of mixing is to be such that an aggregate structured subgrade is developed as opposed to a rigid concrete structured subgrade. The contractor shall employ a qualified testing laboratory to design the sand and cement mix and recommend compaction requirements. The unconfined compressive strength of

the laboratory mix at seven days shall be in the range of 50 to 100 pounds per square inch. Anticipated cement content to meet this criteria is estimated to be in the range of five percent.

- (c) When asphalt materials are used as a stabilizer, the mixture, asphalt material and construction methods employed shall be such to produce the desired result of limited subgrade deformation under construction equipment loads. The contractor shall employ a qualified testing laboratory to design the sand and asphalt mixture and recommended compaction requirements.
- (d) When aggregate is used as a stabilizer, the work shall be accomplished in accordance with the requirements of DOT standard specifications, section 510—Aggregate stabilization.

(Ord. No. 09-09, (19-145), 4-6-2009)

Sec. 38-146. - Aggregate base course.

Aggregate base course shall be in accordance with DOT standard specification, section 520—Aggregate base course.

(Ord. No. 09-09, (19-146), 4-6-2009)

Sec. 38-147. - Asphalt concrete base course.

Asphalt concrete base course shall be in accordance with DOT standard specification, section 630—Asphalt concrete base course, type HB.

(Ord. No. 09-09, (19-147), 4-6-2009)

Sec. 38-148. - Asphalt concrete surface course.

Asphalt concrete surface course shall be type SF 9.5A or S 9.5B in accordance with DOT standard specification, section 610—Asphalt concrete surface courses, types S 9.5B and SF 9.5A.

(Ord. No. 09-09, (19-148), 4-6-2009)

Sec. 38-149. - Aggregate shoulders.

- (a) There shall be an aggregate shoulder constructed on a prepared subgrade. Materials for aggregate shoulders shall be in accordance with DOT standard specification, section 520—Aggregate base course.
- (b) The subgrade for the shoulders shall be graded to an elevation below the finished surface that will permit the placing of the specified thickness of aggregate material. Dumping aggregate shoulder material on the paved road surface, or blading it from the paved road surface onto the shoulders is not permitted. The aggregate shall be deposited on the shoulders in such a manner as to avoid rutting or distorting the subgrade. The aggregate shall be shaped to the required cross section and compacted to 95 percent of the maximum unit weight determined per A.A.S.H.T.O.T. 180 as modified by the DOT.

(Ord. No. 09-09, (19-149), 4-6-2009)

Sec. 38-150. - Tack coat.

A tack coat is required and shall be in accordance with the requirements of DOT standard specification, section 605—Tack coat.

(Ord. No. 09-09, (19-150), 4-6-2009)

Sec. 38-151. - Road names.

Proposed roads which are obviously in alignment with existing roads should be given the same name. In assigning new names duplication should be avoided and in no case should the proposed name be phonetically similar to existing names irrespective of the use of the suffix: Street, avenue, boulevard, drive, place, court, etc. Approval of all road names must be coordinated with the county E911.

(Ord. No. 09-09, (19-151), 4-6-2009)

Cross reference— Street naming system, § 36-60 et seq.

ARTICLE I. - IN GENERAL

Sec. 42-1. - Definitions.

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

Accessory business use is any use that occurs in conjunction with a principal business use and is subordinate to the primary or majority business activity.

Accessory dwelling means a secondary dwelling unit established in conjunction with and clearly subordinate to a principal single-family dwelling unit, whether part of the same structure as the principal dwelling unit, or as a detached structure on the same lot. The use of manufactured or mobile homes, travel trailers, motorhomes, campers or similar vehicles as an accessory dwelling unit is prohibited.

Accessory use means a use which is clearly incidental to and customarily found in connection with the principal use and located on the same lot with such principal use.

Aircraft means any machine or device, including airplanes, helicopters, gliders, dirigibles, hanggliders (whether or not motor powered) and motor-powered parachutes capable of atmospheric flight.

Alley means a minor right-of-way, dedicated to public use, which affords a secondary means of vehicular access to the back or side of properties otherwise abutting a street, and which may be used for public utility purposes.

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

Approval authority means the town council or other board or official designated by ordinance or this chapter as being authorized to grant the specific zoning or land use permit or approval that constitutes a site specific development plan.

Approved parking and driveway surfaces means those surfaces approved from time to time by the town planning board and the town council.

Average footcandles means the average of a number of points of footcandle calculations or footcandle measurements in a given area.

Banner means any piece of cloth, lightweight fabric or other similar material bearing a design, motto, slogan or message, whether commercial or noncommercial.

Beacon means any light with one or more beams directed into the atmosphere or directed at one or more points not on the same lot as the light source; also, any light with one or more beams that rotate or move.

Bed and breakfast facility means a single-family dwelling which consists of a single dwelling unit together with the rental of one or more dwelling rooms on a daily or weekly basis. The dwelling rooms shall not be equipped to allow the preparation of meals, although a single meal may be provided in a common area by the proprietor of the establishment. The term "bed and breakfast" shall be considered synonymous with tourist home, guesthouse and other such similar uses, but is not intended to include group home.

Buffer means a planted or constructed divide of material and space used to provide sight and incidental sound screening from adjoining properties. The required height and width of the buffer strip and the materials used in its construction vary according to use. The term "buffer" is not a use and falls within the definition of open space. Unless specified otherwise in the various district regulations, buffers shall be in accordance with article VI, division 5 of this chapter.

Buffer strip means a device of material and/or space used to provide sight and sound screening from adjoining properties. The required height and width of the buffer strip and the materials used in its construction vary according to use.

Building means any structure enclosed and isolated by exterior walls constructed or used for residence, business, industry or other public purposes. The term "building" includes the term "structure."

Building, accessory, means a subordinate building consisting of walls and a roof, the use of which is clearly incidental to that of a principal building on the same lot. The term "accessory building or structure" shall not include a mobile home, trailer, or existing structure previously used as a mobile home, and mobile homes, trailers, or structures previously used as mobile homes shall not be used as accessory structures within the town.

Building footprint means the outline of the building exterior walls, including any attached additions and projections or similar attached protrusions. The term "building footprint" does not include roof overhangs or eaves.

Building marker means any sign indicating the name of a commercial or historical building and date and information about its construction. Such sign shall be cut into a masonry surface or made of bronze or other permanent material. Residential cottage identification markers shall be considered building markers so long as they do not exceed six square feet in area and are permanently mounted to the wall of such cottage in a location which does not interrupt architectural details.

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

Building setback line means a line parallel to or concentric with the street right-of-way establishing the minimum allowable distance between such right-of-way and the nearest portion of any building, and for oceanfront lots, the oceanfront setback as established by state coastal resources commission.

Building sign means any sign attached to any part of a building, as contrasted to a freestanding sign.

Building site means an area of disturbed land and vegetation required for placement of a structure, its accessways, and utilities, including areas disturbed for parking lots, power lines, driveways, septic tank nitrification fields, cemeteries and hiking trails.

Call center is a centralized service facility used for the purpose of receiving or transmitting a large volume of requests by telephone or email.

CAMA means the Coastal Area Management Act of 1974 (G.S. 113A-100 et seq.).

Canopy sign means any sign that is a part of or attached to an awning, canopy or other fabric, plastic or structural protective cover over a door, entrance, window or outdoor service area. A marquee is not a canopy.

Changeable copy sign means a sign or portion thereof with characters, letters or illustrations that can be changed or rearranged without altering the face or the surface of the sign. A changeable copy sign shall use exposed bulbs to display the changeable message. A sign on which the message changes more than eight times per day shall be considered an animated sign and not a changeable copy sign for purposes of this chapter. A sign on which the only copy that changes is an electronic or mechanical indication of time or temperature shall be considered a "time and temperature" portion of a sign and not a changeable copy sign for purposes of this chapter.

Commercial message means any sign wording, logo or other representation that, directly or indirectly, names, advertises or calls attention to a business, product, service or other commercial activity.

Commercial nudity establishment means any establishment which the public may enter, with or without admission charge or membership, wherein nudity is exhibited by employees or entertainers. For the purposes of this chapter, the term "nudity" means any exposure to public view of the human male or female genitals, pubic area or buttocks, with less than fully opaque covering, or any portion of the areola of the breast of the female with less than a fully opaque covering.

Commercial piers and boat slips means piers and boat slips that are used for commercial purposes or piers from which commercial uses are conducted in the general vicinity of the pier and boat slips. Commercial piers and boat slips are open to the general public.

Community piers and boat slips means piers and boat slips that are owned by two or more residential property owners; or that are owned and maintained by a property owner's association, and the facility is used by all of the property owners as part of an overall plan of development.

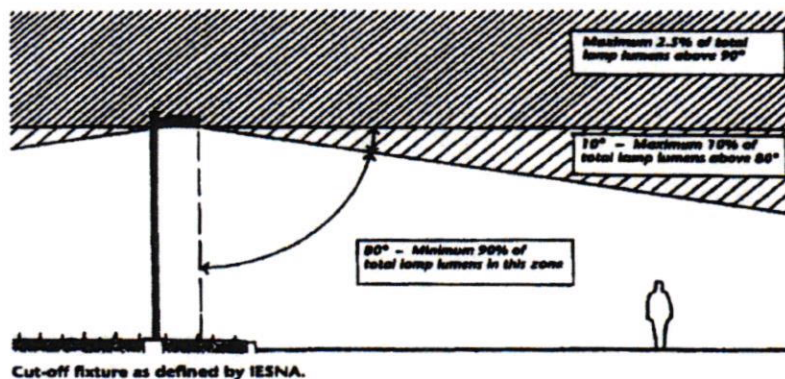
Condominium means ownership in common with others of a parcel of land and certain parts of a building thereon which would normally be used by all the occupants together with individual ownership in fee of a particular condominium unit in such building.

Cottage court means a group of buildings on one property which provide sleeping accommodations for transients on a daily, weekly, or similar shortterm basis, which is operated as a business establishment in a manner similar to a hotel, motel, or inn with an on-site office, front desk, and typical hotel services, with units that are not designed for use as single-family residences.

CRC means the state coastal resources commission.

Customer service area means that area of a building available for servicing customers, but not including kitchen or storage.

Cutoff fixture means a flat lens, full cutoff fixture that by its design, directs a minimum of 90 percent of total lamp lumens within 80 degrees of the vertical plane of the light fixture and a maximum of ten percent of the total lamp lumens above 80 degrees from the vertical plane, and no more than 2.5 percent of total lamp lumens above 90 degrees. Full cutoff fixtures must be installed in a horizontal position as designed.



Density means the number of dwelling units or hotel units which may be constructed upon a parcel of land, as allowed by the various zoning districts. Marsh and wetland areas, as determined by CAMA and/or CRC regulations, which are contiguous with estuarine waters, sounds and bays, and areas waterward of the oceanfront vegetation line, as determined by CAMA regulations, may not be used for density calculations.

Directional sign means signs containing directional information about public places owned or operated by federal, state or local governments or their agents; publicly or privately owned historic, cultural, educational and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation.

Dog park means a facility set aside for dogs to exercise and play off-leash in a controlled environment under the supervision of their owners or handlers.

Drive-in restaurant or refreshment stand means any place or premises used for sale, dispensing, or serving of food, refreshments, or beverages in automobiles, including an establishment where customers may serve themselves and may eat or drink the food, refreshments, or beverages on the premises.

Dwelling means a building that contains one or two dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes.

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

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

Dwelling, two-family (duplex), means a detached building, divided horizontally or vertically, and designed for or occupied by two single-family housekeeping units contained entirely under one roof and having one dividing partition common to each unit, or having the ceiling structure of the lower unit the floor structure of the unit above. A single-family home with an attached ADU meeting the size restrictions of 42-528(b) is not considered a two-family dwelling (duplex).

Dwelling unit means one room, or rooms connected together, constituting a separate, independent housekeeping unit for owner occupancy, or rental or lease, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities for a single family.

Eating establishment.

- (1) The term "eating establishment" means any establishment which provides as a principal use, the sale of food, frozen desserts or beverages in a state ready for consumption within the establishment and the design or principal method of operation of which includes both of the following characteristics:
 - a. Customers are provided with an individual menu and are served their food, frozen desserts or beverages by a restaurant employee at the same table or counter at which said items are consumed.
 - b. The food, frozen desserts or beverages are served on nondisposable plates or containers and nondisposable eating utensils are provided. Customers are not expected to clear their table or dispose of their trash.
- (2) Notwithstanding subsection (1) of this definition, a cafeteria where food, frozen desserts or beverages are:
 - a. Generally consumed within the establishment; and
 - b. Served on nondisposable plates or containers and nondisposable eating utensils are provided;shall be deemed an eating establishment.
- (3) An eating establishment may provide a carryout service provided that such carryout service is clearly not the principal business of such establishment.
- (4) A fast food restaurant shall be deemed an eating establishment.
- (5) Accessory uses in an eating establishment are as follows:
 - a. Entertainment which is provided for the enjoyment of the patrons shall be considered an accessory to an eating establishment, to include dancing by patrons, provided that the space made available for such dancing shall not be more than one-eighth of that part of the floor area available for dining.
 - b. The sale of T-shirts and souvenirs shall be considered an accessory if the area of that secondary commercial use is less than five percent of the square footage of the seating area of the restaurant.
- (6) The term "eating establishment" shall not be deemed to:
 - a. Include a snack bar or refreshment stand at a public or nonprofit recreational facility which is operated solely by the agency or group operating the recreational facility for the convenience of the patrons of the facility.

- b. Be a commercial nudity establishment.

Electronic gaming operation is any for-profit business enterprise, whether principal or accessory, where persons utilize electronic machines or devices, including, but not limited to, computers and gaming terminals, to conduct games of odds or chance, including sweepstakes, and where cash, merchandise, or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds. Such business or enterprises have as a part of its operation the running of one or more games or processes with any of the following characteristics:

- (1) Payment, directly or as an intended addition to the purchase of a product, whereby the customer receives one or more electronic sweepstakes tickets, cards, tokens or similar items entitling or empowering the customer to enter a sweepstakes, and without which the customer would be unable to enter the sweepstakes; or
- (2) Payment, directly or as an intended addition to the purchase of a product; whereby the customer can request a no purchase necessary free entry of one or more sweepstakes tickets or other item entitling the customer to enter a sweepstakes. The term electronic gaming operations includes, but is not limited to, cyber-gaming establishments, internet cafes, internet sweepstakes, beach sweepstakes, video sweepstakes or cybercafes, who have a finite pool of winners. This definition does not include any lottery permitted by the State of North Carolina.

Electronic machine or device is a mechanically, electrically or electronically operated machine or device for use by a single customer or player, that is owned, leased, or otherwise possessed by a sweepstakes sponsor or promoter, or any of the sweepstakes sponsor's or promoter's partners, affiliates, subsidiaries or contractors, that is intended to be used by a sweepstakes entrant, that uses energy, and that is capable of displaying information on a screen or other mechanism. This section is applicable to an electronic machine or device whether or not:

- (1) It is server-based.
- (2) It uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries.
- (3) It utilizes software such that the simulated game influences or determines the winning or value of the prize.
- (4) It selects prizes from a predetermined finite pool of entries.
- (5) It utilizes a mechanism that reveals the content of a predetermined sweepstakes entry.
- (6) It predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed.
- (7) It utilizes software to create a game result.
- (8) It requires a deposit of any money, coin, or token or the use of any credit card, debit card, prepaid card, or any other method of payment to activate the electronic machine or device.
- (9) It requires direct payment into the electronic machine or device, or remote activation of the electronic machine or device.
- (10) It requires purchase of a related product.
- (11) The related product, if any, has legitimate value.
- (12) It reveals the prize incrementally, even though it may not influence if a prize is awarded or the value of any prize awarded.
- (13) It determines and associates the prize with an entry or entries at the time the sweepstakes is entered.
- (14) It is a slot machine or other form of electrical, mechanical, or computer game.

Facade means the front of a building facing the street from the ground level to the ceiling joist. The roof structure shall not be included in any sign calculations.

Family means one or more persons occupying a single-family dwelling unit, provided that unless all members are related by blood or marriage, no such family shall contain more than five persons.

Fast food restaurant.

- (1) *Characteristics.* The term "fast food restaurant" means any establishment which provides as a principal use the sale of food, frozen desserts or beverages in a ready to consume state for consumption either within the restaurant, within a motor vehicle parked on the premises, or off-premises, and whose design or principal method of operation includes one or more of the following characteristics:
 - a. Food, frozen desserts or beverages are served in edible containers or in paper, plastic or other disposable containers. Eating utensils, if provided, are disposable.
 - b. Food, frozen desserts or beverages are usually served over a general service counter for the customer to carry to a seating facility within the restaurant, to a motor vehicle or off-premises. If consumed on premises, customers generally are expected to clear their own tables and dispose of their trash.
 - c. Forty-five percent or more of the gross floor area of the establishment is devoted to food preparation, storage and related activities, which space is not accessible to the general public.
 - d. Food, frozen desserts or beverages are served to the occupants of a motor vehicle while seated therein, such as through a drive-in window.
- (2) *Types.* The term "fast food restaurant" shall include the following eating establishments when they meet the criteria of this definition:
 - a. Drive-in;
 - b. Carryout;
 - c. Deli;
 - d. Snack bar;
 - e. Ice cream; and
 - f. Yogurt shop.

- (3) *Eating establishment.* A fast food restaurant shall be deemed an eating establishment.

Firewall means a fireproof or fire retardant wall that is required by the state building code to prevent fires from spreading to one section of a building from another. The firewall may project beyond the exterior wall of a building or structure.

Fitness center means a building where exercise activities take place, including weight lifting (free weights and machines), aerobic machines and equipment, aerobic, yoga and dance classes or other similar physical activities. It may include steam rooms, sauna rooms, tanning booths, and massage rooms. A fitness center can be a membership or commercial operation. A fitness center can include an indoor or outdoor swimming pool. It may also include sales of dietary supplements as an accessory use within the building.

Flag means any fabric or bunting containing distinctive colors, patterns or symbols.

Flag, banner means any freestanding flag or banner not attached to a permanent flagpole (including smaller flags, vertical banners, feather flags, blade flags, teardrop flags, windsocks, and similar products).

Flag, business means any flag containing the name, logo, product, service, or promotion of a business.

Flag, government means any flag of the United States, State of North Carolina, Town of Kitty Hawk, other legally recognized governments, or otherwise sanctioned by the Town of Kitty Hawk.

Flagpole means a pole on which a flag is raised.

Flagpole, standard means any flagpole comprised of a single vertical pole.

Flagpole, nautical means any flagpole consisting of a vertical pole with an attached yardarm and/or gaff.

Flag lot or panhandle lot means a lot which has a narrow frontage on a street and a thin strip of land which provides access from the street right-of-way to a wider portion of the lot.

Floodlight means a light fixture usually capable of being pointed in any direction that is designed to project a light beam to an object or surface area to a luminance considerably greater than its surroundings.

Floor area, gross, means the total area of a building measured by taking the outside dimension of the building at each floor level intended for occupancy or storage.

Footcandle means the unit of measure of illuminance on a surface. Footcandles are the ratio of the quantity of light in lumens divided by the surface area in square feet on which the lumens are falling. One lumen per square foot is one footcandle.

Forest canopy means the light intercepting layer formed by all of the treetops and ultimate leaf-bearing branches in a forest. It is the uppermost layer of vegetation in a forest. In the Kitty Hawk Woods, the forest canopy may be kept to near constant height by the pruning effect of salt mist nearer the ocean or it may become irregular in the height where salt impact is less.

Forest subcanopy means a light-intercepting understory layer formed by shade-tolerant saplings, shrubs, and small trees beneath the canopy of a forest. The Kitty Hawk Woods subcanopy species include dogwood, muscle wood, hop hornbeam, and holly.

Foundation means and includes a piling.

Freestanding sign means any sign supported by structures or supports that are placed on, or anchored in, the ground and that are independent from any building or other structure.

Front building setback line means a line parallel to or concentric with the street right-of-way establishing the minimum allowable distance between such right-of-way and the nearest portion of any building, excluding the outermost four feet of any uncovered porches, steps, eaves, gutters and similar fixtures; and for oceanfront lots, the oceanfront setback as established by state coastal resources commission.

Fully shielded means a light fixture that is constructed or sufficiently shielded by an opaque housing, in such a manner that all light emitted is below the horizontal plane as determined by photometric test or certified by the manufacturer.

General use district means a zoning district with designated permitted uses and designated conditional uses.

Glare means the sensation produced by luminance within the visual field that is significantly greater than the luminance to which the eyes are adapted, causing annoyance, discomfort, or loss of visual performance. It results from high luminances or insufficiently shielded light sources in the field of view or from reflecting areas of high luminance. There are two types:

- (1) *Disability glare*. The term "disability glare" affects visual performance and reduces the ability to see or identify objects. It is often accompanied by discomfort.
- (2) *Discomfort glare*. The term "discomfort glare" produces discomfort but does not necessarily interfere with visual performance or visibility.

Golf courses does not include a miniature golf or Putt-Putt type of golf course.

Gravel means clean, washed natural or crushed stone, with less than 50 percent passing a ¼-inch screen, with 100 percent passing a ¾-inch screen, and with less than two percent fines passing an ASTM #200 sieve. The term "gravel" includes open-graded crushed rock, pea gravel or river rock meeting the size criteria. The term "gravel" excludes crushed aggregate generally described or designated as "crusher run" or "ABC."

Ground cover means the lowest layer of vegetation in a forest. Generally, these plants are within one foot of the ground. Ground cover may be excluded where the canopy or subcanopy is dense. Ground cover species typically consist of weedy annual herbs, grasses, and vines. Partridge berry is a common ground cover within the dune ridge maritime forest in Kitty Hawk Woods while poison ivy is common on recently logged sites or where the canopy has been opened by ice storm or blowdowns.

Ground elevation means the mean elevation of the undisturbed land computed at the perimeter of the proposed building's foundation or piling location.

Ground stabilization plan means a plan that will ensure the stabilization and subsequent revegetation of all areas that have been disturbed in accordance with chapter 12, article II and chapter 32.

Groundwater recharge area means a catchment basin or watershed underlain by layers of alternating permeable and impermeable strata such that excess rainfall not lost by evapotranspiration or runoff is retained and stored in subterranean porous layers of soil. Essentially the entire Kitty Hawk Woods acts as a groundwater recharge area since porous sandy soils permit little runoff of excess precipitation. For the purposes of this chapter, components of this system include ponds, wetland swales, bay forests, dunes and marsh.

Height means the vertical distance measured from the highest point of the top plate of the permitted structure to the ground elevation.

Height, total, means the distance from ground elevation to the horizontal plane of the highest point of the building.

Home improvement warehouse means the wholesale and retail sales of home improvement and building construction products, residential fixtures and appliances, flooring and wall coating products, and landscaping plants, materials and supplies.

Home occupation means a profession or occupation carried on by a member of a family or a member of a recognized profession residing on the premises (see section 42-522 for conditions and standards).

Home occupation sign means any sign located in a district zoned for residential uses that contains no commercial message except advertising for goods or services legally offered on the premises where the sign is located, if offering such service or such goods at such location conforms with all the requirements of this chapter.

Horse means and includes a pony, mule and donkey.

Horse enclosure means an area containing or holding horses that is enclosed by or as if by a fence.

Horse rental means and includes a pony, mule, and donkey rental.

Horse shelter means something that provides cover or protection for horses, as from the weather. The term horse shelter includes stables.

Hose lay distance means the shortest distance measured from the fire hydrant to the building over an improved public or private right-of-way or a private driveway upon which a fire hose can be dropped from a fire truck in order to provide water at the building site. The term "hose lay distance" does not include unimproved yards, open spaces, wetland areas, and areas not intended or appropriate for activities associated with fire suppression.

Hotel or motel means a building or portion thereof or a group of buildings which provide sleeping accommodations for transients on a daily, weekly or similar shortterm basis, whether such establishment is designated as a hotel, inn, cottage court, automobile court, motel, motor inn, motor lodge, tourist cabin, tourist court, tourist home or otherwise. The term "hotel" or "motel" shall be deemed to include any

establishment which provides residential living accommodations for transients on a shortterm basis, such as an apartment hotel. A time share is specifically not a hotel or motel by definition.

IESNA means the Illumination Engineering Society of North America.

Impervious surface means any material that prevents absorption of stormwater into the ground.

Incidental sign means any sign, generally informational, that has a purpose secondary to the use of the lot on which it is located, such as "no parking," "entrance," "loading only," "telephone," and other similar directives. No sign with a commercial message legible from a position off the lot on which the sign is located shall be considered incidental.

Indoor ramp park means a skateboard ramp park completely enclosed within a building.

ISO footcandle diagram means lines plotted on a set of coordinates to show all points on a surface where equal levels of illuminance occur.

Lamp means a bulb or tube that is a light source.

LED sign means any sign containing light emitting diodes (LED) or lighting with similar characteristics. LEDs are diodes that emit visible light when electricity is applied, much like a lightbulb. When many LEDs are placed side by side, they can be lighted in patterns to create text, symbols, or pictures. The term "LED sign" includes any sign containing incandescent lights or exposed lightbulbs.

Light fixture means any electrically powered illuminating device, reflective surface, lamp or any similar device, permanently installed or portable, used for illumination or advertisement, including illuminated signs.

Lot means a parcel of land which fronts on and has ingress and egress by means of a public right-of-way or any approved private street and upon which there is located or intended to be located thereon a building or groups of buildings as provided herein with the customary accessories and open spaces. The term "lot" includes the term "plot," "parcel" or "tract."

Lot area means the total horizontal area included within lot lines.

Lot, corner, means a lot with at least two adjoining sides abutting for their full lengths on a street, provided that the interior angle at the intersection of two such sides is less than 135 degrees.

Lot coverage means a measure of the developed intensity of land use. The term "lot coverage" includes, but is not limited to, all areas covered by buildings, parking areas, accessory structures, driveways, roads, sidewalks, decks and any area of concrete or asphalt. Permeable pavement (see permeable pavement definition) lot coverage shall be reduced, upon site plan approval by the town, by the built-upon area (BUA) credit established in section C-5, Permeable Pavement, of the NC DEQ Stormwater Design Manual, latest edition, or if a proposed permeable pavement BUA credit has not been assigned by the NCDEQ Stormwater Design Manual, the BUA credit will be as confirmed by NC DEQ Stormwater Section upon evaluation.

Lot coverage physical area means the total area of all areas physically covered by buildings, parking areas, accessory structures, driveways, roads, sidewalks, any area of concrete or asphalt including impervious areas and permeable lot coverage without reduction for built-upon area credits. Lot coverage physical area shall not exceed the limits set out in the dimensional requirements of each zoning district.

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

Lot lines means any of the following lines:

- (1) *Front*. The front lot line means the line separating a lot from that street which is designated as the front street on the building permit, certificate of occupancy or subdivision plat.
- (2) *Rear*. The rear lot line means the lot boundary opposite and most distant from the front lot line. In the case of a pointed or irregular lot, it shall be an imaginary line parallel to and farthest from the front lot line, not less than 30 feet long and wholly within the lot.

(3) *Side*. The side lot line means any lot boundary line which is not a front lot line or a rear lot line.

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

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

Lumen means the unit of measure of the quantity of light emitted by a light source, irrespective of direction.

Maintained footcandles means footcandles (minimum, maximum, or average) that are calculated with an adjustment for a maintenance factor that includes dirt buildup, lamp lumen depreciation, ballast factor, etc. The system is in effect over designed initially and then over time allowed to reach a maintained footcandle level.

~~*Manufactured home* means a structure that is transportable in one or more sections. In traveling mode, the home is eight feet or more in width and 40 feet or more in length. A manufactured home is designed and constructed to the Federal Manufactured Construction and Safety Standards and is so labeled. When erected on site, the home is:~~

~~(1) At least 400 square feet;~~

~~(2) Built and remains on a permanent chassis;~~

~~(3) Designed to be used as a dwelling with a permanent foundation built to FHA criteria.~~

~~The structure must be designed for occupancy as a principle residence by a single family.~~

, 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. "Manufactured home" includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of HUD and complies with the standards established under the Act.

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 semipermanent 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 semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width.

Marquee means a wall sign for a theater which may have manually changeable copy to identify movies currently being screened and the times of day movies will be shown.

Maximum footcandle means the maximum footcandle point calculation or measurement in a given area.

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

Migrating dune means an area of unstabilized sand, subject to movement under the influence of winds. Migrating dunes occur in the Kitty Hawk Woods all along the eastern boundary of the dune ridge maritime forest.

Minimum footcandle means the minimum footcandle point calculation or measurement in a given area.

Minimum lot size means the minimum lot area as required by the various zoning districts. Marsh and wetland areas, as determined by CAMA and/or CRC regulations, which are contiguous with estuarine

waters, sounds and bays, and areas waterward of the oceanfront vegetation line, as determined by CAMA regulations, may not be used for the minimum lot size.

~~Mobile home means a structure that has all of the following characteristics:~~

- ~~(1) It consists of a single unit completely assembled at the factory.~~
- ~~(2) It is designed so that the total structure can be transported on its own chassis.~~
- ~~(3) It is over 32 feet long and eight feet wide.~~
- ~~(4) It is designed to be used as a dwelling unit and provides complete independent living facilities, including provisions for living, sleeping, eating, cooking and sanitation.~~
- ~~(5) It is actually being used, or is held ready for use, as a dwelling.~~
- ~~(6) Built prior to June 15, 1976.~~

~~The term "mobile home" does not include travel trailers.~~

Mobile ~~Manufactured~~ home park means a parcel, tract or contiguous parcel of land under single ownership that has been designated and improved for the placement of mobile homes for dwelling purposes.

Mobile vehicular sign means a sign consisting of not more than four display surfaces or panels on a truck designed and built for the purpose of displaying rotating or changing advertisements within the display area and for which a permit has been issued by the town.

Modification, major means a modification to an approved commercial site plan or a condition cited by Town Council in rendering final approval of an application which includes, but is not limited to, a relocation of structural elements and open spaces; changes in lot coverage or building sizes greater than fifteen percent of that which was originally approved; changes in specific conditions of approval.

Modification, minor means a modification to an approved commercial site plan or special use permit that does not change the material facts or substance upon which Town Council based its original approval, explicitly excluding a modification of use or density. A minor modification to a site plan shall include changes to approved lot coverages or building sizes not to exceed fifteen percent of originally approved lot coverage or building size, provided lot coverage does not exceed the maximum allowed by zoning district.

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

Multifamily dwelling development means a development composed in whole or in part of structures designed and built for occupancy by more than one family unit.

Natural features site plan means a site plan and accompanying report detailing existing vegetation and topography, which must be submitted to develop any subdivision or building site.

Nonconforming sign means any sign that does not conform to the requirements of this chapter.

Nonconforming use means a use of building or land which does not conform with the regulations of the district in which such building or land is situated, but was lawful before August 18, 1986.

Oceanfront setback means a line defined by state coastal resources commission regulations under the Coastal Area Management Act of 1974 (G.S. 113A-100 et seq.).

Off-site sign means a sign, other than a directional sign or mile marker sign, that is located off the property on which the use or activity advertised is sold.

Open commercial activity means any activity done for compensation (or as a result of compensation paid to another in order to engage in such activity) where the activity undertaken is conducted outside of the perimeter walls of the structure.

Open space means that area within the boundaries of a lot or parcel that is intended to provide natural or manmade landscaped green space. The term "open space" may include, but not be limited to, lawns, decorative planting, undisturbed natural areas, wooded areas, natural water bodies and watercourses and those areas where landscaping and screening are required by this Code. The term "open space" shall not include driveways, paved or unpaved, parking lots, building footprints and any other paved areas.

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

Open vertical fixture means an unshielded high intensity discharge fixture with an open bottom acrylic refractor.

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

Pennant means any lightweight plastic, fabric or other material tapering to a point, whether or not containing a message of any kind, suspended from a rope, wire or string, usually in series, designed to move in the wind.

Permanent sign means any sign that is not a temporary sign.

Permeable pavement means pedestrian or vehicular pavement materials installed, operated, maintained, tested and repaired to permit passage of water through the pavement, including porous concrete, porous asphalt, permeable interlocking concrete pavers, concrete grid pavers (e.g., turfstone), reinforced turf, pavement edge restraints, and other similar proven technologies. Permeable pavement shall be not less than 100 percent pervious or built-upon area credit (lot coverage credit) as established in section C-5, Permeable Pavement, of the NC DEQ Stormwater Design Manual, latest edition, or for permeable pavement not evaluated by the NC DEQ Stormwater Design Manual, as confirmed by NC DEQ Stormwater Section upon evaluation.

Permeable pavement confinement means concrete, timber, corrosion resistant metal, or other pavement perimeter confinement means approved by the town to retain permeable pavement (other than permeable concrete or permeable asphalt) within approved site plan limits.

Permeable pavement failure means a permeable pavement condition at any time after installation that cannot be, or is not, promptly corrected and restored to the condition and performance represented for the permeable pavement at the time of Town of Kitty Hawk approval and initial installation.

Permeable pavement operation, maintenance, testing and repair means operation, maintenance, testing in accordance with North Carolina State University Simplified Infiltration Test, and repair as appropriate of a permeable pavement installation in accordance with recommendations and requirements of the permeable pavement manufacturer, supplier, or trade association; the NC DEQ Stormwater Design Manual; and/or the Town of Kitty Hawk approval. Testing shall be required for all permeable pavement installations unless such requirement is waived by the Town of Kitty Hawk. Testing shall be executed at least annually commencing with the date of the certificate of occupancy for the facility being served by the permeable pavement, and test results shall be provided to the Town of Kitty Hawk within 30 days of execution. Permeable pavement repairs, as appropriate, shall be completed promptly.

Person means any association, company, corporation, firm, organization or partnership, singular or plural, of any kind.

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

Pond means a small body of standing water with rooted plants growing across it (or at least capable of supporting plants all the way across). In Kitty Hawk Woods, ponds often exhibit moderate seasonal variations in water depth.

Portable sign means any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported including, but not limited to, signs:

- (1) Designed to be transported by means of wheels;

- (2) Converted to A-frame or T-frames;
- (3) Menu and sandwich board signs;
- (4) Balloons used as signs;
- (5) Umbrellas used for advertising; and
- (6) Attached to, painted on, or placed upon vehicles parked and visible from the public right-of-way, unless such vehicle is registered, licensed and used in the normal day-to-day operations of the business.

Principal business use is the business activity which comprises the primary or majority of the commercial activity that occurs on a site as permitted by the Town of Kitty Hawk.

Private piers and boat slips means piers and boat slips that are owned by the person or entity that owns the single-family residential lot to which the pier and boat slips are attached, and the private pier and boat slips are used by the lot owner, his family and guest.

Projecting sign means any sign affixed to a building or wall in such a manner that its leading edge extends more than six inches beyond the surface of such building or wall.

Rare plants means those plant species listed as "Reasons For Priority Rating" numbers 2, 4, 5, 6, and 7 (pages 1 and 2) in the Basic Inventory and Natural Diversity Summary of the Nags Head Woods, Dare County, North Carolina, 1978.

Recessed or flush-mounted means a fixture that is mounted above the ceiling with the opening, lens, or cover of the fixture recessed or level with the ceiling surface, and all light emitted is below the horizontal plane.

Residential sign means any sign located in a district zoned for residential uses that contains no commercial message except advertising for goods or services legally offered on the premises where the sign is located, if offering such service at such location conforms with all requirements of this chapter.

Restaurant. See *Eating establishment*.

Ridgeline forest means a type of maritime forest in which the pruning effect of salt mist is moderated by distance from the ocean source. The forest canopy is dominated by various evergreen oaks (live, laurel, water) and an understory subcanopy of dogwood, muscle wood, hop hornbeam, and holly. In the Kitty Hawk Woods, the dune ridge maritime forest occupies the highest dunes along a major north-south oriented dune ridge.

Roof overhang means the part of the roof structure that extends beyond the external wall of the building or structure. The term "overhang" shall include the "eaves."

Roof sign means any sign erected, constructed or placed on or over the roof of a building.

Roof sign, integral, means any sign erected or constructed as an integral or essentially integral part of a normal roof structure of any design.

Salt forest means a plant community that forms a border of irregular width between the forested ridge and the frontal dune system. Characteristic scrub forest vegetation includes loblolly pine, evergreen oaks, northern bayberry and wax myrtle. The area is sparsely to densely vegetated, having some areas of bare sand. This plant community is found on USDA soil types of duneland, newland, fine sand, and duneland-newland canopies.

Salt marsh means a flat bed of salt-resistant grasses, sedges and/or rushes that is periodically flooded by salt or brackish water. In Kitty Hawk Woods, salt marsh extends in an irregular band along the foot of the westernmost forested dunes westerly to the edge of the estuary. Characteristic plants include cattails, giant cordgrass, and black needle rush.

Setback means the distance between a property line or right-of-way and the building. It is synonymous with the yard. (Also see yards, and minimum yard requirements in section 42-504(g)).

Sign means any device, fixture, placard or structure that uses any color, form, graphic, illumination, symbol or writing to advertise, announce the purpose of or identify the purpose of a person or entity, or to communicate information of any kind to the public. However, the content or substance of the message or symbol appearing on a sign shall not be subject to or governed by the standards of article VI, division 3, except to define or categorize the sign type subject to regulation.

Sign area means that area of a sign composed in whole or in part of freestanding letters, symbols, devices or sculptured matter not mounted on a measurable surface and shall be construed to be the area of the least square, rectangle or circle that will enclose the letters, devices and/or sculptured matter. The area of a double-faced sign shall be the area of one face of the sign, provided that the two faces are of the same size and are parallel to one another with no more than 24 inches between each sign face.

Sill girder means the lowermost structural beam of a building which rests on the foundation wall or pilings and which supports the floor and exterior structure walls.

Site specific development plan means a plan of land development submitted to the town for purposes of obtaining one of the following zoning or land use permits or approvals by the town council of the:

- (1) Development plan and site plan pursuant to section 42-250(e).
- (2) Development plan and site plan pursuant to section 42-251(e).
- (3) Development plan and site plan pursuant to section 42-252(f).
- (4) Preliminary development plan and commercial site plan for BHMD (BH-1) pursuant to section 42-253.
- (5) Commercial site plan for BH-2 pursuant to section 42-254(e).
- (6) Development plan and site plan pursuant to section 42-276(e).
- (7) Development plan and site plan pursuant to section 42-277(e).
- (8) Development plan and site plan pursuant to section 42-278(e).
- (9) Preliminary approval of detailed site or project development and construction plans pursuant to section 42-389(e).
- (10) Preliminary approval of development plan and site plan pursuant to section 42-418.
- (11) Preliminary approval of development plan and site plan pursuant to section 20-299.
- (12) Preliminary approval of subdivision plat pursuant to section 38-92.
- (13) Mobile home or trailer park pursuant to the provisions of section 42-618.

Notwithstanding subsections (1) through (13) of this definition, neither a variance, a sketch plan or any other document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan.

Skirting area means that area beneath a mobile home from the underside of the floor area to the ground.

Sleeping unit means a room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Special use district means a general zoning district in which uses which are not permitted as a right may be permitted upon the issuance of a special use permit.

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

Stable means a building in which horses are sheltered and fed.

Street means any of the following:

- (1) Any permanently dedicated public right-of-way which has been accepted for maintenance by the state department of transportation or the town.
- (2) Any other open area providing the principal means of access for vehicles or pedestrians from a public right-of-way to a building or use of land and which complies with all of the following:
 - a. Is at least 30 feet in width.
 - b. Has been approved by the town council as a street.
 - c. Satisfies the requirements of this chapter.
 - d. Is covenanted by its owner to remain open and unobstructed throughout the life of any building or use which depends thereon to satisfy any requirement of this chapter.

Street, private, means a street that has not been dedicated to public use and for maintenance by the town.

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

Structure highlighting means:

- (1) Exposed or channel neon, argon, krypton or similar gas tube lighting, not utilized to illuminate a permitted sign, and directs attention to a building, or structure;
- (2) Any light source that illuminates a translucent two or three dimensional surface, or object, that is not part of a permitted sign, and directs attention to a building or structure.

Subdivision sign or subdivision identification signs means a sign displaying the name of a subdivision, which may be located at each entrance to the subdivision. Only one subdivision identification sign may be located at each entrance road.

Suspended sign means a sign that is suspended from the underside of a horizontal plane surface and is supported by such surface.

Sweepstakes is any game, advertising scheme or plan, or other promotion, which, with or without payment of any consideration, a person may enter to win or become eligible to receive any prize, the determination of which is based upon chance.

Temporary sign means any sign that is used only temporarily and is not approved for permanent installation and use.

Theme overlay district means a district in which additional requirements are imposed on properties within the underlying general use district. The additional requirements may include the regulation and restriction of the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land as well as the creation of architectural themes and standards regulating the general exterior facade, color, and material consistent with the designated architectural theme of the district.

Top plate means the structural member of a building located at the point where the structural wall framing and the structural roof framing join together at the top of the uppermost habitable floor and should the building be designed having top plates at more than one horizontal level, the uppermost plate shall be considered insofar as usage in this chapter is concerned.

Tourist-oriented direction sign (TDODS) means a guide sign that displays the business identification of an directional information for tourist-oriented business and tourist-oriented facilities (as defined in G.S. 136-140.15) or for a class of businesses or facilities that are tourist-oriented.

Townhouse means a single-family dwelling on its own individual lot but connected on two sides, by means of a common wall for at least ten feet of its length, to two other single-family dwellings or an end

dwelling of a row of such dwellings. No more than six such dwelling units may be attached in a single group.

Trailer includes any of the following:

- (1) *Camping trailer*. The term "camping trailer" means a folding structure of canvas or other material mounted on wheels and designed for travel, recreation, and vacation use.
- (2) *Motor home*. The term "motor home" means a portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.
- (3) *Pickup coach*. The term "pickup coach" means a structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation, and vacation.
- (4) *Travel trailer*. The term "travel trailer" means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation uses, and, when factory-equipped for the roads, it shall have a body width not exceeding eight feet, and a body length not exceeding 32 feet.

Use means any of the following:

- (1) Any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained, or occupied.
- (2) Any activity, occupation, business, or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land.

Use, conditional special, means a use that would not be appropriate generally or without restriction throughout a particular zoning district but which, if controlled as to number, area, location or relation to the neighborhood, would preserve the intent of this chapter to promote the public health, safety, morals, and general welfare.

Used or occupied, as applied to any land or building, includes the words "intended, arranged or designed to be used or occupied."

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

Vehicular sign means any message, symbol or design painted on or attached to a vehicle or trailer.

Wall sign means any sign attached parallel to, but within six inches of, a wall, painted on the wall surface of, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one sign surface.

Wetland swales means seasonally flooded or water-saturated depressions located between drier adjacent dune ridges. The vegetation cover includes a tree canopy. The general aspect of a swale greatly resembles that of a forested swamp, of which it may be considered a subunit. In the Kitty Hawk Woods, dominant wetland swale vegetation includes sweet gum, black gum, red maple, buttonbush, and cattails. Swales may become flooded seasonally or following heavy rainfall.

Window sign means any sign, pictures, symbol or combination thereof, designed to communicate information about an activity, business, commodity, event, sale or service, that is placed inside a window or upon the window panes or glass and is visible from the exterior of the window.

Workstation is a work or office area assigned to one person, often accommodating a computer terminal or other electronic equipment.

Yard means a required open space other than a court unoccupied and unobstructed by any structure or portion of a structure from 30 inches above the general ground level of the graded lot upward, except that handrails may extend more than 30 inches above the undisturbed ground level, provided the area between the support post or piers remains open and unobstructed by pickets, siding or material unnecessary for the structural strength of the handrails. Any pedestrian walkway and handrail must meet applicable CAMA standards and requirements and structural requirements of the state building code.

Yard, front, means a yard extending between side lot lines across the front of a lot adjoining the public street.

Yard, rear, means a yard extending across the rear of the lot between side lot lines.

Yard, side, means a yard extending from the rear line of the required front yard to the rear yard.

Yard sale means an event, by whatever name, held by a property owner or resident for the purpose of selling used personal property or common household merchandise. The term "yard sale" shall not be interpreted to permit a flea market.

Zoning vested right means a right pursuant to G.S. ~~460A-385.4~~ **160D-102** to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

(Code 1990, § 20-1; Ord. of 8-18-1986, §§ 2.01, 2.02; Ord. No. 88-16A, 10-24-1988; Ord. No. 89-27, 11-6-1989; Ord. No. 90-5, § 6(i), 4-23-1990; Ord. No. 90-7, § 2, 5-21-1990; Ord. No. 90-17, 12-3-1990; Ord. No. 91-14, 10-21-1991; Ord. No. 91-19, 12-10-1991; Ord. No. 93-2, 1-4-1993; Ord. No. 94-2, 1-10-1994; Ord. No. 95-17, 9-5-1995; Ord. No. 95-18, 9-5-1995; Ord. No. 96-7, 4-1-1996; Ord. No. 96-11, 5-6-1996; Ord. No. 97-6, 1-6-1997; Ord. No. 99-7, 3-1-1999; Ord. No. 99-11, 6-7-1999; Ord. No. 99-21, 9-7-1999; Ord. No. 99-24, 10-4-1999; Ord. No. 00-25, 7-10-2000; Ord. No. 00-37, 12-4-2000; Ord. No. 01-9, 4-2-2001; Ord. No. 02-17, § 20-1, 9-9-2002; Ord. No. 02-31, § 2, 12-2-2002; Ord. No. 03-02, § 20-1, 2-3-2003; Ord. No. 03-05, § 20-1, 2-3-2003; Ord. No. 03-26, § 20-1, 5-5-2003; Ord. No. 03-53, § 20-1, 10-6-2003; Ord. No. 03-56, § 20-1, 10-6-2003; Ord. No. 04-14, § 20-1, 4-19-2004; Ord. No. 06-16, § 20-1, 11-6-2006; Ord. No. 06-17, § 20-1, 12-4-2006; Ord. No. 07-25, 8-6-2007; Ord. No. 07-31, 11-5-2007; Ord. No. 08-12, 6-2-2008; Ord. No. 08-16, 10-6-2008; Ord. No. 09-06, 3-2-2009; Ord. No. 10-10, 10-4-2010; Ord. No. 11-03, 3-7-2011; Ord. No. 12-01, 1-9-2012; Ord. No. 12-10, 11-5-2012; Ord. No. 13-12, 12-2-2013; Ord. No. 16-05, 4-4-2016; Ord. No. 18-02, 2-5-2018; Ord. No. 18-06, 6-4-2018)

Sec. 42-2. - Purpose.

In accordance with the provisions of G.S. ~~460A-387~~ **160D-604**, the town council having designated the planning board as the planning agency to prepare a land use plan showing proposed development patterns and to recommend a zoning ordinance and having received from the planning board a plan taking into consideration the character of each district and its peculiar suitability for particular uses with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the town, adopts this chapter. This chapter has been prepared in accordance with the land use plan for the development of the town and is designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; and to give reasonable consideration to the expansion and development of districts within the town so as to provide for their orderly growth and development.

(Code 1990, § 20-2; Ord. of 8-18-1986, § 1.03)

State Law reference— Purpose of zoning ordinances, G.S. ~~460A-383~~ **160D-701**.

Sec. 42-3. - Territorial applicability.

The provisions of this chapter shall apply to all lands and structures and uses thereon, within the zoning areas designated on the Official Zoning Map of the Town of Kitty Hawk, North Carolina.

(Code 1990, § 20-3; Ord. of 8-18-1986, § 1.08)

Charter reference— Planning jurisdiction, § 6-1.

Sec. 42-4. - Compliance.

- (a) No building, structure, or land shall be used or occupied, and no structure or part thereof shall hereafter be constructed, except in conformity with all of the provisions specified in this chapter for the district in which it is located.
- (b) No building or other structure shall hereafter be erected or altered:
 - (1) To exceed the applicable height or bulk requirements of this chapter.
 - (2) To accommodate or house a greater number of families than allowed by this chapter.
 - (3) To occupy a greater percentage of lot area than allowed by this chapter.
 - (4) To have narrower or smaller rear yards, front yards, side yards, or other open spaces than allowed by this chapter.
 - (5) In any other manner contrary to the provisions of this chapter.

(Code 1990, § 20-4; Ord. of 8-18-1986, § 1.04)

Sec. 42-5. - Interpretation, purpose and conflict.

In interpreting and applying the provisions of this chapter, the requirements of this chapter shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, property, and general welfare. It is not intended by this chapter to interfere with or abrogate or annul any easements, covenants, or other agreements between parties; provided, however, that where this chapter imposes a greater restriction upon the use of buildings or premises or upon the height of buildings, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations, or by easements, covenants, or agreements, the provisions of this chapter shall govern.

(Code 1990, § 20-5; Ord. of 8-18-1986, § 7.01)

State Law reference— ~~Conflict of zoning laws with other laws, G.S. 160A-390~~ **Zoning conflicts with other development standards, G.S. 160D-706**

Sec. 42-6. - Computation of required spaces.

- (a) No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this chapter, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building.
- (b) The area of a lot or commercial site deemed covered for the purpose of the lot coverage calculation shall consist of all areas of the lot or site utilized in the conduct of the commercial activity on the site or in support thereof, whether improved or unimproved, but shall not include landscaped borders and buffers or buffers upon which there are no commercial activities on or above the ground surface, green areas, open spaces and common areas and facilities approved by the planning board on the commercial site, and stormwater retention and disposal areas on site. Areas approved for outdoor storage and display shall be included as covered area.

- (c) All development standards and requirements must be satisfied within the boundaries of the site, tract, parcel, or lot submitted for review by the town except as provided in subsection (d) of this section. A sewage treatment system may be located on a parcel other than the parcel containing the facility served by the sewage treatment system, subject to the standards found in subsection 42-514(c)(2)a. and provided that the sewage treatment system is permitted by the applicable state agencies and/or Dare County Environmental Health Department.
- (d) In the BC-2 district where a parcel or lot described by deed or map recorded in the county registry prior to January 1, 1998, has been divided by the town corporate boundary, and the parcel or lot of land containing land inside and outside of the town boundary limit has been submitted as a commercial site plan for town approval, then the town may issue a special use permit to allow the applicant to include the area that portion of the commercial site located outside of the town for the purpose of complying with the lot coverage standard set forth in section 42-251(d)(5), subject to and provided the following conditions are satisfied:
 - (1) The applicant must file a special use permit application with the town and pay such special use permit fees as may be adopted by the town council;
 - (2) The applicant must file a copy of the deed or plat recorded in the county registry with the town which describes the lot or parcel of land existing on January 1, 1998, which is currently divided by the town corporate boundary limit;
 - (3) That portion of the site lying outside of the corporate limits cannot be separated by a street or vehicular accessway from the commercial site within the town corporate limits;
 - (4) The land area of the site outside of the town limits cannot be subdivided, sold, conveyed or otherwise transferred separate from that portion of the commercial site within the town if such sale, conveyance, transfer, or subdivision would cause that portion of the site remaining in the town to violate the coverage standard or any other zoning standard then applicable to commercial lots, and such a sale, conveyance, transfer or subdivision of land shall be a basis for revoking the special use permit and the commercial site approval for the area of the site remaining in the town as well as the issuance of an injunction by a court which prohibits further use of the site until the site is brought into compliance with the current zoning standards of the town;
 - (5) The area of the site located outside of the corporate limits shall be used only as open space-green area, as access into and out of the site, driveway and for subsurface wastewater drainfield purposes as may be approved by the appropriate regulatory authorities;
 - (6) The applicant must submit, prior to approval by the town, a written statement from the appropriate office of the adjoining municipality that the proposed development shown on the site plan within the adjacent municipality complies with all applicable regulations and laws of the adjacent municipality.

(Code 1990, § 20-6; Ord. of 8-18-1986, § 7.02; Ord. No. 98-7, 3-2-1998; Ord. No. 14-09, 10-6-2014)

Sec. 42-7. - Structures excluded from height limitations.

- (a) Cupolas, domes, ornamental towers, similar architectural features, and architectural elements housing mechanical equipment are allowed to extend up to four feet above the maximum building height in all zoning districts when not used for human occupancy.
- (b) Certain structures, including church spires, water towers, conveyors, and communication towers are allowed to exceed maximum height limitations of the zoning district in which the structures are located, subject to standards and limitations found below and elsewhere in this Code:

MAXIMUM HEIGHT FOR EXCLUDED STRUCTURES

Church spires	58 feet
Water towers	160 feet
Conveyors	45 feet
Communications towers	150 feet

(Ord. No. 07-20, 06-05-2007; Ord. No. 07-04, § 20-7, 2-5-2007)

Sec. 42-8. - References to certain roads.

All references in any zoning ordinances to the US 158 Bypass shall be changed to US 158. All references in any zoning ordinances to the US 158 Business shall be changed to NC 12.

(Code 1990, § 20-8; Ord. No. 88-15A, 10-24-1988)

Sec. 42-9. - Termination of town approvals.

Unless otherwise provided by this Code, any town approval required under this chapter as a precondition to undertaking any land use activity, including the construction of improvements to real property or the division or recombination of land, shall expire 365 days following the date of final approval by the town. No action otherwise authorized by such approval shall be undertaken until a subsequent approval has been granted by the town.

(Code 1990, § 20-9; Ord. No. 92-18, 11-2-1992)

Secs. 42-10—42-36. - Reserved.

ARTICLE II. - ADMINISTRATION AND ENFORCEMENT

DIVISION 1. - GENERALLY

Sec. 42-37. - Enforcement officer.

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

(Code 1990, § 20-21; Ord. No. 89-11, 4-17-1989; Ord. No. 02-21, § 20-21, 10-7-2002)

Sec. 42-38. - Violations.

- (a) If it is found that any of the provisions of this chapter are being violated, the code enforcement officer or such other town employee designated by the town manager shall notify, in writing, the person responsible for such violations, indicating the nature of the violations, and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by ordinance to ensure compliance with this chapter or to prevent violations of this chapter.
- (1) While any commercial or multifamily site plan is being reviewed by the town planning board or any zoning request is pending before the planning board, if a zoning or subdivision ordinance violation is located on the site being reviewed or which is the subject of the rezoning request, then the planner shall inform the code enforcement officer or such other town employee designated by the town manager who shall investigate and determine:
 - a. Whether there is probable cause to believe that a zoning or subdivision violation exists.
 - b. If a violation is found or probable cause to believe a violation has occurred is made by the code enforcement officer or such other town employee designated by the town manager, then the owner shall be notified of the nature of the violation and the action required to correct the same within the time period specified by the notice sent by the code enforcement officer or such other town employee designated by the town manager.
 - c. If corrective action is not implemented, then the code enforcement officer or such other town employee designated by the town manager shall use any lawful means to terminate the violation.
- (2) Site plan violations. The town manager or his designee shall investigate any alleged violations of an approved site specific development plan, including, but not limited to, any preliminary and final commercial or project site plan, conditions of approval agreed upon by the applicant and contained in the review record during either planning board or council review, and violations of special or conditional use permits. If a violation is verified by the investigating town official and an administrative approval has not been granted or is not forthwith granted pursuant to this Code by the town planner or such other town employee designated by the town manager, then the town manager or his designee shall issue a stop order describing the project work or activity and setting forth the action necessary to cure the violation or steps necessary to bring the project into compliance with the town approvals and permits.
- (b) Upon notification to the applicant of the stop order by the town manager or his designee as provided in subsection (a)(2) of this section, the applicant, its employees, agents, contractors, subcontractors,

independent contractors and any person or entity engaged in the activity or work described in the stop order shall immediately cease work or activity within the geographical area of the project described in the stop order or cease the specific activity or activities described in the stop order. No project work or activity described in the stop order or in a geographic area described in the stop order shall be continued after notification has been given to the project employee or agent of the applicant, and no work or activity within the scope of the stop order shall be recommenced until the violation has been corrected in accordance with the stop order.

- (c) A violation of the stop order shall be punishable by a civil penalty not exceeding \$500.00 per day for each day or portion thereof that work or activity continues after the issuance of the stop order and notification thereof as provided herein. Each day shall constitute a separate and distinct violation. The remedy of a civil action in the nature of a debt to collect the civil penalties shall be in addition to the remedy of injunction for a violation of the stop order or a violation of the town approvals or permits.
- (d) The scope of the stop order shall be that necessary, as determined by the town manager or his designee, to effect compliance by the developer and applicant with the approved site specific development plan, permits and conditions of approval by satisfying the requirements to cure or correct the violation as set forth in the stop order; the scope may include the authority to stop the activity or work on the specific object of the violation or within the geographical area of the violation, or with the phase in which the violation has occurred or within the entire project boundary or any portion thereof as well as stopping the specific and entire activity within the project boundary.
- (e) Until the corrective action has been completed or the violation ceases, the planning board shall make no recommendation of approval, conditional approval or disapproval of the rezoning application or of the site plan or of the multifamily project plan, and any time limits applicable to the review of the site plan or the zoning amendment shall be suspended from the date of the notice of the violation by the town manager or his designee until the violation has been corrected, or a court of final jurisdiction determines there is no violation, or a variance has been granted by the appropriate governmental body or agency.

(Code 1990, § 20-22; Ord. of 8-18-1986, § 8.04; Ord. No. 89-18, 12-19-1988; Ord. No. 89-11, 4-17-1989; Ord. No. 98-8, 3-2-1998; Ord. No. 02-21, § 20-22, 10-7-2002; Ord. No. 07-11, § 20-22, 5-7-2007)

State Law reference— Remedies for violation of zoning ordinances, ~~G.S. 160A-389~~ **160D-404(c).**

Sec. 42-39. - Fees.

- (a) All applications, site plans, planned unit development plans, or other plans required by this chapter to be presented to the town shall be accompanied by a fee. This fee shall be payable to the town. The fee required by this section shall be the amount specified in the regularly adopted fee schedule of the town.
- (b) If a preplanning fee is paid, and a preplanning conference is held and the applicant does not present a final site plan for review with the remainder of the review fee within 18 months, the process is nullified and the initial payment is forfeited.
- (c) The property owner or applicant shall be charged the cost of consultants or specialists required by the planning board for the purpose of reviewing the proposed project and the cost of any special meetings of the planning board held upon the request of the applicant. All review costs and fees shall be paid to the town by the property owner or the applicant prior to the final vote of the planning board. The special meeting fee shall be set forth on the town fee schedule as adopted and amended by the town council.

(Code 1990, § 20-23; Ord. of 8-18-1986, § 8.06; Ord. No. 94-13, 8-1-1994)

Sec. 42-40. - Amendments.

- (a) The town council may, on its own motion or upon motion or upon petition by any person within the zoning jurisdiction of the town, after public notice and hearing, amend, supplement, change, modify or repeal this chapter or the maps which are part of this chapter, subject to the rules prescribed in this chapter. No regulation or map shall be amended, supplemented, changed, modified or repealed until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. A notice of such hearing shall be given once a week for two successive calendar weeks in a newspaper of general circulation in the town. The notice shall be published for the first time and for the periods required and in accordance with G.S. ~~160A-364~~ **160D-601**. At a minimum, the owner of the property for which the map amendment is sought (or his agent) and all adjoining property owners shall be mailed notice of the public hearing at least ten days prior to the date of the hearing for any map amendment. For the purpose of applying this standard, an adjoining property is deemed to be any parcel that abuts the subject property or is ~~located directly across a public right-of-way from the subject property~~ **separated from the subject property by street or other transportation corridor**. For a zoning map amendment, notice of the public hearing shall be prominently posted on the subject parcel at least 10, but not more than 25 days prior to the date of the public hearing.
- (b) In case of a protest against an amendment, supplement, change, modification, or repeal signed by the owners of 20 percent or more either of the area of the land included in such proposed change, or of the land immediately adjacent thereto extending 100 feet therefrom, or of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by favorable vote of three-fourths of all members of the town council.
- (c) Every proposed amendment, supplement, change, modification or repeal to this chapter shall be referred to the planning board for its recommendation and report. ~~The planning board shall have 60 days within which to submit its recommendation to the town council~~ **If no written report is received from the planning board within 30 days of referral of the amendment to that board, the governing board may act on the amendment without the planning board recommendation**. All petitions for a change in the zoning map shall include a legal description of the property involved and the names and addresses of current abutting property owners.
- (d) **When conducting a review of proposed zoning text or map amendments, the planning board shall advise and comment on whether the proposed action is consistent with the approved land plan that has been adopted. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.**
- (d)(e) A fee shall be paid to the town in accordance with the adopted fee schedule for each application for amendment to this chapter to cover the costs of advertising and other administrative expenses involved.

(Code 1990, § 20-24; Ord. of 8-18-1986, art. X; Ord. No. 89-28, 11-6-1989; Ord. No. 90-5, § 6(j), 4-23-1990; Ord. No. 02-24, § 20-24, 10-7-2002; Ord. No. 07-30, 11-5-2007)

State Law reference— Amendments, G.S. ~~160A-384—160A-386~~. **160D-601 – 160D-604**

Secs. 42-41—42-68. - Reserved.

DIVISION 2. - APPEALS AND VARIANCES

Sec. 42-69. - Intent.

It is the intention of this division that all questions arising in connection with the enforcement of this chapter shall be presented first to the town planner for consideration and that such questions shall be presented to the board of adjustment only on appeal from a decision of an administrative official charged with the enforcement of this chapter, and that from the decision of the board of adjustment, recourse shall be had to the courts, as provided by law. It is further the intention of this division that appeals from a decision of a building inspector, related to this chapter but not pertaining to the state building code or state building laws shall be taken to the board of adjustment, and that from the decision of the board of adjustment, recourse shall be had to the courts, as provided by law; except that it shall be the duty of the town council to consider any amendments to this chapter, applications for ~~conditional use or~~ special use permits or site plans as provided by this chapter and any other duty not specifically delegated to the board of adjustment herein.

(Code 1990, § 20-36; Ord. of 8-18-1986, art. IX; Ord. No. 05-06, § 20-36, 4-6-2005; Ord. No. 13-07, 10-7-2013)

Sec. 42-70. - Board of adjustment—Established.

- (a) The board of adjustment is established and shall consist of five members, including the chairperson, who shall be residents of the town. Members shall be appointed by the town council.
- (b) Members shall serve terms of three years, with terms staggered to ensure that all members' terms do not expire concurrently. Vacancies occurring for reasons other than expirations of terms shall be filled as they occur for the period of the unexpired term. Members may be removed for cause by the town council upon presentation of written charges and after providing for a hearing thereon. The members of the board may be compensated for expenses incurred in the performance of their duties according to the reimbursement schedule which may be adopted by the town council from time to time. The board of adjustment is authorized to expend funds to obtain legal advice or other professional services necessary to discharge their duties.
- (c) In addition to the five regular members of the board of adjustment, the town council may appoint two alternate members for terms of three years. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. An alternate member may sit and deliberate in the place of an absent regular member, and an alternate member sitting on the board in place of an absent member shall have all the rights, privileges, and duties, including the right and power to vote, as the absent regular member, except that an alternate member sitting for an absent chairperson shall not exercise the duties, rights and privileges of the position of chairperson unless the vice-chairperson is also absent. Alternate members may be removed for cause by the town council upon presentation of written charges and after providing for a hearing.
- (d) It shall be the duty of any regular board member to notify the chairperson and an alternate of an anticipated absence from any duly called meeting of the board of adjustment.

(Code 1990, § 20-37; Ord. of 8-18-1986, § 9.01; Ord. No. 05-06, § 20-37, 4-6-2005; Ord. No. 13-07, 10-7-2013; Ord. No. 18-05, 6-4-2018)

State Law reference— Board of adjustments, G.S. ~~160A-388~~ **160D-302**.

Sec. 42-71. - Same—Officers and meetings.

- (a) The town council shall designate one of the board of adjustment members as chairperson and another as vice-chairperson, each of whom shall serve for one year, or until a successor is designated. The board may adopt from time to time such rules and regulations as it may deem necessary to carry into effect the provisions of this subsection.

- (b) All meetings of the board shall be held at a regular place and shall be open to the public. A quorum of four members shall be present at the designated meeting place before a vote is taken or final disposition of any appeal is made upon which the board is required to pass. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, an indication of such fact; and the final disposition of appeals shall be by recorded resolution indicating the reasons of the board therefor all of which shall be a public record.

(Code 1990, § 20-38; Ord. of 8-18-1986, §§ 9.02, 9.03; Ord. No. 13-07, 10-7-2013)

Sec. 42-72. - Same—Powers and duties.

- (a) The jurisdiction of the board of adjustment is limited to questions and issues concerning this chapter, and the board shall hear administrative appeals and variance requests related thereto.
- (b) Voting. The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the board members shall be required to reverse any decision of an administrative official charged with the enforcement of this chapter or decide in favor of the applicant a matter upon which the board is required to pass under this chapter.
- (c) The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.
- (d) The board of adjustment may not pass on any question, issue, appeal or variance request related to amendments of this chapter, the issuance of a ~~conditional~~ or special use permit or violations or orders related thereto, or review of site plans, such powers having been specifically reserved by the town council and not delegated to the board. Decisions rendered by the town council are not subject to review by the board of adjustment.
- (e) The chairperson of the board of adjustment or any member temporarily acting as chairperson, and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board.
- (f) The board of adjustment through the chair, or any member temporarily acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. ~~160A-393(d)~~ **160D-1402(c)** may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he/she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment.

(Code 1990, § 20-39; Ord. of 8-18-1986, § 9.04; Ord. No. 89-11, 4-17-1989; Ord. No. 05-06, § 20-39, 4-6-2005; Ord. No. 06-14, § 20-39, 8-7-2006; Ord. No. 13-07, 10-7-2013; Ord. No. 14-03, 3-3-2014)

State Law reference— Similar provisions, G.S. ~~160A-388~~ **160D-302, -405, -406, -705.**

Sec. 42-73. - Appeals and administrative review.

- (a) *Interpretations.* The board shall interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions that may arise in the administration of this chapter. The board shall hear and decide all matters referred to it or upon which it is required to pass under this chapter.
- (b) *Appeals.* Pursuant to its powers and duties, the board of adjustment shall hear and decide appeals decisions of administrative officials charged with the enforcement of this chapter. As used in this section, the term "decision" includes any final and binding order, requirement, or determination.
- (1) Any person who has standing under G.S. ~~460A-393(d)~~ **160D-1402(c)** or the Town of Kitty Hawk may appeal a decision to the board of adjustment. A written notice of appeal stating the grounds for the appeal must be filed with the town clerk.
 - (2) The official who made the decision must give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice must be delivered by personal delivery, electronic mail, or by first-class mail.
 - (3) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "zoning decision" or "subdivision decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision.
 - (4) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. **In the absence of evidence to the contrary, notice given by first-class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.**
 - (5) The official who made the decision must transmit to the board all the documents and exhibits constituting the record upon which the action appealed is taken. The official must also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
 - (6) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this chapter. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment must meet to hear the appeal within 15 days after such request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with this chapter shall not stay the further review of an application for permits or permissions to use such property. In these situations, the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.
 - (7) The board of adjustment must hear and decide the appeal within a reasonable time.
 - (8) Notice of the public hearing must be mailed to the person or entity whose application is the subject of the hearing; to the owner of the property that is subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land adjoining the property that is subject of the hearing; and to any other persons entitled to receive notice at least ten days, but not more than 25 days, prior to the hearing for any appeal. For the purpose of applying this standard, an adjoining property is deemed to be any parcel that abuts the subject property or is

located directly across a public right-of-way from the subject property. In the absence of evidence to the contrary, the town may rely on Dare County tax listings to determine owners of the property entitled to mailed notice.

- (9) The official who made the decision must be present at the hearing as a witness.
- (10) The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.
- (11) Voting on appeals. A majority of the board members shall be required to reverse any decision of an administrative official charged with the enforcement of this chapter. The board may reverse or affirm, in whole or in part, or may modify the decision appealed from, and shall make any order, requirement, decision or determination that ought to have been made. To this end, the board shall have all the powers of the official who made the decision.

(Code 1990, § 20-40; Ord. of 8-18-1986, § 9.01(A); Ord. No. 89-11, 4-17-1989; Ord. No. 05-06, § 20-40, 4-6-2005; Ord. No. 07-26, 8-6-2007; Ord. No. 13-07, 10-7-2013; Ord. No. 14-03, 3-3-2014)

State Law reference— Similar provisions, G.S. ~~160A-388~~ **160D-302, -405, -406, -705.**

Sec. 42-74. - Variances.

- (a) When unnecessary hardships would result from carrying out the strict letter of this chapter, the board of adjustment shall vary any of the provisions upon a showing of the following:
 - (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
 - (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship.
 - (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.
 - (5) The variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.
- (b) Notice of the public hearing shall be posted on the subject property at least ten days, but not more than 25 days, in advance of public hearing at which the board is to consider the variance. Notice of the public hearing must be mailed to the person or entity whose application is the subject of the hearing; to the owner of the property that is subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land adjoining the property that is subject of the hearing; and to any other persons entitled to receive notice at least ten days, but not more than 25 days, prior to the hearing for any variance. For the purpose of applying this standard, an adjoining property is deemed to be any parcel that abuts the subject property or is located directly across a public right-of-way from the subject property. In the absence of evidence to the contrary, the town may rely on Dare County tax listings to determine owners of the property entitled to mailed notice.

- (c) Voting on variances. A concurring vote of four-fifths of the board members shall be required to grant a variance. The board may grant the variance as requested, deny the variance, or grant the variance with conditions.
 - (1) The board of adjustment may impose appropriate conditions on any variance, provided the conditions are reasonably related to the variance.
 - (2) A violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be a violation of this chapter.
- (d) Under no circumstances shall the board of adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in the district.

(Code 1990, § 20-41; Ord. of 8-18-1986, §§ 2.02, 9.01(B); Ord. No. 05-06, § 20-41, 4-6-2005; Ord. No. 07-30, 11-5-2007; Ord. No. 13-07, 10-7-2013)

State Law reference— Variances, G.S. ~~160A-388~~ **160D-705(d)**.

Sec. 42-75. - Variances from flood damage prevention provisions.

- (a) The board of adjustments for the town shall hear and decide requests for variances from the requirements of the flood damage prevention provisions outlined in chapter 14.
- (b) Any person aggrieved by the decision of the board of adjustments may appeal such decision to the court, as provided in G.S. 7A-1 et seq.
- (c) Variances may be issued for:
 - (1) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure.
 - (2) Functionally dependant facilities, if determined to meet the definition as stated in section 14-5; provided that the provisions of section 14-65(i)(2), (3), and (5) have been satisfied, and such facilities are protected by methods that minimize flood damages.
 - (3) Any other type of development; provided that it meets the requirements stated in this section.
- (d) In passing upon variances, the board of adjustments shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:
 - (1) The danger that materials may be swept onto other lands to the injury of others;
 - (2) The danger to life and property due to flooding or erosion damage;
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (4) The importance of the services provided by the proposed facility to the community;
 - (5) The necessity to the facility of a waterfront location as defined in section 14-5 as a functionally dependent facility, where applicable;
 - (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (7) The compatibility of the proposed use with existing and anticipated development;
 - (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (10) The expected height, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (e) A written report addressing each of the factors in subsection (d) of this section shall be submitted with the application for a variance.
 - (f) Upon consideration of the factors listed in subsection (d) of this section and the purposes of this chapter, the board of adjustments may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
 - (g) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and that such construction below the base flood elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to \$25.00 per \$100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
 - (h) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the state upon request.
 - (i) Conditions for variances. The conditions for variances are as follows:
 - (1) Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.
 - (2) Variances shall not be issued within any designated floodway or nonencroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 - (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (4) Variances shall only be issued prior to development permit approval.
 - (5) Variances shall only be issued upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship; and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - (j) A variance may be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas, provided that all of the following conditions are met:
 - (1) The use serves a critical need in the community.
 - (2) No feasible location exists for the use outside the special flood hazard area.
 - (3) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.
 - (4) The use complies with all other applicable federal, state, and local laws.
 - (5) The town has notified the secretary of the state department of crime control and public safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

(Ord. No. 06-14, § 20-42, 8-7-2006)

Secs. 42-76—42-93. - Reserved.

DIVISION 3. - BUILDING PERMITS, CERTIFICATES OF OCCUPANCY, ETC.

Sec. 42-94. - Required; conditions; town clerk to keep records.

- (a) No building or other structure shall be erected or moved, nor shall any existing building or structure hereafter be altered in any manner, and no land disturbing activity undertaken preliminary to construction of a structure for which a building permit is required, until a building permit therefor has been issued by the building inspector. Each building permit shall expire six months from the date of issuance if work authorized by the permit has not commenced. If, after commencement, the work is discontinued for a period of 12 months, the permit therefor shall immediately expire. The building permit shall expire if less than 80 percent of the work authorized has been completed within 24 months from the date the permit was issued. No work authorized by any permit that has expired shall thereafter be performed until a new permit has been secured.
- (b) Single-family residential structures shall comply with the following requirements:
 - (1) The structure shall not have more than one full kitchen and food preparation area;
 - (2) The structure shall not exceed a total height of 35 feet, as provided in the standards of the zoning district regulations;
 - (3) Building plans or blueprints and specifications showing utility systems, outlets, and maximum loads of each system shall be filed with the building inspector in addition to the building permit application. The system shall meet or exceed any minimum requirements for the state in addition to the requirements of this chapter. A change in utility system layouts or maximum loads will require the building permit holder or owner to file an amendment to the original building permit describing the change or modification in the utility system. The amendment must be approved in writing by the building inspector; and
 - (4) A building site plan prepared by a licensed surveyor or engineer showing the building foundation footprint (perimeter) and the mean elevation of undisturbed land area at the building location.
- (c) All building and occupancy permits shall be conditioned upon continued compliance with the statements set forth in the building permit, and this chapter shall be binding upon the original owner (or building permit applicants if different than the owner), their heirs, successors or assigns. No building shall be occupied or used if the condition of the building permit or occupancy permit has been breached and is not corrected or cured by the owner or otherwise approved by the board of adjustments. The issuance of a building or occupancy permit by the town without approval shall not constitute a waiver of the right of the town to enforce its right to revoke, cancel or terminate the permit due to the violation or breach of any statement contained therein.
- (d) The owner of any building to be constructed in the town shall certify on a form approved by the town that all statements, representations, plans and specifications are material representations of fact made to procure the issuance of a building, improvement, or occupancy permit for the building described therein. Any variance therefrom not approved in writing on the permit by the town building inspector or granted by the board of adjustments shall terminate the improvement, building, or occupancy permits and the same shall become null and void.
- (e) The town clerk shall maintain a record of all building permits, applications and information required by this section. A separate record shall be maintained by the town clerk, listing those buildings which are in noncompliance with the original building permit or occupancy permit and cause written notice of such noncompliance to be filed with the county register of deeds under the name of the owner of the property.

(Code 1990, § 20-51; Ord. of 8-18-1986, § 1.05; Ord. No. 90-5, § 6(k), 4-23-1990; Ord. No. 01-9, 4-2-2001; Ord. No. 01-10, 4-2-2001; Ord. No. 19-07, 11-4-2019)

Sec. 42-95.- Conflicts of interest.

(a) **Governing Board.** - A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(b) **Appointed Boards.** - Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(c) **Administrative Staff.** - No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

(d) **Quasi-Judicial Decisions.** - A member of any board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

(e) **Resolution of Objection.** - If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

(f) **Familial Relationship.** - For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

Sec. 42-965. - Health department approval.

The building inspector shall not approve a building permit for any building for which county health department approval is required, until such approval has been given by the health department.

(Code 1990, § 20-52; Ord. of 8-18-1986, § 1.06)

Sec. 42-976. - Certificate of occupancy.

- (a) No land shall be used or occupied and no building structurally altered, erected or moved shall be used or the commercial use of a building changed until a certificate of occupancy has been issued by the building inspector stating that the building and/or the proposed use thereof complies with the provisions of this chapter. A certificate shall be issued for the purpose of renewing, changing, or extending a nonconforming use. A certificate of occupancy, either for the whole or a part of a building, shall be applied for coincident with the application for a building permit and shall be issued within ten days after the erection or structural alterations of such building, or part, shall have been completed in conformity with the provisions of this chapter. A record of all certificates shall be kept on file in the office of the building inspector.
- (b) A temporary certificate of occupancy may be issued by the building inspector for a period not exceeding six months during alterations or partial occupancy of a building pending its completion, provided that such temporary certificate may require such conditions and safeguards as will protect the safety of the occupants and the public.
- (c) Prior to May 1, 1996, all restaurants operating on the effective date of this amendment (June 5, 1995) shall prepare a restaurant seating plan containing the maximum number of seats approved by the county board of health and the approximate location of the seats within the building. The plan shall be signed by the appropriate county health department official to indicate county health department approval, and the original and one signed copy shall be presented to the town planner for his approval which shall be evidenced by the town planner's signature or such other town employee's signature as designated by the town manager to make such approval. One copy will be filed with the town planner and the original shall be posted at the restaurant but in no event no more than 15 feet from either side of the main entrance. The seating plan must be visibly displayed at all times and must be accessible to county or town officials for the purpose of inspecting the seating plan and the premises.
- (d) The applicant of a commercial restaurant site plan being reviewed by the town shall submit the seating plan as provided by subsection (c) of this section to the town planner before an occupancy permit is issued by the town. The original seating plan shall be posted as required by subsection (c) of this section within ten days of the occupancy permit date. The applicant shall designate on the commercial restaurant site plan the approximate location where the original seating plan will be posted.

(Code 1990, § 20-53; Ord. of 8-18-1986, § 1.07; Ord. No. 95-10, 6-5-1995; Ord. No. 02-21, § 20-53, 10-7-2002)

Sec. 42-987. - Applications for single-family detached and two-family residences.

- (a) All applications for building permits for new construction of single-family detached and two-family residences shall require submission of the following application materials:

- (1) All information and materials listed on a current residential building permit application as of the date that the application is submitted.
 - (2) Other information as may be lawfully required by the building inspector.
 - (3) Any additional information and materials that are necessary to determine conformance with and provide for the enforcement of this chapter.
- (b) One copy of the plans shall be returned to the applicant by the building inspector, after the building inspector has marked the copy as either approved or disapproved and attested to the same by his signature on such copy. The second copy of the plans, similarly marked, shall be retained by the town.

(Code 1990, § 20-54; Ord. of 8-18-1986, § 8.02(A); Ord. No. 90-5, § 6(1), 4-23-1990; Ord. No. 08-13, 6-2-2008)

Sec. 42-998. - Site plan requirements, site plan review, as-built plans and certificate of occupancy.

(a) *Site plans.* Site plans are required for the following:

- (1) A site plan review is required for multifamily, and commercial buildings and commercial sites as well as changes of use on existing commercial sites or changes from a residential use to a commercial use of an existing structure.
- (2) Every applicant seeking review of commercial and multifamily site plans and subdivision plans may have a preplanning board review conference with the town planning staff for the purpose of reviewing and identifying any technical errors, mistakes, or unsatisfied zoning or subdivision ordinance standards shown on the plan or plat under review. Any such errors, mistakes, or unsatisfied standards must be corrected and corrected plats resubmitted to the town planning staff before the application is processed for review by the town.
- (3) Site plans and modifications to site plans for the following uses when listed as permitted uses or ~~conditional~~ **special** uses within a district must be approved by the planning board and the town council (or the town planning staff as authorized by this chapter) before a building permit for construction may be issued:
 - a. Multiple-family residential dwellings containing three or more dwelling units.
 - b. Commercial buildings and use.
 - c. Apartment buildings and duplexes of two or more buildings.
 - d. Condominiums.
 - e. Townhouses.
 - f. Hotels, motels or motor lodges.
 - g. Business, commercial or industrial buildings.
 - h. All other uses similar to but not included in this subsection.

(b) *Procedure.* Submission requirements are as follows:

- (1) Fifteen copies of a site plan prepared, stamped and endorsed by a registered engineer, surveyor, or other person duly authorized by the state to practice as such shall be submitted no later than 30 days prior to the next regular meeting of the planning board.
 - a. Additional copies of each site plan may be requested, as needed, and may be delivered by the planning staff to such town, county and state officials and departments as the planning board or town council may direct. Each department, agency or staff representing such agency or department shall review the site plan and report any recommendations or comments to the planning staff.

- b. The planning staff shall review the application for compliance with submission requirements, and if the application is complete and all fees paid, schedule a staffing meeting with all participating departments.
 - c. The planning staff will notify the applicant of any technical errors, omissions, mistakes or unsatisfied standards which must be corrected before scheduling a review by the planning board.
- (2) In addition to any other requirements of the town staff or planning board, the site plan shall contain the following information:
- a. Property and ownership information.
 - 1. The present recorded owner and the map book reference of the site property.
 - 2. The owners, lot numbers or map book and page reference of all adjacent properties.
 - 3. The boundary of the entire lot by course and distance.
 - 4. The width of the existing rights-of-way.
 - 5. The nature or purpose, location and size of existing easements.
 - 6. Iron pins three-eighths-inch in diameter and 36 inches in length at all lot corners, points of tangents, and any angle point along a given court on the lot. Such pins shall be installed at all lot corners.
 - 7. The plan shall be drawn to a scale of at least one inch equals 100 feet and shall show a north arrow.
 - b. Existing features information.
 - 1. Streets showing the type and width of pavement, curbs and sidewalks.
 - 2. Topographic features of the lot and existing grades for the lot, streets, storm drainage, etc.
 - 3. All other underground utilities and facilities, including gasoline tanks.
 - 4. Each site plan with wetlands (as defined under the Federal Clean Water Act, as amended from time to time, and the rules and regulations published thereunder) within the site plan boundaries shall have the following certificate of a registered surveyor or engineer printed on the plat:

Wetland Certification

"The site plan contains wetland areas as defined by federal law and regulated by the Corps of Engineers. The wetland areas as of (date) have been identified based upon the then current federal rules and regulations as interpreted by the Corps of Engineers. **WARNING:** The wetland areas as well as the permitted uses of wetland areas may change with subsequent changes in the applicable rules and regulations or the interpretations of them by the Corps of Engineers."

- 5. A recordable restrictive covenant containing the following provisions and approved by the town attorney shall be signed by the owners of property subject to commercial site plan review by the planning board prior to final approval by either the town staff or planning board and town council, whichever is appropriate, before commencing the subsequent different commercial use:

"The undersigned, their heirs, successors and assigns, hereby covenant and agree that the property herein described shall be used for the commercial use of (designate commercial use) as allowed by the Kitty Hawk Zoning Ordinance and no other commercial use thereof shall be made without the prior approval of the town of Kitty Hawk pursuant to the Kitty Hawk Zoning Ordinance. Any changes in the site plan required by the change in commercial use shall be shown on an amended site plan which shall be approved by the planning board and town council."

- c. Site improvements.
 - 1. The proposed building type (brick or frame).
 - 2. The floor plans and dimensions.
 - 3. The uses and/or narrative of uses within the structure.
 - 4. The proposed first floor elevation.
 - 5. The location and type of all sidewalks and curbs within the site.
 - 6. The location of all wells, as well as size and depth thereof, water lines, water services, fire hydrants, and any other information the planning board may require.
 - 7. The location of sanitary sewer facilities with connection to sewer system or septic tank.
 - 8. The layout and number of parking stalls. The same shall be shown in accordance with article VI, division 2 of this chapter.
 - 9. The finished grades for the entire site.
 - 10. A tabulation of the total number of dwelling units of various types in the project and the overall project density in dwelling units per acre.
- d. Before any proposed site plan shall be approved, tentative approval of the proposed sewage treatment and disposal facilities, by the county board of health or the state department having jurisdiction, shall be demonstrated to the planning board along with any dredge and fill permits required by law.
- e. The applicant must submit building elevations of each side of the building proposed to be built together with the site plan for the town to review. The building elevations cannot be changed after town approval of the elevations without subsequent town approval of the revised elevations. The review of revised elevations may be conducted by the town staff or the planning board in accordance with the policies for review of site plan amendments.
- f. Proposed lighting plan in accordance with section 42-515(f).
- g. Right-of-way improvements. Such improvements shall be made in accordance with the policy of the town council.
- h. Storm drainage. The same shall be provided in accordance with the policy of the town council.
- i. On-site advertising. The location of on-site advertising signs and the distance of the signs from the closest property line.
- j. Zoning, etc., information. A statement or certificate of the owner or the owner's agent stating the zoning district classification in which the property is located and, if the property has been previously subdivided, the plat cabinet, and slide number designation assigned by the register of deeds to the recorded subdivision plat.
- k. A reduced site plan 8½ inches by 11 inches that can be shown on an overhead projector.
- l. In addition to the building permit covered elsewhere, a permit for any construction within the public right-of-way shall be obtained prior to commencing any work as well as any permits

required by chapter 12, article II, pertaining to the environment and chapter 32, pertaining to soil erosion.

- m. Inspections of sites involving public rights-of-way and inspections of any on-site construction shall be made by the town.
- n. Dimensional requirements and development standards shall be in accordance with the district in which the building is to be located, and shall be shown on the site plan.
- o. Wetlands identification and mapping.
 - 1. *Each applicant seeking planning board review of any proposed subdivision, resubdivision, commercial site plan or multifamily dwelling development shall have the Corps of Engineers verify the location of all wetlands within the property boundaries and the location of the wetland perimeters (404 lines) as flagged by the applicant. Thereafter, three plats prepared by a registered surveyor or engineer shall be filed with the town depicting the boundaries of the wetlands as verified by the Corps or other designated responsible agency along with a written letter or other certification acceptable to the town that the Corps or other designated agency has verified the location of the wetlands as shown on the plats filed with the town.*
 - 2. *The 404 or wetland plats shall be filed prior to or at the time the applicant files his application for planning board review. In the event any project contains wetlands and the applicant has not filed the wetlands plat with the town, then the time period for planning board review before town council review shall be automatically suspended and further planning board review forthwith terminated and deferred until the required plats are filed with the town with the appropriate certification. Thereafter, planning board review shall be reinstated without the payment of an additional fee; however, all zoning and subdivision ordinance amendments adopted by the town council during the interim period shall apply in all respects to the applicant's site or development. Any amendments or modifications to the site plan or development plan under review required by zoning or subdivision ordinance amendments shall be incorporated into the site plan or development plan filed with the town before further review by the planning board. If planning board review is terminated under this section and not reinstated within six months of the date of termination, then the applicant's right to reinstate planning board review shall automatically cease and the planning board shall not review the project until the applicant has refiled his application with the town and paid the appropriate fee.*
- (c) *Site plan review process.* All commercial site plans shall be reviewed by the staff in accordance with the administrative procedures and standards established by the town.
- (d) *Planning board review.* The planning board review is as follows:
 - (1) The planning board may recommend approval, conditional approval or recommend denial of any proposed site plan. Upon completion of its review, the planning board will transmit its recommendations to the town council.
 - (2) The applicant shall make appropriate revisions to comply with planning board recommendations. The applicant shall submit 15 copies of any revised site plan.
- (e) *Town council approval.* The town council may approve, approve with specific requirements and conditions or disapprove any site plan. A rejected site plan may be resubmitted in accordance with this section when redrafted to meet the specifications of this chapter and upon payment of a filing fee as required in section 42-39.
- (f) *Application for a building permit.*
 - (1) After the town council has approved a site plan, the applicant may request a building permit. The permit shall be granted if it complies with all applicable state building codes and conforms with the approved site plan.

- (2) The town staff shall conduct a staff review with all the departmental staff who reviewed the site plan and determine if the building permit is in compliance with the approved site plan.
 - (3) The site development shall be in accordance with the site plan and conditions approved by the town council. Any change to the approved site plan shall be submitted to the planning board for a recommendation and town council for approval.
- (g) *As-built site plan approval.* The applicant shall file a final as-built site plan with the town planning department. The town staff shall make any inspections necessary to verify the correctness of the site plan. The town planning staff may utilize the services of an engineer and/or surveyor licensed in the state for the purposes of examining the site plan and comparing the as-built site plan to the completed site to ensure compliance with all applicable zoning, subdivision, soil sedimentation and erosion control and flood ordinances and to ensure compliance with the approved site drainage plan as well as any other regulations of the town. The engineer and/or surveyor shall report all noncomplying conditions or standards to the town planning staff.
- (1) The as-built site plan shall contain the following site information, as well as any other information to demonstrate complete accordance with the approved site plan:
 - a. The building type, location and the floor dimensions and setbacks.
 - b. The first floor elevation.
 - c. The location and type of all sidewalks and curbs within the site.
 - d. The location of all wells, as well as size and depth thereof, water lines, water services, fire hydrants, and any other information shown on the approved site plan.
 - e. The location of sanitary sewer facilities with connection to sewer system or septic tank.
 - f. The layout and number of parking stalls.
 - g. The finished grades for the entire site along with any stormwater facilities on the site.
 - h. A tabulation of the total number of dwelling units in the project and the overall project density in dwelling units per acre.
 - i. Final lot coverage calculations. The town planning staff shall determine whether the as-built site plan substantially complies with the project approval (including the approved site plan notwithstanding the deficiencies or nonconformities reported by the engineer and/or surveyor). The town planning staff may:
 1. Deny approval of the as-built site plan and require modifications and evidence of compliance therewith;
 2. Grant approval; or
 3. Refer the as-built site plan and engineer's and/or surveyor's report to the planning board for its review and deliberation.
 - (2) Should the town planning staff deny approval or refer the as-built site plan to the planning board, then the planning board shall review the as-built site plan and other information within 30 days of the denial or referral date.
 - (3) After review by the planning board, it may approve, defer for compliance, or deny approval of the as-built site plan. If the planning board denies approval of the as-built site plan, then the applicant may appeal the decision to the town council. The town council may approve, conditionally approve or deny the as-built site plan.
- (h) *Issuance of certificate of occupancy.* No occupancy permit shall be issued until the as-built site plan has been approved by either the town planning staff, planning board or town council as provided herein. No final approval shall be granted until all review fees (including engineer's and/or surveyor's fees for services required by this section) have been paid in full to the town by the applicant.

- (i) *Expiration of site plan approval.* Upon final approval of the site plan, the building inspector may issue a building permit within 180 days from the date of such approval; provided that all other requirements of this chapter and other applicable town ordinances are met. If a building permit is not secured within 180 days of the final approval of the site plan, the applicant must resubmit the site plan for review by the planning board and the town council. Prior to the expiration of an approved site plan, the planning director can grant one extension of the site plan approval for 180 days, provided the planning director finds that:
 - (1) The site plan conforms with all current site plan standards and requirements, and there have not been any changes in this chapter which would make the site plan nonconforming on the date of the extension; and
 - (2) There have been no changes in the site plan.
- (j) *Site plan review following cessation of use.* When a commercial use of a property ceases for 24 months as demonstrated by the property being vacated, not open for business to the general public, utility services being discontinued or an intent to cease commercial use is otherwise stated or shown, before reopening the prior use or establishing a new commercial use a site plan must be submitted for approval and the site brought into compliance with current development standards. The site plan shall proceed to the planning board for review and to the town council for its approval. Reopening the commercial use of the property during the 24 months for less than 30 consecutive days will not toll the running of the 24 months.
- (k) *Changes to an approved site plan.* If, following the town council's conditional or final approval, the owner or developer desires to make a change to the approved site plan, the change must be reviewed by the planning board and approved by the town council.
- (l) *Change of permitted use within a site plan.* A change of permitted use of commercial property to another permitted use in the zoning district must be approved by the town prior to commencing the proposed use. If the proposed use is designated as a permitted use in this chapter for the district, then the town planner may conduct an administrative review and grant town approval of the proposed use and any necessary minor site plan modifications. The town planning staff may conduct an administrative review and grant town approval under the following circumstances:
 - (1) The proposed use has been designated as a permitted use in this chapter for the zoning district;
 - (2) Any site plan modification necessary to conduct the proposed use must be minor and in conformity with all standards and requirements of this chapter;
 - (3) An amended site plan depicting the modifications must be filed with the town, and the modifications at the site must be completed, inspected and approved by the town planning staff, the building department and the county health department, if necessary, before the use is commenced;
 - (4) After granting town approval pursuant to this subsection, the town planner shall inform the planning board of the approval at the board's next regular meeting following the approval date.

The purpose and intent of an administrative review is to allow a "change of permitted uses" within an existing commercial development or shopping center (approved site plan), as long as it meets the current standards as noted in subsections (1) through (4) above.
- (m) *Minor modifications to an approved site plan.* Minor modifications to or changes in an approved site plan and in the improved site, **as defined in Sec 42-1**, may be reviewed and administratively approved by the town planning staff, provided the modifications or changes to the site plan and the site do not result in any violations of site plan standards and the change or modification must be minor and in conformity with all standards and requirements of this chapter; and provided further that requirements of subsection [l](3), and (4) of this section are satisfied. Notwithstanding any request for administrative approval of a change or modification to a site plan and a site, the town planning staff, at their discretion, may require the proposed changes to be reviewed by the town planning board and approved by town council as otherwise provided in this chapter.

- (n) *Multiple lot site plan.* If the site plan depicts the combination of multiple lots, the plat must show the multiple lots as one parcel. In addition, a covenant that said parcel shall remain permanently combined as one parcel shall be submitted with the site plan. The plat and covenant shall be recorded in the county register of deed's office and indexed in the name of the current record owner prior to issuance of a building permit.
- (o) *Revocation of approval.* Development approvals may be revoked by the town by notifying the holder in writing stating the reason for the revocation. town shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the town for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked.
- (p) *Approval applicability.* Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to this Chapter attach to and run with the land.
- (q) *Permit choice.* If an application made in accordance with approved regulation is submitted for a development approval required pursuant to this Chapter and a development regulation changes between the time the application was submitted and a decision is made, the applicant may choose which version of the development regulation will apply to the application. If the development permit applicant chooses the version of the rule or ordinance applicable at the time of the permit application, the development permit applicant shall not be required to await the outcome of the amendment to the rule, map, or ordinance prior to acting on the development permit. This section applies to all development approvals issued by the town.

State Law reference— Conflicts of interest, G.S. 160D-109

(Code 1990, § 20-55; Ord. of 8-18-1986, §§ 1.04, 8.02(B); Ord. No. 87-14, 8-3-1987; Ord. No. 88-2, 1-18-1988; Ord. No. 88-8a, 8-1-1988; Ord. No. 88-13A, 10-24-1988; Ord. No. 89-17, 12-19-1988; Ord. No. 89-6, 3-20-1989; Ord. No. 89-11, 4-17-1989; Ord. No. 90-5, § 6(m), 4-23-1990; Ord. No. 91-7, 6-17-1991; Ord. No. 91-13, § 2, 10-7-1991; Ord. No. 95-7, 4-4-1995; Ord. No. 95-21, 11-6-1995; Ord. No. 98-15, 6-1-1998; Ord. No. 98-17, 6-1-1998; Ord. No. 98-32, 10-5-1998; Ord. No. 00-30, 8-7-2000; Ord. No. 02-18, § 20-55, 9-9-2002; Ord. No. 02-23, § 20-55, 10-7-2002; Ord. No. 02-31, § 1, 12-2-2002; Ord. No. 03-24, § 20-55, 5-5-2003; Ord. No. 03-40, § 20-55, 7-7-2003; Ord. No. 03-49, § 20-55, 9-8-2003; Ord. No. 10-14, 12-6-2010; Ord. No. 17-01, 3-6-2017)

Sec. 42-~~100~~99. - Application for building permit for ~~conditional~~ **special** uses.

- (a) *Town council approval; conditions.* The town council may hear and approve ~~conditional~~ **special** uses in the zoning districts where such ~~conditional~~ **special** uses are specified by this chapter. Applications for planned unit development shall also be processed under the procedures of this section. The town council may impose such reasonable and appropriate conditions and safeguards upon these ~~conditional~~ **special** use permits as to ensure that the spirit and intent of this chapter is preserved and that such ~~conditional~~ **special** use will not adversely affect the public interest.

- (b) *Commercial uses.* The application procedure for a ~~conditional~~ **special** use building permit for commercial uses are as follows:
- (1) Fifteen copies of a written application and accompanying site plan for a ~~conditional~~ **special** use permit shall be submitted no later than 30 days prior to the next regular meeting of the planning board. Additional copies of each ~~conditional~~ **special** use application may be requested by the planning staff.
 - (2) The planning staff shall review the application for compliance with submission requirements. The ~~conditional~~ **special** use shall meet all the commercial site plan requirements, as well as, provide a list of all adjacent property owners. In most cases, the ~~conditional~~ **special** use will require a concurrent review of a commercial site plan. When the staff determines that the application is complete, the staff will schedule the application for the next available planning board meeting.
 - (3) The planning board shall review the application and shall submit its recommendation as to approval or disapproval along with such conditions as it may deem necessary to the town council.
 - (4) The applicant may appear in person, or be represented by an agent or attorney.
 - (5) A ~~conditional~~ **special** use permit application shall not be given final consideration by the town council until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. A notice of such hearing shall be advertised at least 15 days prior to the date of the hearing in a newspaper of general circulation in the town. At a minimum, the owner of the property for which ~~conditional~~ **special** use approval is sought (or his agent) and all adjoining property owners shall be mailed notice of the public hearing at least 15 days prior to the date of the hearing for any ~~conditional~~ **special** use permit. For the purpose of applying this standard, an adjoining property is deemed to be any parcel that abuts the subject property or is located directly across a public right-of-way from the subject property.
 - (6) The town council shall conduct their review of any ~~conditional~~ **special** use permits as a quasi-judicial body. The mayor, or any member temporarily acting as mayor, and the town clerk are authorized to administer oaths to witnesses in any quasi-judicial matter coming before town council.
 - (7) In a quasi-judicial matter, the mayor, or any member temporarily acting as mayor, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the mayor explaining why it is necessary for certain witnesses or evidence to be compelled. The mayor shall issue requested subpoenas he/she determines to be relevant, reasonable in nature and scope, and not oppressive. The mayor shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the mayor may be appealed to the full town council.
 - (8) To approve the application, the town council must make findings that the proposed ~~conditional~~ **special** use:
 - a. Does not materially endanger the public health or safety,
 - b. Does meet all required conditions and specifications,
 - c. Will not substantially injure the value of adjoining property or be a public nuisance, and
 - d. Will be in harmony with the area in which it is located and be in general conformity with the comprehensive plan.
 - (9) The town council shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the council's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the mayor or other duly authorized member of the council. A

quasi-judicial decision is effective upon filing the written decision with the town clerk. The decision of the town council shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

(10) Minor modifications, as defined in Sec. 42-1, may be approved administratively by town planning staff. Notwithstanding any request for administrative approval of a change or modification to a site plan and a site, the town planning staff, at their discretion, may require the proposed changes to be reviewed by the town planning board and approved by town council as otherwise provided in this chapter.

(c) *Residential use in a commercial district.* A conditional special use application together with a review fee in accordance with the adopted fee schedule, shall be filed with the town for review of residential uses in a commercial district where such is permitted as a conditional special use in the zoning district. The town planning staff shall review the application and the town planner will either grant or deny the conditional special use requested by the application. If the planner denies the application, then the applicant shall have ten days from the written notification of such denial in order to appeal the town planner's decision to the town council. Upon a timely appeal to the town council, the appeal shall be placed on the next regular council agenda for hearing by the town council. If the town planner or such other town employee designated by the town manager grants the conditional special residential use in a commercial district, then the planner or such other town employee shall inform the applicant of the following:

(1) A site plan review by the planning board will be necessary in the event the residential use of the dwelling is changed or proposed to be changed to a commercial use.

(2) A commercial use may be commenced on property adjoining the residential use of the applicant.

(d) *Conditions and expiration.* In granting a permit for a conditional special use, the town council may prescribe reasonable and appropriate conditions. Violation of such conditions and safeguards, when made a part of the terms under which the permit is granted, shall be deemed a violation of this chapter. The town council shall prescribe a time limit within which the action for which the permit is required shall be begun or completed, or both. Failure to begin or complete, or both, such action within the time limit set shall void the permit. If an approved conditional special use ceases to operate for more than a period of 180 days, the conditional special use would expire. The property owner or subsequent owner/lessee would have to re-apply for the conditional special use. Only permitted uses allowed within the district would be permitted.

(e) No person shall commence or proceed with development without first securing any required development approval from the town. Applications for development approvals may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement. If approved, the development approval shall be made in writing.

(Code 1990, § 20-56; Ord. of 8-18-1986, § 8.03; Ord. No. 88-11A, 9-7-1988; Ord. No. 95-7, 4-4-1995; Ord. No. 02-21, § 20-56, 10-7-2002; Ord. No. 02-24, § 20-56, 10-7-2002; Ord. No. 03-41, § 20-56, 7-7-2003; Ord. No. 07-30, 11-5-2007; Ord. No. 11-05, 6-6-2011; Ord. No. 14-03, 3-3-2014)

Sec. 42-101. Site-specific vested rights.

(a) A vested right for a site-specific vesting plan shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site-specific vesting plan unless expressly provided by the town. The town may provide that rights regarding a site-specific vesting plan shall be vested for a period exceeding two years, but not exceeding five years, if warranted by the size and phasing of development, the level of investment, the need for development, economic cycles, and market conditions, or other considerations. This determination shall be in the discretion of the Planning Director and shall be made following the process specified for the particular form of a site-specific vesting plan involved in accordance with G.S. 160d-108(d)3(c), which provisions are explicitly incorporated herein by reference. The exceptions to the foregoing ordinance are iterated in G.S. 160D-108(f), which provisions are explicitly incorporated herein by reference.

(b) A multi-phased development is vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this subsection remains vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development.

Secs. 42-1020—42-126. - Reserved.

DIVISION 4. - NONCONFORMITIES

Sec. 42-127. - Generally.

- (a) Within the districts established by this chapter there exist lots, structures, uses of land and structures, and characteristics of use which were lawful before this chapter was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this chapter. Except as otherwise specifically provided in this chapter, it is the intent of this chapter to permit these nonconformities to continue until they are removed. It is further the intent of this chapter that nonconformities shall not be enlarged, expanded, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district. However, the town policy is to encourage the maintenance and improvement of property within the provisions of this section.
- (b) To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction, or designated use of any building for which a valid building permit has been issued by the town.
- (c) Notwithstanding any other provision of this chapter to the contrary, any lawfully established, nonconforming structure or structure containing a nonconforming use can be rebuilt in the event it is damaged or destroyed, whether in whole or in part, by fire, wind, flood or other calamity or catastrophic event. A building permit for such work must be obtained within one year of the date that the structure was damaged or destroyed and such work shall comply with the currently adopted building code. An additional six months may be granted by the planning director or designee when the director or designee determines that the extension is necessary due to delays beyond the control of, or not caused by, the property owner.

During such restoration, reconstruction or repair, the structure shall not be increased in volume or size, the footprint of the foundation enlarged, the structure relocated, or other improvements made to the property in a manner that increases its nonconformity. In the event that a structure violated a minimum setback standard of this chapter prior to its destruction by fire, wind, flood or other catastrophic event, said structure or portion thereof may be rebuilt or restored to the original foundation footprint, notwithstanding the provisions of the current setback standards in this chapter. The size, intensity, and density of a nonconforming use shall not be changed in a manner that increases its nonconformity.

Any structure and grounds housing a lawfully established, nonconforming commercial, office, industrial, institutional, multifamily residential, or group development must be repaired, maintained and/or rebuilt in accordance with the most recently approved project site plans (or existing site layout when plans are not available) or repaired, maintained and/or rebuilt in a manner that decreases its nonconformity.

(Code 1990, § 20-66; Ord. of 8-18-1986, § 6.01; Ord. No. 09-01, (20-66), 1-5-2009)

Editor's note— Ord. No. 09-01, adopted Jan. 5, 2009, changed the title of § 42-127 from intent to generally.

Sec. 42-128. - Nonconforming lots of record.

- (a) When a nonconforming lot can be used in conformity with all of the requirements (other than the area or width requirements) applicable to the district in which the lot is located, such a use may be made as of right. Otherwise, the nonconforming lot may be used only in accordance with a special use permit issued by the town council. The town council shall issue such a permit if it finds that the proposed use is one permitted by the regulations applicable to the district in which the property is located, and that the property can be developed as proposed without any significant negative impact on the surrounding property or the public health, safety, or welfare. In issuing the permit the council may allow deviations from applicable dimensional requirements (such as setback lines and yard size minimums) if it finds that no reasonable use of the property can be made without such deviations.
- (b) Whenever this chapter creates a nonconforming lot and the owner of the nonconforming lot also owns land adjacent to it, and a portion of this other land may be combined with the nonconforming lot to create a conforming lot (without thereby creating other nonconformities), the owner of the nonconforming lot, or his successors in interest may not take advantage of the provisions of subsection (a).

(Code 1990, § 20-67; Ord. of 8-18-1986, § 6.02(A); Ord. No. 89-11, 4-17-1989; Ord. No. 96-2, 1-8-1996; Ord. No. 09-01, (20-67), 1-5-2009)

Editor's note— Ord. No. 09-01, adopted Jan. 5, 2009, changed the title of § 42-128 from nonconforming—lots of record to nonconforming lots of record.

Sec. 42-129. - Nonconforming uses of land.

Where on August 18, 1986, lawful use of land exists which is not permitted by this chapter, the use may be continued so long as it remains otherwise lawful, provided:

- (1) No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied on August 18, 1986 or at the effective date of amendment of this chapter.
- (2) No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use on August 18, 1986 or at the effective date of amendment of this chapter.
- (3) If any such nonconforming use of land ceases for any reason for a period of more than one year, then any subsequent use of land shall conform to this chapter for the district in which such land is located, subject to the provisions of section 42-127.
- (4) No additional structure not conforming to the requirements of this chapter shall be erected in connection with such nonconforming use of land.

- (5) Any lawfully established, nonconforming mobile or manufactured home may be replaced with another mobile or manufactured home of any size in a manner that does not increase its nonconformity with applicable setback and lot coverage standards.
- (6) Existing single-family dwellings in commercial zones may be maintained, repaired, and reconstructed.
- (7) In any district in which residential multifamily or group development dwellings and/ or projects have been approved by the town planning board and town council prior to August 18, 1986, the approved multifamily or group development structure may be constructed, erected, repaired, maintained and rebuilt or reconstructed in accordance with the approved project site plans, and the plans and specifications submitted to the building inspector, notwithstanding the limitations by other provisions of this chapter, including but not limited to those pertaining to density, setback and yard area requirements and lot coverage. In instances where the dimensions of the structure(s) are not changing and number of bedrooms is not increasing, the number of units can be increased, subject to town council approval of a revised site plan.

(Code 1990, § 20-68; Ord. of 8-18-1986, § 6.02(B); Ord. No. 89-19, 12-19-1988; Ord. No. 93-10, 5-3-1993; Ord. No. 07-11, § 20-68, 5-7-2007; Ord. No. 09-01, (20-68), 1-5-2009; Ord. No. 12-07, 8-6-2012)

Editor's note— Ord. No. 09-01, adopted Jan. 5, 2009, changed the title of § 42-129 from same—uses of land to nonconforming uses of land.

Sec. 42-130. - Nonconforming structures.

- (a) Where a lawful structure exists on August 18, 1986 or at the effective date of amendment of this chapter that could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains lawful, subject to the following provisions:
 - (1) No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
 - (2) Should such nonconforming structure or nonconforming portion of a structure be demolished to an extent of more than 50 percent of its replacement cost at time of demolition, it shall not be reconstructed except in conformity with the provisions of this chapter, subject to the provisions of section [42-127].
 - (3) Should such nonconforming structure be moved for any reason for any distance whatever, it shall thereafter conform to the requirements for the district in which it is located after it is moved.
 - (4) Any such nonconforming structure located on the lots adjacent to the Atlantic Ocean or sound waters may be moved on the same lot provided that such movement does not increase the nonconformity of the structure in any way, as long as the proposed move complies with all applicable standards of other regulatory agencies.
- (b) Any outdoor sign which does not comply with this chapter is a nonconforming structure. Notwithstanding any other provisions with regard to nonconforming structures, the continued use of such nonconforming signs as nonconforming structures shall cease and the nonconforming structure be removed (or modified to conform) on January 1, 1994. A nonconforming sign structure which has been destroyed or damaged in excess of 50 percent of its value shall not be repaired or replaced. Such nonconforming sign structure shall be removed by the property owner of the property on which the structure is located.
- [(c)] Per the standards outlined in section [42-127], any lawfully established, nonconforming structure can be repaired or rebuilt in the event it is damaged or destroyed, whether in whole or in part, by fire,

wind, flood or other calamity or catastrophic event. During such reconstruction or repair, the structure shall not be increased in volume or size, the footprint of the foundation enlarged, the structure relocated, or other improvements made to the property in a manner that increases its nonconformity. Any such work shall comply with the electrical, plumbing, heating/air-conditioning and building code in effect at the time of the construction work.

(Code 1990, § 20-69; Ord. of 8-18-1986, § 6.02(C); Ord. No. 90-6, 5-7-1990; Ord. No. 03-44, § 20-69, 7-7-2003; Ord. No. 06-17, § 20-69, 12-4-2006; Ord. No. 09-01, (20-69), 1-5-2009)

Editor's note— Ord. No. 09-01, adopted Jan. 5, 2009, changed the title of § 42-130 from same—structures to nonconforming structures.

Sec. 42-131. - Nonconforming uses of buildings or of buildings and premises in combination.

If a lawful use involving buildings with a replacement cost of \$1,000.00 or more, or of a building and premises in combination, exists on August 18, 1986, or at the effective date of adoption of an amendment to this chapter, that would not be allowed in the district under the terms of this chapter, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (1) No existing structure devoted to a use not permitted by this chapter in the district in which it is located shall be enlarged, extended, constructed or moved except in changing the use of the structure to a use permitted in the district in which it is located.
- (2) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this chapter, but no such use shall be extended to occupy any land outside the building.
- (3) If no structural alterations are made, any nonconforming structure or use of structures may be changed to any conforming use, or with the approval of the town council to any use more in character with uses permitted in the district. In permitting such a change, the town council must find that the proposed use is more appropriate or equally as appropriate to the district as the existing nonconforming use and shall require appropriate conditions and safeguards necessary to ensure that the change is in keeping with provisions and spirit of this chapter.
- (4) Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the provisions for the district, and the nonconforming use may not thereafter be resumed.
- (5) When a nonconforming use of a structure or structure and premises in combination has ceased for one year (except when government action impedes access to the premises), the structure or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located.
- (6) Where nonconforming use status applies to a structure and premises in combination, removal of the structure shall eliminate the legal, nonconforming status of the land and the nonconforming use of the premises must cease.

(Code 1990, § 20-70; Ord. of 8-18-1986, § 6.02(D); Ord. No. 90-6, 5-7-1990; Ord. No. 09-01, (20-70), 1-5-2009)

Editor's note— Ord. No. 09-01, adopted Jan. 5, 2009, changed the title of § 42-131 from same—uses of buildings or buildings and premises in combination to nonconforming uses of buildings or of buildings and premises in combination.

Sec. 42-132. - Repairs and maintenance.

- (a) In any nonconforming structure or portion of a structure containing a nonconforming use, work may be done for ordinary repairs, or for repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, provided that any nonconformities shall not be increased.
- (b) If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by the building inspector to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.
- (c) Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by an official charged with protecting the public safety, upon order of such official.

(Code 1990, § 20-71; Ord. of 8-18-1986, § 6.02(E); Ord. No. 09-01, (20-71), 1-5-2009)

Sec. 42-133. - Nonconforming parking lots.

- (a) Where a lawfully established parking lot exists that could not be built under the current standards of this chapter by reason of restrictions on drive aisle widths or other dimensional requirements, such parking lot may continue to be used in its present configuration, subject to the following provision:
No such nonconforming parking lot may be enlarged or altered in a way which increases its nonconformity, but any parking lot or portion thereof may be altered to decrease its nonconformity.

(Ord. No. 09-13, 5-4-2009)

Sec. 42-134. - ~~Conditional~~ Special uses.

Any use which is permitted as a ~~conditional~~ special use in a district under the terms of this chapter shall not be deemed a nonconforming use in such district, but shall without further action be considered a conforming use.

(Code 1990, § 20-72; Ord. of 8-18-1986, § 6.02(F); Ord. No. 09-13, 5-4-2009)

Editor's note— Ord. No. 09-13, adopted May 4, 2009, renumbered the former § 42-133 as § 42-134. The historical notation for the aforementioned section has been preserved for reference purposes. See the Code Comparative Table for additional information.

Sec. 42-135. - Outstanding—Building permits.

Nothing in this chapter shall require any change in the plans, construction, size, or designated use of any building, structure, or part thereof for which a building permit has been granted by the building inspector prior to August 18, 1986; provided, however, that where construction is not begun under such outstanding permit within a period of 90 days subsequent to such date or where it has not been prosecuted to completion within six months subsequent to such date, any further construction or use shall be in conformity with the provisions of this chapter.

(Code 1990, § 20-73; Ord. of 8-18-1986, § 12.01; Ord. No. 09-13, 5-4-2009)

Editor's note— Ord. No. 09-13, adopted May 4, 2009, renumbered the former § 42-134 as § 42-135. The historical notation for the aforementioned section has been preserved for reference purposes. See the Code Comparative Table for additional information.

Sec. 42-136. - Same—~~Conditional~~ **Special** use and site plan permits.

Any ~~conditional~~ **special** use permit, commercial site plan, subdivision plat, multifamily development, final plat or multifamily site plan which has received final approval (or conditional approval) from the planning board prior to August 18, 1986, shall be allowed to proceed with the commercial or multifamily project or subdivision plan as approved and in accordance with the zoning regulations in effect at the time of the approval and the provisions of this chapter not inconsistent therewith, provided:

- (1) All fees owed to the town for the project (or an approved phase if a phased project) and all prior taxes owed by the applicant have been paid.
- (2) The building permit for the approved commercial site plan has been issued and construction commenced under the permit by March 18, 1987. Once construction has been commenced it must be continued and be completed within 24 months of the date of the building permit.
- (3) Final approval from the town council for multistructure projects (multifamily) must be granted and all building permits for the approved project or approved phase must be issued by August 18, 1987, and all construction completed on each structure within 24 months of each building permit date. Subsequent phases of a project receiving initial overall approval by the planning board must comply with the requirements of this section.

(Code 1990, § 20-74; Ord. of 8-18-1986, § 12.02; Ord. No. 95-3, 3-6-1995; Ord. No. 09-13, 5-4-2009)

Editor's note— Ord. No. 09-13, adopted May 4, 2009, renumbered the former § 42-135 as § 42-136. The historical notation for the aforementioned section has been preserved for reference purposes. See the Code Comparative Table for additional information.

Secs. 42-137—42-153. - Reserved.

DIVISION 5. - ZONING VESTED RIGHT

Sec. 42-154. - Purpose.

The purpose of this division is to implement the provisions of G.S. 160A-385.1 ~~160D-108~~, pursuant to which a statutory zoning vested right is established upon the approval of a site specific development plan.

(Code 1990, § 20-80; Ord. No. 91-20, 12-10-1991)

Sec. 42-155. - Established.

- (a) A zoning vested right shall be deemed established upon the valid final approval or, if required, preliminary approval or conditional preliminary approval, by the town council of a site specific development plan following notice and public hearing. A fee of \$75.00 shall be paid to the town at the time the request or application for any zoning vested right permit is filed with the town if a public hearing is required by this chapter.
- (b) The approving authority may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety and welfare.
- (c) Notwithstanding subsections (a) and (b) of this section, approval of a site specific development plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.

- (d) A site specific development plan shall be deemed approved upon the effective date of the approval authority's action or ordinance relating thereto.
- (e) The establishment of a zoning vested right shall not preclude the application of overlay zoning that imposes additional requirements which do not affect the allowable type or intensity of use, of ordinances or regulations that are general in nature and are applicable to all property subject to land use regulations by the town including, but not limited to, building, fire, plumbing, electrical and mechanical codes. Otherwise applicable new or amended regulations and standards shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this chapter.
- (f) A zoning vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

(Code 1990, § 20-81; Ord. No. 91-20, 12-10-1991)

Sec. 42-156. - Approval procedures and approval authority.

- (a) Except as otherwise provided in this section, an application for site specific development plan approval shall be processed in accordance with the procedures established by this chapter for development and site plan review and shall be considered by the designated approval authority for the specific type of zoning or land use permit or approval for which application is made.
- (b) Notwithstanding the provisions of subsection (a) of this section, if the authority to issue a particular zoning or land use permit or approval has been delegated by ordinance to a board, committee or administrative official other than the town council, the applicant must request, in writing at the time of the application, that the application be considered and acted on by the town council following notice and a public hearing as provided in G.S. ~~460A-364~~ **160D-601**.
- (c) In order for a zoning vested right to be established upon approval of a site specific development plan, the applicant must indicate at the time of the application, on a form to be provided by the town, that a zoning vested right is being sought.
- (d) Each map, plat, site plan or other document evidencing a site specific development plan shall contain the following notation:

"Approval of this plan establishes a zoning vested right under G.S. ~~460A-385.4~~ **160D-108**.
 Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."
- (e) Following approval, preliminary approval or conditional approval of a site specific development plan, nothing in this division shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.
- (f) Nothing in this division shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or this chapter.

(Code 1990, § 20-82; Ord. No. 91-20, 12-10-1991)

Sec. 42-157. - Duration.

- (a) A zoning right that has been vested as provided in this division shall remain vested for a period of two years unless specifically and unambiguously provided otherwise. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the approval authority at the time the amendment or modification is approved.

- (b) Upon issuance of a building permit, the expiration provisions of G.S. 160A-418 and the revocation provisions of G.S. 160A-422 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning right under this section is vested.

(Code 1990, § 20-83; Ord. No. 91-20, 12-10-1991)

Sec. 42-158. - Termination.

A zoning right that has vested as provided in this division shall terminate:

- (1) At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;
- (2) With the written consent of the affected landowner;
- (3) Upon findings by the town council, after notice and a public hearing, that natural or manmade hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety and welfare if the project were to proceed as contemplated in the site specific development plan;
- (4) Upon payment to the affected landowner of compensation for all costs, expenses and other losses incurred by the landowner including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal and other consultants' fees incurred after approval by the town, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;
- (5) Upon findings by the town council, after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site specific development plan; or
- (6) Upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the approval authority may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by town council resolution after notice and a hearing.

(Code 1990, § 20-84; Ord. No. 91-20, 12-10-1991)

Sec. 42-159. - Voluntary annexation.

A petition for annexation filed with the town under G.S. 160A-31 or G.S. 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under G.S. ~~160A-385.1 or G.S. 153A-344.1~~ **160D-102, -108**. A statement that declares that no zoning vested right has been established under G.S. ~~160A-385.1 or G.S. 153A-344.1~~ **160D-102, -108**, or the failure to sign a statement declaring whether or not a zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.

(Code 1990, § 20-85; Ord. No. 91-20, 12-10-1991)

Sec. 42-160. - Limitations.

Nothing in this division is intended or shall be deemed to create any vested right other than those established pursuant to G.S. ~~160A-385.1~~ **160D-108**.

(Code 1990, § 20-86; Ord. No. 91-20, 12-10-1991)

Sec. 42-161. - Effective date.

The ordinance from which this division is derived shall be effective December 2, 1991, and shall only apply to site specific development plans approved pursuant to the provisions of this division.

(Code 1990, § 20-87; Ord. No. 91-20, 12-10-1991)

Secs. 42-162—42-190. - Reserved.

ARTICLE III. - ZONING DISTRICTS GENERALLY; ZONING MAP⁽²⁾

Footnotes:

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State Law reference— Districts authorized, G.S. 160A-382.

Sec. 42-191. - Official zoning map adopted.

- (a) The town is hereby divided into zones or districts within which this chapter shall apply. The districts are shown on a map entitled "Official Zoning Map of the Town of Kitty Hawk, N.C.," which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this chapter. The official zoning map shall be identified by the signature of the mayor and attested to by the town clerk and bearing the town seal under the following words:

"This is to certify that this is the Official Zoning Map referred to in article I of the Zoning Ordinance of the Town of Kitty Hawk, N.C.," together with the date of adoption of this ordinance."

- (b) Regardless of the existence of purported copies of the official zoning map which may be made or published, the official zoning map which shall be located in the town's administrative building shall be the final authority as to the current zoning status of land and water areas, buildings and other structures in the town.
- (c) Extension of boundary. The zoning map of the town is hereby amended so as to extend the zoning boundary for a distance of not more than one mile from the corporate limits, as shown on a zoning map of the extraterritorial zoning area of the town dated May 25, 1994, and subsequently amended, such boundary being described as follows:
- (1) Beginning at a point on the mean high-water mark of Currituck Sound, said point being the intersection point of the town's north boundary line with the mean high-water mark of Currituck Sound; thence running the course of the town's north boundary line in a westerly direction for a distance of one mile into the Currituck Sound to a point; thence turning and running in a southerly direction to a point in Currituck Sound (said point being established by extending the southern boundary of the town in a westerly direction on the same course as said town boundary has on land where it intersects the mean high-water mark of Kitty Hawk Bay); thence turning and running from the point thus established in an easterly direction to a point on the mean high-water mark of Kitty Hawk Bay (said point being the intersection point of the south boundary of the town with the mean high-water mark of Kitty Hawk Bay); thence running in a general northwesterly direction along the mean high-water mark of Kitty Hawk Bay and Currituck Sound to a point on the mean high-water mark of Currituck Sound where the Currituck Sound mean high-water mark intersects the north boundary of the town, the point and place of beginning.
- (2) Establishment of zones. The areas lying outside of and beyond the corporate limits as shown on the map of the extraterritorial zoning area of the town and as described in subsection (c)(1) of this section are hereby divided into districts in accordance with such map and description, and the provisions of the town zoning ordinance are hereby made applicable in every respect for each of the districts within this extraterritorial area as indicated on the zoning map.
- (3) Applicability of ordinances related to zoning, subdivisions, and buildings to extraterritorial area. The zoning ordinance, subdivision ordinance, and building inspection ordinance of the town shall be applicable in every respect within the extraterritorial area in the same manner as they are now applicable within the corporate limits, and the building inspector (or other appropriate official) shall enforce all of the provisions of such ordinances within the extraterritorial area in the same manner as he is authorized to enforce such ordinances within the corporate limits.

(Code 1990, § 20-101; Ord. of 8-18-1986, § 1.09; Ord. No. 94-9, 6-27-1994)

Sec. 42-192. - Changes.

If changes are made in district boundaries or other matter portrayed on the official zoning map, such changes shall be promptly entered on the map after the amendment has been approved by the town council.

(Code 1990, § 20-102; Ord. of 8-18-1986, § 1.09)

Sec. 42-193. - Rules for interpretation of district boundaries.

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

- (1) Boundaries indicated as approximately following the centerlines of streets, highways, or alleys shall be construed to follow such centerlines.
- (2) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
- (3) Boundaries indicated as approximately following corporate limits shall be construed as following such corporate limits.
- (4) Boundaries indicated as following shorelines shall be construed to follow such shorelines. In the event of change in the actual shoreline, boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such centerlines.
- (5) Boundaries indicated as parallel to or extensions of features indicated in subsections (1) through (4) of this section, shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map.
- (6) Where physical or cultural features existing on the ground are at variance with those shown on the official zoning map, or in other circumstances not covered by subsections (1) through (5) of this section, the board of adjustments shall interpret the district boundaries.
- (7) Where district boundary line divides a lot which was in single ownership on August 18, 1986, the town council may permit, as a ~~conditional~~ **special** use, the extension of the regulations for either portion of the lot not to exceed 50 feet beyond the district line into the remaining portion of the lot.
- (8) Where the boundaries have been defined by legal description, the legal description shall prevail.
- (9) Zoning district boundaries indicated as approximately following platted lot lines and a street, highway or alley right-of-way margin shall be construed as following the centerline of the street, highway or alley.

(Code 1990, § 20-103; Ord. of 8-18-1986, § 1.10; Ord. No. 95-15, 8-7-1995; Ord. No. 07-11, § 20-103, 5-7-2007)

State Law reference— Interpretation of boundaries, G.S. ~~160A-384~~ **160D-105**.

Sec. 42-194. - Unlisted uses.

- (a) *Procedure for approving unlisted uses.* Where a particular use category or use type is not specifically allowed under this article and is also not prohibited or restricted by this article, the

planning director may permit the use category or type if the criteria of subsection (b) below are met. The planning director shall give due consideration to the intent of this article concerning the district(s) involved, the character of the uses specifically identified, and the character of the use(s) in question.

- (b) *Criteria for approving unlisted uses.* In order to determine that the proposed use(s) has an impact that is similar in nature, function, and duration to the other uses allowed in a specific zoning district, the planning director shall assess all relevant characteristics of the proposed use, including but not limited to the following:
- (1) The volume and type of sales, retail, wholesale; size and type of items sold and nature of inventory on the premises;
 - (2) Any processing done on the premises, including assembly, manufacturing, warehousing, shipping, distribution; any dangerous, hazardous, toxic, or explosive materials used in the processing;
 - (3) The nature and location of storage and outdoor display of merchandise; enclosed, open, inside or outside the principal building; and predominant types of items stored (such as business vehicles, work-in-process, inventory, and merchandise, construction materials, scrap and junk, and raw materials including liquids and powders);
 - (4) The type, size and nature of buildings and structures;
 - (5) The number and density of employees and customers per unit area of site in relation to business hours and employment shifts;
 - (6) Transportation requirements, including the modal split for people and freight, by volume type and characteristic of traffic generation to and from the site, trip purposes and whether trip purposes can be shared by other uses on the site;
 - (7) Parking requirements, turnover and generation, ratio of the number of spaces required per unit area or activity, and the potential for shared parking with other uses;
 - (8) The amount and nature of any nuisances generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation and fumes;
 - (9) Any special public utility requirements for serving the proposed use, including but not limited to water supply, waste water output, pre-treatment of wastes and emissions required or recommended, and any significant power structures and communications towers or facilities;
 - (10) The impact on adjacent properties created by the proposed use will not be greater than that of other uses in the zoning district.
- (c) *Determination by the planning director; effects.* All determinations by the planning director made pursuant to subsection (b) above shall be in writing. In making the determination described in subsection (b) above, the planning director shall initiate an amendment to this article if the particular use or category of use(s) is likely to be common or to recur frequently, or that omission of specific inclusion and reference to this article is likely to lead to public uncertainty and confusion. Until final action has been taken on such proposed amendment, the determination of the planning director shall be binding on all officers and departments of the town. If no amendment is initiated, the planning director's determination shall thereafter be binding on all officers and departments of the town, without further action or amendment of this article.
- (d) *Appeal of determination of the planning director.* The determination of the planning director may be appealed to the zoning board of adjustment pursuant to the procedures set forth in section 42-73 of this article.

(Ord. No. 16-14, 12-5-2016)

Secs. 42-195—42-224. - Reserved.

ARTICLE IV. - DISTRICT REGULATIONS^[3]

Footnotes:

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State Law reference— District regulations generally, G.S. 160A-382.

DIVISION 1. - KITTY HAWK WOODS^[4]

Footnotes:

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Editor's note— Ord. No. 16-14, adopted Dec. 5, 2016, changed the title of ch. 42, art. IV, div. 1 from "generally" to what is set out herein.

Sec. 42-225. - Kitty Hawk Woods district.

- (a) *Scope and intent.* Unless stated otherwise, this section applies to the Kitty Hawk Woods district. This district is created to encourage development that is compatible with the environmentally sensitive nature of Kitty Hawk Woods and to preserve land in a natural state where such land is considered to be a vital link in the groundwater replenishment cycle of the Outer Banks and where the destruction of natural vegetation would have a harmful effect on the stability of the soil and its resistance to erosion. More specifically, the district is designed to:
- (1) Permit low density residential development of those portions of the district suitable for residential use and to encourage open space and limited recreational use of portions not suitable for residential use.
 - (2) Prohibit commercial and industrial use of the land and any other use not compatible with the ecological carrying capacity of the area.
 - (3) Preserve the natural features and functions of the area necessary for safe and compatible development on the entire Outer Banks. Such features should include, but are not limited to, the following:
 - a. The components of the groundwater storage and recharge system which are necessary for the growth and maintenance of the maritime forest vegetation. Such components include ponds, lowlands, marshes, bay forests and wetlands.
 - b. Vegetation acting as soil stabilizers or which provide significant storm or salt protection value, including the dune ridge plant communities and scrub forest.
 - (4) Prevent pollution of the estuary and the sound which may adversely affect their biological productivity.
- (b) *Permitted uses.* The following uses are permitted by right:
- (1) Single-family dwellings, detached.
 - (2) Watershed conservation area.
 - (3) Wildlife and ecological preserves.
- (c) ~~Conditional~~ **Special** *uses.* The following uses are permitted subject to the requirements of this district and additional regulations and requirements imposed by the town council as provided in section 42-99:

- (1) Churches shall be approved by the town planner and, if required, the town CAMA officer or the town official discharging the duties of the CAMA officer.
- (2) Cemeteries with perpetual care, agent shall notify the town planner and, if required, the town CAMA officer or the town official discharging the duties of the CAMA officer before any vegetation is removed.
- (3) Hiking trails and special environmental awareness areas of low intensity use.
- (4) Commercial kayak guided tours shall be a ~~conditional~~ **special** use subject to the conditions set forth in this subsection and such other reasonable conditions as may be established by the town.
 - a. Permits—Issuance. The ~~conditional~~ **special** use must be conducted pursuant to a permit. The town will issue permits for the commercial kayak guided tours only for applications filed during the month of September each year for the next calendar year. The permit term will be from January 1 to December 31 of each calendar year unless suspended or revoked by the town. A permit will be issued to companies that satisfy the following conditions:
 1. The permit holder must pay the permit application fee of \$300.00 to the town and file the completed application and necessary supporting materials during September of the year next preceding the permit year.
 2. The permit holder must provide evidence of liability insurance coverage of \$300,000.00 minimum per occurrence and a total of \$1,000,000.00.
 3. The administrative operations of the company must be located within the commercial districts of the town or outside the boundaries of the town.
 - b. Same—Continuance. Permit holders must satisfy the following requirements at all times in order for a permit to remain active and in good standing during the permit year:
 1. A trained tour guide must accompany each tour.
 2. The tour guide must have an operational two-way communication device in the possession of the tour guide during the tour. The device shall be either a cell phone or two-way radio or such other device as approved by the town.
 3. Tour guides and tour participants must comply with the rules and regulations established by the town.
 4. Tour kayaks must satisfy identification standards established by the town.
 5. Kayak operators and participants must obey applicable navigation rules and yield the right-of-way to larger power boats in narrow channels and shall keep outside the marked navigable channel in curves or bends in the streams or channels.
 6. The tour must be conducted during the scheduled time periods for the permit holders and within the areas authorized by the town.
 7. Kayak tour participants will not enter upon private property along the streams and canals without permission from the property occupants or owners.
 8. Personal floatation devices must be worn by tour participants.
 9. Tours south of Covered Bridge shall only originate from and shall return to the county public boat ramp and shall not extend north of Covered Bridge or onto the tributaries or designated back waters of High Bridge Creek or the creek running from the boat ramp to the sound.
 10. Tours north of Covered Bridge shall not extend south of Covered Bridge or onto the tributaries or designated back waters of High Bridge Creek or Jeanguite Creek within the boundaries of the town.

11. The permit applicant has not had a permit revoked the prior calendar year.
 12. Kayaks used for research approved by the town shall be exempt from the limits of subsections (c)(4)b.9 and 10 of this section.
- c. Same—Revocation and suspension.
1. The town manager may suspend or revoke a permit for a violation of the rules and regulations by the tour company, its employees, agents or tour participants. The period of suspension shall be in the discretion of the town.
 2. The town may suspend or revoke the permits for all permit holders at any time the town determines it is in the interest of the public, health, safety and welfare to suspend or revoke the permits.
 3. The permit issued by the town is a permissive right to conduct tours as authorized herein and it does not create a vested right to conduct the activity authorized by the permit.
 4. A permit holder may appeal a permit revocation or suspension by the town manager to the town council which shall be heard at the next regular meeting of the town council. The decision of the council shall be final.
- d. Tours.
1. Seven tours per day are authorized both north and south of Covered Bridge with tour times allocated among permit holders by the town. Permit holders may exchange allocated tour times with other permit holders after notifying the town of the exchange.
 2. Each tour shall consist of one guide and not more than ten kayaks.
 3. No tours shall be commenced earlier than one-half hour before sunrise and no tour shall end later than one-half hour after sunset.
- e. Penalties. A person or company violating this section shall be guilty of a misdemeanor upon conviction and punished pursuant to section 1-5.
- (5) Family child care in residential structure.
- a. The use must be legally operated and the operator must obtain a license from the state department of health and human services, division of child development, if required by law, and must be affiliated with the child care resource and referral program in the county or subsequent similar program of the county.
 - b. All contiguous property owners must give written consent to the use of the property for family child care pursuant to this subsection.
 - c. The maximum number of children in the home pursuant to this use shall not exceed the state licensing regulations.
 - d. Adequate parking and/or "pickup/dropoff" space shall be provided on site.
- (6) Home occupations.
- (d) *Setback and dimensional requirements.* Within the Kitty Hawk Woods district, the following dimensional and setback requirements shall be in effect:
- (1) The minimum required lot area per dwelling unit is 80,000 square feet of land not including marsh or ponds or wetland swales or streams.
 - (2) For the purpose of calculating the dwelling density of a tract or parcel to be divided, the proposed Kitty Hawk Woods lots must contain 80,000 square feet of nonwetland area and the lots must have a minimum lot width at the front building setback line of 200 feet. After the dwelling density has been calculated, a tract may be subdivided into mini-conservation lots

containing 80,000 square feet of gross area and the subdivision may be approved by the town upon the following conditions:

- a. The gross dwelling density of the subdivision shall not exceed the density calculated in this subsection;
 - b. The mini-conservation lots must comply with all the Kitty Hawk Woods zoning district lot standards and applicable subdivision standards;
 - c. The remaining portion of the tract or parcel not included within the mini-conservation lot subdivision which was included within the original proposed subdivision for the purpose of calculating the dwelling density provided in subsection (d)(1) of this section shall be limited to conservation/environmental uses by legal instruments subject to town approval which create and convey perpetual conservation/environmental easements to nonprofit conservation/environmental organizations or to the state (including any appropriate agency or political subdivision thereof) with the underlying fee conveyed to the town, its successors and assigns;
 - d. The town, in its discretion, may refuse to accept a conveyance of the title to the conservation/environmental tract, and in such event, the town, in its discretion, may approve a conveyance of the title of the conservation/environmental tract subject to the aforesaid easement to an appropriate agency in the state or a nonprofit conservation or environmental organization. In the event the town neither accepts a conveyance of the underlying fee title to the conservation/environmental tract or approves a conveyance of the same to an appropriate state agency or conservation or environmental organization, then the town shall proceed to review the tract under the then current subdivision and zoning regulations with each lot to contain a minimum lot area of 80,000 square feet as specified in subsection (d)(1) of this section.
- (3) The minimum required lot width per dwelling unit as measured at the building line is 200 feet.
 - (4) Minimum required front yard is 15 feet, subject to the provisions of subsection (e)(1)c of this section.
 - (5) Minimum required side yard is ten feet, subject to the provisions of subsection (e)(1)c of this section.
 - (6) Minimum required rear yard is ten feet, subject to the provisions of subsection (e)(1)c of this section.
 - (7) Septic tank facilities shall be located in accordance with and shall conform to the requirements of county, state, and federal authorities.
 - (8) All structures shall be located no closer than the greatest current applicable setback requirement, if any, of the Coastal Area Management Act (or rules and regulations promulgated thereunder) or the Corps of Engineers to any pond, stream, marsh, or any other wetland.
 - (9) Principal and accessory structures shall meet all requirements of subsection (e)(1)c of this section.
 - (10) Maximum total height shall not exceed 35 feet exclusive of chimneys, flagpoles, communication masts and aerials.
- (e) *Special development standards of review, conditions, and requirements.* When selecting the building site, the applicant shall adhere to the following standards and to the intent and purpose of this section:
- (1) *Building site selection.* The town planner and, if required, the town CAMA officer or town official discharging the duties of the CAMA officer shall review and approve the proposed improvements site plan indicating the proposed building sites before a building permit can be issued. The most suitable building sites are those areas that require the absolute minimum alterations of the natural vegetation, topography, and groundwater systems. Evaluation of site suitability will use the following criteria:

- a. Existing unforested land areas shall be considered as the most suitable building sites unless such a selection would threaten the health of the vegetation by stimulating dune migration or cause extensive salt mist intrusion into Kitty Hawk Woods or would involve alterations prohibited elsewhere in this section.
 - b. Where vegetation must be removed from the building site, the most suitable site will disturb the minimum number of healthy trees and vegetation. In approving the building site, the town planner and, if required, the town CAMA officer or town official discharging the duties of the CAMA officer shall consider the density, etc.
 - c. The topography of the site will be evaluated for overall development suitability so that all structures can be constructed below the canopy of existing tree cover, yet maintain a setback equal to the greatest current applicable setback requirement, if any, of the state coastal area management agency or the Corps of Engineers from any stream, pond, marsh, or wetland swales.
- (2) *Site design.* The following design criteria shall be satisfied, except where an alternative design scheme can be shown to have no adverse effects on the natural features of the district protected under this section:
- a. The filling of ponds or marshes or streams or wetland swales is prohibited within the next growing season. The ground stabilization plan shall be approved by the town planner and, if required, the town CAMA officer or town official discharging the duties of the CAMA officer.
 - b. The dredging of ponds, marshes, streams or wetland swales is prohibited. The developer or his agent shall notify the town planner and, if required, the town CAMA officer or town official discharging the duties of the CAMA officer before any vegetation is removed.
 - c. The grading or other alteration of dunes with greater than 40 percent slope is prohibited.
 - d. The removal of vegetation which provides storm and salt mist protection or acts to stabilize soil and limit dune migration is to be minimum. Such removal is allowed only for the placement of structures and sewage disposal systems when no other suitable building site is available.
 - e. The sewage septic tank and other utilities shall be located to the maximum extent feasible on the edges of areas that have been cleared for access and building purposes, and shall satisfy the legal requirements of county, state, and federal authorities. In addition, the use of alternative septic systems that effectively can be located within a forest stand in satisfaction of subsection (e)(2)d of this section is suggested and encouraged.
 - f. The drawdown of groundwater, except for wells, and the alteration of natural drainage patterns is prohibited.
 - g. The clearing of land to provide access to the physical structures shall be minimized, including the clearing of the forest understory. Driveways shall be the minimum width necessary to allow for easy access by one vehicle and shall follow the natural contour lines of the land insofar as possible.
- (3) *Mitigation requirements.* In order to protect and reestablish natural vegetation during and after construction, the following mitigation actions are required:
- a. In any areas where vegetation has been removed to expose bare ground, an approved ground stabilization plan shall be in effect within 30 days of the beginning of vegetation removal and suitable native vegetative cover established within the next growing season.
 - b. To eliminate pest and disease damage to vegetation, any pruning or damage done to trees during construction should be properly attended to using accepted silviculture practices.

(Code 1990, § 20-126; Ord. of 8-18-1986, § 3.03; Ord. of 3-21-1988; Ord. No. 90-3, 3-19-1990; Ord. No. 90-5, § 6(n), (o), 4-23-1990; Ord. No. 91-15, § 1, 10-21-1991; Ord. No. 93-8, 4-5-1993; Ord. No. 00-27, 7-10-2000; Ord. No. 00-28, 7-10-2000; Ord. No. 00-29, 7-10-2000; Ord. No. 00-34, 8-7-2000; Ord. No. 01-10, 4-2-2001; Ord. No. 01-16, 4-2-2001; Ord. No. 04-11, § 20-126, 4-19-2004; Ord. No. 07-11, § 20-126, 5-7-2007; Ord. No. 11-08, 9-6-2011)

Sec. 42-226. - Reserved.

Editor's note— Ord. No. 16-14, adopted Dec. 5, 2016, repealed § 42-226, which pertained to uses not specifically identified as permitted or conditional, and derived from the Code of 1990, § 20-127; and Ord. No. 96-19, adopted Sep. 9, 1996.

Secs. 42-227—42-245. - Reserved.

DIVISION 2. - KITTY HAWK BEACH

Sec. 42-246. - Scope.

Except as otherwise provided, this division applies to Kitty Hawk Beach.

(Code 1990, § 20-141)

Sec. 42-247. - BR-1 low density beach residential district.

- (a) *Scope and intent.* Unless stated otherwise, this section applies to the BR-1 low density beach residential district. The BR-1 district is intended to encourage the development of low density residential neighborhoods in Kitty Hawk Beach.
- (b) *Permitted uses.* The following uses shall be permitted by right:
 - (1) Detached single-family dwellings, not to include mobile or manufactured homes.
 - (2) Customary accessory buildings and private swimming pools, tennis courts, private piers and boat slips.
 - (3) Town owned or leased facilities.
- (c) *Conditional **Special** uses.* The following uses are permitted subject to the requirements of this district and additional regulations and requirements imposed by the town council as provided in section 42-99:
 - (1) Churches.
 - (2) Fire stations.
 - (3) Home occupations.
 - (4) Golf courses and concessions integral thereto, provided that there is no open commercial activity and no sign other than a directional sign is allowed, noncommercial tennis courts and swimming pools associated with residential subdivision amenities, and libraries.
 - (5) Public utility facilities. Such facilities must provide a vegetated buffer strip at least ten feet in height where the facility abuts a residential lot or use.
 - (6) Bed and breakfast facility.
 - a. The bed and breakfast facility shall be compatible in scale of structure and scale of development with residential structures in the neighborhood in which it is located. The

principal use of such dwelling structures is residential. The exterior of the structure shall be harmonious with surrounding property. The bed and breakfast use shall be operated in a primary, single-family residential structure and not in any accessory structure.

- b. The operation shall be conducted by persons who own and reside within the dwelling unit. It shall be permissible to employ the equivalent of one fulltime person to assist in the operation.
 - c. The structure must contain at least one full bathroom for the exclusive use of the owner and other members of the immediate household, plus one private bathroom for each guest bedroom. Each full, discrete bathroom must include a minimum of a water closet, a lavatory and a bath or shower and meet current building code requirements.
 - d. The rental of rooms shall be on a daily or weekly basis to tourists, vacationers or similar transients. The rental period shall not exceed 14 consecutive days in any 30-day period.
 - e. There shall be no cooking facilities or kitchen-type appliances in the rental dwelling rooms. A breakfast meal may be provided. It is intended by this subsection that meals may be provided only to registered guests of the facility.
 - f. Smoke alarms shall be installed in all rental rooms and in common areas.
 - g. The total rented dwelling rooms shall not exceed four and the total occupancy, including the owner, shall not exceed ten persons.
 - h. Parking shall be provided on the basis of one space per rental dwelling room in addition to two spaces for the owners. Parking spaces for rental dwelling rooms may be grass, Geoweb or gravel. Such parking areas shall be maintained in a dust-free, rut-free condition and shall be visually screened with a vegetated buffer if adjacent to an existing residential structure or a vacant lot on which a residential structure can be built.
 - i. Only signs which comply with standards for display in the zoning district in which the structure is located may be permitted.
 - j. No dwelling may be used as a bed and breakfast unless and until it shall have been permitted by the county environmental health department.
 - k. Lighting of the premises shall be harmonious with surrounding property. Lighting shall not create glare or interfere with the reasonable enjoyment of adjacent properties.
 - l. Noise generated within the structure shall not exceed a volume normally associated with residential occupancy. Between 9:00 p.m. and 6:00 a.m., noise originating within the structure shall not be audible beyond the property lines.
 - m. The town shall issue a permit if all the requirements of this subsection (c)(6) and other applicable provisions of this chapter have been met. The permit shall remain in effect for a period of one year and may be suspended or revoked if a violation of standards is found. The permit shall be renewed each year, upon request, by the code enforcement officer unless it is determined that the use of the dwelling is not in compliance with this chapter. The use of the building as a bed and breakfast shall cease if the permit is not kept in effect.
- (7) Church private school. A church may have a private school on the church site as an accessory use to the church use upon the following additional conditions and such other reasonable conditions imposed by the town council:
- a. The church must be the applicant requesting approval of the private school as an accessory use and the private school must be run, operated and supervised by the church and it must be part of the program of the church.
 - b. School activities cannot be scheduled simultaneously with church services or large gatherings.
 - c. The number of students cannot exceed the approved seating capacity of the area on the site plan designated for school use.

- d. The church must plant or install and maintain natural or artificial buffers or screens approved by the town where appropriate to screen school activities from adjoining properties and public rights-of-way.
 - e. No increase in exterior sign area will be authorized for the private school accessory use, but the exterior sign area authorized for churches may be divided between the church and the private school accessory use, provided the total exterior sign area allowed for churches is not exceeded.
- (8) Community swimming pools, tennis courts, and other similar recreational facilities for the use of the project property owners and which are owned or operated by a property owner's association or condominium association and not for commercial use.
 - (9) Community piers and boat slips that are owned or operated by a property owner's association or condominium association and not for commercial use.
- (d) *Dimensional requirements.*
- (1) The minimum lot size is 15,000 square feet. Marsh and wetland areas, as determined by CAMA and/or CRC regulations, which are contiguous with estuarine waters, sounds and bays, and areas waterward of the oceanfront vegetation line, as determined by CAMA regulations, may not be used for the minimum lot size.
 - (2) The minimum lot width is 75 feet. The minimum lot width shall be measured at the minimum front building setback line as set forth in each zoning district in this chapter.
 - (3) The minimum yard setbacks shall be in accordance with the following chart:

Dwelling Size (in square feet)	Side Setback (in feet)	Front and Rear Setbacks (in feet)
3,000 and under	10	25
3,001—3,500	12.5	25
3,501—4,000	15	25
4,001—5,000	17.5	25
5,001—6,000	20	25
6,001 and over	25	25

- (4) The maximum allowable lot coverage by principal use and all accessory structures is 30 percent.
- (5) Maximum total height shall not exceed 35 feet from existing grade exclusive of chimneys, flagpoles, communication masts and aerials.
- (6) In addition to the minimum number of parking spaces required in section 42-546, any unit requiring more than four parking spaces, the following shall apply:

- a. Drive aisles not less than ten feet wide shall be provided so that no vehicle will be required to back into the public right-of-way.
 - b. Drive aisles shall be a minimum ten feet in width and stacking of vehicles in a drive aisle is prohibited.
 - c. Stacking of vehicles in areas other than a drive aisle shall be limited to two vehicles per stacked lane.
 - d. The driveway entrance to a public or private road shall not exceed 20 feet in width.
- (7) Required parking surfaces and drive aisles shall only be constructed of the following surfaces and must meet all listed conditions:
- a. *Asphalt.*
 - 1. Must have a subgrade consisting of at least six inches of ABC stone or a similar material.
 - 2. The asphalt layer must be at least 1.5 inches in depth.
 - b. *Concrete.*
 - 1. Must have a compacted subgrade.
 - 2. Concrete must be poured to a minimum four inches in depth, with sufficient control and expansion joints.
 - 3. Concrete must have a minimum 3000 p.s.i.
 - 4. Must be reinforced with fiber mesh or welded wire.
 - c. *Paving stones.*
 - 1. Must be installed per the manufacturer's specifications.
 - d. *Open-jointed blocks (turfstone and similar products).*
 - 1. Must be installed per the manufacturer's specifications.
 - e. *Porous asphalt/concrete.*
 - 1. Must be installed per the manufacturer's specifications.
 - f. *Porous turf (geocell/geoweb and similar products).*
 - 1. Must be installed per the manufacturer's specifications.
 - 2. The grid cell opening size can be no greater than six inches.
 - 3. A border is required to delineate the boundaries of the parking area.
 - g. *Wooden timbers.*
 - 1. Must be designed and plan sealed by an engineer.
 - h. *Crusher run/aggregate base course.*
 - 1. Must have a concrete or asphalt apron extending a minimum of ten feet from the edge of the roadway.
 - i. *Aggregate/gravel.*
 - 1. The gravel layer must be a minimum of six inches in depth.
 - 2. Must have a concrete or asphalt apron extending a minimum of ten feet from the edge of the roadway.
 - 3. A border is required to delineate the boundaries of the parking area.

- (e) *Ground stabilization plan.* A plan that will ensure the stabilization and subsequent revegetation of all areas that have been disturbed in accordance with chapter 12, article II, pertaining to sand dune protection and chapter 32, pertaining to soil erosion and sedimentation control, is required.

(Code 1990, § 20-142; Ord. of 8-18-1986, § 3.01(A); Ord. No. 87-1, 1-19-1987; Ord. No. 90-3, 3-19-1990; Ord. No. 90-21, 9-4-1990; Ord. No. 91-15, § 2, 10-21-1991; Ord. No. 93-2, 1-4-1993; Ord. No. 98-23, 7-7-1998; Ord. No. 99-23, 9-7-1999; Ord. No. 00-3, 1-4-2000; Ord. No. 01-10, 4-2-2001; Ord. No. 03-26, § 20-142, 5-5-2003; Ord. No. 03-42, § 20-142, 7-7-2003; Ord. No. 04-01, § 20-142, 2-17-2004; Ord. No. 04-26, § 20-142, 9-13-2004; Ord. No. 06-17, § 20-142, 12-4-2006; Ord. No. 07-03, § 20-142, 2-5-2007; Ord. No. 07-11, § 20-142, 5-7-2007; Ord. No. 08-06, 2-4-2008; Ord. No. 16-05, 4-4-2016; Ord. No. 19-07, 11-4-2019)

Sec. 42-248. - BR-2 medium density beach residential district.

- (a) *Scope and intent.* Unless stated otherwise, this section applies to the BR-2 medium density beach residential district. The BR-2 district is intended to encourage the development of medium density residential neighborhoods in Kitty Hawk Beach.
- (b) *Permitted uses.* The following uses shall be permitted by right:
- (1) Detached single-family dwellings, not to include mobile or manufactured homes.
 - (2) Duplexes.
 - (3) Multifamily dwellings.
 - (4) Customary accessory buildings and private swimming pools and tennis courts.
 - (5) Town owned or leased facilities.
- (c) *Conditional **Special** uses.* The following uses are permitted subject to the requirements of this district and additional regulations and requirements imposed by the town council as provided in section 42-99:
- (1) Churches.
 - (2) Fire stations.
 - (3) Home occupations.
 - (4) Golf courses and concessions integral thereto, provided that there is no open commercial activity and no sign other than a directional sign is allowed, noncommercial tennis courts and swimming pools associated with residential subdivision amenities, and libraries.
 - (5) Funeral homes; provided that:
 - a. The site is adjacent to or across the street from a commercial zone.
 - b. The site is contiguous to and has access to a paved public street.
 - c. The site shall contain no less than the minimum area required for multifamily development.
 - d. All parking shall be provided on site or in an adjoining commercial zone at the rate of one parking space for each 2½ chapel seats. The parking may consist of a 9 1/2-foot by 18-foot temporary parking lane and drive aisle spaces as delineated on the site plan and approved by the town; provided that at least 25 percent of the required spaces are the conventional type required by this chapter.
 - e. A vegetated buffer 20 feet in width shall be provided along any property line adjacent to residential zones. The buffer shall have a nominal screening height of eight feet within two years.

- f. Exterior lighting shall be low level and shall be configured to direct the light and glare away from streets and adjacent property. Sodium vapor lights are prohibited.
 - g. Ancillary sales and services such as, but not limited to, tombstone, memorial tablets and florist shall not be permitted, except in direct association with funeral or burial services provided. Cremation services shall not be permitted.
 - h. There shall be no promotion of sales or services visible outside the building other than the permitted sign.
 - i. One sign shall be permitted in accordance with article VI, division 3 of this chapter, except that where the sign is placed along street frontage across from a commercial zoning district, a sign appropriate to that commercial district may be installed. The sign may not be internally illuminated.
 - j. Lot coverage by principal use and all accessory structures shall not exceed 50 percent.
 - k. An apartment is permitted on the second floor; provided that applicable state building and fire codes are met and that one parking space per bedroom is reserved for the occupants of the apartment in addition to any other parking spaces that may be required.
 - l. Such other reasonable conditions as the town council may propose.
- (6) Bed and breakfast facility.
- a. The bed and breakfast facility shall be compatible in scale of structure and scale of development with residential structures in the neighborhood in which it is located. The principal use of such dwelling structures is residential. The exterior of the structure shall be harmonious with surrounding property. The bed and breakfast use shall be operated in a primary, single-family residential structure and not in any accessory structure.
 - b. The operation shall be conducted by persons who own and reside within the dwelling unit. It shall be permissible to employ the equivalent of one fulltime person to assist in the operation.
 - c. The structure must contain at least one full bathroom for the exclusive use of the owner and other members of the immediate household, plus one private bathroom for each guest bedroom. Each full, discrete bathroom must include a minimum of a water closet, a lavatory and a bath or shower and meet current building code requirements.
 - d. The rental of rooms shall be on a daily or weekly basis to tourists, vacationers or similar transients. The rental period shall not exceed 14 consecutive days in any 30-day period.
 - e. There shall be no cooking facilities or kitchen-type appliances in the rental dwelling rooms. A breakfast meal may be provided. It is intended by this subsection (c)(6) that meals may be provided only to registered guests of the facility.
 - f. Smoke alarms shall be installed in all rental rooms and in common areas.
 - g. The total rented dwelling rooms shall not exceed four and the total occupancy, including the owner, shall not exceed ten persons.
 - h. Parking shall be provided on the basis of one space per rental dwelling room in addition to two spaces for the owner. Parking spaces for rental dwelling rooms may be grass, Geoweb or gravel. Such parking areas shall be maintained in a dust-free, rut-free condition and shall be visually screened with a vegetated buffer if adjacent to an existing residential structure or a vacant lot on which a residential structure can be built.
 - i. Only signs which comply with standards for display in the zoning district in which the structure is located may be permitted.
 - j. No dwelling may be used as a bed and breakfast unless and until it shall have been permitted by the county environmental health department.

- k. Lighting of the premises shall be harmonious with surrounding property. Lighting shall not create glare or interfere with the reasonable enjoyment of adjacent properties.
 - l. Noise generated within the structure shall not exceed a volume normally associated with residential occupancy. Between 9:00 p.m. and 6:00 a.m., noise originating within the structure shall not be audible beyond the property lines.
 - m. The town shall issue a permit if all the requirements of this subsection (c)(6) and other applicable provisions of this chapter have been met. The permit shall remain in effect for a period of one year and may be suspended or revoked if a violation of standards is found. The permit shall be renewed each year, upon request, by the code enforcement officer unless it is determined that the use of the dwelling is not in compliance with this chapter. The use of the building as a bed and breakfast shall cease if the permit is not kept in effect.
- (7) Family child care in residential structure.
- a. The use must be legally operated and the operator must obtain a license from the state department of health and human services, the division of child development if required by law, and must be affiliated with the child care resource and referral program in the county or subsequent similar program of the county.
 - b. All contiguous property owners must give written consent to the use of the property for family child care pursuant to this subsection.
 - c. The maximum number of children in the home pursuant to this use shall not exceed the state licensing regulations.
 - d. Adequate parking and/or pickup/dropoff space shall be provided on site.
- (d) *Dimensional requirements.*
- (1) The minimum lot size is as follows:
 - a. For single-family detached residences, a minimum lot size of 15,000 square feet. Marsh and wetland areas, as determined by CAMA and/or CRC regulations, which are contiguous with estuarine waters, sounds and bays, and areas waterward of the oceanfront vegetation line, as determined by CAMA regulations, may not be used for the minimum lot size.
 - b. For duplexes, a minimum lot size of 25,000 square feet.
 - c. For multifamily dwellings, for each acre or portion thereof, a minimum lot size of 15,000 square feet for the first dwelling unit and a minimum lot size of 9,520 square feet for each additional dwelling unit.
 - (2) The minimum lot width is 75 feet. The minimum lot width shall be measured at the minimum front building setback line as set forth in each zoning district in this chapter.
 - (3) The minimum yard setbacks shall be in accordance with the following chart:

Dwelling Size (in square feet)	Side Setback (in feet)	Front and Rear Setbacks (in feet)
3,000 and under	10	25
3,001—3,500	12.5	25
3,501—4,000	15	25

4,001—5,000	17.5	25
5,001—6,000	20	25
6,001 and over	25	25

- (4) The maximum allowable lot coverage by principal use and all accessory structures is 30 percent.
- (5) Maximum total height shall not exceed 35 feet from existing grade exclusive of chimneys, flagpoles, communication masts and aerials. Multi-family dwellings shall have a minimum roof pitch of three feet by 12 feet.
- (6) In addition to the minimum number of parking spaces required in section 42-546, any unit requiring more than four parking spaces, the following shall apply:
 - a. Drive aisles not less than ten feet wide, shall be provided so that no vehicle will be required to back into the public right-of-way.
 - b. Drive aisles shall be a minimum ten feet in width and stacking of vehicles in a drive aisle is prohibited.
 - c. Stacking of vehicles in areas other than a drive aisle shall be limited to two vehicles per stacked lane.
 - d. The driveway entrance to a public or private road shall not exceed 20 feet in width.
- (7) Required parking surfaces and drive aisles shall only be constructed of the following surfaces and must meet all listed conditions:
 - a. *Asphalt.*
 1. Must have a subgrade consisting of at least six inches of ABC stone or a similar material.
 2. The asphalt layer must be at least 1.5 inches in depth.
 - b. *Concrete.*
 1. Must have a compacted subgrade.
 2. Concrete must be poured to a minimum four inches in depth, with sufficient control and expansion joints.
 3. Concrete must have a minimum 3000 p.s.i.
 4. Must be reinforced with fiber mesh or welded wire.
 - c. *Paving stones.*
 1. Must be installed per the manufacturer's specifications.
 - d. *Open-jointed blocks (turfstone and similar products).*
 1. Must be installed per the manufacturer's specifications.
 - e. *Porous asphalt/concrete.*
 1. Must be installed per the manufacturer's specifications.

- f. *Porous turf (geocell/geoweb and similar products).*
 - 1. Must be installed per the manufacturer's specifications.
 - 2. The grid cell opening size can be no greater than six inches.
 - 3. A border is required to delineate the boundaries of the parking area.
 - g. *Wooden timbers.*
 - 1. Must be designed and plan sealed by an engineer.
 - h. *Crusher run/aggregate base course.*
 - 1. Must have a concrete or asphalt apron extending a minimum of ten feet from the edge of the roadway.
 - i. *Aggregate/gravel.*
 - 1. The gravel layer must be a minimum of six inches in depth.
 - 2. Must have a concrete or asphalt apron extending a minimum of ten feet from the edge of the roadway.
 - 3. A border is required to delineate the boundaries of the parking area.
- (e) *Density.* The maximum permitted density shall be four residential dwelling units per acre.
- (f) *Ground stabilization plan.* A plan that will ensure the stabilization and subsequent revegetation of all areas that have been disturbed in accordance with chapter 12, article II, pertaining to sand dune protection and chapter 32, pertaining to soil erosion and sedimentation control, is required.

(Code 1990, § 20-143; Ord. of 8-18-1986, § 3.01(B); Ord. No. 89-34, 12-18-1989; Ord. No. 90-21, 9-4-1990; Ord. No. 93-2, 1-4-1993; Ord. No. 98-23, 7-7-1998; Ord. No. 00-31, 8-7-2000; Ord. No. 01-10, 4-2-2001; Ord. No. 03-26, § 20-143, 5-5-2003; Ord. No. 03-42, § 20-143, 7-7-2003; Ord. No. 04-01, § 20-143, 2-17-2004; Ord. No. 04-11, § 20-143, 4-19-2004; Ord. No. 04-26, § 20-143, 9-13-2004; Ord. No. 07-03, § 20-143, 2-5-2007; Ord. No. 07-11, § 20-143, 5-7-2007; Ord. No. 08-06, 2-4-2008; Ord. No. 16-05, 4-4-2016; Ord. No. 19-07, 11-4-2019)

Sec. 42-249. - BR-3 high density beach residential district.

- (a) *Scope and intent.* Unless stated otherwise, this section applies to the BR-3 high density beach residential district. The BR-3 district is established as an area in Kitty Hawk Beach for which the principal use of the land is high density residential and for the development of less intensive residential uses as well as for compatible supporting uses.
- (b) *Permitted uses.* The following uses shall be permitted by right:
 - (1) Detached single-family dwellings, not to include mobile or manufactured homes.
 - (2) Duplexes.
 - (3) Multifamily dwellings.
 - (4) Customary accessory buildings including private swimming pools and tennis courts.
 - (5) Town owned or leased facilities.
- (c) *Conditional Special uses.* The following uses are permitted subject to the requirements of this district and additional regulations and requirements imposed by the town council as provided in section 42-99:
 - (1) Home occupations.

- (2) Golf courses and concessions integral thereto; provided that there is no open commercial activity and no sign other than a directional sign is allowed, noncommercial tennis courts and swimming pools associated with residential subdivision amenities, and libraries.
 - (3) Planned unit developments under the provisions of article V of this chapter.
 - (4) Multifamily developments.
 - (5) Churches.
- (d) *Dimensional requirements.*
- (1) The minimum lot size is as follows:
 - a. For single-family detached residences, a minimum lot size of 15,000 square feet. Marsh and wetland areas, as determined by CAMA and/or CRC regulations, which are contiguous with estuarine waters, sounds and bays, and areas waterward of the oceanfront vegetation line, as determined by CAMA regulations, may not be used for the minimum lot size.
 - b. For duplexes, a minimum lot size of 25,000 square feet.
 - c. For multifamily dwellings, a minimum lot size of 15,000 square feet for the first dwelling unit and a minimum lot size of 9,520 square feet for each additional dwelling unit.
 - (2) The minimum lot width is 75 feet. The minimum lot width shall be measured at the minimum front building setback line as set forth in each zoning district in this chapter.
 - (3) The minimum yard setbacks shall be in accordance with the following chart:

Dwelling Size (in square feet)	Side Setback (in feet)	Front and Rear Setbacks (in feet)
3,000 and under	10	25
3,001—3,500	12.5	25
3,501—4,000	15	25
4,001—5,000	17.5	25
5,001—6,000	20	25
6,001 and over	25	25

- (4) The maximum allowable lot coverage by principal use and all accessory structures is 30 percent.
- (5) Maximum total height shall not exceed 35 feet from existing grade exclusive of chimneys, flagpoles, communication masts and aerals. Multi-family dwellings shall have a minimum roof pitch of three feet by 12 feet.
- (6) In addition to the minimum number of parking spaces required in section 42-546, for any unit requiring more than four parking spaces, the following shall apply:

- a. Drive aisles not less than ten feet wide, shall be provided so that no vehicle will be required to back into the public right-of-way.
 - b. Drive aisles shall be a minimum ten feet in width and stacking of vehicles in a drive aisle is prohibited.
 - c. Stacking of vehicles in areas other than a drive aisle shall be limited to two vehicles per stacked lane.
 - d. The driveway entrance to a public or private road shall not exceed 20 feet in width.
- (7) Required parking surfaces and drive aisles shall only be constructed of the following surfaces and must meet all listed conditions:
- a. *Asphalt.*
 - 1. Must have a subgrade consisting of at least six inches of ABC stone or a similar material.
 - 2. The asphalt layer must be at least 1.5 inches in depth.
 - b. *Concrete.*
 - 1. Must have a compacted subgrade.
 - 2. Concrete must be poured to a minimum four inches in depth, with sufficient control and expansion joints.
 - 3. Concrete must have a minimum 3000 p.s.i.
 - 4. Must be reinforced with fiber mesh or welded wire.
 - c. *Paving stones.*
 - 1. Must be installed per the manufacturer's specifications.
 - d. *Open-jointed blocks (turfstone and similar products).*
 - 1. Must be installed per the manufacturer's specifications.
 - e. *Porous asphalt/concrete.*
 - 1. Must be installed per the manufacturer's specifications.
 - f. *Porous turf (geocell/geoweb and similar products).*
 - 1. Must be installed per the manufacturer's specifications.
 - 2. The grid cell opening size can be no greater than six inches.
 - 3. A border is required to delineate the boundaries of the parking area.
 - g. *Wooden timbers.*
 - 1. Must be designed and plan sealed by an engineer.
 - h. *Crusher run/aggregate base course.*
 - 1. Must have a concrete or asphalt apron extending a minimum of ten feet from the edge of the roadway.
 - i. *Aggregate/gravel.*
 - 1. The gravel layer must be a minimum of six inches in depth.
 - 2. Must have a concrete or asphalt apron extending a minimum of ten feet from the edge of the roadway.
 - 3. A border is required to delineate the boundaries of the parking area.
- (e) *Density.* The maximum permitted density shall be four residential dwelling units per acre.

- (f) *Ground stabilization plan.* A plan that will ensure the stabilization and subsequent revegetation of all areas that have been disturbed in accordance with chapter 12, article II, pertaining to sand dune protection and chapter 32, pertaining to soil erosion and sedimentation control, is required.

(Code 1990, § 20-144; Ord. of 8-18-1986, § 3.01(C); Ord. No. 90-21, 9-4-1990; Ord. No. 98-23, 7-7-1998; Ord. No. 01-10, 4-2-2001; Ord. No. 03-26, § 20-144, 5-5-2003; Ord. No. 03-42, § 20-144, 7-7-2003; Ord. No. 04-01, § 20-144, 2-17-2004; Ord. No. 04-26, § 20-144, 9-13-2004; Ord. No. 04-27, § 20-144, 9-13-2004; Ord. No. 07-03, § 20-144, 2-5-2007; Ord. No. 07-11, § 20-144, 5-7-2007; Ord. No. 08-06, 2-4-2008; Ord. No. 16-05, 4-4-2016; Ord. No. 19-07, 11-4-2019)

Sec. 42-250. - BC-1 general beach commercial district.

- (a) *Scope and intent.* Unless stated otherwise, this section applies to the BC-1 general beach commercial district. The BC-1 district is established to provide for the proper grouping and development of commercial facilities in Kitty Hawk Beach. The BC-1 district has been established to provide for the commercial needs of the neighborhood and the immediate surrounding geographical area. The commercial development will be characterized by small to medium size land parcels with commercial development of low intensity. This district is not intended to be developed for shopping centers, shopping malls, or big box retail/wholesale businesses.

- (b) *Permitted uses.* The following uses shall be permitted by right:

(1) Offices.

- a. Business.
- b. Financial.
- c. Governmental.
- d. Professional.
- e. Call centers.

(2) Retail stores.

- a. Books.
- b. Cameras.
- c. Candy.
- d. Clothing.
- e. Dry goods.
- f. Automobile parts, not to include actual repair or service.
- g. Drugs.
- h. Flowers.
- i. Gifts.
- j. Hardware, including rental of small equipment (no outside display or storage).
- k. Hobby goods.
- l. Jewelry.
- m. Leather goods.
- n. Magazines.
- o. Music store.

- p. Notions.
 - q. Sporting goods.
 - r. Toys.
 - s. Food stores.
 - t. Antiques.
 - u. Household appliances.
 - v. Video rental.
 - w. Furniture stores.
 - x. Medical equipment and supplies, sales and rental.
 - y. Bicycle sales and skateboard sales, provided there is no outdoor storage or display.
- (3) Service establishments, including such uses as:
- a. Appliance and electronic equipment sales and repair, provided there is no outdoor storage of appliances or equipment.
 - b. Barbershops and beauty shops.
 - c. Dry cleaning and laundry pickup stations including laundromats.
 - d. Parking lots.
 - e. Radio and television broadcasting studios.
 - f. Restaurants.
 - g. Shoe repair.
 - h. Theaters.
- (4) Public and private schools.
- (5) Town owned or leased facilities.
- (6) Home sales center; provided there is no outdoor display of merchandise.
- (c) ~~Conditional~~ **Special** uses. The following uses are permitted subject to the requirements of this district and additional regulations and requirements imposed by the town as provided in section 42-99:
- (1) Single-family dwellings, not to include mobile or manufactured homes. A single-family dwelling must comply with the dimensional requirements of the BR-1 district.
 - (2) Gas stations or fuel dispensing accessory use facilities; provided that no principal or accessory building shall be located within 50 feet of a residential district, and: provided that there shall be no storage of wrecked or abandoned cars, and that no portion of a gas station building, equipment or canopy shall be nearer than 30 feet to any right-of-way, and no portion of gas pumps shall be nearer than 50 feet to any right-of-way.
 - (3) Motor vehicle service and repair, provided that there shall be no storage of wrecked, junked or abandoned vehicles and that there shall be no fuel dispensing devices.
 - (4) Conveyor carwash service station is a ~~conditional~~ **special** use upon the following conditions and such other conditions as the town council may reasonably set forth:
 - a. A prewash vehicular lane of sufficient size to accommodate 12 vehicles during the prewash phase of the wash operation.

- b. A postwash vehicular lane of sufficient size to accommodate four vehicles being towel dried. The exit from the conveyor belt system shall be the entrance to the postwash vehicle drying area.
 - c. The prewash and postwash vehicle areas must be located separate from and outside of internal traffic circulation lanes and ingress/egress access points with public or private rights-of-way.
 - d. At the location of the vehicle exit from the building there shall be a water catchment at the postwash vehicle parking area which shall drain and slope to the water catchment. The water catchment must be large enough to contain all water draining into it from washed vehicles.
 - e. The water used for washing the vehicles must be recycled on site through a closed recycle system. The system must be designed, constructed and maintained in order to prevent washwater from entering the subsurface ground area or from flowing upon the ground surface.
 - f. On-site directional signs must not be illuminated internally. Sign lighting on the site must not interfere with the vision of motor vehicle operators on site or off site.
 - g. Each site shall have restroom facilities open and available to its customers.
 - h. Trash containers must be located at all vacuum cleaner stations and the area maintained free of trash and rubbish.
 - i. At least one attendant shall be on duty during the hours of operation.
- (5) Public utility facilities.
 - (6) Seafood markets.
 - (7) Hospitals and medical centers.
 - (8) Emergency heliport. The operation of a medical emergency evacuation heliport shall be an accessory use to the primary hospital or medical center ~~conditional~~ **special** use and shall be authorized in addition to the primary hospital or medical center ~~conditional~~ **special** use as a ~~conditional~~ **special** accessory use after the following requirements have been satisfied:
 - a. Hospitals and medical clinics shall include those facilities which, under normal operating conditions, receive and treat trauma patients.
 - b. Compliance with and evidence of compliance with any applicable requirements of the Department of Transportation, Division of Aviation, the Federal Aviation Administration, and any other federal, state or local agency having jurisdiction over the operation of helicopter flights, landings and the environmental impact thereof.
 - c. Submission of a ~~conditional~~ **special** accessory use application with the town planning department in addition to the following materials:
 - 1. A site plan and map drawn to a scale of one inch equals 100 feet showing the locations, height and first floor elevations or foundation elevations above mean sea level of all structures, utility and street rights-of-way, existing power lines, towers, undeveloped residential lots, and other similar uses within 500 feet of the outside edge of the heliport landing pad.
 - 2. Environmental assessment consisting of:
 - (i) An analysis of the impact of noise within 500 feet of the heliport performed by a qualified audio engineer or other appropriate professional;
 - (ii) An analysis of the socioeconomic issues relating to the heliport and the hospital or the clinic; and
 - (iii) Viable alternatives.

The fees and costs associated with the review of the environmental assessment shall be paid to the town by the applicant prior to the public hearing as part of the application review fee. The analysis is to be submitted prior to the first regular or special meeting of the planning board at which the application is considered.

3. Proposed heliport lighting plan demonstrating the technology and technique for retaining light on the site and prevention of light or light glare from affecting traffic using streets and highways in the area.
 4. Proposed approach and departing flight paths shall be shown on the map required in subsection (c)(8)c.1 of this section.
 5. Proposed protection for the innermost portion of the approach and departure routes.
- d. Upon filing the application and all required materials with the town planner, the town council shall set a public hearing on the applicant's request for the ~~conditional~~ **special** accessory use of the medical emergency evacuation heliport. In addition to advertising the public hearing, the town planner shall mail, by certified mail, copies of the notice of hearing to all property owners on the tax records of the town within 500 feet of the heliport landing pad. The cost of advertising and mailing of the notices shall be borne by the applicant and paid prior to the public hearing date.
 - e. In the case of a protest against the medical emergency evacuation heliport by the owners of 20 percent or more either of the area of the lots included within 500 feet of the heliport pad, or of those immediately adjacent thereto either in the rear thereof or on either side thereof or extending 500 feet therefrom, or of those directly opposite thereto extending 500 feet from the street frontage of the opposite lots, then a motion to allow the ~~conditional~~ **special** accessory use shall not become effective except by favorable vote of four of the five members of the town council.
 - f. No protest against the applicant's proposed ~~conditional~~ **special** accessory use shall be valid or effective for the purposes of subsection (c)(8)e of this section unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed ~~conditional~~ **special** accessory use and unless it shall have been received by the city clerk within ten days following the public hearing. For the purposes of determining the ten-day period, the date of the public hearing shall be excluded and the tenth day shall be included. Thereafter, the town shall determine the sufficiency and accuracy of the petition within two normal work days, excluding Saturdays, Sundays and legal holidays, after the end of the ten-day period for filing protest petitions. The protest petition shall be in a form adopted by the town council. In the event no protest is filed or the protest is inadequate, the favorable vote of three of the five town councilmembers shall be required in order to authorize the ~~conditional~~ **special** accessory use.
 - g. The minimum lot or parcel size to accommodate a hospital or medical center with a heliport facility shall be three acres or more.
 - h. The heliport shall be ground based only. No rooftop facility shall be permitted.
 - i. The heliport shall comply with the latest edition of the FAA regulations in its design, size and use.
 - j. The heliport shall not be used until FAA approval is obtained and a copy of the approval is submitted to the town.
 - k. Prior to submitting the FAA permit application for the heliport, a copy of the application shall be forwarded to the town. The town's review of the copy of the application is for informational purposes and not intended as an approval requirement.
 - l. No fixed base operations or refueling facilities shall be permitted on the hospital-medical center or heliport site.

- m. Lighting of the helipad or final approach and takeoff areas shall comply with FAA regulations but shall be ground level based using cutoff or restrictive features to minimize overspill of light from the activity area itself.
 - n. No takeoff and landing area shall be nearer than 200 feet at its closest point to a state or federal highway. The entire takeoff and landing area, as defined by the FAA and determined by the size of the helicopter, shall fall within the property lines of the lot. The developer of a heliport shall be required to place signs warning motorists of low-flying aircraft. These signs shall be placed in accordance with regulations of the state department of transportation.
 - o. Fire protection and safety measures shall be in accordance with the FAA and NFPA guidelines. The presence of firefighting equipment shall not be required by the town unless requested by the owner. The cost of providing such firefighting equipment coverage shall be the responsibility of the owner.
 - p. The use of sound buffers, proper facility siting, separation distances or other natural or manmade barriers shall be made a part of the heliport approval process.
 - q. A protection plan for the innermost portion of the approach and departure routes shall be developed. Protection means may consist of, but not be limited to, acquiring title to the land or leasing the land area, acquisition of air rights, or the written consent of property owners within the approach and departure routes, or other means approved by the town council. The plan shall include an evaluation of viable alternatives. The method of such protection must be approved by the council and consummated by the applicant. The council, acting in its sole discretion, may waive this requirement if the procedure cannot be completed within a reasonable period of time or for reasons beyond the control of the applicant.
- (9) Veterinary hospitals and clinics subject to other requirements of this chapter and provided the following conditions are met:
- a. No animals shall be kept or boarded outside the principal building and there shall be no structure, runs, or pens used for boarding, holding or restraining animals located upon the site outside of the principal building.
 - b. The principal building shall be constructed in such a manner and with such materials as to prevent any noise originating within the facility from being heard beyond the approved site boundary line. An architect, engineer or other qualified professional must certify on the site plan that the proposed design and materials will allow no animal noise originating within the building to be heard at any point on the approved site boundary.
 - c. All animal waste must be disposed of through the facility septic system and the applicant must submit evidence that the appropriate county or state department has approved the proposed septic systems for the disposal of animal waste.
 - d. No dead animal shall be placed in any outside receptacle located on the premises outside the facility.
 - e. A vegetated or constructed visual buffer may be required.
 - f. Exterior lighting shall be of low intensity and shall reflect upon the site in such a manner as not to interfere with traffic on public streets or highways.
- (10) Apartments on the second story of compatible commercial uses; provided that applicable state building and fire codes are met and that one parking space per bedroom be reserved for the occupants of the apartment in addition to any other parking spaces that may be required.
- (11) Day care centers.
- (12) Boat sales and rentals; provided that any outdoor display must be completely screened from the public's view, from public and private rights-of-way or the ground level of adjacent properties according to standards in article VI division 5 of this chapter.

- (13) On-site retail sales and production of bakery goods, subject to any reasonable conditions imposed by the town council and the following specific conditions:
- a. The production of bakery goods must be incidental to and for the purpose of on-site retail sales and not for distribution to wholesale vendors.
 - b. The property owner must provide a waste container of sufficient size to accommodate all of the waste generated by the bakery production activity.
 - c. The owner shall obtain and maintain firefighting apparatus or fire extinguishing apparatus in accordance with the requirements of the planning board and the fire department.
- (14) Craft production and retail sales, subject to any reasonable conditions imposed by the town council and the following conditions:
- a. The production of crafts must be incidental to and for the purpose of retail sales and not for distribution to wholesale vendors.
 - b. The maximum square footage of the area devoted to craft production shall not exceed 800 square feet.
 - c. The building in which crafts are produced shall be constructed in such a manner and with such materials as to prevent any noise originating within the facility from being heard beyond the approved site boundary line if the same is a freestanding building and to prevent any noise emanating from within the building, or portion thereof used for craft production, if the same is located within a multiunit structure. An architect, engineer or qualified professional must certify on the site plan that the proposed design and materials will allow no noise from the craft production activity within the building to be heard at any point on the approved site boundary or outside of the building, or that portion of the building used for craft production if the same is located within a multiunit structure.
 - d. All odors and vapors, including chemical vapors, associated with or generated by the production of crafts shall be contained within the boundaries of the site or within the building, or that portion of the building used for the production of crafts in a multiunit structure. When requested by the planning board, an engineer's certification shall be furnished to the planning board that the design, construction, and proposed methods of odor and vapor control are sufficient to contain all odors and vapors generated by or emanating from the production of crafts within the site boundary, if a freestanding building, or within the interior of that portion of the building used for the production of crafts in a multiunit structure.
 - e. The property owner must provide a waste container of sufficient size to accommodate all of the waste generated by the craft production activity.
 - f. If flammable materials are used in the craft production activity, the owner shall obtain and maintain firefighting apparatus or fire extinguishing apparatus in accordance with the requirements of the planning board or the volunteer fire department.
- (15) Print shop. A print shop may be permitted subject to other requirements of this chapter and provided the following conditions are met:
- a. No more than 1,000 square feet may be used for printing purposes, excluding office area.
 - b. The principal building shall be constructed in such a manner and with such materials as to prevent any noise originating within the facility from being heard beyond the approved site boundary line. An architect, engineer or other qualified professional must certify on the site plan that the proposed design and materials will allow no machine noise originating within the building to be heard at any point on the approved site boundary.
 - c. In the event any chemicals used or stored on the premises require approval by a governmental agency of the method such chemicals are stored, used or disposed, then written evidence of the approval by the appropriate governmental agency shall be furnished to the town.

- d. A list of all chemicals used or stored on the site shall be filed on or before January 10 of each year with the fire department.
- (16) Miniature golf course associated with PCD. A miniature golf course is a course containing all or a significant number of elements of a regulation golf course consisting of some combination of tees, fairways, greens, sand traps, water and vegetation hazards, and varying topography but all of which have been reduced in size to accommodate the project site and designed for the sport of golf. Putt-Putt type golf courses and animated courses are expressly excluded. Miniature golf courses, where authorized in various districts under this chapter, shall meet the following conditions and requirements:
- a. The miniature golf course and support facilities must be located within the boundary of the PCD project.
 - b. The miniature golf course must be compatible with the land uses in the PCD project.
 - c. The miniature golf course site shall consist of at least 30,000 square feet of land area for an 18-hole course with parking and golf course facilities. The total number of golf course holes shall not exceed 36 holes of play. In addition, a separate practice putting green may be located within the miniature golf course site boundary.
 - d. To the extent possible, the course design and layout shall utilize the natural terrain of the site. Alteration of the existing natural topography and the creation of other natural topographical features such as hills, mounds and waterfalls shall require the approval of the planning board and town council. There shall be no animation on or around the course and within the golf course site. The golf course site and course shall utilize only water, earth and natural vegetation as hazards, decorative features and other play-related features and shall not use artificial devices including, but not limited to, miniature buildings, animal, human or vehicular models, signs (other than hole number signs) or billboards. A site plan, including the location and identification of trees larger than six inches in diameter shall be required for miniature golf courses. The PCD submission and review procedure shall apply to the planning review of the golf course site.
 - e. The course shall be buffered from adjacent parcels outside the PCD by a vegetated buffer; however, it is permissible for the course to be visible from US Highway 158 if the PCD boundary is contiguous to the right-of-way of US Highway 158. The buffer shall be a vegetated buffer with plants, shrubs and trees approved for use by the planning board. The vegetated buffer shall be maintained by the manager or association responsible for maintenance of the planned commercial development.
 - f. There shall be no neon or flashing lights in the miniature golf course site boundary. Lighting of the course shall be contained on the site and shall not interfere with the reasonable enjoyment of adjacent parcels or traffic on streets or highways.
 - g. The electrical transmission of sound shall be prohibited.
 - h. Alcoholic beverages may not be sold or consumed in the miniature golf course area.
 - i. Restroom facilities shall be located within the golf course area for use by the players.
 - j. The golf course design shall accommodate stormwater retention and shall comply with the guidelines for soil erosion and sedimentation control.
 - k. There shall be one parking space for each numbered hole plus one parking space for each employee working in the golf course site. All parking spaces shall be located within 400 feet of the golf course.
 - l. Trash receptacles shall be centrally located and maintained within the golf course site.
- (17) Cater service.
- (18) Game room, subject to the following conditions:

- a. A game room ~~conditional~~ **special** use can coexist with another authorized district use within a freestanding detached building or within the area owned or leased by a person or entity within a multiuse building where the game room utilizes no more than 49 percent of the gross (interior) square footage of the floor area excluding designated storage area and areas to which customer access is prohibited.
 - b. Supervision in the game room area shall be provided during all operating hours. If the owner or lessee of the game room allows the consumption of alcoholic beverages within the game room, then the supervising attendant must be at least 18 years of age.
 - c. The game room area shall be constructed in such a manner and with such materials as to prevent any noise originating within the facility from being heard beyond the approved site boundary. If the game room is located in a structure which houses other nonrelated businesses, the noise within the game room must not be audible beyond the boundaries of the area leased or owned by the game room operator. An architect, engineer or other qualified professional must certify on the site plan that the proposed design and materials will comply with these standards.
 - d. The maximum number of occupants shall be determined by the building inspector according to the standards of the state fire code. The maximum number of occupants allowed in the game room shall be posted in a conspicuous place therein and its limits shall not be exceeded.
 - e. No alcoholic beverages shall be sold in the game room and no alcoholic beverages shall be consumed therein unless permitted by state law and in compliance with state law and the laws of the town.
 - f. It shall not be permissible to stimulate play by gambling incentives such as, but not limited to, free plays or games, monetary rewards or the exchange of coupons redeemable for play or gifts.
 - g. The parking requirement shall be calculated on the basis of one space for each 200 square feet of floor area devoted to game room use.
- (19) Natural grass putting golf course. The term "natural grass putting golf course" means a course containing all or a significant number of elements of a regulation golf course consisting of some combination of tees, fairways, greens, sand traps, water and vegetation hazards and varying topography, but all of which have been reduced in size to accommodate the project site and designed for the sport of golf and limiting play to the use of a putter. Miniature golf courses utilizing artificial playing surfaces and/or with animated features within the golf course site are expressly excluded. All playing surfaces must be natural grass. Playing surfaces may be connected by wooden walkways not to exceed three feet in width and one foot in height. In addition to any other reasonable requirements or conditions imposed by the town council, a natural grass putting golf course shall satisfy the following conditions and requirements:
- a. The natural grass putting golf course site shall consist of an area that is at least one acre in size for each 18 holes of play. The parking area for the natural grass putting golf course site shall not be located within the boundaries of the natural grass putting golf course site, and the parking area cannot be included in the calculation of the required one acre of land area for each 18 holes of golf. An accessory structure used as a pro shop may be located within the natural grass putting golf course site. In no event shall the total number of golf holes exceed 36; however, a separate practice green may be included within the natural grass putting course site in addition to the maximum of 36 holes of golf.
 - b. The natural grass putting golf course shall be designed to utilize the natural terrain of the site as much as possible. The golf course shall contain and consist of only natural materials. A certification must be submitted by the property owner with the site plans stating that there will be no change in natural terrain exceeding two feet in elevation or two feet in excavation of the site. If the existing terrain will be altered by more than a two-foot

increase or decrease in elevation, then a topographic plan drawn with elevations at two-foot intervals must be submitted with the site plan.

- c. There shall be no artificial moving objects or animated natural objects on or around the course and within the natural grass putting golf course site. Only water, earth and natural vegetation shall be used as hazards or decorative features. Artificial devices including, but not limited to, miniature buildings, animal, human or vehicular models, manmade waterfalls, signs (other than hole number signs) or billboards are prohibited within the golf course site. The site plan shall show the location of and identify trees larger than six inches in diameter within the project site. To the extent possible, trees with diameters larger than six inches shall be preserved.
- d. The natural grass course shall include a buffer along its common boundary with adjoining properties. The buffer shall consist of an earthen mound at least ten feet wide at its base and six feet high. Natural vegetation shall be planted on the mound to function as a visual screen. The type of vegetation planted on the buffer shall be approved by the planning board. The screen shall be maintained by the owner or operator of the course. In the absence of a buffer and vegetative screen, there shall be an open space buffer 50 feet in width along the common boundary with adjoining properties and lying within the project site. No golf course playing area shall be located closer than 200 feet to the right-of-way of any state road or federal highway. In order to safeguard the public health, safety and welfare, a sufficient vegetative screen shall be provided on property lines adjacent to such state or federal highways. The overall height of the screen shall be at least 12 feet. It shall be opaque to a minimum height of six feet. Intermittent visual obstruction shall be permitted from six feet to a height of at least 12 feet. The opaque portion of the screen is intended to exclude visual contact during all seasons. The intermittent portion shall not contain any unobstructed opening more than 15 feet wide except at approved access points. The screen shall be composed of a landscaped earthen berm, planted vegetation or existing vegetation. The planting materials list in this subsection, defines acceptable species which may constitute the screen. A plan showing details of a proposed screen shall be developed and submitted as part of the site plan review procedure. The plan shall be judged sufficient if it satisfies the standards and species defined in this subsection.

PLANTING MATERIALS
<i>Trees (ten feet to 40 feet)</i>
Black Pine (<i>Pinus thunbergi</i>)
Brazilian Butia (<i>Butia capitata</i>)
Cabbage Palmetto (<i>Sabal palmetto</i>)*
Cedar (<i>Cedrus deodora</i>)
Cluster Pine (<i>Pinus pinaster</i>)
Crepe Myrtle (<i>Lagerstroemia indica</i>)

Eastern Red Cedar (<i>Juniperus virginiana</i>)
Live Oak (<i>Quercus virginiana</i>)
Redbay (<i>Persea borbonia</i>)
White Poplar (<i>Populus alba</i>)
<i>Opaque screen (ground to six feet)</i>
Bayberry (<i>Myrica pensylvanica</i>)
European Privet (<i>Ligustrum vulgare</i>)
Japanese Privet (<i>Ligustrum japonicum</i>)
Oleander (<i>Nerium oleander</i>)
Pampas Grass (<i>Cortaderia selloana</i> , et al.)
Pittosporum (<i>Pittosporum tobira</i>)
Russian Olive (<i>Elaeagnus pumgens</i>)
Saltcedar (<i>Tamarix gallica</i>)
Wax Myrtle (<i>Myrica cerifera</i>)
Yaupon Holly (<i>Ilex vomitoria</i>)

*Requires special care in colder areas.

- e. Lighting within the natural grass putting golf course site boundary shall be shielded and focused on the course in such a manner as not to interfere with the reasonable enjoyment of adjacent parcels of property or traffic on nearby streets or highways. The light shall be contained on the site. Light fixtures shall not exceed ten feet in height. There shall be no neon or flashing lights within the natural grass putting golf course site boundary. A light

plan shall be submitted to the planning board as part of the site plan review. The light plan shall demonstrate compliance with the light standards set forth herein.

- f. The transmission of voice or musical sound within the natural grass putting golf course site boundary shall be prohibited. Malt beverages, wine or other beverages containing alcohol shall not be sold or consumed within the boundaries of the natural grass putting golf course. Adequate restroom facilities for the use of golf course players and customers shall be located within the golf course area. Trash receptacles approved by the town and/or county shall be located and maintained on the site. The site plan submitted to the planning board shall contain information and design elements demonstrating that stormwater runoff will be managed in a manner which contains the runoff within the boundaries of the site and otherwise complies with the applicable provisions of chapter 32, pertaining to soil erosion and sedimentation control.
 - g. There shall be a minimum of two parking spaces per hole of golf play and one parking space for each golf course employee at the site. If the natural grass putting golf course is planned and included as part of a restaurant mixed-use development, then the minimum parking requirement may be reduced to 1½ spaces per golf hole within the site and one space for each employee at the site.
 - h. Accessory uses. A restaurant center that sells snacks and beverages to the customers may be included as an accessory use within the natural grass putting golf course site.
- (20) Bed and breakfast facility.
- a. The bed and breakfast facility shall be compatible in scale of structure and scale of development with residential structures in the neighborhood in which it is located. The principal use of such dwelling structure is residential. The exterior of the structure shall be harmonious with surrounding property. The bed and breakfast use shall be operated in a primary, single-family residential structure and not in any accessory structure.
 - b. The operation shall be conducted by persons who own and reside within the dwelling unit. It shall be permissible to employ the equivalent of one fulltime person to assist in the operation.
 - c. The structure must contain at least one full bathroom for the exclusive use of the owner and other members of the immediate household, plus one private bathroom for each guest bedroom. Each full, discrete bathroom must include a minimum of a water closet, a lavatory and a bath or shower and meet current building code requirements.
 - d. The rental of rooms shall be on a daily or weekly basis to tourists, vacationers or similar transients. The rental period shall not exceed 14 consecutive days in any 30-day period.
 - e. There shall be no cooking facilities or kitchen-type appliances in the rental dwelling rooms. A breakfast meal may be provided. It is intended by this subsection that meals may be provided only to registered guests of the facility.
 - f. Smoke alarms shall be installed in all rental rooms and in common areas.
 - g. The total rented dwelling rooms shall not exceed four and the total occupancy, including the owner, shall not exceed ten persons.
 - h. Parking shall be provided on the basis of one space per rental dwelling room in addition to two spaces for the owner. Parking spaces for rental dwelling rooms may be grass, Geoweb or gravel. Such parking areas shall be maintained in a dust-free, rut-free condition and shall be visually screened with a vegetated buffer if adjacent to an existing residential structure or a vacant lot on which a residential structure can be built.
 - i. Only signs which comply with standards for display in the zoning district in which the structure is located may be permitted.
 - j. No dwelling may be used as a bed and breakfast unless and until it shall have been permitted by the county environmental health department.

- k. Lighting of the premises shall be harmonious with surrounding property. Lighting shall not create glare or interfere with the reasonable enjoyment of adjacent properties.
 - l. Noise generated within the structure shall not exceed a volume normally associated with residential occupancy. Between 9:00 p.m. and 6:00 a.m., noise originating within the structure shall not be audible beyond the property lines.
 - m. The town shall issue a permit if all the requirements of this subsection and other applicable provisions of this chapter have been met. The permit shall remain in effect for a period of one year and may be suspended or revoked if a violation of standards is found. The permit shall be renewed each year, upon request, by the code enforcement officer unless it is determined that the use of the dwelling is not in compliance with this chapter. The use of the building as a bed and breakfast shall cease if the permit is not kept in effect.
- (21) Clubhouse and pro shop use subject to reasonable conditions established by the town council and the following conditions:
- a. The height, intensity and location of the exterior lights must be shown on the site plan and approved by the town. The maximum height of exterior lights shall not exceed 20 feet, and the exterior lights shall be positioned such that the light is directed down towards the ground surface and shielded to prevent glare from being observed from adjoining properties and town rights-of-way. An illustration of the proposed exterior lights must be submitted to the town and approved by the town planner.
 - b. Cart path surfaces will be maintained in a safe condition by the golf course owner and at the golf course owner's expense. The golf course owner must properly repair any cart path within a town street right-of-way which has been damaged by the town, its employees, agents, contractors, or subcontractors performing work for the town or public utilities performing utility work within the street right-of-way.
 - c. The golf course owner shall maintain liability insurance in an amount and form approved by the town, with the town as an additional insured, against risk causing injury or damage due to the presence and use of the golf paths within the town right-of-way.
 - d. Warning signs and signals at any town, street, right-of-way crossing or crossings will be maintained by the applicant (at the applicant's expense) in good working order in all times that the golf course is open for play. Failure to maintain signs or signals shall result in a suspension of the ~~conditional~~ **special** use and shall constitute a violation of this condition which shall be enforceable by the remedy of injunction in addition to, and not in limitation of, other remedies available to the town.
 - e. There shall be a minimum of four parking spaces per hole on the site.
 - f. A regulation golf course consisting of 18 or more playable holes which has a retail pro shop and/or general administrative offices for the golf course use and any ancillary golf course uses may share a maximum of six parking spaces for the golf course use based upon the parking standards for a retail use (one space per 350 square feet) and for an office use (one space per 500 square feet and one parking space for each employee) in order to satisfy the total parking standards for the golf course use together with the retail pro shop and general administrative office use requirements.
 - g. The total number of golf course use shared parking spaces shall not exceed six, and the number of shared parking spaces shall not be increased as a result of an increase in the square footage of the retail pro shop use or the general administrative office use.
- (22) Sales and installation of floor coverings and materials, provided there is no outside storage of materials or products.
- (23) Churches.

- (24) Kayak sales or rental; provided that outdoor display must be completely screened from the public's view, from public and private rights-of-way or from the ground level of adjacent properties according to standards in article VI division 5 of this chapter.
- (25) Kayak tours, provided that they comply with section 42-273(c)(8).
- (26) Water tank murals. Water tank murals shall be a ~~conditional~~ **special** use upon the following terms and conditions as well as such other reasonable terms and conditions as the town council may require:
- a. The water tank must be owned or leased by the county and used as part of the county water distribution system;
 - b. The murals cannot contain words, numbers, and symbols, or commercial, religious, or political themes or content;
 - c. The murals must not be visible from US 158 right-of-way or town street rights-of-way (except for that portion of Sibbern Street west of Croatan Highway);
 - d. A pictorial representation of the murals must be approved by the town planning board and the town council;
 - e. The murals cannot be altered, changed, modified or repainted without the prior approval of the town planning board and town council. Any such alterations, changes, modifications or repainting of the mural must be in accordance with the approval given by the town.
- (27) Retail sale of Christmas trees and wreaths subject to the regulations set forth in section 42-502(3).
- (28) Outside storage associated with furniture stores limited to the following:
- a. All outdoor storage be contained in a maximum of four percent of the site.
 - b. Furniture must be outdoor in type.
 - c. Fenced to shield from public view.
 - d. Must meet all fire code requirements.
 - e. Shall not be located on approved drainfield area.
 - f. Storage area shall not increase the impervious surface.
 - g. Not accessible to the public.
- (29) Indoor ramp parks; provided the following conditions are met:
- a. Supervision in the ramp park area shall be provided during all operating hours.
 - b. The ramp park area shall be constructed in such a manner and with such materials as to prevent any noise originating within the facility from being heard beyond the approved site boundary. If the ramp park is located in a structure which houses other nonrelated businesses, the noise within the ramp park must not be audible beyond the boundaries of the area leased or owned by the ramp park operator. An architect, engineer or other qualified professional must certify on the site plan that the proposed design and materials will comply with these standards.
 - c. The maximum number of occupants shall be determined by the building inspector according to the standards of the state fire code. The maximum number of occupants allowed in the ramp park shall be posted in a conspicuous place therein and its limits shall not be exceeded.
 - d. No alcoholic beverages shall be sold in the ramp park and no alcoholic beverages shall be consumed therein.

- e. It shall not be permissible to stimulate play by gambling incentives such as, but not limited to, free plays or games, monetary rewards or the exchange of coupons redeemable for play or gifts.
 - f. The parking requirement shall be calculated based on retail uses not otherwise listed. Parking for food service shall be calculated on eating establishment. Total parking shall be based on the combination of all uses.
 - g. The owner/lessee shall execute a hold harmless agreement with the town for any accidents or injuries at the ramp park.
 - h. There will be no skateboarding outside the building.
 - i. There will be no open air facility. Any open windows or doors will constitute a violation of the noise requirements.
- (30) Bicycle rental and repair shop, subject to reasonable conditions established by the town council and the following conditions:
- a. No outdoor storage of bicycles and other bicycle accessories.
 - b. No self-propelled or motorized vehicle (e.g., mopeds) rentals.
 - c. All repairs must be made in the interior of the approved building.
- (31) Fitness center; provided the following:
- a. No promotional sales or services shall be visible outside of the building.
 - b. The building shall be designed so that any noise will be contained within the building.
 - c. All lighting shall meet section 42-515.
 - d. Any outdoor uses or facilities shall be set back or buffered so that no noise will go beyond the property.
 - e. Massage personnel shall be licensed by the state.
- (32) Electric vehicle dealership: an electric vehicle dealership (rental, sales and service) may be authorized subject to any reasonable conditions and standards imposed by the town council, this Code, and the following conditions:
- a. The project site must be located along U.S. Highway 158 or N.C. Highway 12 frontage;
 - b. The project site must contain a minimum of 0.75 acres (or 32,670 sq. ft.);
 - c. The project site must have minimum road frontage on U.S. Highway 158 or N.C. Highway 12 of 100 feet;
 - d. New buildings shall be set back a minimum of 75 feet from adjoining residential uses or zoning district boundaries;
 - e. Parking spaces and vehicles for sale or display to customers must be set back a minimum of 15 feet from the rear property line;
 - f. New curb cuts, entrances or exit points from the project site to U.S. Highway 158 or N.C. Highway 12 shall be prohibited;
 - g. An opaque fence may be required along the property line when adjoining a residential use;
 - h. No electric vehicles shall be placed, parked or displayed within, the town rights of way or the rights of way of U.S. Highway 158 or N.C. Highway 12;
 - i. Repair and service of vehicles must take place inside of an enclosed structure;
 - j. No electrical vehicle use shall be permitted on multi-use paths;

- k. The location of electrical vehicle dealerships is limited to properties with direct access onto a street with a speed limit of 35 miles per hour or less. If the proposed site cannot comply with this standard, then all vehicles must be delivered.
- (33) *Produce stand.* The retail sale of fruits, vegetables, flowers, containerized house or bedding plants, herbs and other agricultural food products, such as jam, jelly, vinegar, eggs, cheese or honey, subject to the following terms and conditions:
- a. The project site must have frontage along U.S. Highway 158 or N.C. Highway 12;
 - b. No produce, plants or related products shall be located within the town or state right-of-way or in designated parking spaces or fire lanes;
 - c. The activity may not utilize on-site required parking spaces to conduct retail activities or storage;
 - d. No sales shall be conducted after 10:00 p.m. and prior to 7:00 a.m.;
 - e. No music shall be produced on the site which music is audible beyond the property lines of the lot on which the sales are being conducted;
 - f. Any signs must meet the current standards of this chapter and applicable sign permit requirements;
 - g. No additional lighting shall be allowed on the site;
 - h. Trailers or vehicles used to transport produce and materials to the site shall be concealed from observation from town streets and state rights-of-way;
 - i. Prior to issuance of a ~~conditional~~ **special** use permit, the applicant shall present a scaled site plan illustrating the location of all vendor display and storage areas, pedestrian circulation areas and ways, and location of required parking;
 - j. Any structures must meet wind construction standards and tie-down standards per state building code;
 - k. One paved off-street parking stall shall be required for each 300 square feet of occupied retail space. For purposes of this section, retail space shall be that area occupied for the display, sale or storage of goods;
 - l. The required parking shall not be allowed in public or private rights-of-way, fire lanes or travel lanes designated on approved site plan;
 - m. Any tent occupying over 200 square feet of the site shall require approval from the fire chief;
 - n. Sanitary facilities shall be required in a manner consistent with the International Building Code for a similarly sized retail space and shall be located on the subject property and within 200 feet of the market;
 - o. On-site garbage or trash receptacles must be provided and properly maintained at all times.
- (34) *Vehicle rentals,* subject to any reasonable conditions imposed by the town council and the following specific conditions:
- a. No more than three rental vehicles to be parked in the front of the building, the remainder of the fleet shall be parked in the rear of the building.
 - b. Total number of rental vehicles shall not exceed fifteen.
 - c. Site must have sufficient interior storage for vehicle accessories.
 - d. Location must have counter area with restrooms.
 - e. Vehicle rental business must be the sole use of the property.

- f. No high occupancy vehicles (seating for ten or more passengers) included in the fleet.
 - g. Rental vehicle repair and/or maintenance shall not be performed on site.
- (35) Multi-family dwellings.
- a. Maximum allowable lot coverage by principal use and all accessory structures is 60 percent.
 - b. The minimum front yard setback is 15 feet.
 - c. The minimum side yard setback is ten feet, an additional five-foot side yard adjacent to the street is required for a corner lot.
 - d. The minimum rear yard setback is 20 feet.
 - e. The maximum permitted density shall be ten residential dwelling units per acre.
 - f. Type A vegetative buffer, per section 42-654 shall be required between any multifamily dwelling and abutting residential zones or uses.
- (d) *Dimensional requirements.*
- (1) Commercial lots shall be sufficient size to meet the requirements of the county health department, to provide adequate siting for structures, and to provide parking, loading, and maneuvering space for vehicles as required by article VI, division 2 of this chapter; however, all commercial lots shall have a minimum lot size of 15,000 square feet. In addition, a visual buffer is required where a commercial use or zone abuts a residential district. The maximum lot size for a commercial lot or parcel submitted for review and approval in the BC-1 district shall not exceed four acres in area and no use of an owner or tenant on the site shall exceed a maximum area of 25,000 square feet of building area as shown on the commercial site plan.
 - (2) The minimum front yard is 15 feet.
 - (3) The minimum side yard is ten feet. No side yard is required, if the commercial building is constructed with a common wall. An additional five-foot side yard adjacent to the street is required for a corner lot.
 - (4) The minimum rear yard is 20 feet.
 - (5) The maximum allowable lot coverage by principal use and all accessory structures is 60 percent. Use of permeable pavement shall allow a maximum lot coverage physical area of 72 percent. Permeable pavement failure shall require that the failed permeable pavement is removed and replaced by a pavement meeting the definition of permeable pavement herein with design pavement performance equal to, or better than, the represented performance of the approved pavement.
 - (6) Maximum total height shall not exceed 35 feet from existing grade exclusive of chimneys, flagpoles, communication masts and aerals.
 - (7) No building or other facility (such as parking areas, trash collection areas, etc.), shall be located nearer than 50 feet to the boundaries of any residential district. The width of a driveway or a road and its right-of-way along such boundary may be included as part, or all, of the 50-foot separation zone, and subsurface wastewater disposal systems and stormwater runoff collection and disposal systems may be located within the separation zone. The planning board may require vegetation to be planted and maintained in the 50-foot separation zone.
 - (8) A minimum of 25 percent of the site shall remain in natural or manmade landscaped open space.
- (e) *Commercial site plan review.* Any person desiring to construct or enlarge a structure for a commercial use or to support a commercial use on the same site and any person desiring to change the authorized commercial use of an existing structure to another permitted or conditional **special**

use shall first submit site plans to the planning board for review and to the town council for its approval as provided in this article.

- (f) *Existing structures; use change; comply with state building code.* Any building constructed in a commercial zone for a commercial use must comply with the applicable standards of the state building code. Where the use of an existing building is changed from a noncommercial to a commercial use, the owner must obtain site plan approval from the planning board and an occupancy permit before making a commercial use of the building. The structure must satisfy all state commercial building code standards and requirements applicable to commercial structures for the commercial use proposed at the time of the application of the occupancy permit except as provided in this section.
- (g) *Ground stabilization plan.* A plan that will ensure the stabilization and subsequent revegetation of all areas that have been disturbed in accordance with chapter 12, article II, pertaining to sand dune protection and chapter 32, pertaining to soil erosion and sedimentation control, is required.
- (h) *Rental unit nonconforming use and density grandfathering.* Any motel, hotel, inn or cottage court in the BC or the BH zones may rebuild structures containing one or more rental units and/or freestanding structures used for rental purposes which were in existence and so used on August 18, 1986; notwithstanding such reconstruction would not comply with the density standards of this chapter. Any expansion of the business by the addition of more rental structures shall comply with all the nonuse standards and density standards of this chapter.

(Code 1990, § 20-145; Ord. of 8-18-1986, § 3.01(D); Ord. No. 87-3, 1-19-1987; Ord. No. 87-4, 1-19-1987; Ord. No. 89-20, 8-21-1989; Ord. No. 89-21, 8-21-1989; Ord. No. 89-32, 12-4-1989; Ord. No. 89-35, 12-18-1989; Ord. No. 90-21, 9-4-1990; Ord. No. 90-18, 12-3-1990; Ord. No. 91-12, § 1, 7-15-1991; Ord. No. 91-13, § 3, 10-7-1991; Ord. No. 91-18, 12-10-1991; Ord. No. 92-1, 3-23-1992; Ord. No. 92-8, 7-13-1992; Ord. No. 92-12, 8-3-1992; Ord. No. 93-1, 1-4-1993; Ord. No. 93-2, 1-4-1993; Ord. No. 94-8, 6-6-1994; Ord. No. 94-16, 9-6-1994; Ord. No. 95-18, 9-5-1995; Ord. No. 96-22, 10-7-1996; Ord. No. 97-13, 12-17-1997; Ord. No. 98-3, 2-2-1998; Ord. No. 98-23, 7-7-1998; Ord. No. 99-2, 1-4-1999; Ord. No. 00-5, 1-4-2000; Ord. No. 00-38, 12-4-2000; Ord. No. 00-18, 6-5-2000; Ord. No. 00-39, 12-4-2000; Ord. No. 00-40, 12-4-2000; Ord. No. 01-7, 4-2-2001; Ord. No. 01-10, 4-2-2001; Ord. No. 01-11, 4-2-2001; Ord. No. 01-13, 4-2-2001; Ord. No. 01-31, 10-1-2001; Ord. No. 02-05, § 20-145, 3-4-2002; Ord. No. 03-02, § 20-145, 2-3-2003; Ord. No. 03-05, § 20-145, 2-3-2003; Ord. No. 03-18, § 20-145, 4-7-2003; Ord. No. 03-19, § 20-145, 4-7-2003; Ord. No. 03-26, § 20-145, 5-5-2003; Ord. No. 03-36, § 20-145, 7-7-2003; Ord. No. 03-37, § 20-145, 7-7-2003; Ord. No. 03-38, § 20-145, 7-7-2003; Ord. No. 03-53, 20-145, 10-6-2003; Ord. No. 04-26, § 20-145, 9-13-2004; Ord. No. 07-11, § 20-145, 5-7-2007; Ord. No. 08-18, 12-1-2008; Ord. No. 10-02, 4-6-2010; Ord. No. 10-03, 4-6-2010; Ord. No. 10-14, 12-6-2010; Ord. No. 13-12, 12-2-2013; Ord. No. 15-06, 6-1-2015; Ord. No. 16-05, 4-4-2016; Ord. No. 18-03, 3-5-2018; Ord. No. 18-06, 6-4-2018; Ord. No. 19-02, 1-7-2019)

Sec. 42-251. - BC-2 beach commercial district.

- (a) *Scope and intent.* Unless stated otherwise, this section applies to the BC-2 beach commercial district. The BC-2 district is established to provide for the development of commercial facilities in Kitty Hawk Beach to furnish a broad range of services and commodities to serve the entire community. The BC-2 district has been established to provide for the commercial needs of the town and the immediate surrounding geographical area. The commercial development within the BC-2 district will be characterized by medium size to large size land parcels with commercial development of medium intensity. Commercial centers may be authorized in this district, but large shopping centers or shopping malls, and "big box" retail/wholesale businesses exceed the scale of development planned for this district.

- (b) *Permitted uses.* The following uses shall be permitted by right:
- (1) All permitted uses allowed within the BC-1 district.
 - (2) Home center sales; provided there is no outdoor display or merchandise.
 - (3) Cabinet and woodworking shops.
 - (4) Town owned or leased facilities.
 - (5) Marinas.
- (c) ~~Conditional~~ **Special** *uses.* The following uses are permitted subject to the requirements of this district and additional regulations and requirements imposed by the town council as provided in section 42-99:
- (1) Single-family dwellings, not to include mobile or manufactured homes. A single-family dwelling must comply with the dimensional requirements of the BR-1 district.
 - (2) Gas stations or fuel dispensing accessory use facilities; provided that no principal or accessory building shall be located within 50 feet of a residential district, and; provided that there shall be no storage of wrecked or abandoned cars, and that no portion of a gas station building, equipment or canopy shall be nearer than 30 feet to any right-of-way, and no portion of gas pumps shall be nearer than 50 feet to any right-of-way.
 - (3) Motor vehicle service and repair, provided that there shall be no storage of wrecked, junked or abandoned vehicles and that there shall be no fuel dispensing devices.
 - (4) Conveyor carwash service station is a ~~conditional~~ **special** use upon the following conditions and such other conditions as the town council may reasonably set forth:
 - a. A prewash vehicular lane of sufficient size to accommodate 12 vehicles during the prewash phase of the wash operation.
 - b. A postwash vehicular lane of sufficient size to accommodate four vehicles being towel dried. The exit from the conveyor belt system shall be the entrance to the postwash vehicle drying area.
 - c. The prewash and postwash vehicle areas must be located separate from and outside of internal traffic circulation lanes and ingress/egress access points with public or private rights-of-way.
 - d. At the location of the vehicle exit from the building there shall be a water catchment at the postwash vehicle parking area which shall drain and slope to the water catchment. The water catchment must be large enough to contain all water draining into it from washed vehicles.
 - e. The water used for washing the vehicles must be recycled on site through a closed recycle system. The system must be designed, constructed and maintained in order to prevent washwater from entering the subsurface ground area or from flowing upon the ground surface.
 - f. On-site directional signs must not be illuminated internally. Sign lighting on the site must not interfere with the vision of motor vehicle operators on site or off site.
 - g. Each site shall have restroom facilities open and available to its customers.
 - h. Trash containers must be located at all vacuum cleaner stations and the area maintained free of trash and rubbish.
 - i. At least one attendant shall be on duty during the hours of operation.
 - (5) Public utility facilities.
 - (6) Seafood markets.

- (7) Hospitals, clinics and medical offices.
- (8) Emergency heliport. The operation of a medical emergency evacuation heliport shall be an accessory use to the primary hospital or medical center ~~conditional~~ **special** use and shall be authorized in addition to the primary hospital or medical center conditional use as a ~~conditional~~ **special** accessory use after the following requirements have been satisfied:
- a. Hospitals and medical clinics shall include those facilities which, under normal operating conditions, receive and treat trauma patients.
 - b. Compliance with and evidence of compliance with any applicable requirements of the Department of Transportation, Division of Aviation, the Federal Aviation Administration, and any other federal, state or local agency having jurisdiction over the operation of helicopter flights, landings and the environmental impact thereof.
 - c. Submission of a ~~conditional~~ **special** accessory use application with the town planning department in addition to the following materials:
 1. A site plan and map drawn to a scale of one inch equals 100 feet showing the locations, height and first floor elevations or foundation elevations above mean sea level of all structures, utility and street rights-of-way, existing power lines, towers, undeveloped residential lots, and other similar uses within 500 feet of the outside edge of the heliport landing pad.
 2. Environmental assessment consisting of:
 - (i) An analysis of the impact of noise within 500 feet of the heliport performed by a qualified audio engineer or other appropriate professional;
 - (ii) An analysis of the socioeconomic issues relating to the heliport and the hospital or the clinic; and
 - (iii) Viable alternatives.The fees and costs associated with the review of the environmental assessment shall be paid to the town by the applicant prior to the public hearing as part of the application review fee. The analysis is to be submitted prior to the first regular or special meeting of the planning board at which the application is considered.
 3. Proposed heliport lighting plan demonstrating the technology and technique for retaining light on the site and prevention of light or light glare from affecting traffic using streets and highways in the area.
 4. Proposed approach and departing flight paths shall be shown on the map required in subsection (c)(8)c.1 of this section.
 5. Proposed protection for the innermost portion of the approach and departure routes.
 - d. Upon filing the application and all required materials with the town planner, the town council shall set a public hearing on the applicant's request for the ~~conditional~~ **special** accessory use of the medical emergency evacuation heliport. In addition to advertising the public hearing, the town planner shall mail, by certified mail, copies of the notice of hearing to all property owners on the tax records of the town within 500 feet of the heliport landing pad. The cost of advertising and mailing of the notices shall be borne by the applicant and paid prior to the public hearing date.
 - e. In the case of a protest against the medical emergency evacuation heliport by the owners of 20 percent or more either of the area of the lots included within 500 feet of the heliport pad, or of those immediately adjacent thereto either in the rear thereof or on either side thereof or extending 500 feet therefrom, or of those directly opposite thereto extending 500 feet from the street frontage of the opposite lots, then a motion to allow the ~~conditional~~ **special** accessory use shall not become effective except by favorable vote of four of the five members of the town council.

- f. No protest against the applicant's proposed ~~conditional~~ **special** accessory use shall be valid or effective for the purposes of subsection (c)(8)e of this section unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed ~~conditional~~ **special** accessory use and unless it shall have been received by the city clerk within ten days following the public hearing. For the purposes of determining the ten-day period, the date of the public hearing shall be excluded and the tenth day shall be included. Thereafter the town shall determine the sufficiency and accuracy of the petition within two normal work days, excluding Saturdays, Sundays and legal holidays, after the end of the ten-day period for filing protest petitions. The protest petition shall be in a form adopted by the town council. In the event no protest is filed or the protest is inadequate, the favorable vote of three of the five town councilmembers shall be required in order to authorize the ~~conditional~~ **special** accessory use.
 - g. The minimum lot or parcel size to accommodate a hospital or medical center with a heliport facility shall be three acres or more.
 - h. The heliport shall be ground based only. No rooftop facility shall be permitted.
 - i. The heliport shall comply with the latest edition of the FAA regulations in its design, size and use.
 - j. The heliport shall not be used until FAA approval is obtained and a copy of the approval is submitted to the town.
 - k. Prior to submitting the FAA permit application for the heliport, a copy of the application shall be forwarded to the town. The town's review of the copy of the application is for informational purposes and not intended as an approval requirement.
 - l. No fixed base operations or refueling facilities shall be permitted on the hospital-medical center or heliport site.
 - m. Lighting of the helipad or final approach and takeoff areas shall comply with FAA regulations but shall be ground level based using cutoff or restrictive features to minimize overspill of light from the activity area itself.
 - n. No takeoff and landing area shall be nearer than 200 feet at its closest point to a state or federal highway. The entire takeoff and landing area, as defined by the FAA and determined by the size of the helicopter, shall fall within the property lines of the lot. The developer of a heliport shall be required to place signs warning motorists of low-flying aircraft. These signs shall be placed in accordance with regulations of the state department of transportation.
 - o. Fire protection and safety measures shall be in accordance with the FAA and NFPA guidelines. The presence of firefighting equipment shall not be required by the town unless requested by the owner. The cost of providing such firefighting equipment coverage shall be the responsibility of the owner.
 - p. The use of sound buffers, proper facility siting, separation distances or other natural or manmade barriers shall be made a part of the heliport approval process.
 - q. A protection plan for the innermost portion of the approach and departure routes shall be developed. Protection means may consist of, but not be limited to, acquiring title to the land or leasing the land area, acquisition of air rights, or the written consent of property owners within the approach and departure routes, or other means approved by the town council. The plan shall include an evaluation of viable alternatives. The method of such protection must be approved by the council and consummated by the applicant. The council, acting in its sole discretion, may waive this requirement if the procedure cannot be completed within a reasonable period of time or for reasons beyond the control of the applicant.
- (9) Veterinary hospitals and clinics subject to other requirements of this chapter and provided the following conditions are met:

- a. No animals shall be kept or boarded outside the principal building and there shall be no structure, runs, or pens used for boarding, holding or restraining animals located upon the site outside of the principal building.
 - b. The principal building shall be constructed in such a manner and with such materials as to prevent any noise originating within the facility from being heard beyond the approved site boundary line. An architect, engineer or other qualified professional must certify on the site plan that the proposed design and materials will allow no animal noise originating within the building to be heard at any point on the approved site boundary.
 - c. All animal waste must be disposed of through the facility septic system and the applicant must submit evidence that the appropriate county or state department has approved the proposed septic systems for the disposal of animal waste.
 - d. No dead animal shall be placed in any outside receptacle located on the premises outside the facility.
 - e. A vegetated or constructed visual buffer may be required.
 - f. Exterior lighting shall be of low intensity and shall reflect upon the site in such a manner as not to interfere with traffic on public streets or highways.
- (10) Indoor recreation activities.
- (11) Apartments on the second story of compatible commercial uses; provided that applicable state building and fire codes are met and that one parking space per bedroom is reserved for the occupants of the apartment in addition to any other parking spaces that may be required.
- (12) Day care centers.
- (13) Boat sales and rentals, provided that any outdoor display must be completely screened from the public's view, from public and private rights-of-way or the ground level of adjacent properties according to standards in article VI of division 5 of this chapter.
- (14) On-site retail sales and production of bakery goods, subject to any reasonable conditions imposed by the town council and the following specific conditions:
- a. The production of bakery goods must be incidental to and for the purpose of on-site retail sales and not for distribution to wholesale vendors.
 - b. The property owner must provide a waste container of sufficient size to accommodate all of the waste generated by the bakery production activity.
 - c. The owner shall obtain and maintain firefighting apparatus or fire extinguishing apparatus in accordance with the requirements of the planning board or the fire department.
- (15) Craft production and retail sales, subject to any reasonable conditions imposed by the town council and the following conditions:
- a. The production of crafts must be incidental to and for the purpose of retail sales and not for distribution to wholesale vendors.
 - b. The maximum square footage of the area devoted to craft production shall not exceed 800 square feet.
 - c. The building in which crafts are produced shall be constructed in such a manner and with such materials as to prevent any noise originating within the facility from being heard beyond the approved site boundary line if the same is a freestanding building and to prevent any noise emanating from within the building, or portion thereof used for craft production, if the same is located within a multiunit structure. An architect, engineer or qualified professional must certify on the site plan that the proposed design and materials will allow no noise from the craft production activity within the building to be heard at any point on the approved site boundary or outside of the building, or that portion of the building used for craft production if the same is located within a multiunit structure.

- d. All odors and vapors, including chemical vapors, associated with or generated by the production of crafts shall be contained within the boundaries of the site or within the building, or that portion of the building used for the production of crafts in a multiunit structure. When requested by the planning board, an engineer's certification shall be furnished to the planning board that the design, construction, and proposed methods of odor and vapor control are sufficient to contain all odors and vapors generated by or emanating from the production of crafts within the site boundary, if a freestanding building, or within the interior of that portion of the building used for the production of crafts in a multiunit structure.
 - e. The property owner must provide a waste container of sufficient size to accommodate all of the waste generated by the craft production activity.
 - f. If flammable materials are used in the craft production activity, the owner shall obtain and maintain firefighting apparatus or fire extinguishing apparatus in accordance with the requirements of the planning board or the volunteer fire department.
- (16) A print shop may be permitted subject to other requirements of this chapter and provided the following conditions are met:
- a. No more than 1,000 square feet may be used for printing purposes, excluding office area.
 - b. The principal building shall be constructed in such a manner and with such materials as to prevent any noise originating within the facility from being heard beyond the approved site boundary line. An architect, engineer or other qualified professional must certify on the site plan that the proposed design and materials will allow no machine noise originating within the building to be heard at any point on the approved site boundary.
 - c. In the event any chemicals used or stored on the premises require approval by a governmental agency of the method such chemicals are stored, used or disposed, then written evidence of the approval by the appropriate governmental agency shall be furnished to the town.
 - d. A list of all chemicals used or stored on the site shall be filed on or before January 10 of each year with the fire department.
- (17) Building contractor's offices and storage area; provided that any outdoor storage area must be completely screened from the public's view, from public and private rights-of-way or the ground level of adjacent properties according to standards in article VI of division 5 of this chapter.
- (18) Building supply and equipment sales; provided that any outdoor storage area must be completely screened from the public's view, from public rights-of-way or the ground level of adjacent properties according to standards in article VI of division 5 of this chapter.
- (19) Plumbing supply and equipment sales; provided that any outdoor storage area must be completely screened from the public's view, from public rights-of-way or the ground level of adjacent properties according to standards in article VI of division 5 of this chapter.
- (20) Miniature golf course associated with PCD. A miniature golf course is a course containing all or a significant number of elements of a regulation golf course consisting of some combination of tees, fairways, greens, sand traps, water and vegetation hazards, and varying topography but all of which have been reduced in size to accommodate the project site and designed for the sport of golf. Putt-Putt type golf courses and animated courses are expressly excluded. Miniature golf courses, where authorized in various districts under this chapter, shall meet the following conditions and requirements:
- a. The miniature golf course and support facilities must be located within the boundary of the PCD project.
 - b. The miniature golf course must be compatible with the land uses in the PCD project.

- c. The miniature golf course site shall consist of at least 30,000 square feet of land area for an 18-hole course with parking and golf course facilities. The total number of golf course holes shall not exceed 36 holes of play. In addition, a separate practice putting green may be located within the miniature golf course site boundary.
 - d. To the extent possible, the course design and layout shall utilize the natural terrain of the site. Alteration of the existing natural topography and the creation of other natural topographical features such as hills, mounds and waterfalls shall require the approval of the planning board and town council. There shall be no animation on or around the course and within the golf course site. The golf course site and course shall utilize only water, earth and natural vegetation as hazards, decorative features and other play-related features and shall not use artificial devices including, but not limited to, miniature buildings, animal, human or vehicular models, signs (other than hole number signs) or billboards. A site plan, including the location and identification of trees larger than six inches in diameter shall be required for miniature golf courses. The PCD submission and review procedure shall apply to the planning review of the golf course site.
 - e. The course shall be buffered from adjacent parcels outside the PCD by a vegetated buffer; however, it is permissible for the course to be visible from US Highway 158 if the PCD boundary is contiguous to the right-of-way of US Highway 158. The buffer shall be a vegetated buffer with plants, shrubs and trees approved for use by the planning board. The vegetated buffer shall be maintained by the manager or association responsible for maintenance of the planned commercial development.
 - f. There shall be no neon or flashing lights in the miniature golf course site boundary. Lighting of the course shall be contained on the site and shall not interfere with the reasonable enjoyment of adjacent parcels or traffic on streets or highways.
 - g. The electrical transmission of sound shall be prohibited.
 - h. Alcoholic beverages may not be sold or consumed in the miniature golf course area.
 - i. Restroom facilities shall be located within the golf course area for use by the players.
 - j. The golf course design shall accommodate stormwater retention and shall comply with the guidelines for soil erosion and sedimentation control.
 - k. There shall be one parking space for each numbered hole plus one parking space for each employee working in the golf course site. All parking spaces shall be located within 400 feet of the golf course.
 - l. Trash receptacles shall be centrally located and maintained within the golf course site.
- (21) Cater service.
- (22) Natural grass putting golf course. The term "natural grass putting golf course" means a course containing all or a significant number of elements of a regulation golf course consisting of some combination of tees, fairways, greens, sand traps, water and vegetation hazards and varying topography, but all of which have been reduced in size to accommodate the project site and designed for the sport of golf and limiting play to the use of a putter. Miniature golf courses utilizing artificial playing surfaces and/or with animated features within the golf course site are expressly excluded. All playing surfaces must be natural grass. Playing surfaces may be connected by wooden walkways not to exceed three feet in width and one foot in height. In addition to any other reasonable requirements or conditions imposed by the town council, a natural grass putting golf course shall satisfy the following conditions and requirements:
- a. The natural grass putting golf course site shall consist of an area that is at least one acre in size for each 18 holes of play. The parking area for the natural grass putting golf course site shall not be located within the boundaries of the natural grass putting golf course site, and the parking area cannot be included in the calculation of the required one acre of land area for each 18 holes of golf. An accessory structure used as a pro shop may be located within the natural grass putting golf course site. In no event shall the total number of golf

holes exceed 36; however, a separate practice green may be included within the natural grass putting course site in addition to the maximum of 36 holes of golf.

- b. The natural grass putting golf course shall be designed to utilize the natural terrain of the site as much as possible. The golf course shall contain and consist of only natural materials. A certification must be submitted by the property owner with the site plans stating that there will be no change in natural terrain exceeding two feet in elevation or two feet in excavation of the site. If the existing terrain will be altered by more than a two-foot increase or decrease in elevation, then a topographic plan drawn with elevations at two-foot intervals must be submitted with the site plan.
- c. There shall be no artificial moving objects or animated natural objects on or around the course and within the natural grass putting golf course site. Only water, earth and natural vegetation shall be used as hazards or decorative features. Artificial devices including, but not limited to, miniature buildings, animal, human or vehicular models, manmade waterfalls, signs (other than hole number signs) or billboards are prohibited within the golf course site. The site plan shall show the location of and identify trees larger than six inches in diameter within the project site. To the extent possible, trees with diameters larger than six inches shall be preserved.
- d. The natural grass course shall include a buffer along its common boundary with adjoining properties. The buffer shall consist of an earthen mound at least ten feet wide at its base and six feet high. Natural vegetation shall be planted on the mound to function as a visual screen. The type of vegetation planted on the buffer shall be approved by the planning board. The screen shall be maintained by the owner or operator of the course. In the absence of a buffer and vegetative screen, there shall be an open space buffer 50 feet in width along the common boundary with adjoining properties and lying within the project site. No golf course playing area shall be located closer than 200 feet to the right-of-way of any state road or federal highway. In order to safeguard the public health, safety and welfare, a sufficient vegetative screen shall be provided on property lines adjacent to such state or federal highways. The overall height of the screen shall be at least 12 feet. It shall be opaque to a minimum height of six feet. Intermittent visual obstruction shall be permitted from six feet to a height of at least 12 feet. The opaque portion of the screen is intended to exclude visual contact during all seasons. The intermittent portion shall not contain any unobstructed opening more than 15 feet wide except at approved access points. The screen shall be composed of a landscaped earthen berm, planted vegetation or existing vegetation. The planting materials list in this subsection defines acceptable species which may constitute the screen. A plan showing details of a proposed screen shall be developed and submitted as part of the site plan review procedure. The plan shall be judged sufficient if it satisfies the standards and species defined in this subsection.

PLANTING MATERIALS	
<i>Trees (ten feet to 40 feet)</i>	
	Black Pine (<i>Pinus thunbergi</i>)
	Brazilian Butia (<i>Butia capitata</i>)
	Cabbage Palmetto (<i>Sabal palmetto</i>)*

Cedar (<i>Cedrus deodora</i>)
Cluster Pine (<i>Pinus pinaster</i>)
Crepe Myrtle (<i>Lagerstroemia indica</i>)
Eastern Red Cedar (<i>Juniperus virginiana</i>)
Live Oak (<i>Quercus virginiana</i>)
Redbay (<i>Persea borbonia</i>)
White Poplar (<i>Populus alba</i>)
<i>Opaque screen (ground to six feet)</i>
Bayberry (<i>Myrica pensylvanica</i>)
European Privet (<i>Ligustrum vulgare</i>)
Japanese Privet (<i>Ligustrum japonicum</i>)
Oleander (<i>Nerium oleander</i>)
Pampas Grass (<i>Cortaderia selloana</i> , et al.)
Pittosporum (<i>Pittosporum tobira</i>)
Russian Olive (<i>Elaeagnus pumgens</i>)
Saltcedar (<i>Tamarix gallica</i>)
Wax Myrtle (<i>Myrica cerifera</i>)
Yaupon Holly (<i>Ilex vomitoria</i>)

*Requires special care in colder areas.

- e. Lighting within the natural grass putting golf course site boundary shall be shielded and focused on the course in such a manner as not to interfere with the reasonable enjoyment of adjacent parcels of property or traffic on nearby streets or highways. The light shall be contained on the site. Light fixtures shall not exceed ten feet in height. There shall be no neon or flashing lights within the natural grass putting golf course site boundary. A light plan shall be submitted to the planning board as part of the site plan review. The light plan shall demonstrate compliance with the light standards set forth herein.
 - f. The transmission of voice or musical sound within the natural grass putting golf course site boundary shall be prohibited. Malt beverages, wine or other beverages containing alcohol shall not be sold or consumed within the boundaries of the natural grass putting golf course. Adequate restroom facilities for the use of golf course players and customers shall be located within the golf course area. Trash receptacles approved by the town and/or county shall be located and maintained on the site. The site plan submitted to the planning board shall contain information and design elements demonstrating that stormwater runoff will be managed in a manner which contains the runoff within the boundaries of the site and otherwise complies with the applicable provisions of chapter 32, pertaining to soil erosion and sedimentation control.
 - g. There shall be a minimum of two parking spaces per hole of golf play and one parking space for each golf course employee at the site. If the natural grass putting golf course is planned and included as part of a restaurant mixed-use development, then the minimum parking requirement may be reduced to one and one-half spaces per golf hole within the site and one space for each employee at the site.
 - h. Accessory uses.
 - 1. A food preparation center that sells snacks and beverages to the customers and/or a food preparation center that prepares carry out food to be consumed on site outside of the building or to be delivered off site may be included as an accessory use within the natural grass putting golf course site.
 - 2. Restaurant with not more than ten customer seats.
- (23) Bed and breakfast facility.
- a. The bed and breakfast facility shall be compatible in scale of structure and scale of development with residential structures in the neighborhood in which it is located. The principal use of such dwelling structures is residential. The exterior of the structure shall be harmonious with surrounding property. The bed and breakfast use shall be operated in a primary, single-family residential structure and not in any accessory structure.
 - b. The operation shall be conducted by persons who own and reside within the dwelling unit. It shall be permissible to employ the equivalent of one fulltime person to assist in the operation.
 - c. The structure must contain at least one full bathroom for the exclusive use of the owner and other members of the immediate household, plus one private bathroom for each guest bedroom. Each full, discrete bathroom must include a minimum of a water closet, a lavatory and a bath or shower and meet current building code requirements.
 - d. The rental of rooms shall be on a daily or weekly basis to tourists, vacationers or similar transients. The rental period shall not exceed 14 consecutive days in any 30-day period.
 - e. There shall be no cooking facilities or kitchen-type appliances in the rental dwelling rooms. A breakfast meal may be provided. It is intended by this subsection (c)(23) of this section that meals may be provided only to registered guests of the facility.
 - f. Smoke alarms shall be installed in all rental rooms and in common areas.

- g. The total rented dwelling rooms shall not exceed four and the total occupancy, including the owner, shall not exceed ten persons.
 - h. Parking shall be provided on the basis of one space per rental dwelling room in addition to two spaces for the owner. Parking spaces for rental dwelling rooms may be grass, Geoweb or gravel. Such parking areas shall be maintained in a dust-free, rut-free condition and shall be visually screened with a vegetated buffer if adjacent to an existing residential structure or a vacant lot on which a residential structure can be built.
 - i. Only signs which comply with standards for display in the zoning district in which the structure is located may be permitted.
 - j. No dwelling may be used as a bed and breakfast unless and until it shall have been permitted by the county environmental health department.
 - k. Lighting of the premises shall be harmonious with surrounding property. Lighting shall not create glare or interfere with the reasonable enjoyment of adjacent properties.
 - l. Noise generated within the structure shall not exceed a volume normally associated with residential occupancy. Between 9:00 p.m. and 6:00 a.m., noise originating within the structure shall not be audible beyond the property lines.
 - m. The town shall issue a permit if all the requirements of this subsection of this section (c)(23) and other applicable provisions of this chapter have been met. The permit shall remain in effect for a period of one year and may be suspended or revoked if a violation of standards is found. The permit shall be renewed each year, upon request, by the code enforcement officer unless it is determined that the use of the dwelling is not in compliance with this chapter. The use of the building as a bed and breakfast shall cease if the permit is not kept in effect.
- (24) *Motor vehicle dealership.* A motor vehicle dealership may be authorized subject to any reasonable conditions and standards imposed by the town council, this chapter, and the following conditions:
- a. The project site must be located and the use conducted west of US Highway 158 within the town;
 - b. The project site must contain a minimum of 0.75 acres (or 32,670 square feet);
 - c. The project site must have minimum road frontage on US Highway 158 of 100 feet and minimum road frontage on a street intersecting with US Highway 158 of 100 feet;
 - d. Buildings shall be set back a minimum of 75 feet from adjoining residential uses or zoning district boundaries;
 - e. Parking spaces and vehicles for sale on display to customers must be set back a minimum of 50 feet from adjoining residential uses or residential zoning district boundaries, and a buffer must be installed within those setbacks in accordance with the standards set forth in this chapter;
 - f. A building set back of not less than 60 feet shall be maintained from the centerline of any street which intersects with US Highway 158 and is contiguous to the project site;
 - g. A minimum building setback from the right-of-way margin of US Highway 158 of 175 feet;
 - h. Curb cuts, entrance or exit points from the project site to US Highway 158 shall be prohibited;
 - i. One or more curb cuts or driveway access locations may be authorized by the town where the point of access, ingress and egress is located a minimum of 100 feet from US Highway 158;
 - j. Upon recommendation by the planning board, a traffic study shall be conducted under the supervision of the planning board and at the expense of the applicant, and the applicant

- will install any traffic control measures recommended by the traffic study at the intersection of US Highway 158 by the street which is contiguous to the project site;
- k. No motor vehicles shall be placed, parked, or displayed within the street rights-of-way or the right-of-way of US Highway 158.
- (25) Sales and installation of floor coverings and materials, provided there is no outside storage of materials or products.
 - (26) Churches.
 - (27) Kayak sales or rental; provided that outdoor display must be completely screened from the public's view, from public and private rights-of-way or from the ground level of adjacent properties according to standards in article VI of division 5 of this chapter.
 - (28) Kayak tours, provided that they comply with section 42-273(c)(8).
 - (29) Retail sale of Christmas trees and wreaths subject to the regulations set forth in section 42-502(3).
 - (30) Outside storage associated with furniture stores limited to the following:
 - a. All outdoor storage, contained in the maximum of four percent of the site.
 - b. Furniture must be outdoor in type.
 - c. Fenced to shield from public view.
 - d. Must meet all fire code requirements.
 - e. Shall not be located on approved drainfield area.
 - f. Storage area shall not increase the impervious surface.
 - g. Not accessible to the public.
 - (31) Fitness center; provided that:
 - a. No promotional sales or services shall be visible outside of the building.
 - b. The building shall be designed so that any noise will be contained within the building.
 - c. All lighting shall meet section 42-515.
 - d. Any outdoor uses or facilities shall be set back or buffered so that no noise will go beyond the property.
 - e. Massage personnel shall be licensed by the state.
 - (32) The retail sale of fruits, vegetables, flowers, containerized house or bedding plants, herbs and other agricultural food products, such as jam, jelly, vinegar, eggs, cheese or honey, subject to the following terms and conditions:
 - a. No produce, plants or related products shall be located within the town or state right-of way or in designated parking spaces or fire lanes;
 - b. The activity may not utilize on-site required parking spaces to conduct retail activities or storage;
 - c. No sales shall be conducted after 10:00 p.m. and prior to 7:00 a.m.;
 - d. No music shall be produced on the site which music is audible beyond the property lines of the lot on which the sales are being conducted;
 - e. Any signs must meet the current standards of this chapter and applicable sign permit requirements;
 - f. No additional lighting shall be allowed on the site;

- g. Trailers or vehicles used to transport produce and materials to the site shall be concealed from observation from town streets and state rights-of-way;
 - h. Prior to issuance of a ~~conditional~~ **special** use permit, the applicant shall present a scaled site plan illustrating the location of all vendor display and storage areas, pedestrian circulation areas and ways, and location of required parking;
 - i. Any structures must meet wind construction standards and tiedown standards per state building code;
 - j. One paved off-street parking stall shall be required for each 300 square feet of occupied retail space. For purposes of this section, retail space shall be that area occupied for the display, sale or storage of goods;
 - k. The required parking shall not be allowed in public or private rights-of-way, fire lanes or travel lanes designated on approved site plan;
 - l. Any tent occupying over 200 square feet of the site shall require approval from the fire chief;
 - m. Sanitary facilities shall be required in a manner consistent with the International Building Code for a similarly sized retail space and shall be located on the subject property and within 200 feet of the market;
 - n. On-site garbage or trash receptacles must be provided and properly maintained at all times.
- (33) Electric vehicle dealership: an electric vehicle dealership (rental, sales and service) may be authorized subject to any reasonable conditions and standards imposed by the town council, the town code and the following conditions:
- a. The project site must be located along U.S. Highway 158 or N.C. Highway 12 frontage;
 - b. The project site must contain a minimum of 0.75 acres (or 32,670 sq. ft.);
 - c. The project site must have minimum road frontage on U.S. Highway 158 or N.C. Highway 12 of 100 feet;
 - d. New buildings shall be set back a minimum of 75 feet from adjoining residential uses or zoning district boundaries;
 - e. Parking spaces and vehicles for sale or display to customers must be set back a minimum of 15 feet from the rear property line;
 - f. New curb cuts, entrances or exit points from the project site to U.S. Highway 158 or N.C. Highway 12 shall be prohibited;
 - g. An opaque fence may be required along the property line when adjoining a residential use;
 - h. No electric vehicles shall be placed, parked or displayed within the town rights of way or the rights of way of U.S. Highway 158 or N.C. Highway 12;
 - i. Repair and service of vehicles must take place inside of an enclosed structure;
 - j. No electrical vehicle use shall be permitted on multi-use paths;
 - k. The location of electrical vehicle dealerships is limited to properties with direct access onto a street with a speed limit of 35 miles per hour or less. If the proposed site cannot comply with this standard, then all vehicles must be delivered.
- (34) *Multi-family dwelling development.*
- a. Maximum allowable lot coverage by principal use and all accessory structures is 60 percent.
 - b. The minimum front yard setback is 15 feet.

- c. The minimum side yard setback is 10 feet, an additional five-foot side yard adjacent to the street is required for a corner lot.
 - d. The minimum rear yard setback is 20 feet.
 - e. The maximum permitted density shall be ten residential dwelling units per acre.
 - f. Type A vegetative buffer, per section 42-654 shall be required between any multifamily dwelling and abutting residential zones or uses.
- (d) *Dimensional requirements.*
- (1) Commercial lots shall be sufficient size to meet requirements of the county health department, to provide adequate siting for structures, and to provide parking, loading, and maneuvering space for vehicles as required by article VI, division 2 of this chapter; however, all commercial lots shall have a minimum lot size of 15,000 square feet. In addition, a visual buffer is required where a commercial use or zone abuts a residential district. The maximum lot size of a commercial lot or parcel submitted for review and approval in the BC-2 district shall not exceed seven acres in area and no use of an owner or tenant on the site shall exceed the maximum area of 40,000 square feet of building area as shown on the commercial site plan.
 - (2) The minimum front yard is 15 feet.
 - (3) The minimum side yard is ten feet. No side yard shall be required if a commercial building is constructed with a common wall. An additional five-foot side yard adjacent to the street is required for a corner lot.
 - (4) The minimum rear yard is 20 feet.
 - (5) The maximum allowable lot coverage by principal use and all accessory structures is 60 percent. Use of permeable pavement shall allow a maximum lot coverage physical area of 72 percent. Permeable pavement failure shall require that the failed permeable pavement is removed and replaced by a pavement meeting the definition of permeable pavement herein with design pavement performance equal to, or better than, the represented performance of the approved pavement.
 - (6) Maximum total height shall not exceed 35 feet from existing grade exclusive of chimneys, flagpoles, communication masts and aerials.
 - (7) No building or other facility, such as parking areas, trash collection areas, etc., shall be located nearer than 50 feet to the boundaries of any residential district. The width of a driveway or a road and its right-of-way along such boundary may be included as part, or all, of the 50-foot separation zone, and subsurface wastewater disposal systems and stormwater runoff collection and disposal systems may be located within the separation zone. The planning board may require vegetation to be planted and maintained in the 50-foot separation zone.
 - (8) A minimum of 25 percent of the site shall remain in natural or manmade landscaped open space.
- (e) *Commercial site plan review.* Any person desiring to construct or enlarge a structure for a commercial use or to support a commercial use on the same site and any person desiring to change the authorized commercial use of an existing structure to another permitted or ~~conditional~~ **special** use shall first submit site plans to the planning board for review and to the town council for its approval as provided in this article.
- (f) *Existing structures; use change; comply with building code.* Any building constructed in a commercial zone for a commercial use must comply with the applicable standards of the state building code. Where the use of an existing building is changed from a noncommercial to a commercial use, the owner must obtain an occupancy permit before making a commercial use of the building. The structure must satisfy all state commercial building code standards and requirements applicable to commercial structures for the commercial use proposed at the time of the application of the occupancy permit.

- (g) *Ground stabilization plan.* A plan that will ensure the stabilization and subsequent revegetation of all areas that have been disturbed in accordance with chapter 12, article II, pertaining to sand dune protection and chapter 32, pertaining to soil erosion and sedimentation control, is required.
- (h) *Rental unit nonconforming use and density grandfathering.* Any motel, hotel, inn or cottage court in BC or BH zones may rebuild structures containing one or more rental units and/or freestanding structures used for rental purposes which were in existence and so used on August 18, 1986; notwithstanding such reconstruction would not comply with the nonuse and density standards of this chapter. Any expansion of the business by the addition of more rental structures shall comply with all the nonuse standards and density standards of this chapter.

(Code 1990, § 20-146; Ord. of 8-18-1986, § 3.01(E); Ord. No. 87-1, 1-19-1987; Ord. No. 87-3, 1-19-1987; Ord. No. 87-4, 1-19-1987; Ord. No. 89-20, 8-21-1989; Ord. No. 89-32, 12-4-1989; Ord. No. 90-3, 3-19-1990; Ord. No. 90-21, 9-4-1990; Ord. No. 90-19, 12-3-1990; Ord. No. 91-12, § 2, 7-15-1991; Ord. No. 91-15, § 3, 10-21-1991; Ord. No. 92-1, 3-23-1992; Ord. No. 92-8, 7-13-1992; Ord. No. 92-13, 8-3-1992; Ord. No. 93-1, 1-4-1993; Ord. No. 93-2, 1-4-1993; Ord. No. 94-16, 9-6-1994; Ord. No. 95-18, 9-5-1995; Ord. No. 97-12, 12-17-1997; Ord. No. 97-13, 12-17-1997; Ord. No. 98-3, 2-2-1998; Ord. No. 98-9, 3-2-1998; Ord. No. 99-3, 1-4-1999; Ord. No. 00-17, 6-5-2000; Ord. No. 00-23, 7-10-2000; Ord. No. 00-41, 12-4-2000; Ord. No. 00-42, 12-4-2000; Ord. No. 00-43, 12-4-2000; Ord. No. 01-8, 4-2-2001; Ord. No. 01-12, 4-2-2001; Ord. No. 01-10, 4-2-2001; Ord. No. 01-14, 4-2-2001; Ord. No. 03-02, § 20-146, 2-3-2003; Ord. No. 03-26, § 20-146, 5-5-2003; Ord. No. 03-37, § 20-146, 7-7-2003; Ord. No. 03-38, § 20-146, 7-7-2003; Ord. No. 03-53, § 20-146, 10-6-2003; Ord. No. 04-26, § 20-146, 9-13-2004; Ord. No. 05-03, § 20-146, 4-4-2005; Ord. No. 07-11, § 20-146, 5-7-2007; Ord. No. 08-18, 12-1-2008; Ord. No. 10-02, 4-6-2010; Ord. No. 10-14, 12-6-2010; Ord. No. 11-09, 9-6-2011; Ord. No. 16-05, 4-4-2016; Ord. No. 18-06, 6-4-2018; Ord. No. 18-07, 9-4-2018; Ord. No. 19-02, 1-7-2019)

Sec. 42-252. - BC-3 community shopping mall district; community shopping center district.

- (a) *Intent.* The BC-3 district is established to provide for the proper grouping and development of commercial facilities and to provide a means for protecting the public from dangerous arrangement of vehicle and pedestrian ways within shopping malls and shopping centers.
- (b) *Permitted uses.* The following uses shall be permitted by right: community mall consisting of any of, or any combination of, the following:
 - (1) Any of the following offices, including such uses as:
 - a. Business.
 - b. Financial.
 - c. Governmental.
 - d. Medical and professional.
 - e. Call centers.
 - (2) Any of the following primary retail stores, including such uses as:
 - a. Books.
 - b. Cameras.
 - c. Candy.
 - d. Clothing.
 - e. Craft goods.

- f. Dry goods.
- g. Drugs.
- h. Flowers.
- i. Gifts.
- j. Hardware.
- k. Jewelry.
- l. Leather goods.
- m. Magazines.
- n. Musical instruments.
- o. Notions.
- p. Sporting goods.
- q. Toys.
- r. Food stores and supermarkets.
- s. Household appliances.
- t. Furniture and furnishings.
- u. Card stores.
- v. ABC stores
- (3) Department stores.
- (4) Service establishments such as:
 - a. Barbershops and beauty shops.
 - b. Cafeterias.
 - c. Dry cleaning and laundry pickup stations.
 - d. Restaurants.
 - e. Shoe repairs.
 - f. Theaters.
 - g. Health and physical fitness centers.
- (5) Town, county, state, or federal government owned or leased facilities.
- (c) **Conditional Special uses.** The following uses are permitted subject to the requirements of this district and additional regulations and requirements imposed by the town council as provided in section 42-99:
 - (1) Public utility facilities.
 - (2) Seafood market.
 - (3) Medical centers or clinics.
 - (4) Optometrist facilities.
 - (5) Banks.
 - (6) Child care facilities.
 - (7) Broadcasting facilities excluding antenna tower structures.
 - (8) Bakery retail and bakery products produced to be sold on premises.

- (9) Chiropractor offices.
- (10) Gas station or fuel dispensing accessory use facilities; provided that no principal or accessory building shall be located within 50 feet of a residential district, and: provided that there shall be no storage or wrecked or abandoned cars, and that no portion of a gas station building, equipment or canopy shall be nearer than 30 feet to any right-of-way, and no portion of gas pumps shall be nearer than 50 feet to any right-of-way.
- (11) Cater service.
- (12) Sport facilities, real estate (time share) sales, community association facilities, and building maintenance facilities pursuant to the application and approval procedures of the planned commercial development regulations.
- (13) In a PCD overlay district, the permitted and ~~conditional~~ **special** uses under the PCD overlay shall be established by the town council as a condition of the PCD overlay approval and shall be set forth in the special use permit as amended by the council from time to time.
- (14) Home improvement warehouse as a PCD overlay zone.
- (15) Retail sale of Christmas trees and wreaths, subject to the regulations set forth in section 42-502(3).
- (16) Churches.
- (17) Electronic gaming operations, subject to the following conditions:
 - a. *General requirements:*
 - 1. An electronic gaming operation shall only be permitted as an accessory business use to a permitted principal business use.
 - 2. No electronic gaming operation shall be located within 500 feet in any direction from any residential zoning district, school, day care center, religious institution, public park, public beach, or other electronic gaming operation.
 - 3. An electronic gaming operation shall not exceed ten percent of the gross floor area of the principal business use.
 - 4. Each electronic gaming operation shall be limited to a maximum of two electronic machines or devices.
 - 5. No electronic machine or device can be used by more than one customer or player at a time.
 - 6. The electronic gaming area must be visually separated from the principal business use by a wall.
 - 7. A minimum of one parking space for every one electronic machine or device must be provided in addition to the parking requirements for the principal business use.
 - 8. Signs visible from outside the business that advertise the electronic gaming operation are prohibited. Signs are allowed inside of the business to direct customers to the gaming area.
 - b. *Operating requirements:*
 - 1. Hours of the electronic gaming operation are limited from 8:00 a.m. until 12:00 a.m., Monday through Saturday. Electronic gaming operations are prohibited on Sundays.
 - 2. The electronic gaming room must be restricted to patrons 18 years of age and older. Such requirement shall be posted in a readily visible location at the entrance to the electronic gaming area.
 - 3. There shall be no alcoholic beverages consumed in the establishment containing the electronic gaming area.

4. There shall be attended supervision of the electronic gaming area during operating hours.
 5. The Town of Kitty Hawk shall have the right to conduct unannounced, periodic inspections of the electronic gaming area.
- c. *Nonconforming operations:*
1. Should an existing electronic gaming operation continue in operation or be allowed to continue by an order of a court, such use must come into compliance with all standards of chapter 42-252(c)(17) within 12 months of the date that subsection 42-252(c)(17) is adopted by Kitty Hawk Town Council.
- (18) Truck rentals, subject to other requirements of this chapter and provided the following conditions are met:
- a. *General standards.*
1. Truck rentals shall only be permitted as an accessory use to a permitted principal business use.
 2. Truck rental spaces shall not exceed six percent of the total provided parking spaces, or a maximum of 25 spaces, for the principal business use.
 3. Truck rental spaces shall only utilize parking spaces in excess of the minimum required spaces for the principal business on site.
 4. No additional signage will be permitted for the truck rental use.
 5. Rental trucks to customers are to be limited to those trucks requiring a class D or standard/non-specialized driver's license.
- b. *Operating requirements.*
1. Hours of operations are limited to the principal business's operating hours.
 2. Rental trucks are limited to the designated area set forth on a ~~conditional~~ **special** use permit site plan. That area is to be located at the perimeter of the business's parking lot and designated as "Truck Rental Spaces".
 3. Rental trucks are not to be serviced, repaired, or maintained at the ~~conditional~~ **special** use location. All such service, repair, or maintenance activities are to be conducted off-premises. In addition, rental trucks will not be refueled at the ~~conditional~~ **special** use location. General cleaning of the interior cab may be required. If the interior of the cab is to be cleaned, all refuse is to be brought back into the business for disposal.
 4. Rental trucks left outside of the designated "Truck Rental Spaces" are to be moved by the business to the designated area within 24 hours.
- (d) *Prohibited uses.* Residential uses, whether permanent or transitory, shall not be permitted in the BC-3 district.
- (e) *Standards and requirements.*
- (1) *Community mall standard requirements.* The following provisions apply to community malls:
- a. *Minimum lot size.* A shopping mall shall be located on a parcel having an area of at least 30 acres. A shopping mall site shall not lie on two sides of a public or private street.
 - b. *Minimum front yard.* Each mall shall have a building setback from all public or private street rights-of-way of at least 100 feet. A strip at least 50 feet deep shall be maintained as a buffer planted with shrubs and trees as well as grass and/or a ground cover along the frontage. No parking or other structure shall be permitted in this buffer. A freestanding sign identifying the center may be located in the setback area. If a shopping mall has more than

400,000 square feet of gross leasable area, the vegetated buffer strip shall be increased to 75 feet.

- c. *Minimum side yard.* Each mall parcel shall have a minimum side yard at least 50 feet in width. A strip at least 20 feet in width shall be maintained as a vegetated buffer.
- d. *Minimum rear yard.* Each mall parcel shall have a minimum rear yard at least 50 feet in depth. A strip, at least 20 feet in width, shall be maintained as a vegetated buffer.
- e. *Other yard requirements.* The front yard dimensional requirements shall apply to any mall parcel site or rear yard which adjoins a satellite business lot or is separated from a satellite business lot by a vehicular area for parking or access.
- f. *Maximum lot coverage.* The ground area occupied by all principal buildings together with all accessory buildings shall not exceed 25 percent of the total area of the mall or shopping center parcel. The maximum lot coverage by principal and accessory structures and other impervious surfaces including parking areas, drive aisles and loading zone accessways, but excluding the primary access to the parcel, shall be 60 percent.
- g. *Separation from residential districts.* No building or other facility, such as parking areas, trash collection areas, etc., shall be located closer than 100 feet to the boundaries of a residential district. The width of a driveway or a road right-of-way along such boundary may be included as part of the separation zone. Vegetation shall be planted and maintained in the separation zone. A fence or other visual barrier constructed out of manmade or natural material approved by the planning board shall be constructed and maintained upon the mall district property 50 feet from any boundaries separating the mall parcel or a satellite business lot from an existing residential use or residential zoning district.
- h. *Height limitation.* Maximum total height shall not exceed 35 feet from existing grade exclusive of chimneys, flagpoles, communication masts and aerials.
- i. *Traffic control and traffic flow:*
 - 1. There should be one primary accessway from the mall district property to a public or private right-of-way. One or more secondary accessways may be permitted by the town if additional access points are recommended by the town's traffic engineer or traffic consultant in order to ensure orderly and safe traffic movement within the district and between the district and adjoining areas. The recommendation of the town traffic engineer or traffic consultant must be approved by the town planning board.
 - 2. The applicant shall install such traffic control devices as recommended by the traffic engineer, traffic consultant or the state highway engineer both within the district and at any places where mall traffic, arteries, roads, streets or ways intersect a public or private right-of-way. The cost of installing the traffic control devices shall be paid by the applicant. The mall shall maintain all traffic control devices within the district which are located on the mall property.
 - 3. There shall be no parking areas contiguous to the right-of-way margin or any area used for vehicular traffic such that a vehicle is required to back or maneuver into the mall traffic system while entering or leaving a parking space.
 - 4. The applicant must submit a mall district internal traffic flow plan and an internal parking area traffic flow plan to the planning board for its approval.
 - 5. Accessways shall be not less than 30 feet nor more than 40 feet in width at their intersection with the property line. Accessways shall be installed with curbs of concrete. Curb returns shall have a minimum radius of 30 feet. At its intersection with a property line, an accessway shall not be less than 100 feet from another accessway or 50 feet from the corner of a property.
 - 6. The location and design of accessways shall be such that traffic congestion is reduced as much as possible and traffic hazards are eliminated.

- j. *Off-street parking.* Off-street parking shall be provided according to the following requirements:
1. For malls having 25,000 to 400,000 square feet gross leasable area, not less than four spaces per 1,000 square feet of GLA.
 2. For malls having more than 400,000 square feet gross leasable area, not less than five spaces per 1,000 square feet of GLA.
 3. Handicapped ramps shall be provided near handicapped parking areas.
 4. Each shop or store shall have access to a rear or side entrance that is within a reasonable distance and is accessible to a loading area and service drive. Service drives shall be a minimum of 26 feet in width and shall be in addition to and not a part of the drives or circulation system used by vehicles of shoppers. Loading and delivery zones shall be clearly marked.
 5. Bicycle parking devices shall be installed to provide one bicycle parking space for each 50 automobile parking spaces. Design of parking devices can be obtained from the bicycle program of the state department of transportation.
- k. *Lighting.* All parking areas and accessways shall be floodlighted in accordance with the standards of the town. All outside lighting shall be arranged and shielded to prevent glare or reflection, nuisance, inconvenience or hazardous interference of any kind on adjoining lots or residential areas or area traveled by motor vehicles and shall provide security for mall customers.
- l. *Fire hydrants.*
1. Fire hydrants shall be required at locations recommended by the fire chief and, approved by the planning board. No portion of a building shall be farther than 300 feet nor closer than 50 feet to a fire hydrant, and not more than 500 feet in hose lay distance from the hydrant. Hydrants shall be protected from traffic in accordance with the requirements of the town and shall be marked and painted as required by the town and fire department. The mall shall mark and maintain fire lanes. Parking or storage of merchandise shall not be permitted in fire lanes.
 2. Fire lanes. A paved fire lane shall encircle the mall buildings, with a width no greater than allowed by the state fire code and which width may be reduced by the town council upon recommendation of the fire chief. A fire lane may be required along the rear or side of a mall satellite building based upon recommendation of the fire chief and approval of the town council. Violations of this requirement shall be a misdemeanor.
- m. *Solid waste.* Containers for garbage and refuse shall be provided in accordance with the requirements of the town and, if applicable, the county department of public works. Areas for screened dumpsters shall be provided so as to be out of the traffic flow, accessible to garbage trucks at all times and of adequate size to meet the needs of all uses at the center. Garbage pickup and commercial deliveries shall be during the hours between 7:00 a.m. and 9:00 p.m.
- n. *Stormwater management.* It shall be required that an adequate method for managing stormwater runoff shall be developed. Whenever possible, stormwater management systems, parking layout and the location of curbs and gutters should be planned simultaneously. Any enclosed portion of a system should be designed to manage stormwater, not just to dispose of it or disperse it. No stormwater runoff shall be allowed within pedestrianways or pedestrian easement areas.
- o. *Public restrooms.* Public restrooms shall be required on each mall level opened to the public and located such as to be convenient to the public and shall be maintained by the mall operator in a clean and sanitary condition. The location of all restrooms shall be clearly marked and convenient to mall customers.

- p. *Community mall signage.* A uniform community mall signage criteria plan shall be submitted to the town for approval. The purpose of this plan is to define and specify all exterior signage for the community mall. This plan will set forth guidelines and design concepts for a coordinated and complementary graphic image for the entire community mall.
1. *Community mall site identification sign.* One freestanding community mall site identification sign shall be permitted at the access or entranceway designated as the primary access or entranceway. The mall identification site sign shall not exceed 64 square feet. The sign and the supporting structure shall not exceed 20 feet in height from the undisturbed ground area.
 2. *Secondary accessway or entranceway mall identification signs.* A secondary access or entranceway mall site identification sign may be permitted with the approval of the planning board. The secondary mall site identification sign shall not exceed ten square feet, and the sign and structure supporting it shall not exceed ten feet from the undisturbed ground surface.
 3. *Location of identification signs.* Both the primary and secondary mall site identification signs must be located such as not to block or interfere with the ability of motor vehicle operators to observe the traffic while the operators are entering or exiting the mall area.
 4. *Lighting of mall identification signs.* All mall site identification signs shall be indirectly lighted such that the light is retained on the site and does not interfere with traffic or neighboring property owners. No internal illumination shall be allowed, and no neon or animated signs shall be allowed.
 5. *Directory locator sign.* Directory locator signs may be located at the entrances to parking lots. The businesses contained on the directory locator sign should be those businesses whose mall entrances are closest to the parking lot where the specific directory locator is located. These signs should be no larger than necessary to allow them to be read from a slowly moving vehicle. These signs shall not exceed 15 feet in height.
 6. *Directional signs.* Directional signs for pedestrian and vehicle traffic shall be located as needed within the mall development subject to planning board approval. No directional sign shall exceed six square feet in size.
 7. *Exterior wall signs.* An exterior wall sign may be permitted on anchor stores with more than 25,000 square feet of gross leasable area. Such signs may be up to ten percent of the facade occupied by the anchor store, but in no case shall the display exceed 90 square feet.
- q. *Satellite business lot standards and requirements.*
1. *Dimensional standards.* At least one acre of gross area within the lot lines is required.
 2. *Signs.* One freestanding sign shall be permitted per lot, which sign shall not exceed 32 square feet in area. The maximum height for both the structure and the sign shall be eight feet from the undisturbed ground surface.
 3. *Lot coverage.* The maximum lot coverage per parcel is 60 percent, which shall include parking and driveway areas.
 4. *Number of buildings.* One freestanding building is allowed per lot. Except in theaters, no party or common walls are allowed.
 5. *Parking.* Parking requirements for each use shall be those as set forth in this chapter. There shall be no shared parking with the mall parcel, except that theaters may share parking areas with the mall parcel with the approval of the planning board.

6. *Architectural control and review.* The exterior of all buildings and signs must be compatible with a central mall architectural theme.
 7. *Dumpsters and deliveries.* Dumpster location and deliveries shall be approved by the planning board. Deliveries shall only occur between 7:00 a.m. and 7:00 p.m.
 8. *Lighting standards.* All exterior lighting shall shine within the site and be directed such that it does not interfere with neighboring businesses and traffic.
 9. *Height limitation.* Maximum total height shall not exceed 35 feet from existing grade exclusive of chimneys, flagpoles, communication masts and aerals.
 - r. *Screening and buffers.* A vegetated buffer of 100 feet shall extend around the outer perimeter of the mall development and upon the mall property. Fifty feet in from the outer perimeter of the mall property, a visual screen or barrier of manmade or natural material approved by the planning board shall be constructed and maintained wherever residential districts or uses, border the mall perimeter or boundary. The mall buffer of 100 feet shall not be used for traffic lanes or streets. It shall remain open space and shall be maintained with trees and shrubs. Buffer zones may be used for septic tank repair areas and for the location of subsurface drain lines and utilities.
 - s. *Administrative expenses.* The reasonable expenses and/or fees of any specialists or consultants required by the planning board for the purpose of reviewing the mall development plan or any portions or facets thereof shall be charged as additional review fees and paid by the property owner to the town.
- (2) *Community shopping center districts (CSCD).*
- a. *Minimum lot size.* A CSCD shall be located on a parcel having an area of at least 20 acres. A CSCD site shall not lie on two sides of a public or private street.
 - b. *Minimum front yard.* Each CSCD shall have a building setback from all public or private street rights-of-way of at least 100 feet. A strip at least 35 feet deep shall be maintained as a buffer planted with shrubs and trees as well as grass and/or a ground cover along the frontage. A freestanding sign identifying the center may be located in the setback area.
 - c. *Minimum side yard.* Each CSCD parcel shall have a minimum side yard at least 35 feet in width. A strip at least 20 feet in width shall be maintained as a vegetated buffer.
 - d. *Minimum rear yard.* Each CSCD parcel shall have a minimum rear yard at least 50 feet in depth. A strip at least 20 feet in width shall be maintained as a vegetated buffer.
 - e. *Other yard requirements.* The front yard dimensional requirements shall apply to any CSCD parcel site or rear yard which adjoins a satellite business lot or is separated from a satellite business lot by a vehicular area for parking or access.
 - f. *Maximum lot coverage.* The ground area occupied by all principal buildings together with all accessory buildings shall not exceed 25 percent of the total area of the mall or shopping center parcel. The maximum lot coverage by principal and accessory structures and other impervious surfaces including parking areas, drive aisles and loading zone accessways, but excluding the primary access to the parcel, shall be 60 percent.
 - g. *Separation from residential districts.* No building or other facility, such as parking areas, trash collection areas, etc., shall be located closer than 100 feet to the boundaries of a residential district. The width of a driveway or a road right-of-way along such boundary may be included as part of the separation zone. Vegetation shall be planted and maintained in the separation zone. A fence or other visual barrier constructed out of manmade or natural material approved by the planning board shall be constructed and maintained upon the CSCD property 50 feet from any boundaries separating the CSCD parcel or a satellite business lot from an existing residential use or residential zoning district.
 - h. *Height limitation.* Maximum total height shall not exceed 35 feet from existing grade exclusive of chimneys, flagpoles, communication masts and aerals.

i. *Traffic control and traffic flow.*

1. There should be one primary accessway from the CSCD district property to a public right-of-way. One or more secondary accessways may be permitted by the town if additional access points are recommended by the town's traffic engineer or traffic consultant in order to ensure orderly and safe traffic movement within the district and between the district and adjoining areas. The recommendation of the town traffic engineer or traffic consultant must be approved by the town planning board.
2. The applicant shall install such traffic control devices as recommended by the traffic engineer, traffic consultant or the state highway engineer both within the district and at any places where CSCD traffic, arteries, roads, streets or ways intersect a public or private right-of-way. The cost of installing the traffic control devices shall be paid by the applicant. The CSCD shall maintain all traffic control devices within the district which are located on the CSCD property.
3. There shall be no parking areas contiguous to the right-of-way margin or any area used for vehicular traffic such that a vehicle is required to back or maneuver into the CSCD traffic system while entering or leaving a parking space.
4. The applicant must submit a CSCD internal traffic flow plan and an internal parking area traffic flow plan to the planning board for its approval.
5. Accessways shall be not less than 30 feet nor more than 40 feet in width at their intersection with the property line. Accessways shall be installed with curbs of concrete. Curb returns shall have a minimum radius of 30 feet. At its intersection with a property line, an accessway shall not be less than 100 feet from another accessway or 50 feet from the corner of a property.
6. The location and design of accessways shall be such that traffic congestion is reduced as much as possible and traffic hazards are eliminated.

j. *Off-street parking.* Off-street parking shall be provided according to the following requirements:

1. For CSCDs having 25,000 to 400,000 square feet of gross leasable area, not less than four spaces per 1,000 square feet GLA.
2. For CSCDs having more than 400,000 square feet of gross leasable area, not less than five spaces per 1,000 square feet GLA.
3. Handicapped ramps shall be provided near handicapped parking areas.
4. Each shop or store in excess of 50 feet deep shall have access to a rear or side entrance that is within a reasonable distance and is accessible to a loading area and service drive. Service drives shall be a minimum of 26 feet in width and shall be in addition to and not a part of the drives or circulation system used by vehicles of shoppers. Loading and delivery zones shall be clearly marked. Shops or stores less than 50 feet deep are not required to have access to a rear or side entrance, but they must be protected by the installation of a sprinkler system design to comply with installations approved by the state insurance commission. Shops less than 50 feet deep may not constitute more than 30 percent of the leasable area of a CSCD.
5. Bicycle parking devices shall be installed to provide one bicycle parking space for each 50 automobile parking spaces. Design of parking devices can be obtained from the bicycle program of the state department of transportation.

k. *Lighting.* All parking areas and accessways shall be floodlighted in accordance with the standards of the town. All outside lighting shall be arranged and shielded to prevent glare or reflection, nuisance, inconvenience or hazardous interference of any kind on adjoining lots or residential areas or area traveled by motor vehicles and shall provide security for CSCD customers.

- l. *Fire hydrants.* Fire hydrants shall be required at locations approved by the planning board and fire chief. No portion of a building shall be farther than 250 feet nor closer than 50 feet to a fire hydrant. Hydrants shall be protected from traffic in accordance with the requirements of the town and shall be marked and painted as required by the town and the fire department. The CSCD shall mark and maintain fire lanes. Parking shall not be permitted in the fire lanes. A paved fire lane 12 feet in width shall encircle the CSCD buildings. The fire lane may be permitted along the rear or side of a CSCD satellite building upon recommendation of the fire chief and approval of the planning board. Upon recommendation of the fire chief and the town planner with the approval of the planning board, other alternative means of providing emergency vehicle access may be authorized, or, upon request of the applicant, the planning board may waive the requirement of the 12-foot paved vehicular fire lane around the buildings, provided the applicant, in lieu thereof, agrees to and does install in the CSCD buildings a sprinkler system in accordance with the National Fire Protection Association's standards and the state insurance commission's standards for commercial structures. In addition, the sprinkler system shall be approved by the town building inspector and/or fire chief.
- m. *Solid waste.* Containers for garbage and refuse shall be provided in accordance with the requirements of the town and, if applicable, the county department of public works. Areas for screened dumpsters shall be provided so as to be out of the traffic flow, accessible to garbage trucks at all times and of adequate size to meet the needs of all uses at the center. Garbage pickup and commercial deliveries shall be during the hours between 7:00 a.m. and 9:00 p.m.
- n. *Stormwater management.* It shall be required that an adequate method for managing stormwater runoff shall be developed. Whenever possible, stormwater management systems, parking layout and the location of curbs and gutters should be planned simultaneously. Any enclosed portion of a system should be designed to manage stormwater not just to dispose of it or disperse it. No stormwater runoff shall be allowed within pedestrianways or pedestrian easement areas.
- o. *Public restrooms.* Any CSCD shop or store occupying more than 10,000 square feet shall provide restroom facilities available to the general public. These restroom facilities shall be clearly marked and shall be maintained by the shop or store.
- p. *Shopping center signage.* A uniform shopping center signage criteria plan shall be submitted to the town for approval. The purpose of this plan is to define and specify all exterior signage for the shopping center. This plan will set forth guidelines and design concepts for a coordinated and complementary graphic image for the entire shopping center.
 1. *Shopping center site identification sign.* One freestanding shopping center site identification sign shall be permitted at the access or entranceway. The shopping center identification site sign shall not exceed 64 square feet. The sign and the supporting structure shall not exceed 20 feet in height from the undisturbed ground area.
 2. *Secondary accessway or entranceway shopping center identification signs.* A secondary access or entranceway shopping center site identification sign may be permitted with the approval of the planning board. The secondary shopping center site identification sign shall not exceed ten square feet, and the sign and structure supporting it shall not exceed ten feet from the undisturbed ground surface.
 3. *Location of identification signs.* Both the primary and secondary CSCD site identification signs must be located such as not to block or interfere with the ability of motor vehicle operators to observe the traffic while the operators are entering or exiting the CSCD area.
 4. *Lighting of CSCD identification signs.* All CSCD site identification signs shall be indirectly lighted such that the light is retained on the site and does not interfere with

traffic or neighboring property owners. No internal illumination shall be allowed, and no neon or animated signs shall be allowed.

5. *Directory locator sign.* Directory locator signs may be located at the entrances to parking lots. The businesses contained on the directory locator sign should be those businesses whose CSCD entrances are closest to the parking lot where the specific directory locator is located. These signs should be no larger than necessary to allow them to be read from a slowly moving vehicle. These signs shall not exceed 15 feet in height.
6. *Directional signs.* Directional signs for pedestrian and vehicle traffic shall be located as needed within the CSCD development subject to planning board approval. No directional sign shall exceed six square feet in size.
7. *Exterior wall signs.* Exterior wall signs may be permitted within limits of a uniform shopping center signage criteria plan. Such signs may occupy up to ten percent of the display area of the facade of individual shops, but in no case shall an individual store's sign display exceed 90 square feet.

q. *Satellite business lots standards and requirements.*

1. *Dimensional standards.* At least one acre of gross area within the lot lines is required.
2. *Signs.* One freestanding sign shall be permitted per lot, which sign shall not exceed 32 square feet in area. The maximum height for both the structure and the sign shall be eight feet from the undisturbed ground surface.
3. *Lot coverage.* The maximum lot coverage per parcel is 60 percent, which shall include parking and driveway areas.
4. *Number of buildings.* One freestanding building is allowed per lot. Except for theaters, no party or common walls are allowed.
5. *Parking.* Parking requirements for each use shall be those as set forth in this chapter. There shall be no shared parking with the shopping center parcel, except that theaters may share parking areas with the CSCD parcel with the approval of the planning board.
6. *Architectural control and review.* The exterior of all buildings and signs must be compatible with the shopping center architectural theme.
7. *Dumpsters and deliveries.* Dumpster location and deliveries shall be approved by the planning board. Deliveries shall only occur between 7:00 a.m. and 7:00 p.m.
8. *Lighting standards.* All exterior lighting shall shine within the site and be directed such that it does not interfere with neighboring businesses and traffic.
9. *Minimum front yard.* Each satellite business lot shall have a minimum front yard of 35 feet. This area shall be maintained as a buffer planted with ground cover along this frontage.
10. *Minimum side yard.* Each lot shall have a minimum side yard of 15 feet. A strip of at least ten feet shall be maintained as a vegetated buffer.
11. *Minimum rear yard.* Each lot shall have a minimum rear yard of 15 feet. A strip of at least ten feet shall be maintained as a vegetated buffer.
12. *Height limitation.* Maximum total height shall not exceed 35 feet from existing grade exclusive of chimneys, flagpoles, communication masts and aerals.

- r. *Separation from residential districts.* No building or other facility, such as parking areas, trash collection areas, etc., shall be located closer than 100 feet to the boundaries of a residential district. The width of a driveway or a road right-of-way along such boundary may