Town of Topsail Beach, NC:

Land Development Code Update

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16.1.1 TITLE
This ordinance shall be officially known as the “Chapter 16: Land Development Code of the Town Topsail Beach, North Carolina” and may be referred to as “this ordinance” or “this chapter” of which contains zoning, subdivision, signage, wireless telecommunication, and other land development regulations.

16.1.2 EFFECTIVE DATE
This Land Development Code was adopted on _________ and became effective on ________.

16.1.3 AUTHORITY
This article ordinance is adopted pursuant to the authority vested in the town by its Charter and the General Statutes of North Carolina, particularly G.S. ch. NCGS 160A, art. 19.

16.1.4 PURPOSE
In order 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 provisions of transportation, sewerage, schools, parks and other public requirements; to conserve the value of buildings and encourage the most appropriate use of land throughout the corporate area limits, there is hereby adopted and established an official zoning plan of the town, the Land Development Code of the Town of Topsail Beach.

16.1.5 APPLICABILITY AND JURISDICTION
The provisions of the Land Development Code (LDC) this article shall apply within the corporate limits of the town, as shown on the zoning map on file in the town hall. The LDC applies to all land, development, buildings, structures, and uses located within the corporate limits.

16.1.6 INTERPRETATION AND CONFLICT
In interpreting and applying the provisions of this article ordinance, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity and general welfare. It is not intended by this article ordinance to interfere with, abrogate or annul any easements, covenants or other agreements between parties; provided, however, that where this article ordinance imposes a greater restriction upon land development, the use of land or 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 article ordinance shall govern.

16.1.7 RELATION TO THE COMPREHENSIVE LAND USE PLAN
The comprehensive land use plan (Town of Topsail Beach CAMA Land Use Plan) serves as the basic policy guide for development under this LDC. The policies and action items of the comprehensive land use plan may be amended from time to time to meet the changing requirements of the town.
16.1.8 SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid by the courts, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Commissioners hereby declares that it has passed this article and each section, subsection, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid.

16.1.9 ZONING MAP

The boundaries of the districts are shown upon the map accompanying this Ordinance and made a part hereof, entitled "Zoning Map Topsail Beach, North Carolina." The zoning map and all the notations, references and all amendments thereto, and other information shown thereon is hereby made a part of this Ordinance the same as if such information set forth on the map were all fully described and set out herein. The zoning map properly attested is on file in the office of the town clerk and is available for inspection by the public.

16.1.10 INTERPRETATION OF DISTRICT BOUNDARIES.

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

A. Use of property lines. Where district boundaries are indicated as approximately following street lines, alley lines and lot lines, such lines shall be construed to be such boundaries. Where streets, highways, railroads, watercourses and similar areas with width are indicated as the district boundary, the actual district boundary line shall be the center line of such area.

B. Use of the scale. In unsubdivided property or where a zone boundary divides a lot, the location of such boundary, unless the same is indicated by dimensions, shall be determined by use of the scale appearing on the map.

C. Street closure. Where any street or alley is hereafter officially closed, vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley abandonment.

D. Board of adjustment. In case any further uncertainty exists, the board of adjustment zoning administrator shall interpret the intent of the map as to location of such boundaries.

16.1.11 NO DEVELOPMENT UNTIL COMPLIANCE WITH THIS ORDINANCE

Upon and after the adoption of the ordinance from which this article is derived, no new building or new land use shall be erected, except in conformity with the regulations specified herein for the district in which it is located. No building or part thereof shall be erected, moved or structurally altered, except in conformity with the regulations specified herein for the district in which it is located. No land shall be developed, occupied, or used without full compliance with the provisions of this ordinance and all other applicable Town, County, State, and Federal laws, rules, and regulations. Compliance with regulations from the following agencies may be required prior to issuance of any land development permit: US Fish and Wildlife Service, US
Army Corp of Engineers, Pender County Environmental Health, NC Division of Coastal Management, NC Department of Transportation, and/or the NC Department of Environmental Quality among others.

16.1.12 COMPUTATION OF TIME

A. Unless otherwise specifically provided, the time within which an act is to be done shall be computed by excluding the first and including the last day. If the last day is a Saturday, Sunday, or legal holiday, that day shall be excluded. When the period of time prescribed is less than seven (7) days, intermediate Saturdays, Sundays, and holidays shall be excluded.

B. Unless otherwise specifically provided, whenever a person has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served by mail, three (3) days shall be added to the prescribed period.

16.1.13 FEES

Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters may be charged to applicants for zoning permits, conditional-use permits, subdivision plat approval, site plan approval, zoning amendments, variances, changes to ordinance text and map, and other administrative relief. The amount of the fees charged shall be as set forth in the town’s fee schedule as established by the Board of Commissioners. Applications shall not be deemed complete until all applicable fees are paid.
# Article 2: Rules of Measurement and Definitions

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16.2.1 RULES OF MEASUREMENT

A. MEASUREMENTS GENERALLY

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

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

Irregular shapes
In cases where an irregular shape complicates the application of these standards, the zoning administrator shall determine the applicable dimensional, setback, or bulk standards.

B. LOT LINES

Lot line, front
The lot line along the edge of the street. Where no street is present or on corner lots, then the front lot line shall be that line which runs most closely parallel to the beach strand. Through lots shall have two (2) front lot lines.

Lot line, rear
The lot line opposite and most distant from the front lot line. Through lots shall have no rear lot line.

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

C. LOT TYPES

Lot, corner
A lot abutting the intersection of two (2) or more streets. A corner lot is required to provide a front setback and a side setback. The front setback shall be measured from the front lot line that runs parallel or as close to parallel with the beach strand.

Lot, interior
Any lot not bordering the Atlantic Ocean, Banks Channel, or a canal.

Lot, second tier
A lot not fronting on, or otherwise lying immediately adjacent to a public street, separated from such street by only one lot.

Lot, third tier
A lot not fronting on a public street or not otherwise lying immediately adjacent to a public street, separated from such street by only two lots. Third tier lots shall be limited to lots where the original platted lot or tract is 65 feet or wider. The original platted lots or tracts should contain at least 25,000 square feet.
**Lot, through**
A lot, other than a corner lot, which has frontage on two (2) parallel or nearly parallel streets. The required front setback shall apply to both streets. The remaining yards shall meet the side setback requirements. An interior lot having frontage on two streets. The lot’s address and primary entrance of a building (if applicable) should be consistent with the predominant orientation of the block in which the lot is located.

**D. LOT MEASUREMENTS**

**Lot depth**
The average distance between the front and back lot lines measured at right angles to its frontage and from corner to corner.

**Lot frontage**
The orientation of the lot as determined by the zoning enforcement officer for purposes of determining setbacks and emergency (911) access. In determining such, the lot’s frontage should oppose the front lot line. Through lots shall have frontage on two (2) sides, and where possible the placement of the structure should be consistent with the predominant orientation of the block in which the lot is located.

**Lot width**
The straight line distance between the points where the building front yard setback line intersects the two side lot lines.

**Minimum Lot Area**
The minimum amount of required land area, measured horizontally, that must be included within the lines of a lot. Lands located within any private easements on the lot shall be included within the lot area. Public street rights-of-way and private street rights-of-way/common area shall not be included in calculating the minimum lot area.

**E. SETBACKS**

**Setback**
The required distance between every structure and the lot lines of the lot on which it is located.

**Setback, front**
The setback measured from the front lot line(s). Through lots shall provide a front setback on both streets.

**Setback, rear**
A setback from an interior lot line or rear lot line lying on the opposite side of the lot from the front setback.

**Setback, side**
The side yard setback shall extend from the required front yard setback line(s) to the required rear yard setback line and shall be measured from the side lot line.
F. SETBACK ENCROACHMENTS

1. Elevators, liftavators, and other mechanical devices for elevating people and cargo may encroach into any required setback not more than 30 inches.

2. Flagpoles, mailboxes, bicycle parking, lamp, and address posts are not subject to setback requirements.

3. Fences or walls, ornamental entry columns, and gates may extend into or be located in any required setback in accordance with Section 16.4.11.

4. Beach access structures, oceanfront gazebos, pedestrian access walkways, and similar appurtenances in compliance with CAMA regulations are permitted across any setback area not subject to setback requirements.

5. The setback and yard requirements of this article shall not apply to retaining walls of not more than three (3) feet high, as measured from the lowest ground elevation to the top of the wall, are not subject to setback requirements. The board of adjustment may permit a retaining wall greater than three feet in height where it finds that due to the topography of the lot such a wall is necessary.

6. Signs may extend into or be located in any required setback in accordance with Section 16.4.16.

7. Sills, cornices, eaves, gutters, heating and air conditioning units, and similar items may not project into any required setback not more than 30 inches.

8. Uncovered decks and uncovered porches and stairs may project one-half the distance into any required rear yard setback in the R-1, R-2, R-3, and R-4 districts.

9. Uncovered steps may project into the front and rear setback by one-half of the setback requirement to adjust for the increased height above base flood elevation.

In residential districts, uncovered decks and uncovered porches may project one-half the distance into the required rear yard setback.

With the exception of pedestrian access walkways, architectural features such as open or enclosed fire escapes, steps, outside stairways, balconies and similar features, decks and uncovered porches may not project into any required setback.

16.2.2 HEIGHT

A. MEASUREMENT

The vertical distance from the mean adjacent elevation at the building site to the highest peak of the roof, such elevation to be determined after all site filling and leveling is done and prior to the issuance of the building permit.

B. HEIGHT EXEMPTIONS

1. Church steeples, chimneys, water tanks or towers, flagpoles, wireless and broadcasting towers, and antennas are not subject to the height limit regulations contained in this ordinance unless otherwise provided in this article.

2. No part of the structure other than the chimney may extend beyond the 38-foot height limit plus a freeboard limit of three (3) feet in special flood hazard areas.
16.2.3 DEFINITIONS

The following words, terms and phrases, when used in this article or ordinance, shall have the meanings and interpretations ascribed to them in this subsection, except where the context clearly indicates a different meaning. If a term used in this ordinance is not defined, the zoning administrator is to interpret the term in accordance with professionally accepted sources:

A. Words used in the present tense shall include the future tense.
B. Words used in the singular number shall include the plural number and the plural the singular.
C. Words importing the masculine gender include the feminine.
D. Article, this article, including any amendments. Whenever the effective date of the ordinance is referred to, the reference includes the effective date of any amendment to it.
E. Ordinance, this ordinance (Land Development Code), including any amendments. Whenever the effective date of the ordinance is referred to, the reference includes the effective date of any amendment to it.
F. Building includes all structures, regardless of similarity to buildings unless otherwise provided.
G. Lot includes the terms "parcel," "plot" and "tract."
H. May and should are permissive.
I. Shall and will are mandatory and not discretionary.
J. Used for includes the terms "arranged for," "designed for," "intended for," and "occupied for."

Abutting

Having property or district lines in common. Lots are also considered to be abutting if they are directly opposite each other and separated by a street or alley.

Access

A way of approaching or entering a property. The term "access" also includes the term "ingress," the right to enter, and the term "egress," the right to leave.

Accessory apartment dwelling unit

A secondary dwelling unit on any floor except for the ground floor of a commercial use in the B-1 zoning districts. An accessory apartment dwelling unit is a complete, independent living facility equipped with a kitchen and with provisions for sanitation and sleeping. Adequate water and sewer or an approved septic system shall be available for all accessory apartments dwelling units. Manufactured homes may not be used as accessory apartments. Side and rear setbacks for any detached accessory apartment shall be a minimum of ten feet.

Accessory structure

A detached subordinate or incidental structure, the use of which is incidental to the principal structure and which is located on the same lot as the principal structure.

Accessory building or use

A building or use not including signs, which is:
A. Conducted or located on the same zoning lot as the principal building or use served, except as may be specifically provided elsewhere in this article ordinance;

B. Clearly incidental to, subordinate in area and purpose to, and serves the principal use; and

C. Either in the same ownership as the principal use or is clearly operated and maintained solely for the comfort, convenience, necessity or benefit of the occupants, employees, customers or visitors of or to the principal use.

Adjacent
Two properties, lots, or parcels are “adjacent” where they abut, or where they are separated by a roadway or street, right-of-way, or canal.

Adjoining
The condition of two parcels of land having a common property line or boundary, including cases where two or more parcels of land adjoin at a corner, but not including cases where parcels of land are separated by a street or alley.

Adult entertainment establishment
Retail or service establishments which are characterized by an emphasis on sexual activity and/or specified anatomical areas, including, but not limited to:

A. Any bookstore, video store or other establishment in which a substantial portion of its stock in trade is devoted to printed matter or visual representation of specified sexual activities or specified anatomical areas;

B. Any movie theater offering movies or other displays or any establishments offering coin-operated devices, which emphasize specified sexual activities or specified anatomical areas;

C. Any cabaret, club, tavern, theater or other establishment which offers entertainment emphasizing specified sexual activities or specified anatomical areas; or

D. Any establishment offering massage or similar manipulation of the human body, unless such manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist or similar professional licensed by the state.

E. The term “adult entertainment” does not include massages or similar manipulation offered at an athletic club, health club, school, gymnasium, spa or similar establishments.

AEC
Area of environmental concern as defined by the General Statutes of North Carolina, the North Carolina Administrative Code, and designated by the coastal resources commission.

Aggrieved person
Any person who has standing under NCGS 160A-393(d) or a town official, board, or Board of Commissioners.

Agriculture
The cultivation or production and sale of orchard, garden, or nursery crops on a small or large scale, the production of field grown crops, specialty crops, flowers, fruit, grapes, market
gardening, nursery stock, nuts, ornamental plants, sod, vegetables, and similar horticultural uses.

**Alley**
a public or private right-of-way, not intended for general traffic, primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on a street. Alleys shall not be considered a street for setback purposes or for establishing a front lot line.

*Alley means an access route designed for temporary or private use, not dedicated for public use.*

**Aquaculture**
The rearing of aquatic animals, including oysters and similar shellfish, or the cultivation of aquatic plants for food.

**Apartment (dwelling unit)**
Room or suite of rooms intended for use as a residence by a single household or family (i.e., dwelling unit). Such dwelling unit may be located in an apartment house, duplex, or as an accessory use in a single-family home or a commercial building where permitted.

**Apartment house**
See dwelling, multifamily.

** Appeal**
A request for review of the final decision of any provision of this ordinance.

**Approval**
Any and all forms of land development permits, variances, licenses, and any and all other forms of permission and approval, whether or not writing.

**Approval authority**
The Board of Commissioners, Board of Adjustment, or other board or official designated by this ordinance or this article as being authorized to grant the specific zoning or land use development permit or approval that constitutes a site specific development plan.

**Automobile service station (gas station)**
Any building or land used for the dispensing, sale or offering for sale at retail any automobile fuels along with accessories such as lubricants or tires, except that car washing, mechanical and electrical repairs, and tire repairs shall only be performed incidental to the conduct of the service station and are performed indoors and has no fuel pumps within 15 feet of any property line or street right-of-way. Incidental activities shall not include tire retreading, major body work, major mechanical work or upholstery work.

**Beach access and pedestrian water access walkway**
Pedestrian access facilities, either private or public, built in accordance with CAMA regulations that afford pedestrians access to the ocean or waterfront. Beach access and pedestrian water access walkways shall include parking areas, and ancillary structures such as gazebos and decks permitted in accordance with this ordinance and CAMA regulations.
**Bedroom**
A heated space within a fully enclosed structure that is currently used for or could be used for a bedroom. For the purpose of this article, where regulations are tied to the number of bedrooms, the minimum number of bedrooms shall be determined directly by the total square footage of heated area as set forth in section 16-270(d).

**Block**
A tract of land or a lot or group of lots bounded by streets, public parks, golf courses, watercourses, ocean, sound, canals, lakes, unsubdivided land or a boundary line or lines of the county or its towns or any combination of the above.

**Block frontage**
That portion of a block which abuts a single street.

**Board of adjustment (BOA)**
A local decision-making body responsible for hearing appeals, variance requests, and other matters as specified by this ordinance. A local body, created by ordinance, whose responsibility is to hear appeals from decisions of the zoning administrator and to consider requests for variances from the terms of this article, the zoning ordinance.

**Board of commissioners**
The governing body of the town.

**Boardinghouse, bed and breakfast, guest house**
A building other than a hotel or motel where, for compensation, one or more meals are served and lodging is provided.

**Boat rental facility**
A facility established for the rental of motorized and unmotorized water vessels. Boat rental facilities may include rental of kayaks, motor boats, jet skis, or sail boats.

**Buffer**
A fence, wall, hedge or other planted area or device used to enclose, screen or separate one use or lot from another.

**Building**
Any structure constructed or used for residence, business, industry, or other public or private purposes or accessory thereto, and including tents, lunch wagons, dining cars, trailers, mobile homes and attached or unattached carports consisting of a roof and supporting members, and similar structures, whether stationary or movable.

**Building, height of**
The vertical distance from the mean adjacent elevation at the building site to the highest peak of the roof, such elevation to be determined after all site filling and leveling is done and prior to the issuance of the building permit.

**Building inspector**
The professional staff member responsible for inspecting new construction/renovation and
issuing building permits, certificates of occupancy, and other permits and enforcement actions as specified by this ordinance.

**Building permit**
An official administrative authorization issued by the Town prior to beginning construction consistent with the provisions of Section 160A-417 of the North Carolina General Statutes.

**Building, principal (main)**
A building in which is conducted the principal use of the lot on which it is situated.

**Building setback line**
A line marking the setback distance from the appropriate street, lot line or easement or the high water mark (for lots abutting the ocean, sound or other waterways) which establishes the minimum required front, side and rear yards and open space of a lot, in front of which no structure shall be erected unless otherwise authorized by this ordinance.

**CAMA**
The North Carolina Coastal Area Management Act of 1974, as amended.

**Canopy, marquee or awning**
Any roof-like structure extended from a building over a sidewalk, walkway, or entrance way.

**Certificate of occupancy**
The official certification that a premise conforms to provisions of this ordinance (and building code) and may be used or occupied. Such a certificate is granted for new construction or for alterations or additions to existing structures or a change in use. Unless such a certificate is issued, a structure cannot be occupied.

**Chronic violator**
The owner of a particular property whereupon the town gave notice at least three (3) times in the previous calendar year that a particular situation or condition exists on the particular property in violation of any particular provision of an ordinance and the same constituting a public nuisance.

**Club or lodge, for profit, private nonprofit, civic or fraternal**
A for profit or nonprofit associations of persons who are bona fide members paying dues, which owns, hires or leases a building or portion thereof; the use of such premises being restricted to members and their guests. Clubs may be established for residential communities and/or standalone organizations (i.e., Veterans of Foreign Wars).

**Code**
The Code of Ordinances of the town, including its Charter and applicable local acts, other than the zoning ordinances of the town codified as this article.

**Commission** means the coastal resources commission.

**Comprehensive land-use-plan**
The plan prepared and adopted by the town and submitted to the coastal resources commission.
pursuant to part 2 of the North Carolina Coastal Area Management Act for certification. Comprehensive plan shall be construed to include reference to a “land use plan” or “comprehensive land use plan.”

**Construction**
The process of building, erecting, or making improvements on or to land.

**Convalescent home (nursing home)**
An institution, which is advertised, announced or maintained for the express or implied purpose of providing nursing or convalescent care for persons unrelated to the licensee. A convalescent home is a home for chronic or nursing patients who, on admission, are not as rule acutely ill or who do not usually require special facilities, such as an operating room, x-ray facilities, laboratory facilities, and obstetrical facilities.

**Convenience food store**
A. The term "convenience food store" means a structure in which gasoline, food stuffs, beverages, pharmaceutical, small household supplies and small personal items may be retailed, provided that the gross floor area of the structure shall not exceed 3,500 square feet.
B. Commonly, such structure is a neighborhood grocery-type of store selling personal goods and wares that typically can be hand-carried from the premises by the buyer.
C. No fuel pumps shall be located within 15 feet of any property line or public right-of-way.

**Corner lot**
A lot abutting upon two or more streets at their intersection. See Lot, corner.

**Day care facilities**
A. The term "day care facilities" means any child care arrangement which provides day care on a regular basis for more than four hours per day for more than five children, wherever operated and whether or not operated for profit.
B. The following are not included in the definition of day care facilities:
   1. Public schools;
   2. Nonpublic schools, whether or not accredited by the state department of public instruction, which regularly and exclusively provide a course of grade school instruction to children who are of public school age;
   3. Summer camps having children in full-time residence;
   4. Summer day camps; and
   5. Bible schools normally conducted during vacation periods.

**Decision**
See interpretation. A determination or determinations by the official regarding matters within the scope of this article and other land development Code ordinances, including an order
defined herein. A decision by the official is not final decision subject to immediate judicial review prior to exercising the administrative appeal procedures set forth in this article.

**Decision, Final**
A final decision specified as such, made in writing, by the board of adjustment, zoning administrator or appropriate approval authority concerning matters regarding the proper application of provisions of under this article ordinance, and within the board of adjustment's jurisdiction to determine.

**Department** means the North Carolina Department of Environment, Health and Natural Resources.

**Diameter at breast height (DBH)**
The measurement of the diameter of a tree trunk taken at a height of four-and-one-half feet above the ground. Trees with multiple trunks should be treated as multiple trees and the DBH for each trunk added to aggregate diameter measurement.

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

**Dish antenna (or earth station)**
A dish antenna, or earth station, or any accessory structure capable of receiving, for the sole benefit of the intended principal use, radio, television, or other signals from a transmitter or a transmitter relay located in planetary orbit.

**Dish antenna (or earth station) height**
The height of the antenna or dish shall be that distance as measured vertically from the highest point of the antenna or dish, when positioned at its lowest angle for operation, to ground level at the bottom of the base which supports the antenna.

**Dish antenna (or earth station) setback**
The setback of a dish antenna shall be measured from the center mounting post supporting the antenna.

**Dock**
A structure, typically comprised of wood, that extends alongshore or outwards from the shore into a body of water that allows access to the water or to moored boats or watercraft.

**Double frontage lot**
A lot, other than a corner lot, which has frontage on two parallel or nearly parallel streets. See Lot, through.

**Dwelling, duplex**
A structure comprised of two dwelling units that share common vertical walls or horizontal floors/ceilings; a storage area or garage; or similar enclosed connection. A duplex dwelling structure shall be located on a single lot and dwelling units may be sold separately from the land.
they are located on. Such structure should appear as a single building and such units shall not be separated merely by storage areas, decks, porches, garages, or similar appendages when if removed two distinct structures would remain. A single building containing two dwelling units, other than where second dwelling units are permitted as an accessory use.

**Dwelling, multifamily**
A building containing a single structure comprised of three (3) or more dwelling units.

**Dwelling, single-family**
A building containing only one dwelling unit that is not physically attached to any other principal structure on an individual lot. This term includes modular homes. For regulatory purposes, this term does not include a manufactured home or house trailer, motel, hotel, tourist home, or other structures designed for transient residence.

**Dwelling, Townhouse**
A type of multifamily dwelling, in which three (3) or more individual dwelling units are located on individual lots, but attached by one (1) or more common party walls which are shared by one (1) or more units. The habitable spaces of different dwelling units are typically arranged on a side-by-side rather than a stacked configuration.

**Dwelling unit**
A. The term "dwelling unit" means one or more rooms together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly or longer basis, and physically separated from any other housing unit which may be in the same structure, and containing independent cooking and sleeping facilities for not more than one family.

B. The term "dwelling unit" does not include a manufactured home or house trailer, motel, hotel, tourist home, or other structures designed for transient residence.

**Easement**
A grant by the property owner of use by the public, a corporation, legal entity, or person of a strip of land or parcel for specified reasons. An easement is a recognized interest in real property, but fee simple title to the underlying land is retained by the owner granting the easement.

**Eating establishment, major**
An eating establishment with a drive-through or with more than 150 seats (including outdoor seating), or with 5,000 feet of customer floor area (not including kitchen/prep area), or more.

**Eating establishment, minor**
An eating establishment with no drive-through, 150 or fewer seats (including outdoor seating), or with less than 5,000 square feet of customer floor area (not including kitchen/prep area).

**Expenditure**
A sum of money paid out in return for some benefit or to fulfill some obligation. The term "expenditure" also includes binding, contractual commitments to make future expenditures, as well as any other substantial changes in position.
Family
One or more persons related by blood, marriage or adoption living together as a single
housekeeping unit and having a recognized head of household. For the purposes of this
section, such persons may include gratuitous guests, contributing roommates, and
domestic servants employed on the same premises.

Family care home
A facility licensed by the appropriate state agency as a family care home for one (1) to six (6)
unrelated individuals, together with support and supervisory personnel. See also definitions in
NCGS 168-20.

Farmers’ Market
An occasional or periodic market held in a structure or open area where farmers or
craftsperson’s sell their produce, handmade goods, or farm products.

Fence
A railing, wall or structure to serve as an uncovered enclosure or barrier.

Fill
Any material placed or graded on a lot where the material has the effect of increasing the
elevation of any portion of the lot.

Fishing pier and docks
The placing of piling, dolphins of any type, fender, ramp, floating dock, boat lift or other
structure occupying the area beyond the high-water line.

Floor area (for determining off-street parking and loading requirements)
A. The term "floor area" means the sum of the gross horizontal areas of the several floors of
the building, or portion thereof, devoted to such use, including accessory storage areas
located within selling or working space such as counters, racks, or closets, and any
basement floor area devoted to retailing activities, to the production or processing of
goods, or to business or professional offices.
B. However, the term "floor area," for the purposes of measurement for off-street parking
spaces, shall not include:
   1. Floor area devoted to primarily storage purposes (except as otherwise noted
      herein);
   2. Floor area devoted to off-street parking or loading facilities, including aisles,
ramps and maneuvering space; or
   3. Basement floors other than area devoted to retailing activities, to the production
      or processing of goods, or to business or professional offices.

Floor area, gross
The total floor area enclosed within a building, as measured from outside wall and including
columns.
Garage, private
A building used as an accessory to or a part of the main building permitted in any residential district, and providing for the storage of motor vehicles and in which no business, occupation or service for profit is in any way conducted.

Hardened surfaces.
See Impervious surfaces.

Hazardous materials handling and storage
The collection, storage, processing, treatment, recycling, recovery, transfer, or disposal of hazardous waste as defined in NCGS Article 9 of Chapter 130A. “Hazardous waste” means a solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

Height
See Building, height of.

Home care unit
A facility meeting all of the requirements of the state for boarding and care of not more than five persons who are not critically ill and do not need professional medical attention and is located on a lot of at least one acre in size.

Home occupation
Any occupation or profession carried on entirely within a dwelling by one or more occupants thereof, provided that:

A. Such use is clearly incidental and secondary to the use of the dwelling for dwelling purposes;
B. No more than 25 percent of the total floor area is used for such purposes;
C. There is no outside or window display;
D. No merchandise is sold on the premises; and
E. No person not a resident of such dwelling is employed within the dwelling in connection with the home occupation.

Hotel or motel
A building or other structure kept, used, maintained, advertised as or held out to the public to be a place where sleeping accommodations are supplied for pay to transient or permanent guests or tenants, where rooms are furnished for the accommodation of such guests; and may have one or more dining rooms, restaurants or cafes where meals are served.
Impervious surfaces
Impervious surfaces are mainly constructed surfaces (rooftops, sidewalks, roads, and parking lots) covered by impenetrable materials such as asphalt, concrete, brick, and paving stones. These materials seal surfaces, repel water, and prevent precipitation from infiltrating soils. Soils compacted by urban development are also highly impervious. Unwashed crushed stone containing fines is impervious. Impervious surface does not include a slatted deck; the water area of a swimming pool; a surface of number 57 stone, as designated by the American Society for Testing and Materials, laid at least four inches thick over a geotextile fabric; or a trail as defined in NCGS 113A-85 that is either unpaved or paved as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour).

Incompatible use
A use or service which is unsuitable for direct association and/or contiguity with certain other uses because it is contradictory, incongruous, or discordant.

Industrial, heavy
Heavy industrial uses may include, but shall not be limited to, the following: (1) concentrated fabrication and manufacturing of goods and materials whereby products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers; (2) extraction, removal, or basic processing of minerals, liquids, gases, or other natural resources; and (3) waste-related services which are not associated with residential and nonresidential activities within the town’s planning jurisdiction.

Inlet hazard area
Natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the mean low water line a distance sufficient to encompass that area within which the inlet shall migrate, based on statistical analysis, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet, and external influences such as jetties and channelization. The areas on the maps identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard Areas.

Inoperative vehicle
Any vehicle, designed to be self-propelled, which by virtue of broken or missing component parts, is no longer capable of self-propulsion. For the purpose of this article ordinance, any vehicle which is registered with the state department of motor vehicles and has a current state motor vehicle registration license affixed to it shall not be considered inoperative.

Interpretation
A determination, made in writing, by the zoning administrator regarding the proper application of provisions in this ordinance. An interpretation deemed a final decision is subject to the administrative appeal process.
**Junkyard**
Any area, in whole or in part, where waste or scrap materials are bought, sold, exchanged, stored, baled, packaged, disassembled, or handled, including, but not limited to, scrap iron and other metals, paper, rags, vehicles, rubber tires and bottles. The term "junkyard" includes an auto wrecking yard, but does not include uses established entirely within enclosed buildings.

**Living area**
Heated and cooled square footage exclusive of carports, garages, pump houses, unattached utility rooms, porches, steps, walks, and other additions of such character.

**Loading space, off-street**
A. The term "off-street loading space" means space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles.
B. Required off-street loading space is not to be included as off-street parking space in the computation of required off-street parking space.

**Lot**
A legally described piece of contiguous land that has been or may be developed as a unit. A parcel of land upon which a structure is intended to be built, provided, however, that a lot which is bisected by a public or private street shall be considered as two separate lots. The term "lot" includes the terms "plot," "parcel" and "tract."

**Lot**
A. The term "lot" means:
   1. A parcel of land upon which a structure is intended to be built, provided, however, that a lot which is bisected by a public street shall be considered as two separate lots.
   2. A portion of a subdivision or any other parcel of land intended as a unit for transfer of ownership or for development or both.
B. The term "lot" includes the terms "plot," "parcel" and "tract."
C. Lots, when shown as part of subdivision, shall face upon a street.

**Lot, corner**
A lot abutting the intersection of two (2) or more streets. A corner lot is required to provide a front setback and a side setback. The front setback shall be measured from the front lot line that runs parallel or as close to parallel with the beach strand.

**Lot coverage**
A. The term "lot coverage" means that portion of a lot occupied by a structure or hardened impervious surfaces, either at ground level or the equivalent thereto when a structure is elevated on piles.
B. The term "lot coverage" does not include uncovered wooden decks.
C. The portion of a lot under the roof of a structure (which portion shall be considered a hardened impervious surface) shall be measured at the greatest exterior dimension of the structure which shall be the edge of the roof overhang, extended to ground level.

**Lot depth**
The average distance between the front and back lot lines measured at right angles to its frontage and from corner to corner.

**Lot frontage**
The orientation of the lot as determined by the zoning enforcement officer for purposes of determining setbacks and emergency (911) access. In determining such, the lot’s frontage should oppose the front lot line. Through lots shall have frontage on two (2) sides, and where possible the placement of the structure should be consistent with the predominant orientation of the block in which the lot is located.

**Lot, interior**
Any lot not bordering the Atlantic Ocean, Banks Channel, or a canal.

**Lot line**
The line bounding a lot.

**Lot, front line**
The lot line along the edge of the street. Where no street is present or on corner lots, then the front lot line shall be that line which runs most closely parallel to the beach strand. Through lots shall have two (2) front lot lines.

**Lot, rear line**
The lot line opposite and most distant from the front lot line. Through lots shall have no rear lot line.

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

**Lot of record**
A lot which is a part of a subdivision, a plat of which has been recorded in the office of the county register of deeds; or a lot described by metes and bounds, the description of which has been recorded in the office of the county register of deeds by the owner or predecessor in title thereto.

**Lot, second tier**
A lot not fronting on, or otherwise lying immediately adjacent to a public street, separated from such street by only one lot.

**Lot, third tier**
A lot not fronting on a public street or not otherwise lying immediately adjacent to a public street, separated from such street by only two lots. Third tier lots shall be limited to lots where
the original platted lot or tract is 65 feet or wider. The original platted lots or tracts should contain at least 25,000 square feet.

Lot, through
A lot, other than a corner lot, which has frontage on two parallel or nearly parallel streets. The required front setback shall apply to both streets. The remaining yards shall meet the side setback requirements. An interior lot having frontage on two streets. The lot’s address and primary entrance of a building (if applicable) should be consistent with the predominant orientation of the block in which the lot is located.

Lot width
The straight line distance between the points where the building front yard setback line intersects the two side lot lines.

Major development means any development in an AEC which:

A. Requires permission, licensing, approval, certification or authorization in any form from:
   1. The environmental management commission;
   2. The state departments of environment, health and natural resources, human resources, and administration;
   3. The state mining commission, the state pesticides board, or the state sedimentation control commission; or

B. Occupies a land or water area in excess of 20 acres; or

C. Contemplates drilling for or excavating natural resources on land or under water, or which occupies in a single parcel a structure or structures in excess of a ground area of 60,000 square feet.

Manufactured home
A dwelling unit that:

A. Is not constructed in accordance with the standards set forth in the state building code;
B. Is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis; and
C. Exceeds 40 feet in length and eight feet in width.

Manufactured home, class A
A manufactured home constructed after July 1, 1976, that meets or exceeds the construction standard promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction and that satisfies the following additional criteria:

A. The manufactured home has a length not exceeding four times its width;
B. The manufactured home has a minimum of 1,200 square feet of enclosed living area;
C. The pitch of the roof of the manufactured home has a minimum vertical rise of two and two-tenths feet for each 12 feet of horizontal run and the roof is finished with a type of shingle that is commonly used in standard residential construction;
D. The exterior siding consists predominantly of vinyl or aluminum horizontal lap siding (that does not exceed the reflectivity of gloss white paint), wood or hard board, comparable in composition, appearance and durability to the exterior siding commonly used in standard residential construction;

E. The home is set up in accordance with the standards set by the state department of insurance and Federal Flood Insurance Regulations and a continuous, permanent masonry foundation or curtain wall, unpierced, except for required ventilation and access, is installed under the manufactured home; and

F. The moving hitch, wheels and axles, transporting lights have been removed.

Manufactured home, class B
A manufactured home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction but that does not satisfy all of the criteria necessary to qualify the house as a class A manufactured home.

Manufactured home, class C
Any manufactured home that does not meet the definitional criteria of a class A or class B manufactured home.

Manufactured home, exposure D
A manufactured home constructed after July 13, 1994, and designed to meet ASCE 7-88 Exposure D standards for manufactured homes located within 1,500 feet of the coastline of zone H.

Manufactured home park
A. The term “manufactured home park” means any site or tract of land, of contiguous ownership upon which manufactured home spaces are provided for manufactured home occupancy whether or not a charge is made for such service.

B. The term “manufactured home park” does not include manufactured home sales lots on which unoccupied manufactured homes are parked for the purpose of inspection and sales.

Manufactured home space
A plot of land within a manufactured home park designed for the accommodation of one mobile home.

Manufacturing, artisan
On-site production of goods by hand manufacturing involving the use of hand tools and small-scale light mechanical equipment. Typical uses include woodworking and cabinet shops, ceramic studios, jewelry manufacturing and similar types of arts and crafts or very small-scale manufacturing uses that have very limited, if any, negative external impacts on surrounding properties, water resources, air quality and/or public health.
Marinas

A. Class I public marina means a public facility where boats are stored either in the water or in dry storage, serviced, or supplied with any type of marine service or a contiguous group of two (2) or more boat slips, each of which is or may be separately owned and with common ownership of the land, piers, walkways, and any other structures necessary for service of the slips.

B. Class II private marina means a private facility where boats are stored in the water or a contiguous group of two (2) or more boat slips, each of which is or may be separately owned and with common ownership of the land, piers, walkways, and any other structures necessary for service of the slips. Class II private marinas shall be restricted to use by only the owners or lessees of the boat slips contained therein and shall be subject to the additional requirements set forth in section 16-245 this ordinance.

Marine animal rescue and rehabilitation center
A facility dedicated to the treatment and rehabilitation of sea turtles and marine mammals.

Mean adjacent elevation
The mean elevation of the ground surface, prior to construction, as measured adjacent to the proposed walls, pilings, and/or foundation of a structure.

Minor development means any development in an AEC other than a major development.

Microbrewery
A microbrewery as permitted by NCGS 18B-1104 is an enterprise which engages in one or more of the following: (1) manufacture, purchase, import, possess and transport ingredients and equipment used in the manufacturing of malt beverages; (2) sell, deliver and ship malt beverages in closed containers at wholesale to exporters and local boards within the State, and, subject to the laws of other jurisdictions, at wholesale or retail to private or public agencies or establishments of other states or nations; or (3) give its products to its employees and guests for consumption on its premises.

Microdistillery
A distillery as permitted by NCGS 18B-1105 is an enterprise which engages in one or more of the following: (1) manufacture, purchase, import, possess and transport ingredients and equipment used in the distillation of spirituous liquor; (2) sell, deliver and ship spirituous liquor in closed containers at wholesale to exporters and local boards within the State, and, subject to the laws of other jurisdictions, at wholesale or retail to private or public agencies or establishments of other states or nations; or (3) transport into or out of the distillery the maximum amount of liquor allowed under federal law, if the transportation is related to the distilling process.

Minimum Lot Area
The minimum amount of required land area, measured horizontally, that must be included within the lines of a lot. Lands located within any private easements on the lot shall be included within the lot area. Public street rights-of-way and private street rights-of-way/common area shall not be included in calculating the minimum lot area.
**Minor subdivision**
The division of a tract of land whose entire area is not more than two acres into not more than three lots, where no street right-of-way, public access to beaches, or other dedication is involved, and where the resulting lots meet the minimum standard of the town as required by ordinances.

**Mixed-use**
A mixture of residential and commercial uses in the B-1 district, which mixture is designed as a cohesive whole, and integrates land uses often separated in traditional zoning districts.

**Mobile office**
A structure identical to a manufactured home, except that it has been converted, or originally designed and constructed, for commercial or office use.

**Modular structure**
A structure that is constructed in accordance with the construction standards of the state uniform residential building code for one- and two-family dwellings and composed of components substantially assembled in a manufacturing plant and transplanted to the building site for final assembly and placement on a permanent foundation. The structure must be set up to meet the requirements of the federal flood insurance regulations and enforced by the town.

**Net buildable area**
The total land area within the project property boundary less:

1. All easements for storm drainage or utilities;
2. Highway and street right-of-way;
3. Sediment basins and water retention ponds;
4. Wetlands defined by the North Carolina Coastal Management Act and/or U.S. Army Corps of Engineers;
5. Water and wastewater treatment facilities;
6. Local or state designated historic sites; and
7. Water areas including seasonal ponds.

**Nonconforming lot**
A lot existing at the effective date of this article ordinance or any amendment to it (and not created for the purpose of evading the restrictions of this article ordinance) that cannot meet the minimum area or lot width or depth requirements of the district in which the lot is located.

**Nonconforming project**
Any structure, development, or undertaking that is incomplete at the effective date of the ordinance from which this article ordinance is derived and would be inconsistent with any regulation applicable to the district in which it is located if completed as proposed or planned.

**Nonconforming situation**
A situation that occurs when, on the effective date of the ordinance from which this article ordinance is derived, or any amendment to it, an existing lot, structure, or use of an existing lot or structure does not conform to one or more of the regulations applicable to the
district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum square footage requirements, because structures do not satisfy maximum height or minimum floor-space limitations, because the relationship between existing buildings and the land (in such matters as density and setback requirements) is not in conformity with this article ordinance, or because land or buildings are used for purposes made unlawful by this article ordinance.

**Nonconforming use**
A nonconforming situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located. The term "nonconforming use" also refers to the activity that constitutes the use made of the property.

**Nonresidential use or district**
When referring to a use, it shall be those uses in the “nonresidential” section of the Table of uses. When referring to a zoning district or “district,” it shall be the following zoning districts: B-1 or B-2.

**Official**
The town manager or its designee with the primary responsibility for matters and duties set forth in this article ordinance and other Code provisions governing land development matters and enforcing the same through any applicable provision of law. The term "official" also includes “zoning administrator” and any other person as may otherwise be designated by law as having exclusive authority in a particular land development matter.

**Official maps or plans**
Any maps or plans officially adopted by the board Board of Commissioners as a guide for the development of the town and surrounding area.

**Order**
A directive by the official.

**Ordinance**
The zoning ordinances of the town codified as this article and all Code provisions governing land development.

**Outdoor display**
The placement of products or materials for sale or rent outside the entrance of a retail establishment.

**Outdoor storage (includes Open Storage)**
The keeping, in an unroofed area, of any goods, junk, material, or merchandise in the same place for more than 24 hours.

**Ownership interest**
An ownership or leasehold interest in real property, including an interest created by easement, restriction or covenant in the property, or an option or contract to purchase the property.
Parking lot
An area or plot of land used for the storage or parking of vehicles.

Parking, off-street
An area that is designated for the parking of motor vehicles located outside of a dedicated street right-of-way, vehicular travel way, or parking aisle.

Parking, on-street
On-street parking is a portion of a roadway that is used for parking cars and other vehicles within the street right-of-way (ROW). On-street parking may be on a paved or unpaved portion of the ROW and may be marked or unmarked, regulated or unregulated. On-street parking is a public resource and is available to the general public. On-street parking areas adjacent to a property are not to be reserved by such property, nor considered to be specifically utilized for such.

Parking space
A storage space of not less than 160 square nine (9) feet wide and 18 feet long for one automobile, plus the necessary access space.

Peddler
Any person who shall carry or transport from place to place any goods, wares or merchandise, and who offers to sell or barter the same, or actually sells or barters the same, or who offers for sale or sells any goods from any cart, truck, automobile or other vehicle operated over and upon the streets and highways, or from any other device other than a building meeting requirements for business and mercantile as presented in Sections 405.1 and 410.1 of the state building code. Any person who separates the act of sale and delivery for the purpose of evading the provisions of this article ordinance shall be deemed a peddler.

Pedestrian water access walkway
Pedestrian access facilities, either private or public, built in accordance with CAMA regulations that afford pedestrians access to the waterfront. See Beach access and pedestrian water access walkway.

Permit officer appointed by the town means the minor development permit officer of the town.

Person aggrieved:

A. Persons having an ownership interest in property that is the subject of the situations or conditions.
B. Persons who will suffer special damages that:
   1. Arise by virtue of the person aggrieved's ownership interest in property that is adjacent to property that is the subject of situations and conditions that are the subject of a final decision (property is adjacent for the purposes of this section if it is separated from the subject property by only by a right-of-way, easement, street, road, alley or buffer); and
2. Are distinct from any damage all the remainder of the town may suffer in consequence of the situations and conditions; and
3. Are directly and proximately caused by situations and conditions that are the subject of a final decision;

C. An incorporated or unincorporated association to which owners or lessees of land and premises or property thereon in a designated area belong by virtue of their owning or leasing said property, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association has an ownership interest in land or premises or a building in the area and is a person aggrieved in the manner of subsections (1) and (2) of this definition, and the association was not created in response to a particular approval, decision, final decision, situation, or conditions;

D. A town officer or official, department, board, or commission.

**Permanent access easement**
An easement of record which shall only be permitted in those situations in which access is provided to second tier and third tier lots and shall serve no more than four (4) lots. Permanent access easement shall be constructed in accordance with the standards specified in this ordinance.

**Person liable**
The holder of any applicable approvals, owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, person in authority, permittee, licensee, or other person who participates in, assists, directs, creates, maintains or is otherwise responsible for any situation or condition violation, and who may thereby be held responsible for the same and be made subject to all enforcement mechanisms, remedies, and sanctions as provided in this article ordinance and Code other land development ordinances, and any additional enforcement mechanisms, remedies, sanctions, and legal processes that may be otherwise permitted by law.

**Planning board** means the planning board of the town.

**Planning board** means the planning board of the town.

**Planning board**
The public body of citizens appointed by the town commissioners Board of Commissioners to prepare and recommend updates to the town's land use plan, and to advise the Board of Commissioners on all matters affecting land usage in the town set forth in G.S NCGS 160A-387 and section 16-319.

**Plat**
A map showing the location, boundaries, and ownership of individual properties.

**Premises**
A single piece of property as conveyed in a deed or a lot or a number of adjacent lots on which is
situated a land use, a building, or group of buildings designed as a unit or on which a building or group of buildings are to be constructed.

**Principal structure or building**
A structure in which is conducted the principal use(s) of the lot on which it is located.

**Principal use**
A primary or predominate use of a lot or parcel.

**Private utility stations**
A potable water distribution system or sanitary sewer system owned and maintained by a property owners association and located on private land.

**Public nuisance**
Everything in the town’s jurisdictional limits, or within one mile thereof, that is dangerous or prejudicial to the public health or public safety. Public nuisances, including, but are not limited to, nuisances specified in this Code.

**Public sewer service**
Such sewer service as made available by the town.

**Public utility stations**
A potable water distribution system or sanitary sewer system owned and maintained by the town, county, or the state that serves the public at large and is located within a public right-of-way, public property, or public easement.

**Public water service**
Such water service as made available by the town.

**Required setback line**
A line marking the setback distance from street or lot lines which establishes the minimum required front, side, rear yard, and open space on a lot.

**Reserve strip**
A strip of land created for the purpose of controlling the access to streets or other public rights-of-way from adjoining property.

**Residential use or district**
When referring to a use, it shall be those uses in the “residential” section of the Table of permitted uses. When referring to a zoning district or district it shall be the following zoning districts: R-1, R-2, R-3, R-4, PRD-1, and/or PRD-2.

**Retail sales**
Use types involved in the sale or lease of new or used products to the general public. Accessory uses may include offices, display of goods, limited assembly, processing, or repackaging of goods for on-site sale, concessions, and ATM machines. Retail sales does not include the following:

A. Repair and service establishments.
B. Bars, nightclubs, restaurants, and similar eating establishments.
C. An establishment that provides financial, professional, or business services in an office setting.
D. An establishment that involves the sale, distribution, or presentation of materials or activities emphasizing sexually explicit content.

**Right-of-way**
Property that is publicly owned or upon which a governmental entity has an express or implied property interest (e.g., fee title or easement) held for a public purpose. Examples of such public purpose include, by way of example and not by limitation, a highway, a street, sidewalks, drainage facilities, a crosswalk, a beach/sound access, a road, an electric transmission line, a water main, a sanitary or storm sewer main, or for any other special use. The usage of the term “right-of-way” for subdivision platting purposes means that every right-of-way established and shown on a final plat is separate and distinct from the lots or parcels adjoining the right-of-way, and is not included within the dimensions or areas of such lots or parcels. Rights-of-way involving maintenance by a public agency are dedicated to public use by the maker of the plat on which the right-of-way is established.

**Sandwich board**
A temporary, portable A-frame, or easel sign advertising a business establishment.

**Secretary**
The secretary of the state department of environment, health and natural resources.

**Self-service storage facilities**
A building or outdoor facility divided into sections for use for storage of items, either temporary or long-term, and not to be used for any other purpose (such as small offices, garages, etc.).

**Self-Service Ice Vending Unit**
A stand-alone ice production machine that may operate without full-time service personnel. These units are activated by the insertion of money, credit cards, check cards, token, or similar means; ice is bagged automatically or dispensed in bulk outside to the consumer. A self-service ice vending unit shall not be construed to mean an ice bag cooler associated with a commercial use.

**Setback**
The required distance between every structure and the lot lines of the lot on which it is located.

**Setback, front**
The setback measured from the front lot line(s). Through lots shall provide a front setback on both streets.

**Setback, rear**
A setback from an interior lot line lying or rear lot line on the opposite side of the lot from the front setback.
**Setback, side**
The side yard setback shall extend from the required front yard setback line(s) to the required rear yard setback line and shall be measured from the side lot line.

**Sign**
Any words, lettering, figures, numerals, emblems, devices, trademarks, symbols, or trade names or any combination thereof, by which anything is made known and which is designed to attract attention and/or convey a message.

**Sign, feather flag**
A narrow, tall, flag-like banner sign often made of flexible material that moves with wind. These signs have different names such as flutter flags, swooper flags, blade flags, and teardrop flags.

**Sign, flashing**
Any illuminated sign on which the artificial light is not maintained stationary or constant in intensity and color at all times when such is in use. For the purpose of this article ordinance, any moving, illuminated signs shall be considered a flashing sign. Such signs shall not be deemed to include time and temperature signs or public messages displays using electronic switching.

**Sign, freestanding**
Any sign supported wholly or in part by some structure other than the building or buildings housing the business to which the sign pertains.

**Sign, gross area**
The entire face of a sign, computed as the bounding box of the lettering or other display, together with any integral part of the background of the lettering or display, but not including the support framework, bracing, fence, or wall upon which it is placed when such is clearly incidental to the display itself. In the case of a double faced sign, only one side is considered in computing sign area. The entire area within a single continuous perimeter enclosing the extreme limits of such sign. However, such perimeter shall not include any structural elements lying outside the limits of such sign and not forming an integral part of the display.

**Sign, identification**
A sign used to display only the name, address, crest or trademark of the business, individual, family, organization or enterprise occupying the premises, the profession of the occupant or the name of the building on which the sign is displayed, or a permanent sign announcing the name of a subdivision, shopping center, tourist home, group housing project, church, school, park or public or quasi-public structure, facility or development and the name of the owners or developers.

**Sign, mobile**
A sign mounted on a chassis with axles and wheels.

**Sign, monument**
A freestanding sign supported primarily by an internal structural framework or integrated into landscaping or other solid structural features other than support poles.
**Sign, off-premises**
A sign which directs attention to a business, commodity, service, activity, or entertainment not exclusively related to the premises where such sign is located or to which it is affixed.

**Sign, projecting**
A sign attached to a wall and projecting away from that wall more than 12 inches, but not more than five feet.

**Sign, public information noncommercial**
A sign, usually erected and maintained by a public agency, which provides the public with information and in no way relates to a commercial activity including, but not limited to, speed limit signs, stop signs, city limit signs, street name signs, and directional signs. These signs are in no way regulated by this article.

**Sign, roof**
A sign which is displayed above the eaves of a building.

**Sign, temporary**
A sign that is displayed only for a specified period of time. Signs not permanently embedded in the ground, or not permanently affixed to a building or a separate sign structure that is permanently embedded in the ground, are considered temporary signs.

**Sign, wall**
A sign attached to a wall and not projecting away from the wall more than 12 inches.

**Site plan**
A plan, to scale, showing uses and structures proposed for a parcel of land as required by the regulations involved. It includes lot lines, streets, building sites, reserved open space, buildings, major landscape features, both natural and manmade and, depending on requirements, the location of proposed utility lines.

**Site plan, major**
A plan for residential development of four (4) or more dwelling units on a lot; nonresidential development whereby 10,000 square feet or more of impervious surfaces are proposed; or all other development not subject to plot plan approval.

**Site specific development plan**
A plan of land development submitted to the town for purposes of obtaining one of the following zoning or land use permits or approvals and will trigger the statutory vested right process as provided in NCGS 160A-385.1 and as described in this ordinance:

A. **Major Subdivision preliminary plat review**;
B. Conditional use permit;
C. **Zoning certification Major site plan**.
Notwithstanding the foregoing definition, neither a variance, a sketch plan nor 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.

**Street**
A public thoroughfare which is maintained by the state or the town, and affords the principal means of access to abutting property.

**Solar Energy Systems**
An energy system which converts solar energy to usable thermal, mechanical, chemical or electrical energy for use in the heating or cooling of a structure, for heating domestic water or water used in swimming pools and hot tubs, or for the generation of electricity.

**State building code**
A series of ordinances enacted by the General Assembly and State Building Code Council that establish the minimum requirements that must be met in the construction and maintenance of buildings and structures.

**Street**
A dedicated and accepted public right-of-way for vehicular traffic subject to standards contained in this ordinance. The term "street" does not include the term “easement,” but may include the following:

A. **Highway**: A traffic artery designed primarily to carry heavy volumes of through vehicular traffic.
B. **Major street**: A street designed primarily to carry heavy volumes of local vehicular traffic.
C. **Collector street**: A street designed to carry medium volumes of vehicular traffic, provide access to the major street system and collect the vehicular traffic from the intersecting minor streets.
D. **Minor street**: A street the principal purpose of which is to provide vehicular access to the properties abutting it.
E. **Cul-de-sac**: A street permanently terminated by a turnaround.

**Street, private**
Any road or street which is not publicly owned and maintained and is used for access by the occupants of the development, their guests and the general public.

**Street line**
The line between the street right-of-way and abutting property.

**Structural alterations**
Any change in the supporting members of a building, such as bearing walls, columns, beams, or girders, except for repair or replacement.
Structure
Anything constructed or erected, the use of which requires location in or on the land, or attachment to something having a permanent location in or on the land.

Subdivider
Any person who subdivide or develops any land deemed to be a subdivision as defined in this section.

Subdivision
A. The term "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future) whether immediate or future, of sale or building development, and shall include all divisions of land involving the dedication of a new street or a change in existing streets.

B. Provided, however, that the following shall not be included within this definition nor be subject to the regulations established by this article and are not subject to any subdivision regulations in this ordinance:
   1. The combination or recombination of portions of previously subdivided and recorded platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the town as required by its subdivision provisions.
   2. The division of land into parcels greater than ten acres where no street right-of-way, public access to beaches, or other dedication is involved.
   3. The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation corridors.
   4. The division of a tract of land in single ownership whose entire area is not greater than two acres into not more than three lots, where no street right-of-way, public access to beaches, or other dedication is involved, and where the resultant lots are equal to or exceed the standards of the town as required by this ordinance.
   5. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

Subdivision, major
Subdivisions and/or divisions of land not qualifying as exempt or as a minor subdivision.

Subdivision, minor
A subdivision whereby the entire area of the tract to be divided is greater than five (5) acres and after division no more than three (3) lots results from the division. The review of a minor subdivision final plat for recordation, per NCGS 160A-376, for the division of a tract or parcel of land in single ownership is subject to the following criteria:
A. The tract or parcel to be divided is not exempted under NCGS 160A-376(a)(2).
B. No part of the tract or parcel to be divided has been divided as minor subdivision in the 10 years prior to division.
C. After division, all resultant lots comply with all of the following:
   1. Any lot dimension size requirements of the applicable land-use regulations.
   2. The use of the lots is in conformity with the applicable zoning requirements.
   3. A permanent means of ingress and egress is recorded for each lot.

**Tattoo/body piercing establishment**
An establishment whose principal business activity is the inserting of permanent markings or coloration, or the producing of scars, upon or under human skin or the creation of an opening in the body of a person so as to create a permanent hole for the purpose of inserting jewelry or other decoration.

**Technical review committee (TRC)**
A development and subdivision review committee, as designated by the zoning administrator, which may include, but not necessarily be limited to, the following individuals/departments: zoning administrator, building inspector, town manager, Fire department, Police Department, NC Division of Coastal Management, NC Department of Environmental Quality, Pender County Utilities, or Pender County Environmental Health. The TRC does not hold regular meetings or typically meet in-person.

**Temporary family health care structure**
A transportable residential structure, providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person, that (1) is primarily assembled at a location other than its site of installation, (2) is limited to one occupant who shall be the mentally or physically impaired person, (3) has no more than 300 gross square feet, and (4) complies with applicable provisions of the State Building Code and G.S. 143-139.1(b). Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.

**Tourist home** means any dwelling occupied by the owner or operator in which rooms are rented to guests, for lodging of transients and travelers for compensation, and where food may be served.

**Trailer**
Any vehicle or structure originally designed to transport something or intended for human occupancy for short periods of time. Trailers shall include the following:
A. **Travel trailer**: A vehicular, portable structure built on a wheeled chassis, designed to be towed by a self-propelled vehicle for use for travel, recreation or vacation purposes.
B. **Recreational vehicle**: A self-propelled vehicle or portable structure mounted on such a vehicle designed as a temporary dwelling for travel, recreation and vacation.
C. **Camping trailer**: A towable folding structure manufactured of metal, wood, canvas, plastic or other materials or any combination thereof, mounted on wheels and designed for travel, recreation, or vacation use.
D. **Tow trailer**: A structure designed to be hauled by another vehicle and to transport vehicles, boats or freight.

**Town**

The word “Town” or “Town of Topsail Beach” or “Topsail Beach” shall refer to all lands in the corporate limits planning jurisdiction of the Town of Topsail Beach as recorded in the Pender County Registry of deeds.

**Use**

Any continuing or repetitive occupation or activity taking place upon a parcel of land or within a building or structure including, but not limited to, residential, manufacturing, retailing, offices, public services, recreation, and educational.

**Variance**

A variance is a relaxation of the terms of this article ordinance, the zoning ordinance, where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of this article ordinance would result in unnecessary and undue hardship. As used in this article, a variance is authorized only for height, area and size of a structure or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.

**Situations and conditions Violation**

A breach, infringement, or transgression of any law, requirement in this ordinance or other land development provisions, or failure to comply with any approval procedures or permission as specified by this ordinance. Ordinance violations and approval violations in response to which the town may invoke the enforcement procedures in this division as specified in this ordinance in response to violations. Situations and conditions include everything dangerous or prejudicial to the public health or public safety, any forms of unlawful situations, conditions and matters that come within the scope of those matters set forth in G.S. §§ 160A-174, 175, 193 - 200, 1, 205 and 389, and Parts 5 and 8 of G.S chapter 160A; public nuisances; unlawful situations, conditions, or uses of land, buildings or structures of any type; violations of an approval; violations of any or all provisions, conditions and requirements of this article or land development Code ordinances; failure to comply with any or all provisions, conditions and requirements of this article or approvals, or any decision or any order; and any and all omissions in any way contrary to any or all provisions, conditions and requirements of this article, land development Code ordinances, approvals, decisions or orders. Situations and conditions Violations do not include matters that state or federal law expressly prohibit the Town from regulating.

**Working days**

Any day the Town of Topsail Beach is open for business.
Yard
An open space on the same lot with a building, unoccupied and unobstructed from the ground upward, except by trees or shrubbery, or as otherwise provided herein.

Yard, front
A yard across the full width of the lot, extending from the front line of the structure to the front line of the lot. Through lots shall have two front yards.

Yard, rear
A yard extending across the full width of the lot and measured between the rear line of the lot and the rear line of the main building.

Yard, side
An open unoccupied space on the same lot with a building between the building and the yard extending across side line of the lot extending through from the front building line to the rear yard or, where no rear yard is required, to the rear line of the lot.

Zero lot line
A concept commonly used in planned developments where individual commercial buildings or dwellings, such as townhouses (row houses) and patio homes, are to be sold along with the ground underneath and, perhaps, a small yard or patio area. Such commercial or residential units are grouped in buildings with two or more units per building, usually including common walls, with zero lot line. The minimum requirements for lot area and yards are not met, and construction takes place right up to the lot line.

Zoning
A police power measure, enacted primarily by general purpose units of local government, in which the community is divided into districts or zones within which permitted and conditional uses are established as are regulations governing lot size, building bulk, placement, and other development standards. Requirements vary from district to district, but they must be uniform within districts. The zoning ordinance consists of two parts: A text and a map.

Zoning administrator
The official charged with the enforcement of land development regulations within this article ordinance, Chapter 16 Land Development Code, the zoning ordinance.

Zoning permit
A permit issued by the town conferring the right to undertake and complete the development or the use of property subject to the provisions outlined in this ordinance.

Zoning vested right
A right pursuant to G.S NCGS. 160A-385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan and this ordinance.
Article 3: Administration and Procedures

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16.3.1 GENERAL
This article contains powers and duties, approval procedures, amendment procedures, and enforcement mechanisms. The following bodies and town staff have powers and responsibilities in administering this ordinance, reviewing applications for development/subdivision, matters of quasi-judicial nature, or amendments under this ordinance:

A. Board of Commissioners
B. Planning Board
C. Board of Adjustment
D. Zoning Administrator
E. CAMA Local Permit Officer

16.3.2 BOARD OF COMMISSIONERS
A. POWERS AND DUTIES
The Town of Topsail Beach Board of Commissioners has the following responsibilities in relation to this ordinance:

1. Hear and decide applications for amendments to the text, schedules, and map portions of this ordinance.
2. Hear and decide applications for Conditional Use Permits, as specified in this ordinance.
3. Establish rules of procedure for the conduct of hearings and other proceedings before the Board of Commissioners.
4. Make the necessary appointments to the Planning Board and Board of Adjustment.
5. Provide by appropriation, funds for the administration of this ordinance.
6. Such other actions as are, or may be, authorized by North Carolina General Statutes Chapter 160A, Article 19.

16.3.3 PLANNING BOARD
A. POWERS AND DUTIES
It shall be the duty of the Planning Board to serve as the Parks and Recreation Advisory Board, and in general:

1. To acquire and maintain in current form such basic information and materials as are necessary to an understanding of past trends, present conditions, and forces at work to cause changes in these conditions.
2. To prepare and, from time to time, amend and revise a comprehensive and coordinated plan for the physical development of the area.
3. To establish principles and policies for guiding action in the development of the area.
4. To prepare and recommend to the Board of Commissioners ordinances promoting orderly development along the lines indicated in the comprehensive plan.
5. To determine whether specific proposed developments conform to the principles and requirements of the comprehensive plan for the growth and improvement of the area.

6. To keep the town board Board of Commissioners and the general public informed and advised as to these matters.

7. To perform any duties which may lawfully be assigned to it.

8. Members of the Planning Board may attend planning conferences or meetings of planning institutes or hearings upon pending planning legislation. The Planning Board member must request any travel and instructional expenses to the town manager prior to attending any meetings and must submit a travel voucher for any funds expended to attend such meetings.

9. The Planning Board may seek the establishment of an unofficial advisory council and may cooperate with this council to the end that its investigations and plans may receive fullest consideration, but the Planning Board may not delegate to such advisory council any of its official prerogatives. The Planning Board may set up special committees to assist it in the study of specific questions and problems.

10. The Planning Board shall review with the town manager and other town officials and report as recommendations to the town board Board of Commissioners upon the extent, location, and design of all public structures and facilities, on the acquisition and disposal of public properties, and on the establishment of building lines, mapped street lines, and proposals to change existing street lines. However, in the absence of a recommendation from the Planning Board, the town board Board of Commissioners may, if it deems wise, after the expiration of ten 30 days from the date on which the question has been submitted in writing to the Planning Board for review and recommendation, or ten 30 days prior to any deadline stipulated by the town board Board of Commissioners, take final action.

B. MEMBERSHIP, VACANCIES, AND MEETINGS

1. The Planning Board shall consist of five (5) members who shall be persons of experience and qualified to render planning assistance to the town, and three (3) of whom shall be permanent residents and two (2) of whom may be nonresident property owners. At the time of their appointment and during the continuance of their appointive term, members shall hold no other official government position. For the purposes of this section, the term "other official municipal government position" shall not be interpreted to include the zoning Board of Adjustment, zoning administrator, building inspector, or CAMA local permit officer.

2. The citizen members shall be appointed by the town board Board of Commissioners to hold office for staggered terms. Thereafter, members shall be appointed for a term of three (3) years. All members of the Planning Board shall serve as such without compensation. Members may be removed by the town board Board of Commissioners for inefficiency, neglect of duty, malfeasance in office, or conduct, which in the discretion of the town board Board of Commissioners is detrimental to the best interest of the town.
3. Within 30 days after appointment, the Planning Board shall meet and elect a chairperson, secretary, vice chairperson, and fill any other such offices as it may determine are necessary. The term of the chairperson and other officers shall be one (1) year, with eligibility for re-election. The Planning Board shall adopt rules for transaction of its business and shall keep a record of its members' attendance and of its resolutions, discussions, findings, and recommendations, which record shall be a public record maintained in the office of the town hall. The Planning Board shall hold at least one (1) meeting monthly, any day other than Sunday, and all of its meetings shall be open to the public. There shall be a quorum of three (3) members for the purpose of taking any official action required by this division ordinance.

C. BASIC STUDIES

1. As background for its comprehensive plan and any ordinances it may prepare, the Planning Board may gather maps and aerial photographs of manmade and natural physical features of the area, statistics on past trends and present conditions with respect to population, property values, the economic base of the community, land use, and such other information as is important or likely to be important in determining the amount, direction, and kind of development to be expected in the area and its various parts.

2. In addition, the Planning Board may make, cause to be made, or obtain special studies on the location, condition, and adequacy of specific facilities, which may include, but are not limited to studies of housing; commercial and industrial facilities; parks, playgrounds, and recreational facilities; public and private utilities; and traffic, transportation, and parking facilities.

3. All town officials shall, upon request, furnish to the Planning Board such available records or information as it may require in its work. The Planning Board or its agents may, in the performance of its official duties, enter upon lands and make examinations or surveys and maintain necessary monuments thereon.

D. COMPREHENSIVE PLAN

1. The comprehensive plan, with the accompanying maps, plats, charts, and descriptive matter, shall be and show the Planning Board's recommendations to the Board of Commissioners for the development of the territory including, among other things:
   a) The general location, character, and extent of streets, bridges, boulevards, playgrounds, squares, parks, and other public ways, grounds and open spaces.
   b) The general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power, and other purposes.
   c) The removal, relocation, widening, narrowing, vacating, abandonment, change of use, or extension of any of the roadways, buildings, grounds, open spaces, property utilities, or terminals which are set forth in subsections (a) and (b) of this section.
   d) The most desirable pattern of land use with the area.
2. The plan and any ordinances or other measures to effectuate it shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the town and its environs which will, in accordance with present and future needs, best promote health, safety, morals, and the general welfare, as well as efficiency and economy in the process of development, including among other things, adequate provision for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and adequate provision of public utilities, services, and other public requirements.

E. ZONING AND SUBDIVISION REGULATIONS

1. The Planning Board may initiate, from time to time, proposals for amendment of article IV of this chapter, the zoning ordinance zoning regulations, based upon its studies and comprehensive plan. In addition, the Planning Board shall review and make recommendations and statements of consistency to the town board Board of Commissioners concerning all proposed amendments to article IV of this chapter, the zoning ordinance, to the zoning regulations in this ordinance.

2. The Planning Board shall review, from time to time, the need for regulations for the control of land subdivision in the area and submit to the town board Board of Commissioners its recommendations, if any, for adoption or revision of such regulations.

3. In accordance with such regulations, the Planning Board shall review and make recommendations to the town board Board of Commissioners concerning all proposed plats of land for major subdivisions.

16.3.4 BOARD OF ADJUSTMENT

A. POWERS AND DUTIES

The Board of Adjustment is established to conduct hearings in a quasi-judicial manner as provided in this article ordinance in the course of the following:

1. Deciding whether variances from the requirements of a land development Code this ordinance should be granted. Nothing in this ordinance shall be construed to authorize the Board of Adjustment or other approval body to permit a use in a district where that use is neither a permitted use nor Conditional Use, under the applicable provisions of that ordinance;

2. Hear, review, and decide appeals from and review any order, requirement, final decision of this ordinance, or determination made by the zoning administrator in the performance of official duties. Administratively reviewing appeals from interpretation and enforcement of this article and land development Code ordinances by an official and which under this article are subject to an administrative appeal, and
3. Pass upon, decide, or determine such other matters as may be required by this ordinance. Hearing and deciding motions to revoke approval as provided in this article.

B. MEMBERSHIP, VACANCIES, AND MEETINGS

1. There is hereby created and established a Board of Adjustment (hereinafter called the BOA) which shall consist of five (5) members who shall be residents of the town. The members shall be appointed by the Board of Commissioners for a regular term of office of three (3) years. Board BOA members whose terms of office have expired may be reappointed to serve consecutive terms. In appointing members to fill vacancies, the Board of Commissioners shall appoint persons to serve the remaining terms of office rather than a full three (3) years.

2. There shall be two (2) alternate members to serve on the board BOA in the absence for any cause of any regular member. Alternate members shall also be residents of the town and shall be appointed by the Board of Commissioners. The terms of office of alternate members shall also be for three (3) years. Alternate members shall have and may exercise all the powers and duties of a regular member while attending any regular or special meeting of the Board of Adjustment. The members of the board BOA shall receive no compensation for their services.

3. No more than one (1) regular member and one (1) alternate member of the board BOA shall be permitted to sit concurrently on the Planning Board or on the Board of Commissioners.

4. Officers. The Board of Adjustment shall elect a chairperson and a vice-chairperson from its membership and such other officers as the board BOA deems best.

5. Meetings. Meetings of the Board of Adjustment shall be held at the call of the chairperson and at such other times as the majority of the board BOA may determine. All meetings of the Board of Adjustment shall be open to the public. The board BOA shall keep minutes of its procedures, showing the vote of each member upon each question, or, if absent or failing to vote, an indication of such fact; and final disposition of appeals shall be taken, all of which shall be of public record.

6. No final action shall be taken on any variance matter without the concurring vote of four-fifths (4/5) of the members of the board BOA. A simple majority vote of those BOA members present shall be sufficient to conduct other business before the BOA.

7. A quorum of the Board of Adjustment, necessary to conduct any business of the BOA, shall consist of three (3) members.

8. Conflict of interest. Pursuant to NCGS 160A-388(e1), a member of the Board of Adjustment or any other body exercising the functions of Board of Adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision.
maker. Impermissible conflicts include but are not limited to a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation, and that member does not recuse himself, the remaining members shall by majority vote rule on the objection.

9. Procedures for hearings. All hearings before the Board of Adjustment are quasi-judicial proceedings and are as far as practicable to be conducted in accord with the Quasi-Judicial Hearing Procedural Guidelines adopted by the Board of Commissioners in Resolution No. 2012-02-15 on file with the town clerk in town hall.

10. Administration of oaths. The chairperson or any member temporarily acting as chairperson is authorized to administer oaths to witnesses in any matter coming before the board. All testimony before the board must be under oath and recorded.

11. Other procedures. Should NCGS, Ch. 160A, Art. 4, mandate any procedures inconsistent with, or contrary to procedures herein, then the state statutory procedures shall apply.

12. Notice of quasi-judicial hearing. Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

C. QUASI-JUDICIAL DECISIONS AND JUDICIAL REVIEW

1. The Board of Adjustment 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 BOA's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chairperson or other duly authorized member of the BOA. A quasi-judicial decision is effective upon filing the written decision with the clerk to the BOA. 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.

2. Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to NCGS 160A-393. A petition for
review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with section (1) of this subsection. When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

3. Any failure to follow a particular procedure in the town’s Quasi-Judicial Hearing Procedural Guidelines shall not in and of itself and standing alone be the basis for error in any judicial review of a final decision by the Board of Adjustment.

16.3.5 ZONING ADMINISTRATOR

A. POWERS AND DUTIES

The town zoning enforcement officer is the official defined in section 16.295 below. The official’s duty as of the zoning enforcement officer administrator is to assure the enforcement of the provisions of this article and other land development Code ordinances. The official zoning administrator is empowered to do those things set forth in this article ordinance and other land development Code ordinances as specified, and shall also have the right to enter upon the premises at any time necessary to carry out his/her duties. It is the intention of this article ordinance that all questions arising in connection with enforcement and interpretation shall be presented first to the official zoning administrator. Appeal from the official zoning administrator’s decision shall be to the Board of Adjustment as provided in of this article. In administering the provisions of this ordinance article, the official zoning administrator shall:

1. Make and maintain records of all applications for land development permits and requests, and records of all permits issued or denied, with notations of all special conditions or modifications involved.

2. Make interpretations of this ordinance as requested.

3. File and safely keep copies of all plans submitted, and the same shall form a part of the records of his or her office and shall be available for inspection at reasonable times by any interested party.

4. Transmit to the appropriate board or commission and the Board of Commissioners all applications and plans for which their review and approval is required.

5. Conduct inspections of premises and, upon finding that any of the provisions of this article and other land development Code ordinances are being violated, notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it.

6. Except as otherwise provided by law, the zoning administrator official shall administer, review and enforce the town’s zoning and Code land development ordinances and all approvals issued under the same. Any appeal from a decision of the official is subject to review under this article by the Board of Adjustment, except as may otherwise be provided by law.
7. Except to the extent otherwise expressly limited by law, the town through its duty authorized officials—zoning administrator—shall have the power to summarily remove, abate, or remedy all situations and conditions applicable violations.

8. Except as may be otherwise provided by law, the official—zoning administrator—shall have the power and duty to implement policies and procedures appropriate to accomplishing the purposes and provisions of this article and land development Code—ordinances and approvals, and taking actions—authorized in this article ordinance—and land development Code ordinances.

9. Implementing and enforcing permit application procedures set forth in this article and other land development Code provisions; issuing and denying permits under this article and other land development Code provisions; investigating, compiling information, responding to reports and complaints concerning whether violations of zoning and land development Code ordinances have occurred, determining whether situations and conditions and public nuisances exist; determining the identity of persons liable in connection with the same; meeting with persons liable and complainants, and making decisions in connection with the same;

10. Enforcing those powers set forth in section 16-269; investigating, compiling information, responding to reports and complaints concerning whether zoning violations have occurred, determining whether situations and conditions and public nuisances exist; determining whether violations of this article have occurred; determining the identity of persons liable in connection with the same; meeting with persons liable and complainants, and making decisions in connection with the same;

11. Working with applicable law enforcement agencies as appropriate;

12. Filing approval revocation motions;

13. Imposing civil charges on persons liable for situations and conditions for which civil charges may be imposed under section 1-6 and table 1 in section 1-7 or as otherwise provided in this Code;

14. Issuing notices identifying situations and conditions, applicable ordinances and any approval, directing persons liable to correct, remediate, remove, and abate situations and conditions, and directing persons liable to post a bond to secure performance of the same; and identifying remedies and enforcement mechanisms available to the town;

15. Authorizing the incurring of expenses and executing agreements (in accord with applicable town procedures) needed for correction, remediation, removal, and abatement of situations and conditions and seeking reimbursement of said expenses from persons liable;

16. Collecting in the nature of a debt and, to the extent allowed by law, using procedures available for collecting unpaid taxes for recovery of all amounts owed by persons liable for situations and conditions;

17. Obtaining liens on property located within the town's jurisdiction in order to secure payment of amounts owed by persons liable in consequence of situations.
18. Imposing conditions and provisions on any and all approvals for defined periods of time in the course of dealing with situations and conditions, as determined in the informed and considered discretion of the official;

19. Pursuing chronic violator procedures;

20. Pursuing all forms of legal processes and remedies available in connection with situations and conditions through the courts of competent jurisdiction; and

21. Employing any, all, or any combination of enforcement mechanisms and remedies available in this article, land development Code ordinance, and as otherwise provided by law.

22. In addition to powers and duties of the official enumerated herein, the zoning administrator shall have all those powers set forth in other provisions of this article, ordinance, in other applicable land development Code ordinances and in G.S. §§ 160A-174, 175, 193, 200.1, 205 and 389 and Parts 5 and 8 of G.S., chpt. 160A.

11. The enumeration of powers and duties of the official herein do not limit or restrict the powers and duties of the official as may be provided elsewhere in this article, ordinance or other land development Code ordinances.

16.3.6 CAMA LOCAL PERMIT OFFICER

A. POWERS AND DUTIES

1. Generally. The town may appoint a minor development CAMA local permit officer.

2. Qualifications. The permit officer shall have at least a high school diploma or equivalent and considerable experience with construction in a coastal area. Within one (1) year after appointment to the position, the permit officer shall successfully complete the training course offered by the commission and the department.

3. Appointment. The person or agency designated by the Board of Commissioners shall serve as the permit officer subject to the terms of his or her regular employment and duties.

4. General duties. The town-appointed CAMA local permit officer shall:
   a) Administer and enforce, in an AEC duly designated by the Coastal Resources Commission (CRC), the provisions of the CAMA, the minor development permit issuing process as herein established, all applicable town ordinances, and all other guidelines and standards established by the commission CRC and the board Board of Commissioners pursuant to the CAMA. The CAMA local permit officer shall be available in an advisory capacity for the purpose of facilitating efficient disposition of CAMA major permit applications. The CAMA local permit officer shall assist in identifying and assessing projects of greater than local concern.
The CAMA local permit officer shall also be responsible for implementing any procedures recommended by the Board of Commissioners for the purpose of coordinating the CAMA minor development permits with other permits required by the town ordinances and by county government. Such permits and approvals include, but are not limited to building permits, electric permits, plumbing permits, liquid waste disposal permits, zoning certificates, dune protection permits, and subdivision preliminary plat approvals.

b) Hold regular office hours in the town. The CAMA local permit officer shall be accessible to the extent practical to town property owners seeking minor development permits during the normal work week. The CAMA local permit officer shall have office space in the town hall.

c) Immediately notify the town manager and town attorney of any suit filed or intended to be filed against the town because of minor development permit disposition or other functions of the CAMA management program.

d) Inform the town manager and consult with the town attorney when he or she intends to initiate any suit arising out of the CAMA management program. The initiation of any suit requires prior board of commissioners approval.

e) Use his or her knowledge and the knowledge of the town planner of the CAMA program and shall consult with other permit letting agencies to assess the regional or national impact of certain projects and to so inform the Planning Board, Board of Commissioners, and the Coastal Resources Commission.

16.3.7 COMMON REVIEW PROCEDURES

A. COMPLETE APPLICATIONS

All applications for any approval required by this ordinance must be complete. Applicants who submit incomplete applications will receive a written notice stating the information needed to complete the application and a date by which the information must be submitted to maintain the review schedule. No application for any provision of this ordinance will be considered complete until all fees required by the town’s fee schedule have been paid in full.

Upon receipt of an application, the zoning administrator shall determine if the application is complete. A complete application is one that:

1. Contains all information and materials established by the zoning administrator and/or the requirements of this ordinance as required for submittal of the particular type of application.

2. Is in the form established by the zoning administrator as required for submittal of the particular type of application.
3. Includes information in sufficient detail to evaluate the application to determine whether it complies with the appropriate substantive standards of this ordinance.
4. Is accompanied by the fee established for the particular type of application.
5. Is signed by the property owner, a designated owner’s agent, or a contract purchaser of a property with authorization of the property owner. Written proof of authority must be submitted with every application.

B. ZONING PERMIT
1. Required. A valid zoning permit shall be presented with any application for a building permit zoning permit shall be required for changes of use, construction, or enlargement of any of the following: all new principal and accessory structures; enlargements of existing structures; construction/installation of fences/walls, piers, docks, decks, stairs, signs, and driveways; and/or any activity which proposes to increase the amount of impervious square footage on a lot. No building permit shall be issued for any activity in a zoned area until such zoning permit is presented. It shall be unlawful to commence site preparation or excavation for the construction of any building or other structure including accessory structures or to commence the moving, alteration or repair of any structure or the use of any land or building including accessory structures, or the paving or other installation or construction of a hardened surface upon the site, until the zoning administrator has issued a zoning permit for such work or use including a statement that the plans, specifications and intended use of such land, or structure, in all respects conforms with the provisions of this article ordinance. Application for a zoning permit shall be made in writing to the zoning administrator/building inspector on forms provided for that purpose.

2. Expiration. Zoning permits shall be void after six (6) months from date of issue unless substantial progress on the project has been made by that time.

3. Approval of plans. It shall be unlawful for the zoning administrator/building inspector to approve any plans or issue a zoning permit for any purpose regulated by this article ordinance until he or she has inspected such plans as required in detail and found them in conformity with this article ordinance. To this end, the zoning administrator/building inspector shall require that every application for a zoning permit be accompanied by the applicable approved plot plan, plat drawn major site plan, conditional use permit site plan, or any other plan as required by this ordinance, to scale and showing the following in sufficient detail to enable the zoning administrator/building inspector to ascertain whether the proposed activity is in conformance with this article:
   a) The actual shape, location and dimensions of the lot.
   b) The shape, size and location of all buildings or other structures to be erected, altered or moved and any building or other structures already on the lot.
   c) The existing and intended use of all such buildings or other structures.
a) Such other information concerning the lot or adjoining lots as may be essential for determining whether the provisions of this article are being observed.

4.3. Issuance and approval of zoning permit. If the proposed activity was set forth in the application is in conformity with the provisions of this article, ordinance and any applicable approved plans, the zoning administrator/building inspector shall issue a zoning permit. If any application for a zoning permit is not approved, the zoning administrator/building inspector shall state in writing on the application the cause for such disapproval. Issuance of a permit shall, in no case, be construed as waiving any provision of this or any other ordinance or regulation.

2. In order to obtain a building permit for a new structure, or to expand the heated living space of an existing structure, a current certificate of septic capacity issued or approved by Pender County Environmental Health must be presented to the building inspector.

5.4. Nothing in this section precludes, supersedes, replaces or limits the requirements for other permits provided for elsewhere in the Code ordinance, including other permits specified in this article herein.

C. BUILDING PERMIT

1. Unless exempted in accordance with the State Building Code or NCGS 160A-417, before commencing the construction, erection, repair, alteration, addition to, or moving of any building or structure or part thereof, or before commencing any excavation for such building or structure, or any form of activity that is within the scope of G.S. ch. 160A, art. 4, part 5, and chapters 6 and 14 of the Code, pertaining to buildings and building regulations, a building permit for the same shall be obtained from the applicable building inspector or any other town official or its designee with responsibility over building code and related matters. Compliance with all applicable provisions of Chapter 6: Buildings and Building Regulations shall be required prior to the issuance of a building permit.

2. Before commencing the removal or demolition of any building or structure or part thereof, a building permit authorizing said removal or demolition shall be obtained from the building inspector.

3. In order to obtain a building permit for a new structure, or to expand the heated living space of an existing structure, a current certificate of septic capacity issued or approved by Pender County Environmental Health must be presented to the building inspector.

4. The applicable building inspector and any other town official or its designee with responsibility over building code and related matters shall have all those powers set forth in G.S. ch. 160A, art. 4, part 5, and any applicable provision in this Code and nothing in this division 2 restricts or limits those powers.

5. Nothing in this article confers jurisdiction over matters within the exclusive jurisdiction of governing officials and bodies other than those of the Town.
D. CAMA MINOR PERMIT

1. Application. An application for a minor development permit with the currently established fee shall be submitted to the appropriate agency within the town if a designated CAMA local permit officer has been appointed. If a CAMA local permit officer is not employed with the town, then such application must be filed with the Wilmington district office of the NC Division of Coastal Management through the designated Division of Coastal Management field representative. The designated field representative will issue the permit in accordance with the following in the absence of a CAMA local permit officer.

2. CAMA minor permits are required for development proposed in affected areas that occupy less than 20 acres and less than 60,000 square feet of structure. Single-family homes, docks, shoreline armoring, and similar forms of development are the most common type of development required to obtain a CAMA minor permit. CAMA general and major permits are decided by the Coastal Resources Commission (CRC) and NC Division of Coastal Management, not the town.

3. Return of application. The CAMA local permit officer shall return applications that are, after acceptance, found to be incomplete, insufficient or unauthorized within a reasonable time. The 30-day period for consideration of the application shall begin to run upon acceptance. The time period shall continue to run in the case of an application found to be incomplete or insufficient until two days after the permit officer deposits in the U.S. mail, postage prepaid, return receipt requested, written reasons for the rejection to the applicant for correction of the deficiencies. The time period will resume running when a corrected application is returned to the permit officer. Any application requesting a permit for an activity which constitutes major development shall be either not accepted or returned by the permit officer with appropriate instructions for submitting the application to the commission.

4. Disposition. Disposition of the application must take place within 25 days of receipt of a complete application unless the permit officer gives written notice by registered mail of one additional 25-day extension as necessary for proper evaluation of the application, except applications for subdivisions when the time limit shall be automatically extended by written notice by registered mail to conform with the procedures specified in this article for preliminary plat approval and the deliberations and review procedures specified in this article shall become part of the record upon which approval, denial, or conditional approval is based.

5. Permit issuance. The CAMA minor permit shall be issued if the application complies with all applicable standards for development in an AEC found in the North Carolina Administrative Code (Sections 15A NCAC 7H .0208-310 or .0405-6), NCGS 113A-120(a)(1-10), applicable land use plan policy guidance, and any applicable local development regulations.
6. **Grant.** The grant of minor development permits shall be made only if consideration of the application results in none of the appropriate findings listed in G.S. 113A-120(a)(i)—(viii) and shall be displayed on the premises while the permitted activities are being accomplished.

7. **Conditioned grant of approval.** The grant of approval of a minor development permit may be conditioned upon the acceptance by the applicant of certain reasonable conditions as set out by the CAMA local permit officer to protect the public interest with respect to the appropriate factors enumerated in G.S. 113A-120(a)(i)—(viii) ensure compliance with the CRC’s regulations and protect resources. The applicant must sign the conditioned grant as an acceptance of the amendments of the proposed project plans in a manner consistent with the conditions set out by the CAMA local permit officer before the permit shall become effective.

8. **Passive grant.** Failure of the permit officer to approve or deny a properly completed and accepted application, or to give notice of an extension beyond the initial 20/25-day disposition period, except as set out in subsection (d) of this section, shall result in a passive grant the permit being deemed approved. A passive grant shall have the full force and effect of a grant.

**E. CERTIFICATE OF OCCUPANCY**

1. No new building or part thereof shall be occupied, and no addition or enlargement of any existing building shall be occupied, and no existing building after being altered or moved shall be occupied, and no change of occupancy shall be made in any existing building or part thereof, until the building inspector or zoning administrator/building inspector has issued a certificate of occupancy therefor. The change of occupancy provision shall not apply to rooms intended for transient rental.

2. A temporary certificate of occupancy may be issued for a stated period of time as determined by the zoning administrator for a portion or portions of a building which may safely be occupied prior to final completion and occupancy of the entire building or for other temporary uses.

3. Application for a certificate of occupancy may be made by the owner or his agent at the same time as submitting an application for a building permit, if needed, or for a zoning permit. The certificate of occupancy shall be issued automatically by the building inspector after all final inspections have been made.

4. In the case of existing buildings or other uses not requiring a building permit, after supplying the information and data necessary to determine compliance with this article ordinance and appropriate regulatory codes of the town for the occupancy intended, the zoning administrator shall issue a zoning permit and the building inspector shall issue a certificate of occupancy when, after examination and inspection, it is found that the building or use in all respects conforms to the provisions of this article and appropriate regulatory codes of the town for the occupancy intended.
5. A certificate of occupancy may be withheld pending the zoning administrator determination of compliance with any other requirements of this article ordinance.

16.3.8 SPECIFIC REVIEW PROCEDURES

A. PLOT PLAN

1. Purpose. Plot plan review is intended to ensure that the layout and general design of low-intensity development is compatible with all applicable standards in this ordinance and all other applicable town regulations.

2. Applicability. The following development types must submit a plot plan as specified in this ordinance:
   a) Proposals for single-family residential uses, duplexes, and attached residential units consisting of three (3) or fewer dwelling units or for renovation/rehabilitation projects that will modify an existing structure’s footprint. A plot plan is not required for changes of use whereby no increase in impervious square footage or an enlargement in an existing structure’s footprint is proposed.
   b) Nonresidential development projects whereby less than 10,000 square feet of impervious surfaces are proposed.
   c) Accessory structures.

3. Application Materials and Submittal. One (1) digital copy and three (3) hard copies of the plot plan shall be submitted with all such applications. Plot plans shall be submitted for review along with the typical building permit application, when required. When a building permit is not required, a copy of the plan should be submitted directly to the zoning administrator for review and approval. Plot plans shall be prepared and sealed by a licensed land surveyor, landscape architect, or engineer, registered to practice in the State of North Carolina.
   a) Accessory structures less than 150 square feet and construction/installation of fences/walls, piers, docks, decks, stairs, signs, and driveways do not require a plot plan to be prepared by a land surveyor or engineer.

4. The following shall be shown/labeled on the plot plan:
   a) North arrow, scale, and date of survey to be not more than 180 calendar days prior to submission.
   b) The names and addresses of the owner(s), tax parcel identification numbers and existing land uses of all adjoining properties.
   c) A boundary survey and vicinity map showing the total acreage and current zoning classification of the property, the zoning classification of adjacent properties, and the general location of the property in relation to major streets.
   d) Approximate location of existing and proposed buildings, structures, piers, docks, walkways, sidewalks, impervious surfaces, streets, and access points to the public road system.
e) Approximate dimensions, including height of proposed buildings.

f) Easements – Identify their location, widths, their purpose and if they are public or private.

g) Label the front, side, and rear minimum building (setbacks) lines.

h) Show any/all existing or proposed septic tanks, pipes, and drain fields and repair areas. Although not required, it is recommended that the location of any/all existing utilities be identified even when no adjustments are proposed.

i) Show any/all existing or proposed storm drainage systems sufficient to capture, collect, and infiltrate runoff on site from all impervious surfaces for a storm event equaling a rainfall depth of 1.5 inches. Such plans shall be signed and sealed by a NC Registered Professional Engineer in accordance with Chapter 6: Building and Building Regulations.

j) If located within the Maritime Forest Overlay District, the location of all vegetation greater than three (3) inches in diameters at breast height.

k) Off-street parking accommodations.

l) All applicable requirements as outlined in Chapter 6: Building and Building Regulation.

m) All applicable requirements as outlined in the plot plan procedures in Chapter 14: Flood Damage Prevention.

n) If a pool is being proposed, identify the required fencing and add a statement that the pool and associated requirements for draining, covering, and/or fence latching requirements will be completed in accordance with any/all local, state or federal laws; and any other information needed to ensure compliance/adequately review the proposal.

5. Plot Plan Review Procedure:

a) Within 30 working days of receipt of a complete application for a plot plan, the zoning administrator or his/her designee shall review the plans and make a determination to approve or disapprove plans based on this ordinance and other applicable land development ordinances.

b) If it is determined that more information is needed or that a significant number of changes must be made before the plan can be approved, the applicant shall make the necessary changes; and re-submit the plans. All re-submissions shall contain a list of the changes made. A new 30-day review period may begin on the date of the re-submission of a required information.

c) If plan approval is denied, the reasons for this action shall be communicated to the applicant in writing. A revised plan may then be submitted in the manner of a new application.

d) Plot plan approval expires six (6) months from the date of approval.

e) Zoning permits may be issued once the plot plan is approved.

6. Compliance:
a) In the event of failure to comply with an approved plot plan or condition related thereto, the plan shall immediately become void and of no effect, no further permits for construction or compliance shall be issued and existing permits may be suspended or revoked by the zoning administrator.

B. MAJOR SITE PLAN

1. Purpose. A major site plan is intended for more intense development proposals requiring greater discretion of the town.

2. Applicability. The following development types must submit a major site plan as specified in this ordinance:
   a) Residential development of four (4) or more dwelling units on a lot.
   b) Nonresidential development whereby 10,000 square feet or more of impervious surfaces are proposed.
   c) All other development not subject to plot plan approval.

3. Pre-Application Meetings. Applicants may request a pre-application meeting with the zoning administrator prior to submission of an application to discuss procedural and substantive matters related to the proposed application.

4. Application Materials and Submittal. One (1) digital copy and three (3) hard copies of the major site plan shall be submitted with all such applications. Where an application is made by an agent other than an attorney, the application shall include a written agreement signed by all property owners designating the agent as the owner’s representative with binding authority.

5. The major site plan shall be prepared by and sealed by a licensed land surveyor, landscape architect, or engineer, registered to practice in the state of North Carolina, at a scale no smaller than 1 inch = 100 feet and shall include the following:
   a) North arrow, scale, and date of survey to be not more than 180 calendar days prior to submission.
   b) The names and addresses of the owner(s), tax parcel identification numbers and existing land uses of all adjoining properties.
   c) A boundary survey and vicinity map showing the total acreage and current zoning classification of the property, the zoning classification of adjacent properties, and the general location of the property in relation to major streets.
   d) Approximate location of existing and proposed buildings, structures, piers, docks, walkways, sidewalks, impervious surfaces, streets, and access points to the public road system.
   e) Approximate dimensions, including height of proposed buildings.
   f) Easements – Identify their location, widths, their purpose and if they are public or private.
   g) Label the front, side, and rear minimum building (setbacks) lines.
   h) Show any/all existing or proposed septic tanks, pipes, and drain fields and repair areas. Although not required, it is recommended that the
location of any/all existing utilities be identified even when no
adjustments are proposed

i) Show any/all existing or proposed storm drainage systems sufficient to
capture, collect, and infiltrate runoff on site from all impervious surfaces
for a storm event equaling a rainfall depth of 1.5 inches. Such plans shall
be signed and sealed by a NC Registered Professional Engineer in
accordance with Chapter 6: Building and Building Regulations.

j) Proposed use of all land and structures, including the maximum number
of residential units and the total square footage of any nonresidential
development.

k) All yards, buffers, screening, and landscaping proposed by the developer
or required by ordinance.

l) Proposed phasing, if any, and approximate completion time for each
phase of the project.

m) Existing and proposed topography at two (2) foot contour intervals.

n) Approximate location of all existing and proposed utilities (if applicable),
including fire hydrants, and infrastructure on the site.

o) The location of all vegetation greater than three (3) inches in diameters
at breast height.

p) Off street parking, loading and unloading, access to existing streets.

q) All applicable requirements as outlined in Chapter 6: Building and
Building Regulation.

r) All applicable requirements as outlined in the plot plan procedures in
Chapter 14: Flood Damage Prevention.

6. In the course of evaluating the proposed major site plan, the zoning
administrator may request additional information from the applicant. A request
for such additional information shall stay until a date certain established by the
zoning administrator any further consideration of the application. This
information may include (but not be limited to) the following:

a) Approved NC stormwater permit.

b) Proposed sign types and locations.

c) Scale of buildings relative to abutting property.

d) Exterior features of proposed development.

e) Description and copies of proposed deed restrictions to be placed on the
property.

f) Any other information reasonably needed to consider the application in
reference to these regulations.

7. Major Site Plan Review Procedure:

a) The zoning administrator or his/her designee will review the major site
plan and may require a Technical Review Procedure. The Technical
Review Committee may include, but not necessarily be limited to, the
following individuals/departments: zoning administrator, building
inspector, town manager, Fire department, Police Department, NC
Division of Coastal Management, NC Department of Environmental Quality, Pender County Utilities, or Pender County Environmental Health.

b) If the zoning administrator determines that more information is needed or that a significant number of changes must be made before the plan can be approved, the applicant shall make the necessary changes; and re-submit the plans. All re-submissions shall contain a list of the changes made. A new 30-day review period may begin on the date of the re-submission of a required information.

c) Upon determination that a major site plan application is complete, within 30 working days of the submittal date, the zoning administrator and the Technical Review Committee (if applicable) shall review the plans and make a recommendation to the Planning Board as to compliance with this ordinance. The major site plan will be placed on the agenda of the next regularly scheduled Planning Board meeting following 30 working days of submittal of a complete application for a major site plan.

d) The Planning Board shall review the major site plan and written recommendations of the zoning administrator and the Technical Review Committee (if applicable) prior to approving, denying, or conditionally approving the site plan. If the site plan submitted otherwise meets all of the standards of this ordinance, the Planning Board shall approve such.

e) If plan approval is denied, the reasons for this action shall be communicated to the applicant in writing. A revised plan may then be submitted in the manner of a new application.

f) Major site plan approval expires 24 months from the date of approval.

g) Zoning permits may be issued once the site plan is approved.

8. Compliance:

In the event of failure to comply with an approved major site plan or condition related thereto, the plan shall immediately become void and of no effect, no further permits for construction or compliance shall be issued and existing permits may be suspended or revoked by the zoning administrator.

C. CONDITIONAL USE PERMIT

1. Purpose. The development and execution of this article ordinance is based on the division of the town into districts within which the use of land and buildings and the bulk and location of buildings and structures in relation to the land are substantially uniform. It is recognized, however, that there are some land uses which are basically in keeping with the intent and purposes of the district where permitted, but which may have an impact on the area around them which can only be determined by review of the specific proposal. These uses may be established, under certain conditions and with proper controls, in such a manner as to minimize any adverse effects. In order to ensure that these uses, in their proposed locations, would be compatible with surrounding development and in keeping with the purposes of the district in which they are located, their
establishment shall not be as a matter of right, but only after review and approval of a conditional use permit as provided in this division ordinance.

2. Applicability. All uses classified as “conditional” in the table of permitted uses (Section 16.4.6).

3. Application Materials and Submittal. One (1) digital copy and three (3) hard copies of the conditional use permit site plan shall be submitted with all such applications. Where an application is made by an agent other than an attorney, the application shall include a written agreement signed by all property owners designating the agent as the owner’s representative with binding authority.

4. Applications for conditional use permits, signed by the applicant, shall be addressed to the zoning administrator/building inspector. A fee for such application shall be paid at the time of application according to division 2 of this article. Each application shall contain the following information. The application shall contain:

4. The conditional use permit site plan shall be prepared by a licensed land surveyor or engineer, registered to practice in the state of North Carolina, at a scale no smaller than 1 inch = 100 feet and shall include all applicable requirements of a major site plan as provided in Section 16.3.8.B.5 & 6 in addition to an operations plan stating the method by which the undisturbed portion of the site shall be maintained and preserved in that state; this plan may include such items, without the intent to limit the inclusions, as bonds, as forms of common ownership, maintenance preservation easements, mandatory homeowners' association, etc.

5. Three copies of a site plan, prepared by the state registered land surveyor which shall contain the following:

a) North arrow, scale and date of survey to be not more than 60 calendar days prior to submission;
b) Boundaries of area covered by application;
c) Existing and proposed topography, at a contour interval of five feet, based upon mean sea level datum;
d) The location, species and size, at breast height (five feet), of all trees having a caliper in excess of three inches;
e) The location, ground coverage, height and use of all existing and proposed structures and building;
f) The location of all service, parking and circulation areas; whether for motor vehicles, bicycles or pedestrians;
g) Location and purpose of all existing and proposed rights of way and easements within or adjacent to the site; and
h) Location and capacity of potable water and sanitary sewer systems.

An operations plan stating the method by which the undisturbed portion of the site shall be maintained and preserved in that state; this plan may include such items, without the intent to limit the inclusions, as bonds,
as forms of common ownership, maintenance preservation easements, mandatory homeowners’ association, etc.

6. The names, addresses and signatures of the owner, and of the applicant, if different from the owner.
   Detailed construction plans shall be submitted prior to issuance of a building permit.

5. Other requirements. The applicant shall provide to the zoning administrator/building inspector a list of all names and addresses of all adjacent abutting property owners along with one (1) set of envelopes stamped and with typed addresses to each person on the list to be sent certified mail, return receipt requested. These addressed envelopes and the list shall be submitted at least 14 workdays prior to the public hearing. The zoning administrator/building inspector shall then send by certified mail, return receipt requested, a copy of the legal notice to each adjacent property owner.

6. Notice of quasi-judicial hearing. Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

7. Hearings conducted pursuant to this section shall follow the town’s Quasi-Judicial Hearing Procedural Guidelines. Any failure to follow a particular procedure in the Quasi-Judicial Hearing Procedural Guidelines shall not in and of itself and standing alone be the basis for error in any judicial review of a final decision by the Board of Commissioners.

8. Conditional Use Permit Site Plan Review Procedure:
   a) The zoning administrator or his/her designee will review the conditional use permit site plan and may require a Technical Review Procedure. The Technical Review Committee may include, but not necessarily be limited to, the following individuals/departments: zoning administrator, building inspector, town manager, Fire department, Police Department, NC Division of Coastal Management, NC Department of Environmental Quality, Pender County Utilities, or Pender County Environmental Health.
   b) If the zoning administrator determines that more information is needed or that a significant number of changes must be made before the plan can be approved, the applicant shall make the necessary changes; and re-submit the plans. All re-submissions shall contain a list of the changes made. A new 30-day review period may begin on the date of the re-submission of a required information.
a) Upon determination that a conditional use permit site plan application is complete, the zoning administrator and the Technical Review Committee (if applicable) shall review the plans and make a recommendation to the Planning Board as to compliance with this ordinance. Within 90 days of the transmittal of a properly completed application to the Planning Board at an official meeting, the Planning Board shall transmit to the Town Board a recommendation for the disapproval, approval, or approval with conditions of the application.

b) Prior to making its recommendation, the Planning Board may consult with officials of the town, the county, the state and the United States, citizens, the applicant or its agents, and others who may possess knowledge, experience or information to aid in its deliberations. No hearing is required.

c) If a public meeting is to be held, public notice of the meeting shall be given once a week for two consecutive weeks in a newspaper having general circulation in the county. The notice shall be first published not less than 15 days nor more than 25 days before the date fixed for the public meeting.

d) The Town Board, after receipt of the Planning Board recommendation or upon expiration of the 90-day period as specified hereinabove, whichever first occurs, shall cause a date for the quasi-judicial public hearing on the application to be set. Notice of the hearing shall be as provided in this section.

e) Notice of the public hearing shall be given once a week for two consecutive calendar weeks in a newspaper having general circulation in the county. The notice shall be first published not less than 15 days nor more than 25 days before the date fixed for the public hearing.

f) The public hearing shall be conducted as a quasi-judicial hearing in accord with procedures adopted by the board of commissioners and applicable state statute. Pursuant to G.S. 160A-388(e1), a member shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons’ constitutional rights to an impartial decision maker. Impermissible conflicts include but are not limited to a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member’s participation, and that member does not recuse himself, the remaining members shall by majority vote rule on the objection.

g) After the completion of the quasi-judicial hearing, the Town Board shall take action upon the application for approval of a conditional use. In reaching a decision, the Board of

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Commissioners shall consider the recommendation of the Planning Board, the evidence presented at the public hearing, and the specified requirements attached to each conditional use.

h) The decision of the Board of Commissioners 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, by the town clerk. The town clerk, subsequent to the town board’s action on the application, shall notify the applicant by first-class mail of that action. Notice shall also be given to the zoning administrator and building inspector/building inspector who shall, in the case of approval or approval with attached conditions, issue the necessary permits in accordance with the board’s action/Board of Commissioner’s action subject to all applicable provisions of this ordinance.

i) The town board/Board of Commissioners shall approve, modify, or deny the application for a conditional use permit. In approving a conditional use permit the town board/Board of Commissioners, with due regard to the nature and state of all adjacent structures and uses in the district within same is located, shall make written findings that the following are fulfilled:

i) The use requested is listed among the conditional uses in the district for which application is made.

ii) The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor adversely affect the safety, health, morals or welfare of the community or of the immediate neighbors of the property.

iii) The requested use is essential or desirable to the public convenience or welfare.

iv) The requested use will be in conformity with the land use plan.

v) Adequate utilities, access roads, drainage, sanitation or other necessary facilities have been or are being provided.

vi) Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize the traffic congestion in the public streets.

vii) The conditional use shall, in all other respects, conform to the applicable regulations of the zoning district in which it is located.

7.9. Conditions and guarantees. Prior to the granting of any conditional use, the town board/Board of Commissioners may stipulate such conditions and restrictions upon the establishment, location or construction, maintenance and operation of the conditional use as it deems necessary for the protection of the public and to secure compliance with the standards and requirements specified in this article/ordinance. In all cases in which conditional uses are granted, the town board/Board of Commissioners shall require such evidence and guarantees as it
may deem necessary to assure that the conditions stipulated in connection therewith are being and will be complied with. Such conditions and guarantee may include the following:

a) **Such conditions may include** a time limitation.

b) Conditions may be imposed which require that one or more things be done before the use requested can be initiated. For example, "that a solid board fence be erected around the site to a height of six (6) feet before the use requested is initiated."

c) Conditions of a continuing nature may be imposed. For example: "exterior loudspeakers shall not be used between the hours of 10:00 p.m. and 9:00 a.m."

d) Any conditions imposed on a conditional use authorized and exercised shall be perpetually binding upon the property unless expressly limited by the conditional use permit or subsequently changed or amended by in accordance with the requirements of a major change to a conditional use permit the town board after a public hearing.

8-10 Expiration. In a case where a conditional use permit has not been exercised within the time limit set by the town board or within six (6) months if no specific time limit has been set, then without further action, the conditional use permit shall be null and void. The term "exercised," as set forth in this subsection, means that binding contracts for the construction of the main building have been let; or in the absence of contracts that the main building is under construction to a substantial degree; or that prerequisite conditions involving substantial investment are contracted for, in substantial development, or completed (sewerage, drainage, etc.). When construction is not a part of the use, the term "exercised" means that the use is in operation in compliance with the conditions set forth in the permit.

9-11 Compliance:

a) The official with responsibility under division 3 of this zoning article shall ensure compliance with plans approved by the Board of Commissioners and with any other conditions imposed upon the conditional use permit. Enforcement of the approved plans and with any other conditions imposed upon the conditional use permit shall be pursuant to those procedures set forth in divisions 3 and 5 of this zoning article regarding administration, enforcement and review of approvals and subject to applicable administrative review and appeal procedures. Further, in the event of a division 3 decision finding a failure to comply with the approved plans and with any other conditions imposed upon the conditional use permit, and subject to applicable administrative review, revocation and appeal procedures, no building permits for further construction shall be issued, and all completed structures shall be regarded as nonconforming uses subject to the provisions of the town's zoning ordinances.
10.12. Major changes. Major changes to approved plans and conditions of development may be authorized only by the Board of Commissioners after review and recommendation by the Planning Board in the same manner as outlined in this article for original submission. Major changes include, but are not limited to:
   a) Change in use
   b) Increase in intensity of the development; any increase or decrease in development density; such as, increase/decrease in density of units, whether residential, office, commercial or industrial; an increase/decrease in number of off-street parking or loading spaces; or, an increase/decrease in impervious surface area.
   c) An increase in overall ground coverage by structures
   d) A change in any site dimension by more than 10\text{\%}
   e) A reduction in approved open space or screening
   f) A change in access and internal circulation design

11.13. Minor changes, which are not deemed as major changes by the division 3 official, may be authorized by the zoning administrator official if no required engineering or other physical circumstances changes are not foreseen at the time of approval. Denials of minor change requests may be appealed to the board of commissioners.

12.14. Any changes to approved plans and conditions of development in consequence of enforcement actions under divisions 3 or 5 of this article are not changes subject to this section.

15. An aggrieved person may appeal a quasi-judicial decision by the Board of Commissioners on an application for appeal to the Superior Court. Such appeal shall be in the nature of certiorari and must be filed within 30 days of the effective decision and as provided by NCGS 160A-388(e2).

D. VARIANCE

1. An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the town clerk, who shall enter on it the date and time of filing.

2. Notice of quasi-judicial hearing. Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose application or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

3. Hearings conducted pursuant to this section shall follow the town’s Quasi-Judicial Hearing Procedural Guidelines. Any failure to follow a particular procedure in the Quasi-Judicial Hearing Procedural Guidelines shall not in and of
itself and standing alone be the basis for error in any judicial review of a final
decision by the Board of Adjustment.

4. When unnecessary hardships would result from carrying out the strict letter of
this ordinance, the Board of Adjustment shall vary any of the provisions of this
ordinance upon a showing of all of the following:
   a) 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.
   b) The hardship results from conditions that are peculiar to the property,
      such as location, size, or topography. Hardships resulting from personal
      circumstances, as well as hardships resulting from conditions that are
      common to the neighborhood or the general public, may not be the
      basis for granting a variance.
   c) The hardship did not result from actions taken by the applicant or the
      property owner. The act of purchasing property with knowledge that
      circumstances exist that may justify the granting of a variance shall not
      be regarded as a self-created hardship.
   d) The requested variance is consistent with the spirit, purpose, and intent
      of the ordinance, such that public safety is secured, and substantial
      justice is achieved.

5. Before granting a variance, the Board of Adjustment must take a separate vote
and vote affirmatively (by a four-fifths majority) on each of the four (4) required
findings stated above in Section 16.3.8.D.4. Insofar as practicable, a motion to
make an affirmative finding on each of the requirements set forth herein shall
include a statement of the specific reasons or findings of fact supporting such
motion.

6. A motion to deny a variance may be made on the basis that any one (1) or more
of the four (4) criteria set forth in Section 16.3.8.D.4 are not satisfied or that the
application is incomplete. Insofar as practicable, such a motion shall include a
statement of the specific reasons or findings of fact that support it.

7. In granting variances, the Board of Adjustment may impose such reasonable
conditions as will ensure that the use of the property to which the variance
applies will be as compatible as practicable with the surrounding properties,
provided that the conditions are reasonably related to the variance.

8. A variance may be issued for an indefinite duration or for a specified duration
only.

9. The nature of the variance and any conditions attached to it shall be entered on
the face of the zoning permit, or the zoning permit may simply note the issuance
of the variance and refer to the written record of the variance for further
information. All such conditions are enforceable in the same manner as any
other applicable requirement of this ordinance.

10. No change in permitted uses may be authorized by variance.
11. The decision of the Board of Adjustment 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, by the town clerk.

12. An aggrieved person may appeal a decision by the Board of Adjustment on an application for appeal to the Superior Court. Such appeal shall be in the nature of certiorari and must be filed within 30 days of the effective decision and as provided by NCGS 160A-388(e2).

13. The Board of Adjustment may authorize upon application in specific cases a variance from the terms of the town’s Flood Damage Prevention Ordinance (Chapter 14 of the Code) in accord with the variance criteria set forth in that ordinance. In such Flood Damage Prevention Ordinance variance requests, the variance criteria set forth in subsection (b) of this section above is not applicable.

E. APPEAL

1. An appeal from any final order or decision of the zoning administrator or any provision of this ordinance may be taken to the Board of Adjustment by any person who has standing under NCGS 160A-393(d). An appeal is taken by filing with the town clerk a written notice of appeal specifying the grounds therefor. A notice of appeal shall be considered filed with the Board of Adjustment when delivered to the town clerk, who shall enter on it the date and time of filing.

2. The owner or other party shall have 30 days from receipt of the written notice of the final order or decision of the zoning administrator within which to file an appeal.

3. Notice of quasi-judicial hearing. Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

4. Hearings conducted pursuant to this section shall follow the town’s Quasi-Judicial Hearing Procedural Guidelines. Any failure to follow a particular procedure in the Quasi-Judicial Hearing Procedural Guidelines shall not in and of itself and standing alone be the basis for error in any judicial review of a final decision by the Board of Adjustment.

5. The zoning administrator shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed from is taken, and shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
6. An appeal stays all actions by the zoning administrator seeking enforcement of or compliance with the order or decision appealed from, unless the zoning administrator certifies to the Board of Adjustment in an affidavit that (because of facts stated in the certificate) a stay would, in his or her opinion, cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, 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 zoning administrator a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board of Adjustment 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 may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the official or approval authority from whom the appeal is taken.

8. The zoning administrator shall be present at the hearing as a witness. 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 of Adjustment shall continue the hearing.

9. A motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons and findings of facts that support the motion.

10. The final written decision of the Board of Adjustment 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, by the town clerk.

11. An aggrieved person may appeal a decision by the Board of Adjustment on an application for appeal to the Superior Court. Such appeal shall be in the nature of certiorari and must be filed within 30 days of the effective decision and as provided by NCGS 160A-388(e2).

F. REVOCATION OF APPROVAL

1. Any permit may be revoked by the permit-issuing authority (in accordance with the provisions of this section) if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this
ordinance, or any additional requirements lawfully imposed by the permit-issuing authority.

2. Before a conditional use permit may be revoked, all of the notice and hearing and other requirements of this ordinance shall be complied with. The notice shall inform the permit recipient of the alleged grounds for the revocation.

3. Before a zoning permit may be revoked, the zoning administrator shall give the permit recipient 10 days notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation. If the permit is revoked, the zoning administrator shall provide to the permittee a written statement of the decision and the reasons therefor.

4. No person may continue to make use of land or building in the manner authorized by any zoning or conditional-use permit after such permit has been revoked in accordance with this ordinance.

5. Building permits.
   a) In accordance with NCGS 160A-422, the building inspector may revoke and require the return of any building permit by notifying the permit holder in writing stating the reason for the revocation. Building permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable State or local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable State or local law may also be revoked. Decisions to revoke a building permit shall be appealed to the Board of Adjustment.

16.3.9 CREATION OF NEW LOTS/DIVISION OF LAND

No land within the town’s planning jurisdiction shall be subdivided, combined, or re-subdivided and offered for sale, gifted, exchanged, or in any other way conveyed until a plat thereof has been approved as herein provided. No plat shall be recorded by the Pender County Register of Deeds until this approval is entered in writing on the face of the plat as herein provided.

A. EXEMPT PLAT REVIEW

1. Applicability. Divisions or land and creation of lots which do not meet the statutory definition of subdivision in accordance with NCGS 160A-376 or are as provided in this section. In accordance with NCGS 160A-376(a)(1) & (4), newly created lots must be equal to or exceed the dimensional standards of the zoning district in which they are located.

2. Application Materials and Submittal. The applicant shall submit one (1) digital copy and one (1) hard copy of the final plat so marked to the zoning administrator for approval. The final plat shall be prepared by a licensed land surveyor or engineer registered to practice in the state of North Carolina. The final plat shall conform to the provisions for plats, subdivisions, and mapping
requirements set forth in NCGS 47-30 and the Standards of Practice for Land Surveying in North Carolina.

3. Property owners or their authorized agents must present a paper or recordable map to the zoning administrator for determination of whether the action created by the recording of the map meets the ordinance standards to be exempt.

4. If the proposal meets the exemptions listed in this ordinance or in NCGS 160A-376, the zoning administrator shall sign an exemption note on the face of the recordable map before it is recorded.

5. In addition to the divisions of land identified in NCGS 160A-376(a)(1) through (4), the following divisions of land shall not be included within the definition of the term “subdivision” and shall not be subject to the lot dimensional standards in this ordinance: (1) the division of land for the purpose of creating a lot for use as a site for a public utility; (2) the creation of a lot to be conveyed to the town or to a non-profit entity for the purpose of creating public parks, public access, or public open space, provided that the plat and the deed creating such parcel shall specifically state that the parcel created may not be used for any other purpose, and (3) the division of land owned by a governmental entity to facilitate the conveyance of a portion of said land to another governmental entity for governmental or public use.

6. If the proposal does not meet the exemptions, the zoning administrator shall return the unsigned map to the property owner or authorized agent with a written description of why the map does not qualify to be exempt.

7. The applicant shall file any approved exempt plat with the Register of Deeds of Pender County within 30 days of approval; otherwise, such approval shall be null and void.

8. The following certificate should be included on all minor subdivision preliminary plats, in addition to any other required by the Article 5: Subdivision Regulations:

   a) Certificate of Approval for Recording

   “I hereby certify that the minor subdivision plat shown hereon has been found to comply with the Subdivision Regulations of the Town of Topsail Beach, North Carolina, and that this plat has been approved by an authorized representative of the Town of Topsail Beach for recording in the Office of the Register of Deeds of Pender County.

   ________________________________
   Town of Topsail Beach: Zoning Administrator

   b) Certificate of Ownership and Dedication

   “I hereby certify that I am the owner of the property shown and described hereon, which is located in the subdivision jurisdiction of the Town of Topsail Beach and that I hereby adopt this exempt plat with my free consent.

   ________________________________
   Owner

   ________________________________
   Date
B. MINOR SUBDIVISION REVIEW

2. Applicability. In accordance with NCGS 160A-376, the town only requires submittal of a final plat for review of minor subdivision subject to the following provisions:
   a) The tract or parcel to be divided is not exempted under Section 16.3.9.A of this ordinance.
   b) No part of the tract or parcel to be divided has been divided under this section in the 10 years prior.
   c) The entire area of the tract or parcel to be divided is greater than five (5) acres.
   d) After division, no more than three (3) lots result from the division.
   e) After division, all resultant lots comply with the minimum dimensional standards of the applicable zoning district and the use of the lots shall be in conformity with the applicable zoning requirements.
   f) A permanent means of ingress and egress is recorded for each lot.

3. Application Materials and Submittal. The applicant shall submit one (1) digital copy and one (1) hard copy of the final plat so marked to the zoning administrator for approval. The final plat shall be prepared by a licensed land surveyor or engineer registered to practice in the state of North Carolina. The final plat shall conform to the provisions for plats, subdivisions, and mapping requirements set forth in NCGS 47-30 and the Standards of Practice for Land Surveying in North Carolina.

4. The zoning administrator shall review the final plat and shall proceed with approval, conditional approval with modifications to bring the plat into compliance, or disapproval of the final plat with reasons within 30 days of initial receipt of a complete application for a minor subdivision plat.

5. The applicant shall file any approved final plat with the Register of Deeds of Pender County within 30 days of approval; otherwise, such approval shall be null and void.

6. The following certificate should be included on all minor subdivision preliminary plats, in addition to any other required by the Article 5: Subdivision Regulations:
   a) Certificate of Approval for Recording

   “I hereby certify that the minor subdivision plat shown hereon has been found to comply with the Subdivision Regulations of the Town of Topsail Beach, North Carolina, and that this plat has been approved by an authorized representative of the Town of Topsail Beach for recording in the Office of the Register of Deeds of Pender County.

   __________________________
   Town of Topsail Beach: Zoning Administrator

   b) Certificate of Ownership and Dedication
"I hereby certify that I am the owner of the property shown and described hereon, which is located in the subdivision jurisdiction of the Town of Topsail Beach and that I hereby adopt this plat of subdivision with my free consent.

[Owner] [Date]

C. MAJOR SUBDIVISION SKETCH PLAN REVIEW

1. Applicability. Subdivisions and/or divisions of land not qualifying as exempt or as a minor subdivision.

2. Application Materials and Submittal. Prior to the filing of an application for approval of a major subdivision preliminary plat, the subdivider may submit to the secretary of the planning board (town clerk/zoning administrator), hereinafter referred to as "secretary," two copies, one (1) digital copy and one (1) hard copy, of a sketch design plan of the proposed subdivision which generally depicts the concept of the development and any explanatory materials as may be desirable. Plan requirements for a sketch design plan are described in section 16-178. Copies of any pertinent additional information regarding the proposed subdivision or of adjoining property as may be useful to the Planning Board in formulating an overall plan for any given section of the town may be submitted.

3. The Planning Board at their next regularly scheduled meeting following acceptance of the sketch design plan by the secretary/zoning administrator shall meet with the potential subdivider and the subdivider shall meet with the planning board. At this stage the subdivider should discuss his or her thoughts and ideas pertaining to the subdivision and also become familiar with the regulations affecting the land to be subdivided. Failure of the subdivider or his agent to appear shall constitute sufficient grounds for the planning board to consider the submission null and return to the developer the sketch design plan submitted.

4. The discussion and any recommendations made by the Planning Board shall be advisory. One copy of the sketch design plan shall be returned to the subdivider; one copy together with such notes and a copy of that portion of the planning board minutes pertaining to the discussion of the preliminary design plan shall become part of the planning board's official records.

D. MAJOR SUBDIVISION PRELIMINARY PLAT

1. Applicability. Subdivisions and/or divisions of land not qualifying as exempt or as a minor subdivision.

2. Pre-Application Meetings. Applicants may request a pre-application meeting with the zoning administrator prior to submission of an application to discuss procedural and substantive matters related to the proposed application.

3. Application Materials and Submittal. One (1) digital copy and three (3) hard copies of the major subdivision preliminary plat shall be submitted with all applications for such. Where an application is made by an agent other than an
attorney, the application shall include a written agreement signed by all property owners designating the agent as the owner’s representative with binding authority. In addition, a draft of any protective covenants, deeds or master restrictions, proposed articles of incorporation and by-laws of any property owners association to be applied to the subdivision shall be submitted with the application. Such restrictions are mandatory where private recreation areas, open spaces, utilities, or other amenities are established.

4. The major subdivision preliminary plat shall be prepared by and sealed by a licensed land surveyor or engineer, registered to practice in the state of North Carolina, at a scale no smaller than 1 inch = 100 feet and shall include the following:
   a) The location of streets, buildings, impervious surfaces, watercourses, transmission lines, sewers, bridges, culverts and drainpipes, water mains hydrants, town limit lines, public utility easements, sidewalks, bike paths, docks, piers, and public or private access to the ocean or sound (if applicable).
   b) Boundaries of the tract to be subdivided shown with bearings and distances.
   c) Wooded areas, marshes, and any other conditions affecting the site including the location and description of Areas of Environmental Concern, including 404 wetland areas as determined by the Army Corps of Engineers and coastal wetlands as determined by NCDEQ.
   d) Name of adjoining property owners or subdivisions.
   e) Proposed streets, street names, rights-of-way for streets, pavement width and approximate grades and the type of street dedication, either public or private.
   f) The location of existing and proposed utilities (sewer, water, gas, electricity).
   g) Topography, both existing and proposed, at a contour interval of one (1) foot based upon mean sea level datum showing the flood elevations as described in Chapter 14, as well as preliminary plans for the handling of surface drainage, street drainage and any stabilization of the dune system.
   h) The location of all vegetation greater than three (3) inches in diameters at breast height. The canopy drip line of those trees shall be delineated. If groves of protected trees exist that will not be removed or disturbed, it is permitted to label the grove as such on the plat, stating the approximate number of protected trees and species mix, without specifying data on each individual tree.
   i) Proposed rights-of-way of easements: location, width, and purposes of each proposed easement.
   j) Proposed lot lines, lot and block numbers, and dimensions of lots.
k) The date of the survey to be not more than 180 calendar days prior to submission.
l) Proposed minimum building setback lines.
m) Proposed parks, school sites, or other public open spaces, if any
n) Title block including therein name of the subdivision and date.
o) Name and address of the subdivider or his authorized agent.
p) Name of registered surveyor and/or engineer who prepared the plat.
q) Acreage in the total tract to be developed
r) Smallest lot size
s) Total number of dwelling units, by development phase (if applicable)
t) Total number of lots
u) Lineal feet in streets
v) North arrow and graphic scale
w) Name of town and county as civil jurisdictions within which the proposed subdivision is located.
x) A sketch vicinity map showing the relationship between the subdivision and the surrounding area.

5. In the course of evaluating the proposed major subdivision preliminary plat, the zoning administrator may request additional information from the applicant. A request for such additional information shall stay until a date certain established by the zoning administrator any further consideration of the application. This information may include (but not be limited to) the following:
a) Approved NC stormwater permit.
b) Proposed maximum allowable height of structures.
c) Description and copies of proposed deed restrictions to be placed on the property.
d) Any other information reasonably needed to consider the application in reference to these regulations.

2.6. The following certificates should be included on all major subdivision preliminary plats, in addition to any other required by the Article 5: Subdivision Regulations:

a) Certificate of Survey and Accuracy

In accordance with NCGS 47-30: There shall appear on each plat a certificate by the person under whose supervision such survey or such plat was made, stating the origin of the information shown on the plat, including recorded deed and plat references shown thereon. The ratio of precision as calculated by latitudes and departures before any adjustments must be shown. Any lines on the plat that were not actually surveyed must be clearly indicated and a statement included revealing the source of information. The execution of such certificate shall be acknowledged before any officer authorized to take acknowledgments by the registered land surveyor preparing the plat. All plats to be recorded shall be probated as required by law for the registration of deeds. Where a plat consists of more than one sheet, only the first sheet must contain the certification and all subsequent sheets must be signed and sealed.
The certificate shall include the source of information for the survey and data indicating the accuracy of closure of the plat before adjustments, and shall be in substantially the following form:

“I, _______________, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book ____, Page ____ , etc.) (other); that the boundaries not surveyed are clearly indicated as drawn from information found in Book ____, Page ____ ; that the ratio of precision as calculated is 1: _____; that this plat was prepared in accordance with NCGS 47-30 as amended. Witness my original signature, registration number and seal this ____ day of ____, A.D. 20__. ____________________________________________________________________________

Surveyor
Seal or Stamp
Registration Number

b) Certification of Approval of the Preliminary Plat by the Topsail Beach Board of Commissioners

The Town of Topsail Beach hereby approves or approves conditionally the preliminary plat of ______________ Subdivision. If approved conditionally, the specific conditions shall be listed.

________________________________________________________________________
Mayor, Town of Topsail Beach

7. Major subdivision preliminary plat review procedure:
   a) The zoning administrator or his/her designee will review the major subdivision preliminary plat and may require a Technical Review Procedure. The Technical Review Committee may include, but not necessarily be limited to, the following individuals/departments: zoning administrator, building inspector, town manager, Fire department, Police Department, NC Division of Coastal Management, NC Department of Environmental Quality, Pender County Utilities, or Pender County Environmental Health.
   b) If the zoning administrator determines that more information is needed or that a significant number of changes must be made before the plat can be approved, the applicant shall make the necessary changes; and re-submit the plat. All re-submissions shall contain a list of the changes made. A new 30 day review period may begin on the date of the re-submission of a required information.
   c) Upon determination that a major subdivision preliminary plat application is complete, within 30 working days of the submittal date, the zoning administrator and the Technical Review Committee (if applicable) shall review the plat and make a recommendation to the Planning Board as to compliance with this ordinance. The major subdivision preliminary plat will be placed on the agenda of the next regularly scheduled Planning Board meeting following 30 working days of submittal of a complete application for a major subdivision preliminary plat.
d) The Planning Board shall review the major subdivision preliminary plat and written recommendations of the zoning administrator and the Technical Review Committee (if applicable) prior to recommending approval, denial, or conditional approval of the major subdivision preliminary plat to the Board of Commissioners. Within 90 days of receipt of the major subdivision preliminary plat, the Planning Board shall transmit a formal recommendation to the Board of Commissioners.

3. The disposition of the application by the planning board shall be approval, approval conditioned on the meeting of certain requirements, or disapproval. Once the planning board, by official motion of the board, decides upon its action on a preliminary plat, the secretary shall note that action and the date thereof upon three copies of the preliminary plat that was the subject of such action. One of these copies shall be sent to the subdivider or his agent, a second filed with the town clerk, and the third filed as part of the permanent records of the planning board. It shall be the duty of the town clerk to notify the board at the first regular meeting subsequent to the receipt by the town clerk of the clerk’s copy of the plat, of the action taken by the planning board on the preliminary plat.

4. If the planning board either disapproves or approves with conditions the preliminary plat, the reasons therefor shall be stated in writing with reference being made to the specific section of this article or other ordinances, plans, or standards of the town. Subdivider is advised that he must comply with state, county, etc., regulations, together with such explanations as are necessary to explain such disapproval or approval with conditions.

a) Approved conditionally. The conditions and reasons shall be stated in writing.

b) Disapproval. The reasons for such action shall be stated, as provided in this subsection, and recommendations made on the basis of which the proposed subdivision could be approved if appropriate.

d) Should the Planning Board fail to act on the major subdivision preliminary plat within 90 days after acceptance of the preliminary plat by the Planning Board by the secretary, or 15 days following receipt of reports from agencies referred to in subsection (2) of this section, whichever occurs first, the subdivider may seek proceed to major subdivision preliminary plat approval only at one of the next three regularly scheduled meetings of the board following the expiration of the time limit by the Board of Commissioners without a recommendation of the Planning Board.

d) The Board of Commissioners shall consider approval or denial of the major subdivision preliminary plat at any of the next three regularly scheduled meetings following receipt of the preliminary plat.

e) When received with recommendation from the Planning Board, the Board of Commissioners shall concur in the action of the Planning Board.
or shall alter the action of the Planning Board. In those cases where the Board of Commissioners fails to concur with the Planning Board, the specific reasons for the change shall be in writing and made part of the official record of the town. If the Board of Commissioners by formal motion approves conditionally or disapproves the preliminary plat, the reasons shall be set forth in writing, and refer specifically to those parts of this ordinance or other land development ordinances with which the plat does not comply as prescribed in section 16.144(6).

f) When received on motion of the subdivider as provided in subsection (6) of this section, the disposition of the application by the Board of Commissioners shall be approval, approval conditioned on the meeting of certain requirements, or disapproval. Once the Board of Commissioners, by official motion of the board, decides upon its action on a preliminary plat, the town clerk shall note that action and the date thereof upon three copies of the preliminary plat that was the subject of the action. One of these copies shall be sent to the subdivider or his agent, a second filed with the town clerk, and the third transmitted to the planning board for its permanent records. If the Board of Commissioners either disapproves or approves conditionally the preliminary plat, the reasons therefor shall be stated in writing in the same manner as provided in subsections (5)a. and (5)b. of this section.

g) Approval of the major subdivision preliminary plat by the Board of Commissioners is authorization for the subdivider to proceed with the construction of the necessary improvements in preparation for submission of the final plat.

h) The approval granted by the Board of Commissioners shall not extend for more than one (1) year from the date of action by the Board of Commissioners. However, extensions may be granted upon application and request for such to the board and upon scheduled terms and conditions as are specified by this article or by the Board of Commissioners. Such time limits shall expire automatically unless extended by the Board of Commissioners, and once lapsed shall not be extended.

E. MAJOR SUBDIVISION FINAL PLAT

1. Applicability. Subdivisions and/or divisions of land not qualifying as exempt or as a minor subdivision and whereby a major subdivision preliminary plat has been approved and all necessary and/or required improvements have been installed in accordance with Section 16.5.7 shall comply with the following procedures in order to obtain final plat approval.

2. Pre-Application Meetings. Applicants may request a pre-application meeting with the zoning administrator prior to submission of an application to discuss procedural and substantive matters related to the proposed application.
3. **Application Materials and Submittal.** One (1) digital copy and three (3) hard copies of the major subdivision final plat shall be submitted with all such applications. Where an application is made by an agent other than an attorney, the application shall include a written agreement signed by all property owners designating the agent as the owner’s representative with binding authority. In addition, a draft of any protective covenants, deeds or master restrictions, proposed articles of incorporation and by-laws of any property owners association to be applied to the subdivision shall be submitted with the application. Such restrictions are mandatory where private recreation areas, open spaces, or other amenities are established.

4. **Final As-Built Drawings.** Accompanying the application for a major subdivision final plat approval will be copies of as-built drawings showing the actual construction, location, and materials used in the installation of all required public improvements. These drawings will become a part of the public record of the town. Where the subdivider exercises the option to post a performance bond with the filing of an application for approval of the final plat, rather than installing the required improvements, the performance bond shall not be finally discharged until the subdivider has filed with the town final as-built drawings for all required public improvements.

5. **The subdivider shall within one (1) year of the date of major subdivision preliminary plat approval or approval with conditions,** unless an extension is granted by the Board of Commissioners, as set forth in section 16-143(9) and at least 15 days prior to a regularly scheduled meeting of the planning board submit to the secretary one drawing of the final plat in ink on linen or film and at least four black or blueline prints of the final plat to the zoning administrator a complete application for approval of a final plat. If the preliminary plat was approved with conditions, the final plat shall show the modifications made to meet the conditions attached to the preliminary plat approval.

6. **The major subdivision final plat shall be prepared by and sealed by a licensed land surveyor or engineer,** registered to practice in the state of North Carolina, at a scale no smaller than 1 inch = 100 feet, on mylar or current industry standard at the same scale and on the same sheet as the preliminary plat. The final plat shall constitute only that portion of the approved preliminary plat which the subdivider proposes to record and develop at the time and shall include the following:
   a) The lines of all streets and roads
   b) The names of all streets
   c) Lot lines and lot numbers
   d) Reservations, easements, alleys and any areas to be dedicated to public use or sites for other than residential uses with notes stating their purpose and limitations, if any.
   e) Sufficient data to determine readily and reproduce on the ground the location, bearing and length of every street line, lot line, boundary line,
2.7. **Administration and Procedures**

Regulations

The following certificates should be included on all major subdivision final plats, as applicable, in addition to any other required by Article 5: Subdivision Regulations:

a) Certificate of Ownership and Dedication

“I hereby certify that I am the owner of the property shown and described hereon, which is located in the subdivision jurisdiction of the Town of Topsail Beach and that I hereby adopt this plat of subdivision with my free consent, establish minimum building setback lines, and dedicate all streets, alleys, walks, parks, open space, utilities, and other sites and easements to public or private use as noted.

________________________________________
Owner  Date

a) Certificate of Survey and Accuracy

In accordance with NCGS 47-30: There shall appear on each plat a certificate by the person under whose supervision such survey or such plat was made, stating the origin of the information shown on the plat, including recorded deed and plat references shown thereon. The ratio of precision as calculated by latitudes and departures before any adjustments must be shown. Any lines on the plat that were not actually surveyed must be clearly indicated and a statement included revealing the source of information. The execution of such certificate shall be acknowledged before any officer authorized to take acknowledgments by the registered land surveyor preparing the plat. All plats to be recorded shall be probated as required by law for the registration of deeds. Where a plat consists of more than one sheet, only the first sheet must contain the certification and all subsequent sheets must be signed and sealed.
The certificate shall include the source of information for the survey and data indicating the accuracy of closure of the plat before adjustments, and shall be in substantially the following form:

“I,__________________, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book___, Page___, etc.) (other); that the boundaries not surveyed are clearly indicated as drawn from information found in Book___, Page___; that the ratio of precision as calculated is 1:_____; that this plat was prepared in accordance with NCGS 47-30 as amended. Witness my original signature, registration number and seal this____ day of__, A.D. 20__.  

Surveyor

Seal or Stamp  Registration Number  

c) Certification of Approval of the Final Plat by the Topsail Beach Board of Commissioners

The Town of Topsail Beach hereby approves or approves the final plat of __________________ Subdivision. If approved conditionally, the specific conditions shall be listed.

______________________________
Mayor, Town of Topsail Beach

d) Certification of Approval of Necessary or Required Improvements

"I hereby certify that (1) streets, utilities, and other required improvements (list all improvements that have been installed and approved by appropriate agency) have been installed in an acceptable manner and according to town specifications and standards in the subdivision titled _______________; or, (2) a performance bond guaranteeing the installation of the required improvements in an acceptable manner in an amount satisfactory to the Town of Topsail Beach has been received.

______________________________  
Developer or Authorized Agent Signature (s)

______________________________  Professional Engineer (s) [seal included]

______________________________  Town Manager

e) Certification of Suitability for Septic Tank Systems and Water Supplies, if applicable, to be signed by appropriate authority/representative:

“I hereby certify that this subdivision, entitled ___________________, is generally suitable for individual septic tank systems and individual water supplies. However, this certification does not constitute “blanket issued subject to the approval of each individual lot by the Pender County Environmental Health Department and the issuance of an improvements permit for each lot as required by the General Statutes of North Carolina.” Any artificial drainage measures installed or proposed for
installation in this subdivision to control water table must be properly maintained. Lots must be properly landscaped to control surface water in order to decrease the changes in septic tank system malfunctions.

____________________________________________

Pender County Health Director or Licensed Soil Scientist

f) Certificate of Disclosure, Town of Topsail Beach Floodplain Management Regulations, if applicable, to be signed by owner:

“I (we) hereby certify that prior to entering any agreement or any conveyance with a prospective buyer, I (we) shall prepare and sign, and the buyer of the subject real estate shall receive and sign a statement which fully and accurately discloses that the subject real estate, or a portion of the subject real estate, is located within a flood hazard area and that the buyer must satisfy the requirements of Town of Topsail Beach floodplain management regulations prior to the issuance of building permits.

____________________________________________

Owner’s Signature(s)

g) Acknowledgment of Compliance (Private Developments), if applicable, to be signed by owner:

“I, ______________________, (name of developer and/or owner) hereby certify that the parks, open space, permanent access easement, utilities, or other areas delineated hereon and dedicated to private use, shall not be the responsibility of the public or the Town of Topsail Beach, acting on behalf of the public, to maintain. Furthermore, prior to entering any agreement or any conveyance with any prospective buyer, I shall prepare and sign, and the buyer of the subject real estate shall receive and sign, an acknowledgment of receipt of a disclosure statement. The disclosure statement shall fully and completely disclose the private areas and include an examination of the consequences and responsibility as to the maintenance of the private areas, and shall fully and accurately disclose the party or parties upon whom the responsibility for construction and maintenance of such private areas shall rest.

____________________________________________

Owner’s Signature(s)

h) Certificate of Approval for Recording

“I hereby certify that the subdivision plat shown hereon has been found to comply with the Subdivision Regulations of the Town of Topsail Beach, North Carolina, and that this plat has been approved by an authorized representative of the Town of Topsail Beach for recording in the Office of the Register of Deeds of Pender County.

____________________________________________

Town of Topsail Beach: Zoning Administrator

8. Major subdivision final plat review procedure:

a) The zoning administrator or his/her designee will review the major subdivision final plat and may require a Technical Review Procedure. The Technical Review Committee may include, but not necessarily be limited
to, the following individuals/departments: zoning administrator, building inspector, town manager, Fire department, Police Department, NC Division of Coastal Management, NC Department of Environmental Quality, Pender County Utilities, or Pender County Environmental Health.

b) If the zoning administrator determines that more information is needed or that a significant number of changes must be made before the plat can be approved, the applicant shall make the necessary changes; and re-submit the plat. All re-submissions shall contain a list of the changes made. A new 30-day review period may begin on the date of the re-submission of a required information.

c) Upon determination that a major subdivision final plat application is complete, within 30 working days of the submittal date, the zoning administrator and the Technical Review Committee (if applicable) shall review the plat and make a recommendation to the Planning Board as to compliance with this ordinance. The major subdivision final plat will be placed on the agenda of the next regularly scheduled Planning Board meeting following 30 working days of submittal of a complete application for a major subdivision final plat.

d) The Planning Board shall review the major subdivision final plat and written recommendations of the zoning administrator and the Technical Review Committee (if applicable) prior to recommending approval, denial, or conditional approval of the major subdivision final plat to the Board of Commissioners. Within 90 days of receipt of the major subdivision preliminary plat, the Planning Board shall transmit a formal recommendation to the Board of Commissioners.

e) The Planning Board shall review the final plat for compliance with the requirements of this chapter and any other specifications which were agreed upon at the time of the review of the major subdivision preliminary plat.

f) During its review of the final plat, the Planning Board may request reports from any person or agency affected by the proposed development.

g) If the Planning Board fails to act on the final plat within 45-90 days after its submission of receipt of a complete application for a major subdivision final plat, the subdivider may seek final approval of the plat at any regularly scheduled meeting of the board within one year of its submission to the board by the Board of Commissioners without a recommendation of the Planning Board, but not thereafter.

d) If the final plat is disapproved by the planning board, the reasons for such action shall be specifically stated in writing. The reasons for disapproval shall refer specifically to those parts of this article or related town standards with which the plat does not comply. One copy of such reasons with the drawing completed in ink and remaining prints of the
proposed subdivision shall be transmitted to the subdivider. Before final approval is granted, the subdivider shall make the required changes and submit a revised final plat as specified in this section.

e) When the planning board by formal motion approves the final plat, such approval shall be indicated on the drawing completed in ink by the signature of the chairperson of the planning board on the certificate of approval.

f) The Board of Commissioners shall consider the recommendations of the Planning Board, if applicable, at the next regular meeting after final action by the Planning Board. The Board of Commissioners shall approve or disapprove the final plat within 45 days after the date of the regularly scheduled meeting at which the final plat is first considered. If the board of commissioners fails to take action in the allotted time, the recommendation of the planning board shall stand as the decision of the board.

i) If the Board of Commissioners by formal motion disapproves the final plat, the reasons shall be set forth in writing and refer specifically to those parts of this ordinance or other land development ordinances with which the plat does not comply.

j) The approval of the final plat by the board of commissioners shall be shown on the original tracing and on three prints of the final plat on the certificate of approval by the board. One print shall be returned to the subdivider, one print shall become a permanent record of the planning board, and one copy shall be filed with the town clerk, which copy shall be the official town record.

k) Within five 30 working days after the approval of the Board of Commissioners of the final plat, the town clerk shall cause the approved final plat to be filed. The subdivider shall file the final plat with the Pender County Register of Deeds. The town clerk shall note upon the copy filed with the town clerk the date of filing and the book and page number assigned by the register of deeds to the subject subdivision. After July 11, 1973, the register of deeds shall not file or record a plat of a subdivision located within the town until such plat shall bear the required signature attesting approval by the Board. Failure to file an approved final plat within 30 days shall make such approval null and void.

16.3.10 CHANGES AND AMENDMENTS

A. INITIATION OF AMENDMENTS

1. Purpose and applicability. Pursuant to NCGS 160A-384, the Board of Commissioners may, on its own motion, upon recommendation of the Planning Board, or upon petition by any interested person, amend, supplement, change, modify or repeal the regulations or district boundaries established by this article.
the text of this ordinance or the zoning district boundaries as shown on the
town’s zoning map may be amended in accordance with the procedures
established herein. A petition by an interested person the appropriate person or
entity shall be submitted to the Board of Commissioners zoning administrator
through, and reviewed by the Planning Board, which shall consider its merit and
make a recommendation to the Board of Commissioners. In no case shall final
action by the Board of Commissioners be taken on amending, changing,
supplementing, modifying or repealing the regulations or district boundaries
hereby established until a public hearing has been held by the Board of
Commissioners at which parties in interest and citizens shall have an opportunity
to be heard.

a) Proposed changes or amendments to the zoning map may be initiated by
the Board of Commissioners, Planning Board, town administration, board
of adjustment or by the owner, or his or her agent, of property within
the area proposed to be changed.

b) Proposed amendments to the text of the ordinance may be initiated by
any interested party.

2. Application. An application for any change or amendment shall contain a
description and/or statement of the present and proposed zoning regulation or
district boundary, and. If a zoning map amendment is proposed, the names and
addresses of the owners of the property involved shall be included. Such
application shall be filed not later than two weeks 30 days prior to the meeting of
the Planning Board at which the application is to be considered, and in all cases
with enough lead time to properly advertise.

3. Fees. A nonrefundable fee shall be paid to the town for each application for an
amendment, to cover costs of advertising and other administrative expenses
involved.

4. Public hearing requirement, advertised, mailed, and posted notices.

a) Public hearing. A public hearing is required for all amendments for (1)
the advisory recommendation before the Planning Board and (2) prior
the final decision before the Board of Commissioners. Public hearings are
optional for advisory recommendations of the Planning Board.

i) Notification of the Planning Board public hearing shall be
published once in a newspaper having general circulation in the
area not less than 10 days before the date of the Planning Board
meeting at which the amendment will be considered.

ii) Notification of the Board of Commissioners’ public hearing shall
be published once a week for two (2) successive calendar weeks
in a local newspaper of general circulation in the town. The
notice shall be published the first time not less than 10 days nor
more than 25 days before the date fixed for the hearing.

b) Mailed notice. When a change in the zoning classification of a piece of
property is requested (zoning map change), the applicant shall provide to
the zoning administrator/building inspector a list of names and addresses, as obtained from the county tax listings and tax abstract, of all adjacent abutting property owners and all owners of property within the area under consideration for rezoning, along with one two sets of business (No. 10) envelopes stamped with a first class stamp and addressed to each person on the list. These addressed envelopes and the list shall be submitted at least 14-30 workdays prior to the Planning Board/Board of Commissioners meeting and public hearing at which the amendment will be considered. The zoning administrator or his/her designee/building inspector shall then mail notices of the public hearing to each person on the list at least 10 but no more than 25 days prior to the date of the meetings at which the Board of Commissioners will consider the request for a zoning map amendment. The letter of notification shall contain a description of the request and the time, date, and location of the public hearing and shall certify that fact to the board of commissioners. Such certification shall be deemed conclusive in the absence of fraud.

i) The first-class mail notice required under subsection (b) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the town elects to use the expanded published notice. In this instance, the town may elect to either make the mailed notice provided for in this section or may as an alternative elect to publish a notice of the hearing as required by NCGS 160A-364, but provided that each advertisement shall not be less than one half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent Pender County property tax listing for the affected property, shall be notified by mail.

c) Posted notice. Additionally, a Notice of a proposed zoning change for any parcel, regarding which a petition for change in zoning classification has been filed by any person, shall be prominently posted on the site proposed for rezoning or on an adjacent public street or highway right-of-way for at least 15 days prior to the public hearing before the Planning Board and Board of Commissioners. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the zoning administrator or his/her designee shall post sufficient notices to provide reasonable notice to interested persons. The posted notices shall be provided and erected by
the zoning administrator/building inspector and shall include in the message the:
  i) Present zoning classification
  ii) Proposed zoning classification
  iii) Time and place of the public hearing
  iv) Location where additional information may be obtained.

4.5. Reapplication for amendment. With the exception of requests originating with the Board of Commissioners, Planning Board, Board of Adjustment or town administration, an application for any rezoning of the same property or any application for the same amendment to the zoning ordinance text shall be permitted only once within any six (6) month period. The Board of Commissioners, by 80 percent affirmative vote of its total membership by simple majority, may waive this restriction if it finds any emergency exists.

B. PLANNING BOARD ACTION

1. Every proposed amendment, supplement, change, modification or repeal of this article ordinance shall be referred to the Planning Board for its recommendation and report. The following policy guidelines shall be followed by the Planning Board concerning zoning amendments and no proposed zoning amendment will receive favorable recommendation unless:
   a) The proposal will place all property similarly situated in the area in the same category, or in appropriate complementary categories.
   b) There is convincing demonstration that all uses permitted under the proposed district classification would be in the general public interest and not merely in the interest of an individual or small group.
   c) There is convincing demonstration that all uses permitted under the proposed district classification would be appropriate in the area included in the proposed change. (When a new district designation is assigned, any use permitted in the district is allowable, so long as it meets district requirements, and not merely uses which applicants state they intend to make of the property involved.)
   d) There is convincing demonstration that the character of the neighborhood will not be materially and adversely affected by any use permitted in the proposed change.
   e) The proposed change is in accord with any land use plan and sound planning principles.

2. A petition to amend the district boundaries or regulations established by this article ordinance shall be considered by the Planning Board at its next regular monthly meeting or any called special meeting, provided it has been filed, complete in form and content, at least two weeks 30 days prior to such meeting. Otherwise, consideration may be deferred until the following monthly meeting.

3. The Planning Board shall render its decision on any properly filed petition within 65 days after the introduction of such petition at a regularly scheduled meeting and shall transmit its recommendation
and report, including the reasons for its determinations, to the Board of Commissioners.

4. **The Planning Board may make recommendations to the Board of Commissioners concerning zone map change petitions.** Pursuant to NCGS 160A-383, the Planning Board shall advise and comment on whether the proposed text or zoning map amendment is consistent with the comprehensive plan or any other officially adopted plans that are applicable. The Planning Board shall provide a written recommendation to the Board of Commissioners that addresses plan consistency and other matters 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 Board of Commissioners.

C. BOARD OF COMMISSIONERS ACTION

1. Before taking such lawful action as it may deem advisable, the Board of Commissioners shall consider the Planning Board’s recommendations on each proposed text or zoning map amendment. If no recommendation is received from the Planning Board within 65 days after the introduction of the petition at a regularly scheduled meeting, the proposed amendment shall be deemed to have been approved by the planning board. The board of commissioners shall then

2. In any vote to change, amend, repeal, modify or supplement a zoning district designation for property, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall not be recorded as an affirmative vote.

3. Pursuant to NCGS 160A-375, no member shall be excused from voting except upon matters involving the consideration of the member’s own financial interest or official conduct. A failure to vote by a member who is physically present in the commissioner’s chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote.

4. An affirmative vote equal to a majority of all the members of the commissioners not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt any amendment to this ordinance or to take any action having the effect of an ordinance. In addition, no ordinance amendment nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two-thirds (2/3) of the Board of Commissioners. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the Board of Commissioners.

5. If any resident or property owner in the town submits a written statement regarding a proposed amendment, modification, or repeal this ordinance to the town clerk at least two (2) business days prior to the proposed vote on such
change, the town clerk shall deliver such written statement to the Board of Commissioners.

D. APPLICATION WITHDRAWAL
Any application submitted in accordance with the provisions of Section 16-3-318.10 for the purpose of amending the regulations or district boundaries established by this article of this ordinance may be withdrawn at any time, but fees are nonrefundable.

16.3.11 VESTED RIGHTS
A. PURPOSE
The purpose of this chapter is to implement the provisions of NCGS 160A-385.1 pursuant to which a statutory zoning vested right is established upon the approval of a site specific development plan as defined in this ordinance.

B. ESTABLISHMENT OF A ZONING VESTED RIGHT
1. A zoning vested right shall be deemed established upon following the valid approval, or conditional approval, by the Board of Commissioners as applicable, of a site specific development plan and following notice and public hearing separate approval by the Board of Commissioners of a request for statutory zoning vested rights. 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.

2. Notwithstanding subsections (a1) 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.

3. A site specific development plan shall be deemed approved upon the effective date of the approval authority's action or ordinance relating thereto.

4. The establishment of a zoning vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the town, including, but not limited to, building, fire, plumbing, electrical and mechanical codes. Otherwise applicable new or amended regulations 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 article.

5. 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 and approval of an application for statutory zoning vested rights before the Board of Commissioners, all successors to the original landowner shall be entitled to exercise such right while applicable.
C. APPROVAL PROCEDURES AND AUTHORITY

1. 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 ordinance 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. Consideration and approval of a zoning vested right constitutes a separate approval process under the sole discretion of the Board of Commissioners. Any application for a zoning vested right shall be processed concurrently or after the approval of the associated site specific development plan and shall follow a quasi-judicial procedures outlined in the town’s Quasi-Judicial Hearing Procedural Guidelines.

2. 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 board of commissioners, board of adjustment, or other planning agency designated to perform any or all of the duties of the board of adjustment, in order to obtain a zoning vested right, the applicant must request in writing at the time of application for the particular site specific development plan type that the application for a zoning vested right be considered concurrently or following approval of such and acted on by the Board of Commissioners following notice and a public hearing as provided in G.S. 160A-364. Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose application or request is the subject of the hearing; to the owner of the property that is the subject of the hearing; to the owner of all parcels of land abutting the parcel of land that is the subject of the hearing. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

3. In order for a zoning vested right to be established upon following approval of a site specific development plan, the applicant must indicate at the time of application, on a form to be provided by the town, that a zoning vested right is being sought.

4. 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 NCGS 160A-385.1. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."

5. Following approval or conditional approval of a site specific development plan and approval of zoning vested rights by the Board of Commissioners, nothing in this article shall exempt such a plan from subsequent reviews and approval 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.

6. Nothing in this article 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 Article, the Zoning Ordinance.

D. DURATION

1. A zoning right that has been vested as provided in this article shall remain vested for a period of two (2) years unless specifically and unambiguously provided otherwise pursuant to subsection (b) of this section. 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.

2. Notwithstanding the provisions of subsection (a) of this section, the approval authority may provide that rights shall be vested for a period exceeding two (2) years but not exceeding five (5) years where warranted in light of all relevant circumstances, including, but not limited to, the size of the development, the level of investment, the need for or desirability of the development, economic cycles and market conditions. These determinations shall be in the sound discretion of the approval authority at the time the site specific development plan is approved.

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

E. TERMINATION

1. A zoning right that has been vested as provided in this Article, Ordinance shall terminate in accordance with any one of the following:
   a) At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.
   b) With the written consent of the affected landowner.
   c) Upon findings by the Board of Commissioners, by ordinance 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.
   d) 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 consultant's fees incurred after approval by the town, together with interest thereon at
their legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action.

e) Upon findings by the Board of Commissioners, by ordinance 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.

f) 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 ordinance after notice and a hearing.

**F. VOLUNTARY ANNEXATION**

A petition for annexation filed with the town under NCGS 160A-31 or 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 NCGS 160A-385.1 or 153A-344.1. A statement that declares that no zoning vested right has been established under NCGS 160A-385.1 or 153A-344.1, 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.

**G. LIMITATIONS**

Nothing in this article is intended or shall be deemed to create any vested right other than those established pursuant to NCGS 160A-385.1.

**16.3.12 REVIEW PROCEDURES SUMMARY**

<table>
<thead>
<tr>
<th>Application Type</th>
<th>Advisory or Decision-Making Body</th>
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</thead>
<tbody>
<tr>
<td>Complete Application</td>
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<tr>
<td>Zoning Permit</td>
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<tr>
<td>Building Permit</td>
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<tr>
<td>CAMA Minor Permit</td>
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FD = Final Decision; R = Advisory Recommendation; PH = Public Hearing; QJ = Quasi-judicial Hearing
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<th>Certificate of Occupancy</th>
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</tr>
<tr>
<td>Major Site Plan</td>
<td>FD</td>
</tr>
<tr>
<td>Conditional Use Permit</td>
<td>FD-QJ</td>
</tr>
<tr>
<td>Variance</td>
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<tr>
<td>Appeal</td>
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<td>Exempt Plat</td>
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<td>Minor Subdivision</td>
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<tr>
<td>Statutory Zoning Vested Rights</td>
<td>FD-QJ</td>
</tr>
</tbody>
</table>

[1] CAMA general and major permits are decided by the NC Division of Coastal Management and Coastal Resources Commission.

[2] The zoning administrator is responsible for revocation of zoning related approvals and the building inspector is responsible for revocation of building code related approvals.

### 16.3.13 Public Notification Requirements

#### Table 16.3.2: Public Notification Summary

<table>
<thead>
<tr>
<th>Application Type</th>
<th>Advisory or Decision-Making Body</th>
<th>Published Notice</th>
<th>Mailed Notice [1]</th>
<th>Posted Notice [2]</th>
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<tr>
<td>X = Notification Required; PH = Public Hearing; QJ = Quasi-judicial Hearing</td>
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<td>Text Amendment</td>
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</table>
16.3.14 ENFORCEMENT AND PENALTIES

A. ENFORCEMENT MECHANISMS, REMEDIES, AND SANCTIONS

1. The official zoning administrator may investigate situations and conditions violations, conduct site inspections at any time, exercise any and all powers enumerated in this article ordinance and other land development Code ordinances, issue decisions, orders, notices of violation, order a person liable to correct, remedy, abate, or remove situations or conditions violations, withhold pending development approvals on the property pending compliance, and order the posting of a bond in an amount determined in the official’s zoning administrator’s considered and informed discretion, in order to secure performance of the same. The building inspector shall be responsible for enforcement matters pertaining to the State Building Code.

2. Should the town incur expenses to correct, remedy, abate, or remove situations or conditions violations, then the official zoning administrator may issue a written order to the person liable for the situations or conditions violations to pay within 30 days a specified sum reimbursing the town for its expenses. In the event the person liable fails to pay the sum as ordered, then the person liable shall be further liable for interest on all or any portion of same, to the extent allowed by law.

3. A person liable failing comply with a written order regarding any situations or conditions violations is subject to civil monetary charges being imposed by the official zoning administrator under “Section 1-6: Enforcement of Code; not exclusive remedy; continuing, multiple and chronic violations” of the General Code in an amount specified in table “Table 1. Charges for Civil Violations of Code” in “Section 1-7: Table of charges for civil violation of Code” for violations of this article for each day of noncompliance with the terms of the order, which
amounts are found by the town to be reasonably related to the town's actual administrative overhead in administering and otherwise enforcing this article.

4. In the event the person liable fails to pay any sums as ordered in subsections (b2) and (e3) of this section, the town may secure the obligation to pay the said sums by obtaining a lien on (i1) the land or premises where the situations or conditions exist and (ii2) on any other real property that the person liable owns within the town's city limits or within one mile of the city limits (except for the person liable's primary residence, unless it is the subject of the applicable situations and conditions violation) and by enforcing such liens through available legal process, and collecting the same as unpaid taxes.

5. The town may seek recovery from person liable any sums as ordered in subsections (b2) and (e3) of this section through a civil action in the nature of debt.

6. No monies collected by the town as civil charges for situations and conditions violations are deemed to be charges for violations of criminal law for which payment is to be made to any other state government agency.

7. Without limitation of any other remedies afforded the town by this division, division 5 and by any other applicable law, the town may at any time seek all injunctive, equitable, and monetary remedies of all types available in a court of competent jurisdiction, in order to enforce provisions, conditions, safeguards, requirements, monetary obligations and the like of this article ordinance and any approval issued thereunder, and to correct, remove, abate, or remedy any situations or conditions violations. The availability of any monetary remedy does not affect or restrict any equitable remedy available to the town.

8. Approvals that are the subject of situations and conditions violations may be revoked upon motion by the official zoning administrator or building inspector pursuant to the procedures specified in this article ordinance. No person shall continue to use the land or premises in the manner authorized by any approval that has been revoked.

9. The town may exercise any one, all, or any combination of the foregoing enforcement mechanisms, remedies and sanctions and any other mechanisms, remedies and sanctions afforded the town elsewhere in this article and by any other law.

10. The absence of any approval does not limit the powers of the town to exercise the provisions of this article ordinance and land development Code ordinances with respect to situations or conditions violations or otherwise enforce this article ordinance.

B. PROCEDURES REGARDING ENFORCEMENT MECHANISMS, REMEDIES AND SANCTIONS

1. Should situations and conditions violations come to the attention of the town through its own investigation, or through a signed complaint form (supplied and made available by the town) on which the complainant provides its identity, contact information and facts constituting situations or conditions violations,
then the official zoning administrator shall send a written initial or final notice to the person liable as follows:

a) The notice shall indicate the nature of the situations or conditions violation, any ordinance or approval violated, whether the situation violation is a public nuisance, any warning or request to remedy the same, or any other finding of violation by the official zoning administrator or building inspector, and any decision by the official in connection with the same.

b) An initial notice of violation may be shall contain any initial order issued by the official zoning administrator in its considered and informed discretion to the person liable which order shall specify. A notice is not final nor subject to appeal unless explicitly indicated as such pursuant to Section 16.3.14.B.7. The initial notice shall specify the following:

i) The premises involved;
ii) Actions required of the person liable to correct, remedy, abate, or remove the situations or conditions violations at the premises;
iii) The time certain required to complete the ordered actions as set forth in subsection (b)(1) of this section; and
iv) Any bond required of the person liable to secure performance of the ordered actions and the terms for posting of the same;

c) The initial notice of violation shall indicate actions the official zoning administrator or building inspector may take in consequence of the situations and conditions violations, including:

i) Imposing a civil charge under Section 1-6: Enforcement of Code; not exclusive remedy; continuing, multiple and chronic violations“ of the General Code in the amount specified in “Table 1. Charges for Civil Violations of Code” in “Section 1-7: Table of charges for civil violation of Code section 1-6 in the amount specified in table 1 in section 1-7 for each day of noncompliance with the terms of the order and recovering said charges together with any allowable interest;

ii) Directing reimbursement of the town for expenses incurred in dealing with the situations and conditions violations by paying to the town a specified sum as determined by the town manager within a time certain, together with interest computed on all or any portion of the reimbursement sum not timely paid and recovery of the same;

iii) Obtaining, imposing to the extent allowed by law, and enforcing a lien on the land or premises where the situations or conditions violation exists and on any other real property that the person liable owns within the town’s city limits or within one mile of the city limits (except for the person liable’s primary
residence, unless it is the subject of the applicable situations and conditions violation;

iv) Seeking all injunctive, equitable, and monetary remedies of all types available in a court of competent jurisdiction; and

v) Moving Requesting the board of adjustment appropriate authority to revoke all or any part of any applicable approval.

vi) Issuing any stop work order, conducting any inspection, withholding any development approval pending compliance;

vii) Any other enforcement mechanism, remedy, or sanction authorized by this article or any other applicable law.

d) Enclose a written decision by the official.

2. Upon determining that a situation or condition violation exists, the official zoning administrator may take the following actions:

a) Issue an order to pay a civil charge under Section 1-6(g) of the General Code in the amount specified in “Table 1. Charges for Civil Violations of Code” in “Section 1-7: Table of charges for civil violation of Code” for each day of noncompliance with the terms of the order, which sum shall be fully paid within 30 days of such order. Should the sum not be timely paid, then the person liable shall further owe interest computed on all or any part to the extent allowed by law.

b) Prior to the expiration of the period of compliance of any notice of violation or order, the official zoning administrator may meet with the person liable and upon hearing from the same, may: (i) withdraw any notice of violation or order issued under this section; (ii) modify the notice of violation or order; or (iii) informally resolve the subject of the notice by reaching an agreement between the town and person liable; provided, however, that should the notice have issued in consequence of a written complaint under subsection (a1) above, then the complainant
shall be afforded the opportunity to be attend all such meetings and be heard, and to participate in any agreement.

d) In the event the person liable within the period of compliance requests the town in writing to perform the matters ordered, then ordering cost of which shall be paid by the person liable, who shall also be subject to all other enforcement mechanisms, remedies and sanctions provided in this division ordinance as may be applicable.

e) In the event the matter is not resolved per subsection (b)2)(3c) of this section, and the person liable fails to comply with the official's zoning administrator's order by the time specified, then the official zoning administrator or building inspector may enforce any performance bond, go upon the specified premises in the manner required by law, correct, remedy, abate, or remove the situations or conditions violation and incur expenses in connection with the same, and take any judicial action to recover sums owed or correct remedy, abate or remove the situations or conditions violation through any judicial relief.

3. In the event the person liable fails to comply with any order to pay any sums or charges, the town may take all actions available under law to secure payment of same, including the obtaining, imposing to the extent allowed by law, and enforcing a lien on the land or premises where the situations or conditions violation exists and on any other real property that the person liable owns within the town's city limits or within one mile of the city limits (except for the person liable's primary residence, unless it is the subject of the applicable situations and conditions), and the town may seek to recover the same by enforcing any means available through legal process securing the sums owed. In the event the person liable fails to correct, remedy, abate, or remove situations or conditions violation as ordered by the official zoning administrator, the town may invoke any judicial process to compel the same.

4. The official zoning administrator in its considered and informed discretion may in an order impose any other requirements on the person liable for a specified period of time, for the purposes of remedying the situations or conditions violation.

5. In extreme exigent cases when, in the considered and informed discretion of the official zoning administrator or building inspector, delay would seriously threaten the effective enforcement of this article ordinance or pose a danger to the public health or safety, the official zoning administrator or building inspector may take actions whereby the town corrects, remedies, abates, or removes situations or conditions violations without a prior request or order for the person liable to perform said corrective actions. In the event the town seeks reimbursement from the person liable for the expenses associated with the corrective actions and to recover civil charges, the town shall issue a written order directing the person liable to reimburse the town within 30 days by paying the sum certain specified in the order as constituting the town's expenses in taking the said
corrective actions and any civil charges. Such persons liable are further subject to other enforcement mechanisms, remedies and sanctions of this division ordinance as may be applicable.

6. When a particular property has been found at least three (3) times in the previous calendar year to be in violation due to the same particular situation or condition in violation of the same ordinance and the same public nuisance as identified in the three (3) prior notices, the official zoning administrator may notify the owner of particular property of the same by certified mail (the provisions of section Section 16-3-30014.C notwithstanding) and the owner shall thereafter be deemed a chronic violator within the meaning of NCGS 160A-200.1. If in the calendar year following the three (3) noticed violations, the particular property is found after the certified mail notice to be in violation due to the same particular situation or condition in violation of the same ordinance and the same public nuisance as identified in the three (3) prior notices, the official zoning administrator shall, without further notice in the calendar year in which notice is given, take action to remedy the violation, and the expenses of the actions of the town in connection with the same, any administrative overhead fee in the amount determined by the town manager, any civil charges, and all other sums owed in connection with the particular situation and condition violation, to the extent allowed by law, become secured by a lien upon the property and collectable as unpaid taxes.

7. Additional written notices under this article may be sent at the official's zoning administrator's discretion. The final written notice to the person liable (and the initial written notice may be the final notice) shall state or include any order, state what actions the official intends to take if situations or conditions are not corrected or if the order is not followed, and advise that the person liable may appeal the same to the Board of Adjustment in accordance with the procedures set forth in division 5 of this article within 30 days of receipt of such notice.

8. Decisions and notices of the official zoning administrator are to be sent to persons liable in accord with section 16-3-14.C.

9. The person liable may administratively appeal a decision to the board of adjustment in accordance with the applicable procedures specified in this article. The decision is not subject to judicial review prior to a final decision by the board of adjustment.

C. MODE OF NOTICE OF DECISION, VIOLATION, OR ORDER

1. The official zoning administrator shall issue written notice of violations described in this article by regular United States mail to the last known address of the person liable, or hand delivery at the last known location of the residence or any place of occupation of the person liable. The official zoning administrator in its discretion may exercise both forms of notice, and any other additional means of notice. Should the person liable's address or whereabouts be unknown or notice by mail or hand delivery not is reasonably attainable, the official zoning administrator may in its discretion arrange for notice to be posted at
the premises that is the subject of the notice. *Any other provision of this Code notwithstanding.* The period of time set forth in this article for the person liable to take any action in consequence of the written notice does not include the date of notice but begins to run on and includes the day after the date of the envelope of the mailed notice is postmarked or the date of hand delivery, whichever is earlier. Should the last day of the applicable period fall upon a Saturday, Sunday, or a legal holiday in which the town offices are closed for business, then the date of compliance shall fall on the next day the town offices are open for business. Should any period of time prescribed or allowed for any act, event, default, or publication under this division be less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday. It shall be in accordance with Section 16.1.12.
Article 4: Zoning

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16.4.1 GENERAL

A. TYPES OF ZONING DISTRICTS
All land within the Town of Topsail Beach is classified by this ordinance to be within one (1) of the several Base Zoning Districts or overlay districts respectively.

B. OVERLAY ZONING AREAS AND RELATIONSHIP TO ZONING DISTRICTS
Land within any base zoning district may also be classified into one (1) or more Overlay Zoning areas, as listed in Section 16.4.4, Overlay Zoning Districts. Regulations governing development in an overlay area shall apply in addition to the regulations governing development in the underlying district. If the standards governing a zoning district expressly conflict with those governing an overlay zoning area, the more restrictive standard shall control.

C. COMPLIANCE WITH DISTRICT STANDARDS
No land within the town shall be developed except in accordance with the zoning district use, use and development standards, and requirements of this article and all other regulations of this ordinance, as applicable.

16.4.2 ZONING DISTRICTS ESTABLISHED
In order to implement the intent of this article, there are hereby created zoning districts with the following designations and general purposes:

<table>
<thead>
<tr>
<th>Table 16.4.1: Zoning Districts</th>
</tr>
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<tbody>
<tr>
<td><strong>Abbreviation</strong></td>
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<tr>
<td>R-1</td>
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<td>R-2</td>
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<td>R-3</td>
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<td>R-4</td>
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<td>PRD-1</td>
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<td>PRD-2</td>
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<td>B-1</td>
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<td>B-2</td>
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<td>C-1</td>
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<td>C-2</td>
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<td>C-4</td>
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<tr>
<td>MFOD</td>
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</tbody>
</table>

16.4.3 BASE ZONING DISTRICTS
A. R-1, R-2, R-3, R-4 Residential Districts. These districts are established for residential development in which the principal use of the land is for single- and two-family dwellings. In promoting the general purpose of this article, the specific intent of these districts is to:

1. Encourage the construction of and the continued use of the land for single-family and two-family residential purposes.
2. Encourage the development of residential neighborhoods that compliment one another.
3. Prohibit commercial and industrial use of the land and to prohibit any other use which would substantially interfere with development or continuation of dwellings in the district.
4. Encourage the discontinuance of existing uses that would not be permitted as new uses under the provisions of this article.
5. Discourage any use which would generate traffic on minor streets other than normal traffic to serve residents on those streets.
6. To discourage any use which because of its character or size would create requirements and costs for public services, such as police and fire protection, water supply and sewerage, substantially in excess of such requirements and costs if the district were developed solely for residential purposes.

B. PRD-1 Planned Residential Development District. This district is established for residential development of varying types and designs. In promoting the general purpose of this article, the specific intent of this district is to:
   1. Encourage the construction of planned residential developments of various styles and types at a higher density than the R-1, R-2, R-3 or R-4 districts.
   2. Prohibit commercial and industrial use of the land and to prohibit any other use which would substantially interfere with development or continuation of dwellings in the district.
   3. Discourage any use which would generate traffic on minor streets other than normal traffic to serve residents on those streets.
   4. Encourage the discontinuance of existing uses that would not be permitted as new uses under the provisions of this article.

C. PRD-2 Planned Residential Development District. This district is established for residential development in which the principal use of the land is for single- and two-family development. In promoting the general purpose of this article, the specific intent of this district is to:
   1. Encourage the construction of and the continued use of the land for planned residential developments of single- and two-family dwellings at a density higher than the R-1, R-2, R-3 or R-4 districts.
   2. Prohibit commercial and industrial use of the land and to prohibit any other use which would substantially interfere with development or continuation of dwellings in the district.
   3. Discourage any use which would generate traffic on minor streets other than normal traffic to serve residents on those streets.
   4. Encourage the discontinuance of existing uses that would not be permitted as new uses under the provisions of this article.

D. B-1 General Business District. The general business district is established as a district in which the principal use of the land is for commercial, mixed-use, two-family residential, and service uses for the surrounding urban market residential community. In promoting the general purposes of this article, the specific intent of this district is to:
1. Encourage the construction of and the continued use of the land for commercial, mixed-use, two-family residential, and service uses.

2. Provide for the orderly expansion of such uses within the general business district, as designated on the zoning map.

3. Permit a concentrated, intensive development of the permitted uses while maintaining a substantial relationship between the intensity of land use and the capacity of utilities and streets.

4. Discourage the continuance of existing uses that would not be permitted as new uses under the provision of this district.

5. Allow accessory apartments dwelling units.

E. B-2 Restricted Business District. This district is established as a district in which the principal use of land is for the retailing of goods and provision of commercial services to surrounding areas and two-family residential uses. In promoting the general purpose of this article, the specific intent of this district is to:

1. Encourage the construction of and the continued use of the land for commercial, two-family residential, and service uses.

2. Provide for the orderly expansion of such uses within this district, as designated on the zoning map.

3. Discourage the continuance of existing uses that would not be permitted as new uses under the provision of this district.

F. C-1 Conservation District—Ocean Front Side. The purpose of this district is to preserve and protect the areas of environmental concern as identified by G.S. 113A-113 and 15A NCAC 07H .0200 and 07H .0300. The C-1 district is identified as that area between the mean low-water line and mean high-water line along the Atlantic Ocean beachfront from a point at the oceanfront intersection of the Topsail Beach/Surf City town lines and southwestwardly to a point in the center line of Topsail Inlet at its intersection with the Atlantic Ocean.

G. C-2 Conservation District—Sound Side. The purpose of this district is to preserve and protect the areas of environmental concern as identified by G.S. 113A-113 and 15A NCAC 07H .0200 and 07H .0300. The C-2 district is identified as the waters and marshlands between the center of the intracoastal waterway and the mean low-high-water mark of Topsail Sound and its adjacent waters within the corporate limits of Topsail Beach.

H. C-4 Conservation District—Inlet Area. The purpose of this district is to preserve and protect the areas of environmental concern as identified by G.S. 113A-113 and 15A NCAC 07H .0200 and 07H .0300. The C-4 district is identified as all land included in the inlet hazard area and that is not zoned for residential use.

16.4.4 OVERLAY ZONING DISTRICTS

A. Maritime Forest Overlay District (MFOD). The maritime forest overlay district shall include all land northeast of Davis Street, the B-1 zoning district and west of North Anderson Boulevard (NC 50), from the ocean to the extending sound to the city limits of the town. The MFOD district shall not include oceanfront lots. The purpose of this district is to protect the remaining maritime forests located within the town. Maritime forests are recognized as both an important resource and as an important component of the
barrier island ecosystem providing wildlife habitat, serving to stabilize soil and sand and providing a vital link in the local ground water replenishment cycle. Development in this district should be designed to cause the least practical disruption to the maritime forest cover. The requirements of the Maritime Forest Overlay District (MFOD) shall be in addition to any other zoning districts where applied so that any parcel of land lying in a MFOD may also lie in one (1) or more of the zoning districts provided for by this article. The development of all uses permitted by right or by conditional use permit in the underlying district, if any, shall be subject to the requirements of both the MFOD and the underlying district, if any. In the event the MFOD requirements conflict with the underlying district requirements, the requirements of the MFOD shall take precedence. If requirements for a particular item are not specified in the MFOD but are specified by the underlying district, then the requirements of the underlying district shall be followed.

B. Dimensional requirements. The dimensional requirements should be the same as in the underlying district.

C. Design standards. In maritime forest areas the MFOD, the development shall be designed so as to protect and enhance the continuing growth of the remaining undisturbed areas. In doing so, the following requirements shall be met:

1. No alteration of a lot or building site shall occur prior to the issuance of a zoning permit. No zoning permit shall be issued for a lot without a physical inspection by the building inspector. Some clearing of understory trees and shrubs may be required to prepare a site for survey, inspection by governmental agencies as part of any permitting process, or to stake the proposed building site. On densely vegetated lots a walking access trail not to exceed three (3) feet may be cleared for access purposes. Permission to clear such understory trees and shrubs shall not be required by the building inspector for these purposes listed in this subsection above; however, clearing shall be kept to an absolute minimum.

2. The area of disturbance shall be limited to the area of the lot contained within the front, rear and side yard setbacks of the underlying zoning district, except for limited driveway access, stormwater drainage system, and an approved septic tank system.

3. Vegetation contained within the zoning setbacks with a diameter of three (3) inches or less at breast height may be removed. Vegetation larger than three (3) inches may be removed subject to mitigation requirements. Any tree or vegetation removed greater than three (3) inches must be transplanted or replaced with newly installed vegetation of the same species of an equivalent number of inches of vegetation removed. Newly planted or transplanted vegetation must clearly be indicated on an approved plot plan, site plan, or subdivision plat.

16.4.5 INTERPRETATION OF DISTRICT REGULATIONS

A. Regulations for each district shall be enforced and interpreted according to the following rules:

1. Uses by right. All listed permitted uses are permitted by right according to the terms of this article. The uses listed may not address all possible uses. In
determining if a use is permitted, the zoning enforcement officer shall consider which category of expressed uses most closely matches the use proposed and apply the regulations pertaining to that category to the proposed use. In determining the use which most closely matches the proposed use, the zoning administrator shall consider the density and intensity of the use, and anticipated traffic, noise, light, and odor on adjacent properties. Such interpretation shall be provided in writing to the property owner and subject to appeal by the Board of Adjustment. Where a proposed use does not closely match any uses provided in Table 16.4.2, such use shall be deemed an “Unlisted use” by the zoning administrator and subject to the approval procedures provided herein.

2. Conditional uses are permitted, subject to compliance with the additional regulations specified. Uses with additional standards are denoted with an “S.”

3. Minimum regulations. Regulations set forth in this article shall be minimum regulations. If the requirements set forth in this article are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the more restrictive or higher standard shall govern.

4. Restrictive covenants and deed restrictions. Unless restrictions established by covenants and deed restrictions running with the land are prohibited by the provisions of this article, nothing herein contained shall be construed to render such covenants or restrictions inoperative.

16.4.6 TABLE OF PERMITTED AND CONDITIONAL USES

A. USE TABLE

The following uses are listed as permitted by right (P), or conditional (C), or permitted by right with an additional use standard (PS), or conditional with an additional use standard (CS) in each zoning district where allowed. The Use Table (16.4.2) is separated by Accessory Uses, Residential Uses, and Nonresidential Uses. The uses listed may not address all possible uses. In determining if a use is permitted, the zoning enforcement officer shall consider which category of expressed uses most closely matches the use proposed and apply the regulations pertaining to that category to the proposed use. In the event there is no match, the use shall be prohibited.

B. PROHIBITED USES

1. If a cell in the table of uses is blank the use is prohibited in the corresponding zoning district.

2. The following uses are prohibited throughout the town’s zoning jurisdiction in an effort to mitigate natural and manmade hazards, maintain desired environmental qualities, and enhance public health, safety, welfare, family atmosphere, and sea turtle protection as specified in the town’s land use plan:

   a) Architecture and aquaculture
   b) Hazardous materials handling and storage
   c) Shooting and archery range (whether indoors or outdoors)
   d) Junkyard and salvage yard
   e) Explosives and chemical manufacturing
f) Leather and leather products manufacturing involving tanning

g) Slaughter or rendering of animals, excluding seafood products

h) Heavy industrial uses not otherwise classified

### Table 16.4.2: Table of Uses

<table>
<thead>
<tr>
<th>Uses</th>
<th>Districts</th>
<th>Use Standard</th>
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<tbody>
<tr>
<td></td>
<td>R-1</td>
<td>R-2</td>
</tr>
<tr>
<td>Accessory Uses</td>
<td></td>
<td></td>
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<tr>
<td>ATMs, Vending units, &amp; attached accessory structures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accessory apartment dwelling unit</td>
<td>PS</td>
<td>PS</td>
</tr>
<tr>
<td>Accessory uses and structures incidental to any permitted principal use</td>
<td>PS</td>
<td>PS</td>
</tr>
<tr>
<td>Beach access and pedestrian water access walkways</td>
<td>PS</td>
<td>PS</td>
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<tr>
<td>Fishing piers and docks (private) uncovered</td>
<td>PS</td>
<td>PS</td>
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<tr>
<td>Home day care</td>
<td>PS</td>
<td>PS</td>
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<tr>
<td>Home occupation</td>
<td>PS</td>
<td>PS</td>
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<tr>
<td>Outdoor display</td>
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<td>Outdoor storage</td>
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<tr>
<td>Pedestrian water access walkways</td>
<td>PS</td>
<td>PS</td>
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<tr>
<td>Pickleball or tennis volleyball courts</td>
<td>PS</td>
<td>PS</td>
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<tr>
<td>Recreational Vehicle (RV) or travel trailer</td>
<td>PS</td>
<td>PS</td>
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<tr>
<td>Recycling center, municipal</td>
<td>P</td>
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<tr>
<td>Repair, rental and/or servicing of any product</td>
<td>PS</td>
<td>PS</td>
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<tr>
<td>Uses</td>
<td>R-1</td>
<td>R-2</td>
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<tr>
<td>----------------------------------------------------------</td>
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<tr>
<td>retail sale of which is permitted use in the same district</td>
<td></td>
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<tr>
<td>Satellite dish antennas</td>
<td>PS</td>
<td>PS</td>
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<tr>
<td>Self-service ice vending machines</td>
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<tr>
<td>Solar energy systems</td>
<td>PS</td>
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<td>Storage containers</td>
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<td>Swimming pool</td>
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<td>Temporary health care structure</td>
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<td>PS</td>
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<tr>
<td>Volleyball or basketball courts</td>
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<td>P</td>
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<tr>
<td>Residential Uses</td>
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<tr>
<td>Dwelling, single-family</td>
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<td>P</td>
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<tr>
<td>Dwelling, two-family/duplex</td>
<td>P</td>
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<tr>
<td>Dwelling, manufactured home (wind zone D rated)</td>
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<tr>
<td>Dwelling, multi-family planned residential development</td>
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<tr>
<td>Family care home</td>
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<td>PS</td>
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<tr>
<td>Nonresidential Uses</td>
<td></td>
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<tr>
<td>Alcoholic beverages, packaged retail sale</td>
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<td>P</td>
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<tr>
<td>Adult entertainment establishment</td>
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<td>Uses</td>
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<tr>
<td>Ambulance service</td>
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<tr>
<td>Arcade, bowling alley, or skating rink</td>
<td>P</td>
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<tr>
<td>Assembly hall</td>
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<td>P</td>
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<tr>
<td>Assisted living and nursing homes</td>
<td>PS</td>
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<tr>
<td>Automobile sales and service</td>
<td>PS</td>
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<tr>
<td>Bank, savings and loan company and other financial institutions</td>
<td>P</td>
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<tr>
<td>Barbershop, beauty shop, hairdresser, and similar personal service establishments</td>
<td>P</td>
<td>P</td>
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<tr>
<td>Beach access and pedestrian water access walkways</td>
<td>PS</td>
<td>PS</td>
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<tr>
<td>Beauty shop</td>
<td>P</td>
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<tr>
<td>Boardinghouse, bed and breakfast, guesthouse</td>
<td>P</td>
<td>P</td>
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<tr>
<td>Boats and accessories, retail sales and service</td>
<td>PS</td>
<td>PS</td>
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<tr>
<td>Boat ramp (public or commercial)</td>
<td>PS</td>
<td>PS</td>
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<tr>
<td>Boat rental facilities</td>
<td>PS</td>
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<tr>
<td>Builders supply (roofed storage only)</td>
<td>P</td>
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<tr>
<td>Building materials sales and storage yards</td>
<td>PS</td>
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<td>Business and professional offices, including architects;</td>
<td>P</td>
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<tr>
<td>Uses</td>
<td>R-1</td>
<td>R-2</td>
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<td>---------------------------------------------------------------------</td>
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<tr>
<td>real estate, legal, engineering, firms and accountants</td>
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<td>Candy or confectionery store (on-premises retail sales only)</td>
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<tr>
<td>Church</td>
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<td>P</td>
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<td>Clinic, medical and dental</td>
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<td>Club or lodge</td>
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<td>CS</td>
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<td>Commercial parking lot</td>
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<td>Commercial fishing pier</td>
<td>PS</td>
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<tr>
<td>Convenient food store</td>
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<tr>
<td>Curio and souvenir shop</td>
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<td>Dairy products store (on-premises retail sales only)</td>
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<td>Day care facilities</td>
<td>PS</td>
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<tr>
<td>Delicatessen, including catering</td>
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<tr>
<td>Eating establishment, major</td>
<td>PS</td>
<td>PS</td>
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<tr>
<td>Eating establishment, minor</td>
<td>P</td>
<td>P</td>
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<tr>
<td>Electronic gaming</td>
<td>CS</td>
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<td>Farmers’ market</td>
<td>CS</td>
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<tr>
<td>Fire station</td>
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<tr>
<td>Fishing piers and docks</td>
<td>PS</td>
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<tr>
<td>Grounds and facilities for public recreation facility, such as community center buildings, parks, playgrounds, tennis courts</td>
<td>PC</td>
<td>PC</td>
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<tr>
<td>Uses</td>
<td>R-1</td>
<td>R-2</td>
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<tr>
<td>and similar facilities operated by the town</td>
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<tr>
<td>Hotels and motels</td>
<td>PCS</td>
<td>PCS</td>
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<tr>
<td>Library</td>
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<tr>
<td>Manufacturing, artisan</td>
<td>PS</td>
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<tr>
<td>Marinas-Class I (Public)</td>
<td>CS</td>
<td>CS</td>
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<tr>
<td>Marinas-Class II (Private)</td>
<td>PS</td>
<td>PS</td>
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<tr>
<td>Marine animal rescue and rehabilitation center</td>
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<td>Miniature golf</td>
<td>P</td>
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<tr>
<td>Microbrewery and microdistillery</td>
<td>CS</td>
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<tr>
<td>Office, general</td>
<td>P</td>
<td></td>
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<tr>
<td>Office supplies and equipment sales</td>
<td>P</td>
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<tr>
<td>Public utility works or shops or storage yards</td>
<td>P</td>
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<tr>
<td>Restaurants (See eating establishments)</td>
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<tr>
<td>Retail sales, including baked goods, bicycles, books, cameras, candy, clothing, cosmetics, drugs, fabrics, flowers, furniture, gardening supplies, gifts, groceries, hardware, hobby supplies, household appliances, ice cream, jewelry, lawn mowers, magazines, newspapers, notions, shoes, televisions, toys, watches, and similar goods</td>
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<tr>
<td>Uses</td>
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<tr>
<td>Retail sales</td>
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<tr>
<td>Self-service storage facility</td>
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<td>School, private or public (kindergarten, elementary, or secondary)</td>
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<td>Studio for teaching music, dance, or dramatics</td>
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<td>Tap room or wine bar</td>
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<tr>
<td>Tennis courts—unlighted</td>
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<td>Tattoo/body piercing establishment</td>
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<tr>
<td>Tennis courts—lighted</td>
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<tr>
<td>Theater, indoor</td>
<td></td>
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<td>Trades contractor, excluding outside storage of equipment or supplies</td>
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<tr>
<td>Public Utility stations or substations</td>
<td>CS</td>
<td>CS</td>
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<tr>
<td>Water towers and related water works, shops and storage owned, operated, or leased by, or leased to the town</td>
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<tr>
<td>Wireless telecommunication facility or complex, freestanding and substantial modifications and related shops and storage owned or operated, or leased by, or leased to the town (see § 16-732(1), amended 1/9/2012)</td>
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</table>
### 16.4.7 ACCESORY USE STANDARDS

**A. ACCESSORY DWELLING UNIT**

Where permitted, accessory dwelling units shall be allowed within a principal structure subject to the following:

1. Only one (1) accessory dwelling unit is permitted per structure.
2. An accessory dwelling unit is a complete, independent living facility equipped with a kitchen and with provisions for sanitation and sleeping.
3. Adequate water and sewer or an approved septic system shall be available for all accessory dwelling units.

**B. ACCESSORY USES AND STRUCTURES**

1. Permitted accessory uses and structures are clearly incidental to, subordinate in purpose to, and serve the principal use subject to the following:
   a) No residence shall have more than two (2) one (1) accessory/utility building, plus one (1) detached garage, on a lot.
   b) Accessory buildings and detached garages shall not be placed less than five (5) feet from any lot line unless otherwise specified.
   c) Accessory structures on oceanfront and waterfront lots must abide by any required CAMA setback.
2. No accessory structures may be erected on any lot without a principal structure and/or use, except that temporary construction offices or storage containers shall be permitted on lots with a valid building permit issued for construction of a principal structure as provided in Section 16.4.7.N.
3. Storage of personal property such as vehicles, boats, trailers, and other materials shall not be allowed on any lot without a principal structure unless permitted as
A principal use of “Self-service storage facility” in accordance with the Table of uses.

4. A lawfully-established nonconforming use or structure may be supplemented with an accessory use or structure provided the accessory does not increase the nonconformity.

C. BEACH ACCESS AND PEDESTRIAN WATER ACCESS WALKWAYS
All beach access and pedestrian water access walkways shall be constructed in accordance with the CAMA use standards as stated in 15A NCAC 07H. No roof, gazebo, or other similar materials shall be placed on any portion of a beach access or pedestrian water access walkway in the C-2 zoning district where adjacent to the R-3 zoning district.

D. FISHING PIERS AND DOCKS
Where permitted, piers, docks, and boat lifts shall be constructed in accordance with Chapter 6, Article 3: Piers and Docks and the CAMA use standards as stated in 15A NCAC 07H. No roof, gazebo, or other similar materials shall be placed on any portion of a pier or dock – including boat lifts/slips – in the C-2 zoning district where adjacent to the R-3 zoning district.

E. HOME DAY CARE
A home day care is permitted as accessory to a residential dwelling unit if it complies with the following standards:

1. Care is provided within a dwelling unit, for between three (3) and eight (8) children less than 13 years of age, not more than five (5) of which are preschool age, or up to eight (8) adults, who do not reside in the dwelling, for at least once per week for at least four (4) hours, but less than 24 hours per day.

2. The establishment shall not operate between the hours of 7:00 pm and 6:00 am.

3. It complies with all applicable home occupation requirements, except the gross floor area requirement.

4. It is licensed by the State of North Carolina and complies with all applicable State requirements.

5. Any outdoor play equipment stored throughout the day and night shall not be permitted in the front yard area nor shall it be situated closer than 15 feet from any adjoining lot containing a dwelling.

F. HOME OCCUPATIONS
Where permitted, home occupations shall comply with the following minimum standards:

1. Such use is clearly incidental and secondary to the residential use of the dwelling for dwelling purposes.

2. No more than 25% of the total floor area is used for such purposes.

3. There is no outdoor display or window display associated with the business.

4. No mechanical equipment shall be installed or used except such that is normally used for domestic, professional or hobby purposes and which does not cause noise or other interference in radio and television reception.
5. No accessory building or outside storage shall be used in connection with the home occupation.

6. **Traffic generation shall not exceed the traffic volumes generated by nearby residents.** The home occupation shall not generate more than six (6) customer or client and delivery trips combined in any one (1) day and no more than two (2) clients may be present at any one time.

7. No merchandise is sold on the premises.

8. No person not a resident of such dwelling is employed within the dwelling in connection with the home occupation.

G. OUTDOOR DISPLAY
Where permitted, outdoor display shall comply with the following minimum standards. This section applies to the display of retail and rental goods outside of an enclosed building. This section does not apply to permitted farmers’ markets.

1. **Outdoor display must be customarily incidental to a permitted principal use in the zoning district.** Only the business or entity occupying the principal use or structure shall sell merchandise or rent equipment in the outdoor display areas.

2. Merchandise or rental equipment shall not be placed or located where it will interfere with pedestrian or building access or egress, public right-of-way, required vehicular parking and handicapped parking, aisles, access or egress, fire lanes, alarms, hydrants, standpipes, or other fire protection equipment, or emergency access or egress.

H. OUTDOOR STORAGE
Where permitted, accessory outdoor storage shall comply with the following minimum standards:

1. All outdoor/open storage areas shall be fenced with a minimum of a six (6) foot opaque fence.

2. Where possible, all outdoor storage materials shall be kept in the rear of buildings and in no case shall outdoor storage materials be located closer than five (5) feet from any adjoining property line.

I. PICKLEBALL, AND TENNIS, AND VOLLEYBALL COURTS
Where permitted, recreational sports courts shall comply with the following minimum standards:

1. In residential zoning districts, all pickleball and tennis courts shall be unlighted.

2. No pickleball or tennis court shall be located closer than 25 feet from any residential structure.

J. RECREATIONAL VEHICLE (RV) OR TRAVEL TRAILER
Where permitted, recreational vehicles and travel trailers shall be parked/stored on the owner’s property in a designated parking space. It shall be unlawful for any person to park or allow to be
parked, any motor home pickup truck camper, travel trailer and/or camper for the purpose of habitation overnight upon any public or private property within the town limits.

K. REPAIR, RENTAL, AND/OR SERVICING
Where permitted, the repair, rental, and/or servicing of any product the retail sale of which is permitted use in the same district shall comply with the following minimum standards:

1. All repair and service areas shall be totally enclosed.

L. SATELLITE DISH ANTENNAS
Where permitted, satellite dish antennas shall comply with the following minimum standards:

1. Compact dish antennas 36 inches or less in size may be installed in accordance with the manufacturer's specifications. Installation must meet all existing requirements and state building code.
2. Dishes in excess of 36 inches in diameter are prohibited in all districts.

M. SELF-SERVICE ICE VENDING MACHINE
Where permitted, self-service ice vending units or similar freestanding accessory uses shall comply with the following minimum standards:

1. Self-service ice vending units or other similar uses shall be an accessory to a principal nonresidential use.
2. Self-service ice vending units or other similar uses shall not be placed less than 5 feet from any lot line.
3. Architectural features of any self-service ice vending unit or other similar use shall be complementary to existing development in the immediate area. Building elevations shall be submitted with each application considered for approval.
4. The foundation of each unit shall be screened by skirting, lattice or foundation plantings and landscaping.
5. Roof-mounted or other equipment on top of the unit shall be screened by a parapet wall.
6. Within 30 days of the closure or ceasing of operations of any self-service ice vending unit or other similar use all equipment and incidentals shall be removed from the premises.

N. SOLAR ENERGY SYSTEMS
Where permitted, accessory solar energy systems shall comply with the following minimum standards:

1. Roof-mounted solar energy systems. Solar panels should generally relate to the slope of the roof surface to which they are attached. However, the height of any ground-mounted solar energy system including any mounts shall not exceed 10 feet when oriented at maximum tilt and shall not exceed the maximum building height requirement of the district in which it is located. Roof-mounted solar energy systems shall in no instance extend beyond the edge of the roof to which they are attached.
2. Ground-mounted solar energy systems shall be prohibited.

O. STORAGE CONTAINERS

1. Where permitted, storage containers shall comply with the following minimum standards:
   a) One (1) storage container is permitted only as a temporary accessory use.
   b) A temporary storage container may be up to 16 feet long by eight (8) feet wide by nine (9) feet tall.
   c) One (1) storage container may be placed on the site for up to 60 days.
   d) The storage container shall be placed in a driveway or a designated parking area. Unless located in a driveway or designated parking area, the storage container must be in the side or rear yard and shall not be placed less than 10 feet from any lot line.
   e) Where storage containers are associated with a property with a valid building permit, such storage containers shall comply with the following minimum standards:
      i) One (1) storage container may be placed on the lot and shall not exceed 40 feet long by eight (8) feet wide by nine (9) feet high, nor shall it remain on the lot for more than 30 days following expiration of the building permit or issuance of a certificate of occupancy, whichever comes sooner. 60 days.
      ii) The storage container shall be placed on the site meeting the setback requirements of the zoning district in which it is located and shall not be visible from the street.
      iii) If the nonresidential property adjoins residential property, storage containers are not permitted.
   f) These standards do not apply to portable units for donating goods to a charitable organization (such as Goodwill drop off), dumpsters, or recycling facilities.

P. SWIMMING POOLS

Where permitted, all public, commercial or private outdoor swimming pools of three (3) feet or more in depth, either above ground or below ground, and of either permanent or temporary nature shall comply with the following minimum standards: construction shall meet the following requirements, in addition to setbacks and other requirements specified elsewhere:

1. That the setback for an aboveground swimming pool shall be setback 10 feet from any lot line equals the required setback for accessory structures in the district in which it is located plus one (1) foot for each foot over five (5) of pool height.
2. That a fence must be erected to a minimum height of four (4) feet to completely enclose all sides of the pool not bounded by a building. Any gate of equal height shall be installed and securely fastened when the pool is not in use.
3. That all mechanical equipment shall be located a minimum of five (5) feet from any property line.
4. Pools are not permitted between a principal structure and the Atlantic Ocean in the R-1 district.
5. Pools shall not be permitted in the front or side yard.

Q. TEMPORARY HEALTH CARE STRUCTURE
Temporary health care structures shall be permitted in accordance with NCGS 160A-383.5.

16.4.8 RESIDENTIAL USE STANDARDS

A. DWELLING, TWO-FAMILY/DUPLEX
Where permitted, two-family/duplex dwelling structure shall be located on a single lot and dwelling units may be sold separately from the land they are located on.

1. Duplex dwelling units shall not be located on individual lots.

B. MANUFACTURED HOMES
Where permitted, no manufactured homes or trailer shall not be used in any manner for business or commercial purposes, except when used for a sales office on a manufactured home sales lot, except when used as a temporary construction office building use according to division 8 of this article.

C. DWELLING, MULTIFAMILY
The following standards shall be used in evaluating an application for approval of a conditional use for multiple-family dwellings:

1. The minimum lot size shall be 10,000 square feet for three (3) dwelling units plus 3,500 square feet of lot size for each additional dwelling unit above three (3).
2. Buildings and other improvements shall be so installed that the dune structure shall be maintained.
3. The maritime forest shall be maintained, except for removal of that which is the absolute minimum to allow reasonable use of the site.
4. The minimum floor area per dwelling unit shall be as set out in 900 square feet.
5. There shall be an acceptable plan for the maintenance and preservation of those portions of the site which are left undisturbed as duly recorded in an established Homeowners Association restrictions and covenants, and
6. The provisions of water supply and sewage disposal systems shall meet the requirements of the town, the county, the state, the United States and any other governmental body having jurisdiction.

D. FAMILY CARE HOME
Family care homes shall be permitted in accordance with NCGS 168-22.

16.4.9 NONRESIDENTIAL USE STANDARDS

A. ADULT ENTERTAINMENT ESTABLISHMENT
Where permitted, adult entertainment establishments shall comply with the following minimum standards:
1. Adult entertainment shall not be located in a building or on a premises where alcohol or alcoholic beverages are sold or in a building or on a premises that allows alcohol or alcoholic beverages to be consumed.

2. Adult entertainment shall not be located within 100 feet in any direction from any lot on which a public playground is located.

3. Adult entertainment shall be not be located within 100 feet of any residential dwelling unit.

4. Signs are allowed, as permitted by this ordinance, but may not include promotional displays, flashing lights, or photographs, silhouettes, drawings, or pictorial representations of any manner depicting sexual activity, themes, or nudity.

5. The facade of the proposed operation shall be screened in a manner that obscures visibility of the interior to pedestrians and/or automobile traffic.

B. ASSISTED LIVING AND NURSING HOMES
Where permitted, assisted living and nursing home facilities shall comply with the following minimum standards:

1. All structures shall be built to a residential scale consistent with the surrounding area.

C. AUTOMOBILE SALES AND SERVICE
Where permitted, retail sales and service of automobile and accessories shall comply with the following minimum standards:

1. The display or storage of automobiles for sale shall not be subject to the outdoor storage or outdoor display requirements provided that no boat or accessory for sale be parked closer than 25 feet from any street lot line.

2. All service areas shall be totally enclosed.

D. BEACH ACCESS AND PEDESTRIAN WATER ACCESS WALKWAYS
All beach access and pedestrian water access walkways shall be constructed in accordance with the CAMA use standards as stated in 15A NCAC 07H. No roof, gazebo, or other similar materials shall be placed on any portion of a beach access or pedestrian water access walkway in the C-2 zoning district where adjacent to the R-3 zoning district.

E. BOATS AND ACCESSORIES, RETAIL SALES AND SERVICE
Where permitted, retail sales and service of boats and accessories shall comply with the following minimum standards:

1. The display or storage of boats for sale shall not be subject to the outdoor storage or outdoor display requirements provided that no boat or accessory for sale be parked closer than 25 feet from any street lot line.

2. All service areas shall be totally enclosed.
F. BOAT RAMP
Where permitted, boat ramps shall comply with the following minimum standards:

1. All boat ramps shall be constructed in accordance with the CAMA use standards as stated in 15A NCAC 07H.

G. BOAT RENTAL FACILITIES
Where permitted, boat rental facilities shall comply with the following minimum standards:

1. Where use of a water-based dock facility is required in the C-2 zoning district, such dock shall not be located adjacent to an adjoining residential zoning district.
2. No vessel or trailer shall be stored on site.

H. BUILDING MATERIALS SALES AND STORAGE YARDS
Where permitted, building materials sales and storage yards shall comply with the following minimum standards:

1. All outdoor/open storage areas shall be enclosed by an opaque fence a minimum six (6) feet in height.
2. Where possible, all outdoor storage materials shall be kept in the rear of buildings and in no case shall outdoor storage materials be located closer than five (5) feet from any adjoining property line.

I. CLUB OR LODGE
Where permitted, a club or lodge shall comply with the following minimum standards. Any request for a conditional use permit club or lodge, in addition to meeting the zoning requirements for its zone, must contain sufficient information to satisfy to the town that:

1. Adequate off-street parking is provided.
2. Adequate sanitation facilities and capacity is provided.
3. Adequate screening from other properties is provided.
4. Adequate setbacks from property lines are used.
5. An occupancy number shall be established as part of the approval process and increase thereof shall require a new conditional use permit to be issued.
6. Where the club or lodge is associated with a residential development or community, such club shall not be located on an oceanfront or soundfront lot.

J. COMMERCIAL FISHING PIER
Where permitted, commercial fishing piers shall not be located adjacent to an adjoining residential zoning district.

K. DAY CARE FACILITIES
Where permitted, day care facilities shall comply with the following minimum standards:

1. An applicant for an adult or child day care facility shall provide a vehicular circulation plan showing on-site queuing and circulation based upon the location and number of patrons that utilize the facility.
2. Outdoor recreational facilities shall be located in the rear or side yard.
3. All stationary play equipment, dumpsters, garbage cans, or recycling bins, and similar equipment shall be located at least 15 feet from any adjoining residential zoning district property line.
4. Day care facilities which adjoin a residential zoning district shall not operate between the hours of 7:00 pm and 6:00 am.

L. EATING ESTABLISHMENT, MAJOR
Where permitted, major eating establishments shall comply with the following minimum standards:

1. A minimum setback of 25 feet shall be required from any adjoining residential zoning district property line.

M. ELECTRONIC GAMING
Where permitted, electronic gaming operations not prohibited by NCGS 14-306.1 shall comply with the following minimum standards:

1. Electronic gaming operations shall not be located in a building or on a premises where alcohol or alcoholic beverages are sold or in a building or on a premises that allows alcohol or alcoholic beverages to be consumed.
2. Electronic gaming establishments shall not be located within 100 feet of any residential dwelling unit.

N. FARMERS’ MARKET
Where permitted, a farmers’ market shall comply with the following minimum standards:

1. Farm products sold shall be produced by the participating farmers who have obtained grower certification from the NC Department of Agriculture or NC Cooperative Extension.
2. Limited production and assembly of crafts and woodworking items for sale on site is permitted. No livestock may be sold.
3. A Conditional Use Permit shall be issued on an annual basis prior to the start of any proposed farmers’ market.

O. FISHING PIERS AND DOCKS
Where permitted, piers, docks, and boat lifts shall be constructed in accordance with Chapter 6, Article 3: Piers and Docks, the CAMA use standards as stated in 15A NCAC 07H, and the following minimum standards:

1. When permitted as a principle use, no vessel or trailer shall be stored on site except in permitted boat slips.
2. No roof, gazebo, or other similar materials shall be placed on any portion of a pier or dock – including boat lifts/slips – in the C-2 zoning district where adjacent to the R-3 zoning district.
P. HOTELS AND MOTELS
Where permitted, hotels and motels shall comply with the following minimum standards:

1. The minimum lot size for a hotel, motel, inn, or similar development shall be no less than one (1) acre. Such developments shall be on a single lot, undivided by public or private streets or rights-of-way.

2. The minimum setbacks shall be doubled along lot lines shared with a residential district or use in which a hotel, motel, inn, or similar development is located.

3. The maximum number of guest units for a hotel, motel, inn, or similar development shall not exceed 20 units per acre.

Q. MANUFACTURING, ARTISAN
Where permitted, artisan manufacturing establishments shall comply with the following minimum standards:

1. All artisan manufacturing areas shall be totally enclosed.

R. MARINA – CLASS 1 PUBLIC
Where permitted, Class 1 public marinas shall comply with the following minimum standards:

1. Maximum number of boats stored on land or water: 50
2. Minimum land area/lot size: 15,000 square feet
3. Minimum lot width/water frontage: 200 feet
4. Minimum lot depth: 75 feet
5. Minimum lot side yard/land setback: 15 feet
6. Minimum front yard setback: 25 feet
7. Maximum building height: 38 feet from mean adjacent grade to peak of roof.
8. Maximum land area to be covered by building structures and nonpervious coverings: 35 percent.
9. Minimum rear yard setback: 20 feet; provided, however, uncovered decks may project 10 feet into the rear setback be built within this 20-foot requirement.
10. Parking:
   a) One parking space for each employee multiplied by the maximum number of employees who will work per working shift.
   b) If the marina has a launching ramp, there shall be a minimum of two boat trailer spaces. A boat trailer space shall be a minimum of 12 feet by 38 feet with such space having access so that the vehicle pulling the trailer and the trailer will have sufficient space to park and maneuver in and out of such spaces.
   c) There shall be one automobile parking space for each slip or space in the water available for storing or keeping boats. These spaces shall be in addition to automobile spaces provided for dry storage of boats as well as those spaces provided when a launching ramp is located on the premises.
d) On land, storage of boats shall require one automobile parking space for each three boat storage spaces in addition to any automobile spaces required for wet storage and automobile/trailer spaces required in the event a launching ramp is located on the premises.

e) Additionally, there shall be provided one parking space for each 500 square feet of floor space for accessory, retail or repair buildings located on the premises.

f) Street or highway rights-of-way shall not be used for the storage of boats, trailers, or automobiles.

8. Where use of a water-based dock facility is required in the C-2 zoning district, such dock shall not be located adjacent to an adjoining residential zoning district.

S. MARINA - CLASS 2 PRIVATE

Where permitted, Class 2 private marinas shall comply with the following minimum standards:

1. One parking space shall be provided on site for each boat slip. In addition, if the class II private marina has a boat launching ramp, there shall be a minimum of two parking spaces for a vehicle and a boat trailer. Such parking spaces shall be a minimum of 12 feet by 28 feet and shall have access so that the vehicle pulling the trailer and the trailer will have sufficient space to park and maneuver in and out of such space.

2. Minimum lot width/water frontage: 150 feet

3. No person may stay overnight for more than three (3) consecutive nights on any vessel moored in a class II private marina.

4. No fuel storage facilities (except for fuel storage on permitted vessels) and no fuel sales shall be permitted.

5. No permanent repair facilities shall be permitted, provided that this shall not prohibit repair of vessels on site so long as no permanent facilities to accommodate such repairs are constructed or maintained.

6. Any boat launching ramp or other access to the public waters constructed on site shall be used only by owners or tenants utilizing the boat slips within the marina. The general public shall not be permitted to use such ramp or access.

7. Garbage collection facilities adequate for the use of the marina shall be provided on site.

8. No vessel or trailer shall be stored on site except in permitted boat slips.

T. MICRO BREWERY AND MICRODISTILLERY

Where permitted, microbreweries and microdistilleries shall comply with the following minimum standards:

1. Shall not exceed 40,000 square feet of gross floor area.
2. Outside gathering areas shall not be located within 100 feet of a residential district.
3. Required parking shall be calculated based on square footage proposed for each use.
4. Storage of materials, including silos, products for distribution and other items requiring long-term storage shall be allowed in areas behind building, in enclosed buildings, or otherwise screened from the public right-of-way or pedestrian way.
5. Shall include one (1) or more accessory uses such as a tasting room, tap room, restaurant, retail, demonstration area, education and training facility or other use incidental to the facility and open and accessible to the public.

U. SELF-SERVICE STORAGE FACILITY
Where permitted, self-service storage facilities shall comply with the following minimum standards:

1. Individual storage units shall not exceed 400 square feet each.
2. Storage of boats, recreational vehicles, and similar equipment may be allowed, subject to the following standards:
   a) Storage shall occur only within a designated area, approved as part of the site plan.
   b) Boats shall be stored on trailers with wheels.
   c) Storage areas shall be completely screened from public rights-of-way or adjoining residential zoning districts or uses, by an opaque fence, a minimum of six (6) feet in height.

V. TATTOO/BODY PIERCING ESTABLISHMENT
Where permitted, a tattoo/body piercing establishments shall comply with the following minimum standards:

1. Tattoo/body piercing establishments shall not be located in a building or on a premises where alcohol or alcoholic beverages are sold or in a building or on a premises that allows alcohol or alcoholic beverages to be consumed.
2. Tattoo/body piercing establishments shall not be located within 100 feet in any direction from any lot or parcel on which a public playground is located.
3. Tattoo/body piercing establishments shall be not be located within 100 feet of any residential dwelling unit.
4. The facade of the proposed operation shall be screened in a manner that obscures visibility of the interior to pedestrians and/or automobile traffic.

W. UTILITY STATION
Where permitted, utility stations shall comply with the following minimum standards:

1. Structure setback: Minimum setback from any public or private street lot line: 10 feet
2. Minimum rear yard setback minimum: 10 feet
3. Minimum side yard setback minimum: 10 feet
4. Within residential zoning districts, all equipment cabinets and similar facilities shall be completely screened by an opaque fence.

4.5. Privately owned utility stations shall submit documentation of a property owners association or similar entity responsible for perpetual maintenance and operation of the facility. A contingency plan outlining procedures for removal/replacement of the system in the event of failure shall also be submitted to the town as part of the approval process. An annual report of condition, operation, and funds to support the private utility system shall be submitted to the Town Manager each year following approval of the system.

5-6. The lot on which the public or private utility station or substation is located shall be landscaped to fit into its surroundings. In the event other uses are permitted on the lot, the landscaping shall be designed taking into consideration the location and use of such other facilities.

X. WATER TOWER
Where permitted, water towers and related water works, shops, and storage shall be publicly-owned.

Y. UNLISTED USE
Where a proposed use does not closely match any uses provided in Table 16.4.2, such use shall be deemed an “Unlisted use” by the zoning administrator and subject to the following approval procedures:

1. The Board of Adjustment must find that the proposed use will be similar in character and intensity to other permitted or conditional uses provided for within the district in which it is proposed. Such determination shall be noted as a finding of fact and shall be included in the record of the final disposition of the application.

2. Any proposed outdoor operations, inventory display and/or storage must be specifically approved by the Board of Adjustment who may establish any additional conditions as may be determined necessary. Such conditions may include, but shall not be limited to: screening, buffering, increased setbacks or other appropriate conditions up to and including denial of such proposed outdoor use for the location sought for due cause in order to protect, maintain or promote the general public, health, safety and welfare. Such due cause shall be noted as a finding of fact and shall be included in the record of the final disposition of the application.

3. Parking requirements shall be those noted for the use most closely associated with the proposed use as listed in Section 16.4.13 as determined by the Board of Adjustment in conjunction with staff review and recommendation.

4. The Board of Adjustment shall reasonably consider and may require the establishment of appropriate hours of operation for the proposed use should they determine such limitation to be appropriate in order to protect, maintain or promote the general public health, safety and welfare.

5. The Board of Adjustment shall consider and may require any additional relevant time, place and manner conditions or restrictions as may be deemed appropriate for the location sought for due cause in order to protect, maintain or promote
the general public health, safety and welfare. Such due cause shall be noted as a finding of fact and shall be included in the record of the final disposition of the application.

16.4.10 DIMENSIONAL REQUIREMENTS

A. MAXIMUM HEIGHT LIMIT
The maximum height limit shall be 38 feet, plus a freeboard limit of three (3) feet, where applicable, as measured by the vertical distance from the mean adjacent elevation at the building site to the highest peak of the roof. Such elevation shall be determined after site filling and leveling is done and prior to the issuance of a building permit from mean adjacent grade to highest peak of the roof. Grade elevation is to be established before construction. No part of the structure other than the chimney may extend beyond the 38-foot plus freeboard limit.

B. MINIMUM DWELLING UNIT SIZE
The minimum dwelling unit size shall be 1,200 square feet for single-family dwellings and 900 square feet per unit for duplex and multifamily dwelling units.

C. LOT COVERAGE
Lot coverage, including hardened surfaces, shall not exceed 35% of gross lot area in all districts.

D. DENSITY
1. In the PRD-1 District, the maximum density calculated based upon net buildable area shall be 15.4 units per acre for multiple-family development and 8.7 housing units per acre for single-family development.
2. In the PRD-2 District, the maximum density calculated based upon net buildable area shall be 2.9 units per acre.

<table>
<thead>
<tr>
<th>Table 16.4.3: Dimensional Requirements</th>
<th>Dimensional Requirements by Zoning District</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-1: Residential District—Ocean Front</td>
<td>50 feet</td>
</tr>
<tr>
<td>R-2: Residential District—Sound Front</td>
<td>50 feet</td>
</tr>
<tr>
<td>R-3: Residential District—Canal Lots</td>
<td>50 feet</td>
</tr>
</tbody>
</table>
Table 16.4.3: Dimensional Requirements by Zoning District

<table>
<thead>
<tr>
<th>Zoning District</th>
<th>Minimum Lot Width</th>
<th>Minimum Lot Area</th>
<th>Minimum Front Setback</th>
<th>Minimum Rear Setback</th>
<th>Minimum Side Setback</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-4: Residential District—Interior Lots</td>
<td>50 feet</td>
<td>5,000 square feet</td>
<td>7.5 feet</td>
<td>15 feet</td>
<td>5 feet</td>
</tr>
<tr>
<td>PRD-1: Planned Residential Development District Multifamily</td>
<td>50 feet</td>
<td>3 acres</td>
<td>20 feet</td>
<td>15 feet</td>
<td>5 feet</td>
</tr>
<tr>
<td>PRD-2: Planned Residential Development District Single-Family and Two-Family Only</td>
<td>50 feet</td>
<td>3 acres</td>
<td>20 feet</td>
<td>7.5 feet interior lots: 50’ ocean front</td>
<td>5 feet</td>
</tr>
<tr>
<td>B-1: General Business District</td>
<td>50 feet</td>
<td>5,000 square feet</td>
<td>7.5 feet</td>
<td>10 feet</td>
<td>5 feet</td>
</tr>
<tr>
<td>B-2: Restricted Business District</td>
<td>50 feet</td>
<td>5,000 square feet</td>
<td>7.5 feet</td>
<td>15 feet</td>
<td>5 feet</td>
</tr>
<tr>
<td>C-1: Conservation District—Ocean Front Side</td>
<td>50 feet</td>
<td>3 acres</td>
<td>0 feet</td>
<td>0 feet</td>
<td>5 feet</td>
</tr>
<tr>
<td>C-2: Conservation District—Sound Side</td>
<td>50 feet</td>
<td>3 acres</td>
<td>0 feet</td>
<td>0 feet</td>
<td>5 feet</td>
</tr>
<tr>
<td>C-4: Conservation District—Inlet Area</td>
<td>50 feet</td>
<td>3 acres</td>
<td>20 feet</td>
<td>20 feet</td>
<td>5 feet</td>
</tr>
</tbody>
</table>

[1] Lots subject to CAMA setbacks may have more restrictive setback requirements. Oceanfront, canal, and sound lots must comply with required CAMA setbacks.

E. SETBACK ENCROACHMENTS

1. Elevators, liftavators, and other mechanical devices for elevating people and cargo may encroach into any required setback not more than 30 inches.
2. Flagpoles, mailboxes, bicycle parking, lamp, and address posts are not subject to setback requirements.
3. Fences or walls, ornamental entry columns, and gates may extend into or be located in any required setback in accordance with Section 16.4.11.C.
4. Beach access structures, oceanfront gazebos, pedestrian access walkways, and similar appurtenances in compliance with CAMA regulations are not subject to setback requirements.
5. Retaining walls of not more than three (3) feet high, as measured from the lowest ground elevation to the top of the wall, are not subject to setback requirements.
6. Signs may extend into or be located in any required setback in accordance with Section 16.4.16.
7. Sills, cornices, eaves, gutters, heating and air conditioning units, and similar items may project into any required setback not more than 30 inches.
8. Uncovered decks and uncovered porches may project one-half the distance into any required rear setback in the R-1, R-2, R-3, and R-4 districts.

9. Uncovered steps may project into the front and rear setback by one-half of the setback requirement to adjust for the increased height above base flood elevation.

16.4.11 GENERAL DEVELOPMENT STANDARDS

A. GENERAL

The purpose of this section is to provide consistent development standards for application throughout the Town of Topsail Beach.

B. FILL, GRADING, AND EXCAVATION

1. No lot, parcel, or tract of land may be disturbed by grading, filling, and excavation without a town fill and grade permit.

2. Permits for fill and grade shall be accompanied by a scaled grading plan depicting elevation change prepared by a licensed surveyor, landscape architect, or professional engineer. When fill is not proposed in excess of four (4) inches, a scaled grading plan is not required. However, a hand-drawn sketch should be submitted to depict areas of proposed fill, grading, or excavation.

3. The amount of fill added to a lot shall not be greater than one foot (1) above the crown of the highest adjoining street or access easement.

4. Fill that is necessary to meet any Pender County Environmental Health Department or town/NCDEQ Stormwater permit requirement may exceed the one (1) foot limit. In which case, fill shall only be allowed to the minimum extent necessary to obtain a permit.

C. CORNER VISIBILITY

No planting, fence or other obstruction to visibility of vehicles shall be erected, maintained or allowed to exist in residential districts within the range of three (3) to seven (7) feet above street level when located within 15 feet of the road surface edge of pavement at the intersection of a corner lot closer to the intersection of any two street lines than 15 feet of any two street lines than 25 feet. Streets designed to state DOT standards are exempt from this requirement.

D. FENCES AND WALLS

1. No fence or wall shall be erected without the issuance of a zoning permit.

2. A property owner may erect an ornamental fence or wall on his own property.

3. No fence or wall can be erected across or on any public or private street, alley or highway right-of-way or within a site triangle.

4. No barbed wire or sharp materials are allowed.

5. No fence or wall shall exceed eight (8) feet in height within a front yard and eight (8) feet within a side or rear yard, unless specifically required by this ordinance.

6. Fence height limits shall not apply to electric/gas substations, water/sewer treatment plants or facilities, outdoor storage areas, municipal water storage facilities, waste treatment facilities, public recreation facilities, or sports courts.
however, chainlink fences around tennis courts may be constructed to a height not to exceed ten feet.

7. No fence which is less than 85% open (transparent) at a height of greater than two (2) feet shall be erected closer than 10 feet to the paved portion of any street or highway.

8. Retaining walls shall not exceed three (3) feet in height unless a certification letter is submitted by a licensed professional engineer stating compliance with state building code requirements.

E. UNDERGROUND ELECTRICAL

New construction of principal structures shall provide for underground installation of utilities from all utility poles, including telephone, electric power, TV, cable, and gas lines.

F. STORMWATER RUNOFF

All development or land disturbance shall comply with the stormwater requirements provided in Chapter 6: Buildings and Building Regulations, Section 6-59 Plans and Specifications.

16.4.12 TRANSPORTATION ACCESS

A. STREET ACCESS AND PERMANENT ACCESS EASEMENTS

1. No building shall be erected on a lot which does not abut a street or have access to a public street by means of an unobstructed permanent access easement of record or private street (new private streets shall not be created). For the purposes of this article ordinance, an easement of record shall mean that the easement is recorded in the county register of deeds office and made a part of the deed for the property it is on. Such easement of record shall only be permitted in those situations in which access is provided to second tier and third tier lots and shall serve no more than four (4) lots. Permanent access easements of record shall be constructed and maintained in accordance with the following standards:

a) The width of such easements shall be no less than 15 feet. It shall be the responsibility of the property owner(s) to ensure that the entire width of the easement shall be kept free and clear of obstructions at all times. This includes vegetation, vehicles, structures and other objects which in any manner obstruct any access or egress over and across such easement area.

b) All permanent access easements shall be surfaced to a minimum width of 12 feet. Surfacing material must be capable of supporting the weight of emergency vehicles as set forth in the state building code.

c) One vehicle turnaround area shall be provided in conjunction with each structure located on a second or third tier lot. Such turnaround area shall be immediately adjacent to the access easement and constructed in accordance with the following specifications:
i) Turnaround areas shall be located within 100 feet from the structure which they are intended to serve.

ii) The width of the turnaround area at the point where it adjoins the access easement shall be a minimum of 30 feet.

iii) The depth of the turnaround area (measured from the closest edge of the access easement to the back of the turnaround) shall be a minimum of 25 feet.

iv) The width of the turnaround area at its furthermost point from the closest edge of the access easement shall be a minimum of 20 feet.

B. EMERGENCY VEHICLE ACCESS

1. Emergency vehicle access to be kept clear of obstructions. The owner of every lot upon which a building is situated shall provide a means of emergency vehicle access to said building. Access to all buildings shall be kept clear of obstruction in the manner set forth in this section.

2. Obstruction. Obstruction as used in this section means all forms of natural or man-made obstructions, impediments, and hindrances to emergency vehicle ingress and egress. Obstruction includes, but is not limited to, trees, bushes, vegetation, gates, fences, poles, signs, utility service lines and other similar items, and objects of all kinds.

3. Area above access. No obstruction may be placed or allowed to remain in the area 12 feet above the vehicle access surface for the entire length of the access.

4. Area of access width. Access width must be at least 12 feet for the entire length of the access and shall be continuous so as to permit an emergency vehicle to drive the entire length of the access. The width distance shall be measured from a point on an edge of such access to a point immediately perpendicular from said point toward the other edge of the access. No obstruction may be placed or allowed to remain within the 12 feet of access width.

5. Area access to be kept clear. The access areas set forth in subsections (b) and (c) above area above the access and the width of the access shall be maintained free and clear of obstruction at all times at a minimum height and width of 12 x 12 linear feet.

Construction of section and meaning of terms. This section shall be construed as follows:

a) This section shall be construed to permit emergency vehicle ingress and egress to structures and buildings on lots and to prohibit obstruction of any kind that would interfere with such access.

b) Sections 16-443 and 16-444 shall not be construed to permit the placement or construction of any of the objects listed in those sections within the areas of access described in subsections (b) and (c) above.

c) This section does not affect street access requirements set forth in section 16-241.
d) Access as used in this section means emergency vehicle ingress and egress to and from a structure or building on a lot. The term access includes, but is not limited to, street and street private as defined in section 16-237, permanent access easement as defined in section 16-241, driveway, alley, and road.

a) Obstruction as used in this section means all forms of natural or man-made obstructions, impediments, and hindrances to emergency vehicle ingress and egress. Obstruction includes, but is not limited to, trees, bushes, vegetation, gates, fences, poles, signs, utility service lines and other similar items, and objects of all kinds.

16.4.13 PARKING

A. GENERAL

1. It is the intent and purpose of these regulations to provide accessible, attractive, and well maintained parking facilities for the citizens and the visitors of the Town of Topsail Beach.

2. Each application for a zoning permit or a certificate of occupancy shall include information as to the location and dimensions of off-street parking and the means of ingress and egress to such space. This information shall be in sufficient detail to enable the zoning administrator/building inspector to determine whether the requirements of this section are met. The certificate of occupancy for the use of any building or structure on land where off-street parking or loading space is required shall be withheld by the building inspector until provisions of this section are fully met. If at any time compliance ceases, then any certificate of occupancy which shall have been issued for the use of the property shall immediately become void and of no effect.

B. VEHICLE STORAGE

1. Residential districts. Only vehicles intended for personal use shall be parked or stored on any property zoned for residential use. No storage of commercial inventory whatsoever shall be permitted and no inoperative vehicle shall be permitted to be parked or stored out of doors longer than 30 days. Commercial trucks or vans driven home by employees must be parked in a garage, carport, or in the driveway.

2. Business Nonresidential districts. Customer and employee parking is permitted along with the parking and storing of governmental or commercial vehicles, in any business nonresidential district. Inoperative vehicles shall only be permitted to be parked or stored while undergoing repairs at a commercial garage or automobile service station or if stored in an approved junkyard or wrecking yard in a business district.

3. Recreational vehicles. Recreational vehicles may be parked/stored on the owner’s property in a designated parking space. It shall be unlawful for any person to park or allow to be parked, any motor home pickup truck camper,
travel trailer and/or camper for the purpose of habitation overnight upon any public or private property within the town limits.

C. SHARED PARKING
The required parking space for any number of separate uses may be combined in one lot but the required space assigned to one use may not be assigned to another use, except that one-half of the parking space required for churches whose peak attendance will be at night or on Sundays may be assigned to a use which will be closed at night and on Sundays.

1. Those wishing to use shared parking as a means of satisfying off-street parking requirements must submit a shared parking analysis to the zoning administrator that clearly demonstrates the feasibility of shared parking. The study must address, at a minimum, the size and type of the development, the composition of tenants, the anticipated rate of parking turnover, and the anticipated peak parking and traffic loads for all uses that will be sharing off-street parking spaces. A shared parking plan will be enforced through written agreement among all owners of record. An attested copy of the agreement between the owners of record must be submitted to the zoning administrator and submitted to the county register of deeds for recordation. Recordation of the agreement must take place before issuance of a zoning permit or certificate of occupancy for any use to be served by the off-street parking area.

2. Parking spaces which are reserved for that specific business (e.g., reserved for manager only) shall not be counted toward meeting the above parking requirements, except for those spaces designated and marked for use only by handicapped persons.

3. The maximum reduction in the number of parking spaces required for all uses sharing the parking area shall be 50%.

4. The Planning Board shall evaluate and may approve or deny the shared parking analysis and agreement if it can be demonstrated by the applicant that the shared parking agreement will not encourage nuisance parking on adjacent lot owners or businesses.

D. PARKING LOT DESIGN
1. Where parking lots for more than 15 cars are permitted or required, the following provisions shall be complied with:
   a) The lot may be used only for parking and not for any type of loading, sales, dead storage, repair work, dismantling or servicing unless otherwise permitted by this ordinance, but shall not preclude convention exhibits or parking of rental vehicles.
   b) All entrances, exits, barricades at sidewalks and drainage plans shall be approved and constructed before occupancy.
   c) A strip of land five (5) feet wide adjoining any street line or any residential zoning district lot zoned for residential uses shall be reserved as open space, guarded with wheel bumpers and planted with evergreen
shrubs at three (3) feet separation at a minimum of three (3) feet in height at time of planting in grass and/or shrubs or trees.

d) Only one entrance and one exit sign no larger than two square feet prescribing parking regulations may be erected at each entrance or exit.

e) Where parking or loading areas are provided adjacent to a public street, ingress and egress thereto shall be made only through driveways not less than nine feet, six inches nor more than 25 feet in width at the curb line of such street, except where the zoning administrator/building inspector finds that a greater width is necessary to accommodate the vehicles customarily using the driveway.

f) Where two or more driveways are located on the same lot, other than a mobile home park, the minimum distance between such drives shall be 30 feet or one-third of the lot frontage, whichever is greater.

g) No driveway shall be located closer than 25 feet to any street intersection.

h) Any lighting of parking areas shall be shielded so as to cast no light upon adjacent properties and streets or oceanfront.

E. MINIMUM OFF-STREET PARKING REQUIREMENTS

1. For purposes of this article ordinance an off-street parking space shall be no less than 160 square feet in area, and no less than nine (9) feet wide and 18 feet long, plus adequate ingress and egress provided for each off-street parking space.

2. The number of exclusive off-street residential parking spaces required by this section shall be provided on the same lot or a contiguous (or immediately across the street from) lot with the principal use and the required number of off-street parking spaces specified for each use shall be considered as the absolute minimum.

3. Off-street parking spaces required for uses within the business nonresidential districts must be provided within 1,000 feet of the use for which they are required, and they must be located on a lot within a business nonresidential district.

4. In the B-1 zoning district, for nonresidential uses, where on-street or public parking facilities are located within 500-750 linear feet of a proposed use, the minimum off-street parking requirement may be reduced by 50%.

5. In the case of mixed uses (an establishment comprised of more than one (1) use; e.g. restaurant and hotel), which may include a principal and accessory use, the total requirements for off-street parking shall be the sum of the requirements of the various uses computed separately and the off-street parking space for one (1) use shall not be considered as providing the required off-street parking for any other use, except as provided for in the shared parking criteria in this article.

6. For uses that do not correspond to the use types listed in Table 16.4.4, Minimum Off-Street Parking Spaces Required, the zoning administrator shall determine the minimum parking space requirement. In such instances, the applicant shall
provide adequate information for review, which includes, but is not limited to the type of use(s), number of employees, the occupancy of the building, square feet of sales, service and office area, parking spaces proposed, and hours of operation.

7. Handicapped parking spaces shall be in accordance with the regulations set forth by the Americans with Disabilities Act and shall be identified by appropriate signage. The minimum number of spaces shall be provided in accordance with the state building code.

8. Fractional space requirements shall be rounded up to the next whole space.

<table>
<thead>
<tr>
<th>Table 16.4.4: Minimum Off-Street Parking Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uses</td>
</tr>
<tr>
<td><strong>Change of Use or Redevelopment in B-1 &amp; B-2 Districts</strong></td>
</tr>
<tr>
<td>A change of use or redevelopment whereby the floor area of the building is not expanded by greater than 25%. A change of use from a residential to nonresidential use shall not apply to this section.</td>
</tr>
<tr>
<td>Change of use or redevelopment whereby the floor area of the building is expanded by greater than 25%. A change of use from a residential to nonresidential use shall not apply to this section.</td>
</tr>
<tr>
<td>Change of use from a residential to nonresidential use.</td>
</tr>
</tbody>
</table>

**Parking Ratios by Use**

<table>
<thead>
<tr>
<th>Uses</th>
<th>Required Parking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accessory dwelling unit</td>
<td>One (1) space per bedroom.</td>
</tr>
<tr>
<td>Other multifamily dwellings</td>
<td>1.5 spaces per dwelling unit</td>
</tr>
<tr>
<td>Single- and two-family dwellings</td>
<td>Three (3) spaces per dwelling up to four (4) bedrooms; 1 space per each additional bedroom, rounded upwards to the next whole number.</td>
</tr>
<tr>
<td>Adult entertainment</td>
<td>One (1) space per 200 square feet of floor area.</td>
</tr>
<tr>
<td>Arcade, bowling alley, or skating rink</td>
<td>One (1) space per 500 square feet of floor area.</td>
</tr>
<tr>
<td>Artisan manufacturing</td>
<td>One (1) space per 400 square feet of floor area.</td>
</tr>
<tr>
<td>Beach access and pedestrian water access walkways</td>
<td>No parking required.</td>
</tr>
<tr>
<td>Boardinghouses, bed and breakfast, and guesthouses</td>
<td>One (1) space per bedroom for each two persons housed in the structure.</td>
</tr>
<tr>
<td>Boat ramp</td>
<td>Two (2) boat trailer spaces per ramp or launching area. A boat trailer space shall be a minimum of 12 feet by 38 feet with such space having access so that the vehicle pulling the trailer and the trailer will have sufficient space to park and maneuver in and out of such spaces.</td>
</tr>
<tr>
<td>Churches, theaters, auditoriums and similar uses involving the assembling of persons to view theatrical or other performances or exhibitions at scheduled times</td>
<td>One space for each four seats or similar accommodations provided in such theater or place of assembly for the patrons thereof per 100 square feet of seating area in the primary assembly room.</td>
</tr>
<tr>
<td>Club or lodge</td>
<td>One (1) space per 300 square feet of floor area.</td>
</tr>
<tr>
<td>Commercial fishing pier</td>
<td>One space per 2,000 square feet of pier area.</td>
</tr>
<tr>
<td>Eating establishments (restaurants or other eating places)</td>
<td>One (1) space for each four seats per 300 square feet of floor area.</td>
</tr>
<tr>
<td>Farmers’ market</td>
<td>One (1) space per 1,000 square feet of market area.</td>
</tr>
</tbody>
</table>
Table 16.4.4: Minimum Off-Street Parking Required

<table>
<thead>
<tr>
<th>Uses</th>
<th>Required Parking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fishing piers and docks (noncommercial)</td>
<td>No parking required</td>
</tr>
<tr>
<td>Government or community facilities (fire station, community center, library, police department, town hall, etc.)</td>
<td>One (1) space per 300 square feet.</td>
</tr>
<tr>
<td>Healthcare and daycare facilities</td>
<td>One space for each guest bedroom. Space must be provided on the lot on which the hotel is situated or within 500 feet thereof on property under the same ownership as the hotel lot.</td>
</tr>
</tbody>
</table>
| Hotels and motels                         | A. One (1) parking space for each employee multiplied by the maximum number of employees who will work per working shift.  
   B. If the marina has a launching ramp, there shall be a minimum of two (2) boat trailer spaces. A boat trailer space shall be a minimum of 12 feet by 38 feet with such space having access so that the vehicle pulling the trailer and the trailer will have sufficient space to park and maneuver in and out of such spaces.  
   C. There shall be one (1) automobile parking space for each slip or space in the water available for storing or keeping boats. These spaces shall be in addition to automobile spaces provided for dry storage of boats as well as those spaces provided when a launching ramp is located on the premises.  
   D. On-land storage of boats shall require one (1) automobile parking space for each three boat storage spaces in addition to any automobile spaces required for wet storage and automobile/trailer spaces required in the event a launching ramp is located on the premises.  
   E. Additionally, there shall be provided one (1) parking space for each 500 square feet of floor space for accessory, retail or repair buildings located on the premises.  
   F. Street or highway rights-of-way shall not be used for the storage of boats, trailers or automobiles. |
| Marina – Class I (Public)                 | One (1) parking space shall be provided on site for each boat slip. In addition, if the Class II private marina has a boat launching ramp, there shall be a minimum of two (2) parking spaces for a vehicle and a boat trailer. Such parking spaces shall be a minimum of 12 feet by 28 feet and shall have access so that the vehicle pulling the trailer and the trailer will have sufficient space to park and maneuver in and out of such space. |
| Marina – Class II (Private)               | One (1) space per 300 square feet of floor area.      |
| Microbrewery, microdistillery, tap room, or wine bar | One (1) space per 300 square feet of floor area.      |
| Office buildings                          | One space for each 200-300 square feet of building area in the same lot as that of the principal use, which must be in a nonresidential district. The gross square feet of building area is the total area of all floors of the principal structure obtained by measuring the outside thereof on each interior floor excluding non-enclosed and unroofed area. Square feet of floor area. |
| Outdoor recreation (public or private)    | One space per 5,000 square feet of active recreation area, with a minimum of one space. |
Table 16.4: Minimum Off-Street Parking Required

<table>
<thead>
<tr>
<th>Uses</th>
<th>Required Parking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outdoor seating (nonresidential – i.e. eating establishment)</td>
<td>One (1) space per 300 square feet of outdoor seating area.</td>
</tr>
<tr>
<td>Repair service establishments and (automotive, marine, etc.)</td>
<td>One (1) space per 400 square feet of floor area.</td>
</tr>
<tr>
<td>Personal service establishments</td>
<td>One (1) space per 300 square feet of floor area.</td>
</tr>
<tr>
<td>Grocery stores, drug stores, variety stores, banks, apparel stores,</td>
<td>One space for each 200-300 gross square feet of gross commercial floor area. The</td>
</tr>
<tr>
<td>specialty shops, department stores, personal service stores, gift</td>
<td>parking areas of such spaces shall be within 100 feet of the use to which they</td>
</tr>
<tr>
<td>stores, gaming arcades, and similar types of business, Retail sales</td>
<td>pertain or within 200 feet in the cases containing more than 75 spaces-square</td>
</tr>
<tr>
<td>and rental facilities</td>
<td>feet of floor area, plus one (1) space for each 5,000 square feet of outdoor</td>
</tr>
<tr>
<td></td>
<td>sales/rental area.</td>
</tr>
<tr>
<td>School</td>
<td>One (1) per employee, plus one (1) per classroom.</td>
</tr>
<tr>
<td>Storage facilities</td>
<td>One (1) per employee.</td>
</tr>
<tr>
<td>Public utility works, stations, or wireless communication facilities</td>
<td>No parking required.</td>
</tr>
<tr>
<td>Furniture stores, appliance stores, and similar types of business</td>
<td>One space for each 500 square feet of gross commercial floor area. The parking</td>
</tr>
<tr>
<td></td>
<td>areas of such spaces shall be within 200 feet of the use to which they pertain,</td>
</tr>
<tr>
<td></td>
<td>or within 400 feet in the cases containing more than 75 spaces-square feet of</td>
</tr>
<tr>
<td></td>
<td>floor area, plus one (1) space for each four anticipated simultaneous patrons.</td>
</tr>
</tbody>
</table>

16.4.14 BUFFERS

A. GENERAL

Where a proposed nonresidential use, in a nonresidential district, adjoins a residential zoning district a buffer shall be installed in accordance with the minimum specifications provided herein. A buffer strip, where required by this article, shall consist of plant material of such growth characteristics as will provide an obscuring screen of not less than six feet in height at the time of planting. The amount of planting required to accomplish adequate screening is variable with the individual site. The zoning enforcement officer shall determine types and amount where no specific standards are specified by this article, and the zoning board of adjustment or planning board shall make such determination when approval of site plans is required by either of these bodies. In any case, the description of screening in section 16-560 shall be established as the minimum acceptable buffer within the terms.

B. MINIMUM SPECIFICATIONS

A minimum five (5) foot wide planting strip shall be installed along the adjoining property line of a nonresidential use, in a nonresidential district, adjacent to a residential district. The buffer planting strip shall be planted with evergreen shrubs with a maximum of three (3) feet of separation at a minimum of three (3) feet in height at time of planting. Such a buffer strip, where required by this article, shall, as would reasonably be expected, provide within three years of planting, a planted, growing barrier affording visual privacy and sight relief between properties of dissimilar uses and/or character of buildings. Once erected, a buffer shall be properly maintained. The construction and maintenance of a buffer shall be the responsibilities of the landowner or developer.
16.4.15 TREE PRESERVATION

Within the Maritime Forest Overlay District (Section 16.4.4.A), vegetation contained within the zoning setbacks with a diameter of three (3) inches at breast height or less may be removed without a permit. Vegetation larger than three (3) inches shall remain. The area of disturbance shall be limited to the area of the lot contained within the front, rear, and side yard setbacks of the underlying zoning district, except for limited driveway access, stormwater drainage system, and an approved septic tank system may be removed subject to mitigation requirements and issuance of a tree removal permit. Any tree or vegetation removed greater than three (3) inches must be transplanted or replaced with newly installed vegetation of the same species of an equivalent number of inches of vegetation removed. Newly planted or transplanted vegetation must clearly be indicated on a hand drawn sketch plan of the property, or an approved plot plan, site plan, and/or subdivision plat.

16.4.16 SIGNS

A. GENERAL

Sign regulations are established to restrict private signs and lights which overload the public's capacity to receive information, which violate privacy, or which increase the probability of accidents by distracting attention or obstructing vision. Such regulations are also designed to encourage signing and lighting and other private communications which aid orientation and identify activities, and to which reduce conflict among private signs and lighting and between the private and public environmental information systems.

B. APPROVAL PROCEDURES

1. No sign of any type or any part thereof shall be erected, painted, repainted, posted, reposted, placed, replaced or hung in any zoning district, except in compliance with these regulations.

2. Except as authorized in section 16.587, no sign may be erected or displayed without a permit from the zoning administrator/building inspector. Signs requiring a permit shall not be erected or displayed without issuance of a sign permit from the zoning administrator.

3. Every application for a permit shall be submitted on forms which may be obtained at the office of the zoning administrator/building inspector. Each application for a sign permit shall be accompanied by plans which:
   a) Indicate the proposed site by identifying the property by ownership, location and use;
   b) Show the location of the sign on the lot in relation to property lines and building, zoning district boundaries, right-of-way and existing signs; and
   c) Show size, character, complete structural specifications and methods of anchoring and support.

4. Sign plans shall generally be drawn to scale. Hand sketches on a parcel map may be submitted to identify the location of signs.

5. Signs proposed for illumination must comply with the submittal requirements as outlined in Chapter 6: Building Regulations, Section 6-241.
6. If conditions warrant, the zoning administrator/building inspector may require such additional information as will enable him or her to determine if such sign is to be erected in conformance with this division ordinance.

C. SIGNS NOT REQUIRING A PERMIT

The following types of signs are exempted from the application of the regulations herein may be erected and/or displayed without issuance of a sign permit subject to the following regulations:

1. Signs unlighted, not exceeding three (3) square feet in area and bearing only property numbers, mail box numbers, and the name of the owner or occupant of the premises. If more than one (1) sign or nameplate is required, the total allowable sign area shall not exceed nine (9) square feet. Such signs are intended for identification and emergency management purposes.

2. Flags and insignia of any government and flags of historical note, religious flags, military flags, and flags of social and political causes, except when displayed in connection with commercial promotion.

3. Holiday decorations in season.

4. Legal notices and warnings, regulatory, informational or directional signs erected by any public agency, institution or utility.

5. Integral decorative or architectural features of buildings, including signs which denote only the building name, date of erection or street number. Such signs shall be permitted as exemptions when cut into any masonry surface or implanted with a metal plate.

6. Signs directing and guiding traffic and parking on private property, the total allowable sign area shall not exceed three square feet.

7. The act of changing advertising copy of messages on any sign designated for the use of replaceable copy.

8. Price signs at automobile service stations or other establishments engaged in the retail sales of gasoline. One such sign is permitted for each frontage of a public street, provided it does not exceed eight square feet in area. Any such sign shall be affixed to a permitted freestanding identification sign, to a canopy support in the vicinity of the gasoline pumps, or flat-mounted against the wall of a building.

9. Signs announcing the location of self-service or full-service gasoline pumps at any establishment engaged in the retail sale of gasoline. Such signs shall be located in the vicinity of the gasoline pumps and shall not exceed eight square feet in area.

10. Temporary signs as permitted in section 16.590 in accordance with Section 16.4.16.D.

D. TEMPORARY SIGNS

The following signs of a temporary nature are permitted in all zoning districts may be erected and/or displayed without issuance of a sign permit subject to the following regulations:

1. Fence-wrap signs affixed to fences surrounding a construction site may be allowed in accordance with NCGS 160A-381(j).
2. One (1) construction sign may be erected on a site during the period of construction or reconstruction of a building or other similar project with a valid building permit. The sign may identify the owner and/or developer, architect, engineer, contractor and other individuals or firms and the character or purpose for which the structure or item is intended. The sign shall be un-illuminated and shall be removed within two (2) days after the construction work has been completed. The maximum size of a construction sign shall be as follows:
   a) In residential districts, eight (8) square feet.
   b) In business-nonresidential districts, one (1) square foot of sign area for each five (5) lineal feet of property abutting a public street. In no instance, however, shall any such sign exceed 32 square feet in area.

3. Temporary signs in nonresidential districts. Signs, not to exceed eight (8) square feet, for promotional purposes by an individual business may be displayed on the premises for a period not to exceed 28 days during each calendar year in a 12-month period.

4. Window signs in nonresidential districts. Temporary signs painted or displayed on the interior or exterior of commercial building nonresidential use windows, provided, however, such signs shall not exceed 25% of the total window area.

5. Sandwich board signs in nonresidential districts. Sandwich boards shall not exceed eight (8) square feet in size per side and five (5) feet in height, shall not be placed within the public right-of-way of a state or municipal highway, shall be located on the property of the business advertised, and shall only be displayed during business hours of the business advertised.

6. Temporary right-of-way signs. Temporary right-of-way signs may be in place for up to seven (7) days for six (6) times per year with a minimum seven (7) day separation subject to adjoining property owner permission. Directional signs advertising a public event and located off-premises may be displayed on private property not more than one week in advance of the event and not more than two days after the completion of the event. No such sign shall exceed six square feet in area.

7. Political sign placement and duration shall be in accordance with NCGS 136-32 in the NCDOT right-of-way. During the period beginning on the 30th day before the beginning date of "one-stop" early voting under NCGS 163-227.2 and ending on the 10th day after the primary or election day, subject to the following provisions:
   a) Right-of-way Sign Placement. A person must obtain the permission of any property owner of a residence, business, or religious institution fronting the right-of-way where a sign would be erected. Signs must be placed in accordance with the following:
      i) No sign shall be permitted in the right-of-way of a fully controlled access highway.
ii) No sign shall be closer than three (3) feet from the edge of the pavement of the road.

iii) No sign shall obscure motorist visibility at an intersection.

iv) No sign shall be higher than 3.5 feet above the edge of the pavement of the road.

v) No sign shall be larger than six (6) square feet.

vi) No sign shall obscure or replace another sign.

vii) Within the town right-of-way, signs shall only be allowed in the nonresidential districts.

b) Private property sign placement. One (1) sign shall be permitted during the period beginning on the 30th day before the beginning date of "one-stop" early voting under NCGS 163-227.2 and ending on the 10th day after the primary or election day and shall be limited to six (6) square feet in size per lot. Political campaign signs may be posted on private property only after the official campaign period has begun and must be removed within one week after elections. Political campaign signs may be posted in the right-of-way as specified by G.S. 136-2B-E. Such signs shall not exceed six square feet in area.

8. Temporary real estate signs. One (1) sign not exceeding eight (8) square feet in area for individual lot/home or one (1) sign not exceeding 16 square feet in area for a large project development (nonresidential development or residential project with four (4) or more lots or units) may be placed on property that is for sale. In addition to a for sale sign, a rental sign not exceeding four (4) square feet in area may be placed on the structure itself. When the property for sale or rent fronts on more than one (1) street or on a body of water, one (1) for sale sign and an additional rental sign shall be allowed on each street frontage or water frontage. On waterfront property one (1) for sale and one for rent sign shall be allowed to be affixed to a dock, deck, or crossover. Real estate signs shall not be illuminated or reflectorized. Real estate signs shall not be closer than 10 feet to the edge of the pavement or road surface. One (1) off-premises directional sign shall be permitted up to 14 days for six (6) times per year with a minimum seven (7) day separation subject to adjoining property owner permission. Signs are not allowed.

a) All real estate signs shall be removed from the property within 30 days after such property is purported to be sold or bartered. For enforcement purposes, the 30-day period shall commence on the date upon which a sign or banner denoting that the property transaction has taken place first appears on the property (i.e., when a "sold" sign or banner appears on a "for sale" sign). All signs or banners denoting that a property transaction has taken place shall be clearly and legibly marked with the date upon which such sign or banner was placed on the property. The date of placement shall be marked clearly and legibly on or about such sign or banner.
§ 4.9. Any temporary sign found to be in violation of these provisions shall be removed by the town immediately. The owner of any sign found to be in violation shall be subject to the provisions of division 3 of this article, enforcement and penalties. The owner shall also be responsible for all costs incurred by the town during confiscation of such sign. The owner of any sign found to be in violation of these provisions shall be notified by the town, as feasible, when such sign is confiscated. Any sign not claimed by the owner within 30 days of the date of notification shall be disposed of by the town in any manner it deems appropriate. Any owner so notified shall have the right to reclaim the sign within 30 days of receipt of notification of the confiscation of the sign, upon payment of the costs incurred by the town.

E. NONRESIDENTIAL DISTRICT SIGNS (B-1 & B-2)

Within the business districts as shown on the zoning map, only the following types of signs shall be permitted subject to issuance of a sign permit:

1. One permanent, freestanding or projecting identification sign is permitted for each premises. One such sign is permitted for each frontage on a public street. Any such freestanding or projecting sign shall not exceed 30 feet in height or 32 square feet in sign area per side.

2. One permanent, freestanding sign, is permitted for each lot within a nonresidential district containing a nonresidential use. Any such sign shall not exceed a height of 30 feet or 32 square feet in sign area per side. Where two (2) or more nonresidential uses are located on one lot, such sign may be increased in size by a maximum of eight (8) square feet in sign area per side. In no case shall more than one (1) freestanding sign be located on any one (1) lot.

3. Permanent wall signs shall be permitted for each separate business establishment provided the total allowable wall sign area for all signs shall not exceed one-half square foot for each lineal foot of road frontage facing a public street. One such sign is permitted for each frontage on a public street. Wall signs shall in no case project higher than the eave of the building or 30 feet, whichever is lower. Wall signs shall not be placed on the roof.

4. One identification sign per business establishment per nonresidential use may be suspended from or attached to the underside of a canopy or marquee, provided such sign does not exceed six (6) square feet in area and maintains a clear distance of at least 7.5 feet between the sidewalk or ingress/egress and the bottom of the sign.

5. In addition to the identification signs described in subsections (1) through (3) of this section, any business nonresidential use located along a shoreline may erect one (1) sign no larger than 32 square feet on the shoreline side of the business designating the business establishment. Such sign must be attached to an existing structure such as the principal building, a pier or other permanent structure and shall not extend above the height of any structure to which it is attached or 30 feet, whichever is lower.
6. No part of any freestanding sign in the B-1 district shall be located in any public right-of-way, or closer than three (3) from any property line or 15 feet from any other property line. No part of any freestanding sign in the B-2 district shall be located in any public closer than 2½ feet from a street right-of-way or 15 feet from any other property line.

7. Temporary signs, as permitted in section 16-590 and sandwich boards. Sandwich boards shall not exceed eight square feet in size per side and five feet in height, shall not be placed within the right-of-way of a state or municipal highway, shall be located on the property of the business advertised, and shall only be displayed during business hours of the business advertised.

8. If the lot on which a sign is to be located is zoned other than residential, but it is immediately adjacent to a lot zoned for residential use No freestanding signs shall be placed in a nonresidential district closer than 20 feet from any residential district., then a distance of at least 20 feet shall intervene between any part of such sign and the adjacent lot line of the property in the residential district.

F. RESIDENTIAL DISTRICT SIGNS (R-1, R-2, R-3, R-4, PRD-1, PRD-2)
Within the business districts as shown on the zoning map residential districts, only the following types of signs shall be permitted subject to issuance of a sign permit:

1. Permanent identification signs for subdivisions and residential developments not exceeding 10 square feet in area. One (1) sign may be erected at each major entrance to the subdivision, but shall be located on private property no closer than 10 feet to any property line. No sign shall exceed six (6) feet in height above ground level. Illumination of signs is prohibited.

2. One (1) permanent identification sign for multifamily residential developments may be erected at each major entrance to the property. Such signs shall not exceed 10 square feet in area and may be flat-mounted against the wall of an apartment building or freestanding. If freestanding, such sign shall be set back so that no part of the sign shall be closer than 10 feet to any public right-of-way or property line and shall not exceed six (6) feet in height above ground level. Illumination of signs is prohibited.

3. One (1) permanent freestanding sign and one (1) wall identification sign for nonresidential uses permitted as a matter of right may be erected on the premises, provided such signs do not exceed 10 square feet in area. Such sign shall be set back so that no part of the sign shall be closer than 10 feet to any public right-of-way or property line and shall not exceed six (6) feet in height above ground level. Illumination of signs is prohibited.

4. Temporary signs as permitted by section 16-590. No other signs are permitted.

G. ILLUMINATION
Where illuminated signs are permitted, they shall conform to the following requirements:
1. All signs illuminated under the provisions of this section shall be constructed to meet the requirements of the National Electrical Code and Underwriters Laboratories shall comply with the provisions of Chapter 6: Buildings and Building Regulations, Article 6. Lighting.

2. Signs which contain, include, or are lighted by any flashing, intermittent or moving lights are prohibited, except those giving public information such as time, temperature, date, traffic control and public safety.

3. Interior illumination. Where the source of illumination is from within the sign itself, it shall be such that the illumination emanating from the sign is diffused.

4. Exterior illumination. Where the source of illumination if provided by such devices as, but not limited to, floodlights or spotlights, shall be so placed and so shielded as to prevent the direct rays of illumination from being cast upon neighboring lots and/or vehicles approaching on a public way in any direction. Bottom-mounted outdoor advertising—sign lighting shall not be permitted.

5. Flame and external neon tubes as a source of light is prohibited.

H. PROHIBITED SIGNS

Unless otherwise permitted, the following signs are prohibited:

1. Signs advertising an activity, business, product or service no longer conducted on the premises upon which the sign is located.

2. Portable signs Feather flags.

3. Signs with flashing lights with the exception of flashing lights used for traffic control and public safety.

4. Off-premises advertising structures or billboards.

5. Mobile billboards.

6. Vehicles utilized as advertising, unless parked onsite of establishment and not located within the public right-of-way.

7. Wind-driven signs or signs constructed of materials that may spin, rotate, or move as a result of wind or air movement.

8. Roof signs.

9. Projecting signs and freestanding signs located within a public right-of-way, except when erected by a government agency.

10. No sign shall be attached to or painted on any telephone pole, telegraph pole, power pole or other manmade object not intended to support a sign, or to any tree, rock or other natural object, except as specifically authorized herein.

11. No sign shall be located between the high-water mark of the western shore of the town west to the intracoastal waterway/town limits.

I. MAINTENANCE AND REMOVAL OF UNSAFE SIGNS

All signs of any nature shall be maintained in a state of good repair. No sign shall be allowed to remain which becomes structurally unsafe, hazardous or endangers the safety of the public or property. Upon determining that a sign is structurally unsafe, hazardous or endangers the safety of the public or property, the zoning administrator/building inspector or his

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Article 4: Zoning
designated agent shall order the sign to be made safe or removed subject to the following provisions:

1. The owner of the sign, the occupant of the premises on which the sign or structure is located, or the persons or firm maintaining the same shall, upon written notice by registered or certified mail from the zoning administrator/building inspector or his designated agent, forthwith in the case of immediate danger and in any case within 10 days, secure or repair the sign or structure in a manner approved by the zoning administrator/building inspector or his designated agent or remove it.

2. If such order is not complied with within 10 days, the zoning administrator/building inspector or his designated agent shall remove the sign at the expense of the owner or lessee thereof. No sign shall be erected or maintained in such a manner that any portion of its surface or its supports will interfere in any way with the free use of access to any fire escape, exit or standpipe, or so as to obstruct any window so that light or ventilation is reduced below minimum standards required by any applicable law or building code.

3. Whenever a sign has been abandoned, advertises an activity, business, product or service no longer conducted on the premises or is erected in violation of the provisions of this section, the zoning administrator/building inspector or his designated agent shall cause such sign to be removed or brought into compliance in accordance with the method prescribed for nonconforming signs in Section 16.4.17.H502: Nonconforming Signs.

16.4.17 NONCONFORMITIES

A. GENERAL

There are existing uses of land, structures, lots of record, signs, and site features that were lawfully established before the effective date of this ordinance or a subsequent amendment thereto, that now do not conform to standards and requirements of this ordinance. Such uses, structures, lots, signs, and site features are collectively referred to as “nonconformities.” The purpose and intent of this section is to allow nonconformities to continue to exist, but to regulate their continued existence and limit their expansion so as to bring them into conformity to the extent that is reasonably practicable. Upon the effective date of the ordinance from which this article is derived, and any amendment thereto, preexisting structures or lots of record and existing and lawful uses of any building or land which do not meet the minimum requirements of this article for the district in which they are located or which would be prohibited as new development in the district in which they are located shall be considered as nonconforming. It is the intent of this article to permit this nonconforming use to continue until they are removed, discontinued or destroyed.

B. CONTINUATION – REPAIR AND MAINTENANCE

1. Continuation. Nonconformities are allowed to continue in accordance with the requirements of this article.
2. **Maintenance Allowed.** Nonconformities are allowed and encouraged to receive minor repairs and routine maintenance that are necessary to maintain the nonconformity and its surroundings in a safe condition and to protect against health hazards.

3. **Strengthening Allowed.** Nothing in this ordinance shall prevent the strengthening or restoration to a safe or lawful condition of any part of any building or structure declared unsafe or unlawful by the town’s building inspector.

4. **Change of ownership/tenancy.** No change of title or possession or right to possession of property involved with a nonconformity shall be construed to prevent the continuance of such nonconformity.

C. **NONCONFORMING LOTS OF RECORD**

   Lot not meeting minimum lot size requirements. Any lot of record existing **prior to 1972** as of the effective date of this ordinance that has dimensions and area requirements which are less than required by these regulations may, the district in which it is located, may be used as a building site for any permitted use in that district provided that all yard setbacks requirements are met subject to compliance with all required setbacks and all other applicable development standards.

D. **NONCONFORMING STRUCTURES (DIMENSIONAL NONCONFORMANCE)**

   Where a lawfully established principal structure, accessory structure, fence, wall, pier, dock, deck, staircase, driveway or similar structure exists as of the effective date of this ordinance that could not be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yards or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful and compliant with all other state or federal regulations, including substantial damage/improvement flood damage prevention ordinance regulations, subject to the following provisions:

   1. **Nonconforming structures subject to damage by fire, explosion, tornado, earthquake, hurricane or similar uncontrollable cause** may be reconstructed in the same location and with the same footprint as existed prior to damage. In no instance shall replacement of a nonconforming structure increase the nonconformity or result in a larger structure than existed prior to damage.

   2. **Nonconforming structures with maintenance and repair needs** may be replaced in the same location and with the same footprint in accordance with a previously approved site plan or building permit, as applicable; in the same location and up to the same dimensions as originally existed; or in compliance with the current dimensional requirements.

E. **NONCONFORMING USES**

   The lawfully established use of building or premises existing as of the effective date of this ordinance may be continued although such use does not conform to the provisions of this ordinance, and nonconforming uses therein changed subject to the following regulations:
1. A nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this article ordinance, was manifestly designed or arranged to accommodate such use. However, subject to section 16.4.475, a nonconforming use may not be extended to additional buildings or to land outside the original building.

2. A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming.

3. Nonconforming single-family and two-family residential dwelling uses may be expanded or replaced in accordance with required dimensional requirements of the district in which it is located. See Section 16.4.17.D for dimensional nonconformities related to a single-family or two-residential structure. A nonconforming use may be changed to a conforming use. Thereafter, the property may not revert to a nonconforming use.

4. A nonconforming use may be changed to another nonconforming use only in accordance with approval issued by the board of adjustment. The board shall issue such approval if it finds that the proposed use will be more compatible with the surrounding neighborhood than the use in operation at the time the approval is applied for. If a nonconforming use is changed to any use other than a conforming use without obtaining approval pursuant to this subsection, that change shall constitute a discontinuance of the nonconforming use, and the property involved may thereafter be used only for conforming purposes. A nonconforming accessory use or building may only be changed to another nonconforming accessory use or building in accordance with approval issued by the board of adjustment.

5. If a nonconforming use and a conforming use, or any combination of a conforming and nonconforming uses, any combination of nonconforming uses exists in one lot, the use made of the property may be changed substantially (except to a conforming use), only in accordance with approval issued by the board of adjustment. The board shall issue such approval if it finds that the proposed use will be more compatible with the surrounding neighborhood than the use of combination of uses in operation at the time the approval is applied for.

F. ABANDONMENT AND DISCONTINUANCE OF NONCONFORMING USES

1. When a nonconforming use is discontinued for a consecutive period of 90 days for any reason other than destruction/repair, the property involved may thereafter be used only for conforming purposes. Seasonal closing shall not be construed as a discontinuance of use. This section shall not apply to single-family and two-family dwellings.

2. For purposes of determining whether a right to continue a nonconforming situation use is lost pursuant to this section, all of the buildings, activities and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building for 90 days shall not result in the loss of the right to rent the apartment.
so long as the apartment building as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the period shall terminate the right to maintain it thereafter.

G. NONCONFORMING SITE FEATURES
For purposes of this section, the term “nonconforming site features” includes off-street parking and buffers subject to the following provisions:

1. Nonconforming off-street parking. Within the B-1 and B-2 zoning district, where an application is filed for a change of use or redevelopment whereby the floor area of the building is expanded by greater than 25%, additional off-street parking required shall be calculated based on the increase in square footage in floor area of the expanded building. Where the floor area dedicated to a use within an existing building is not be expanded by greater than 25% than no additional parking is required. See Section 16.4.13.E and Table 16.4.4 for more information. In residential districts, nonconforming off-street parking shall be brought into full compliance if an application is filed for a building permit (including mechanical, electrical, HVAC, or other typical permit) for the expansion of a structure whereby the improvements total more than 50% of the assessed value as provided in the county tax listing.

2. Nonconforming buffers. In nonresidential districts nonconforming buffers shall be brought into full compliance if an application is filed for a building permit (including mechanical, electrical, HVAC, or other typical permit) for the expansion of a structure whereby the improvements total more than 50% of the assessed value as provided in the county tax listing.

H. NONCONFORMING SIGNS
Any nonconforming sign existing on the effective of the ordinance from which this article is derived may remain in place subject to the following requirements. Minor repairs and routine maintenance of nonconforming signs is permitted and encouraged.

1. No nonconforming sign shall be structurally altered as to change the shape, size, type or design of the sign, nor shall any nonconforming sign be relocated.

2. No nonconforming sign shall be allowed to remain after the activity, business or use to which it relates has been discontinued.

3. Any nonconforming sign which is destroyed or damaged more than 50% of its estimated value must be replaced with a sign conforming to the requirements of this section.

4. A nonconforming sign may not be replaced or repaired whereby more than 50% of its value will be expended on replacement or repair.
# Article 5: Subdivision

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16.5.1 GENERAL

A. The purpose of this article is to support and guide the proper subdivision of land within the jurisdiction of the town in order to promote the public health, safety, and general welfare of the citizens of the town. This article establishes procedures and standards for platting, recording, and developing subdivisions of real estate within the town, the division of land and creation of lots. These procedures and standards are necessary in order to:

1. Ensure proper legal description, identification, monumentation and recordation of real estate boundaries;
2. Further the orderly layout and appropriate use of the land;
3. Provide safe, convenient, and economic circulation of vehicular traffic;
4. Provide suitable building sites which are readily accessible to emergency vehicles;
5. Ensure the proper installation of streets and utilities;
6. Promote the eventual elimination of unsafe or unsanitary conditions arising from undue concentration of population;
7. Help conserve and protect the physical and economic resources of the town; and
8. Facilitate adequate provisions for transportation, water, sewerage, and other public requirements.

16.5.2 JURISDICTION

These regulations, as in addition to those provided in G.S. ch. NCGS 160A, shall govern each and every subdivision within the town.

16.5.3 VIOLATIONS AND ENFORCEMENT

A. Any person who, being the owner or agent of the owner of any land located within the corporate limits of the town, thereafter transfers or sells such land by reference to a plat showing a subdivision of such land before such plat has been approved by the board of appropriate town authority and recorded in the office of the county register of deeds, shall be guilty under “Section 1-6 (g): Enforcement of Code; not exclusive remedy; continuing, multiple and chronic violations” of the General Code section 1-6(g) of a misdemeanor for which the person is subject to a penalty under G.S. NCGS 14-4(a) as provided in “Table 2: Table of penalties for penal violations of Code” in section “Section 1-8: Table of penalties for penal violations of Code,” and the description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. The town, through its attorney or other official designated by the board of Commissioners, may enjoin such transfer or sale by action for injunction.

B. The town may enforce the requirements of this article through the civil enforcement provisions available in Article IV Article 3 of this Chapter, pertaining to zoning.

16.5.4 APPROVAL

Approval procedures for the division of land and creation of lots are provided in Article 3 of this Chapter. Approval. No street shall be accepted and maintained by the town nor shall any street...
lighting, water, or sewer be extended to or connected with any subdivision of land as defined in section 16.118, nor shall any permit be issued by an administrative agent or department of the town, for the construction of any building or other improvement requiring a permit, upon any land concerning which a plat is required to be approved unless and until the final plat has been approved by the Board of Commissioners.

16.5.5 LOCAL, STATE, OR FEDERAL AGENCY PERMITS REQUIRED

Land-disturbing activities associated with a subdivision shall not take place until all permits required from federal or state agencies are obtained, including but not limited to those required by the NC Department of Environmental Quality, NCDOT, U.S. Army Corps of Engineers, and NC Division of Coastal Management.

16.5.6 DESIGN REQUIREMENTS

A. Conformity to existing maps or plans. The location and width of all proposed streets shall be in conformity with official plans, maps, and ordinances of the town.

B. Continuation of adjoining street system. The proposed street layout shall be coordinated with the street system of the surrounding area. Where possible, existing principal streets shall be extended.

C. Access to adjacent properties. Where, in the opinion of the Planning Board and Board of Commissioners, it is desirable to provide for street access to an adjoining property, proposed streets shall be extended by dedication to the boundary of such property, and a temporary turnaround shall be provided.

D. Reserve strips. There shall be no reserve strips platted in any subdivision.

E. 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 streets and logical further re-subdivision.

F. Lots. All lots shall front upon a public street or have access via a duly recorded permanent access easement. Double-frontage lots shall be avoided unless no other design is practical.

G. Dimensional requirements. All lots in a new subdivision shall conform to the requirements of the zoning district in which the subdivision is located.

H. Alleys. The Planning Board, with the concurrence of the Board of Commissioners, may require an alley to the rear of lots used for other than residential purposes. Alleys are prohibited in residential blocks unless such are approved by the Planning Board, with concurrence of board. All dead-end alleys shall be provided with a turnaround.

Contour map. A contour map shall be provided at the time of submission of the preliminary plat showing existing and proposed topography at a contour interval of 1.0 foot based on mean sea level datum.

16.5.7 REQUIRED IMPROVEMENTS

A. INSTALLATION OF IMPROVEMENTS

1. The cost of all improvements shall be at the developer’s-subdivider’s expense. No financial guarantee or performance bond shall be allowed for installation of
required improvements. All required improvements shall be installed prior to final plat approval. Approval of the subdivision final plats shall be subject to the installation of the following improvements outlined herein, where specified.

2. All required improvements shall be completed by the applicant or his or her agents and inspected and approved by the building inspector, officials of the county and/or state as appropriate, zoning administrator, or appropriate professional hired by the town. Within 180 days of approval of the final plat, the applicant should make a formal request in writing for acceptance of all public required improvements.

3. All required offers to dedicate or reserve for future dedication shall be made clear of all liens and encumbrances on the property and public improvements thus dedicated prior to consideration for acceptance by the town.

B. PERMANENT REFERENCE POINTS

1. Prior to the approval of a major subdivision 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. If a corner is within 2,000 feet of U.S. National Ocean Survey Station or North Carolina Grid System coordinated monument, or town-coordinated system, then this corner shall be marked with a monument so designated by computed X and Y coordinates which shall appear on the map with a statement identifying this station or monument to an accuracy of 1:10,000. When such a monument or station is not available, the tie shall be made to some pertinent and readily recognizable land mark or identifiable point, physical object or structure.

   b) Monuments. Within each block of a subdivision, at least two monuments designed and designated as control corners shall be installed. The surveyor shall employ additional monuments if and when required. All monuments shall be constructed of concrete and shall be at least four inches in diameter or square and not less than three (3) feet in length. Each monument shall have imbedded in its top or attached by a suitable means a metal plate of noncorrosive materials and marked plainly with the point, the surveyor's registration number, the month and year it was installed, and the word "monument" or "control corner." A monument shall be set at least 30 inches in the ground with at least six (6) inches exposed above the ground unless this requirement is impractical.

   c) Property markers. A steel or wrought iron pipe or the equivalent not less than 3/4 of an inch in diameter and at least 30 inches in length shall be set at all 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 and reference point unless a monument has already been set.
been placed at said points. Additional markers shall be placed at other points as required.

d) Accuracy. Land surveys within the town shall be at an accuracy of at least 1:5,000.

C. ACCESS EASEMENTS

1. This subsection allows for the limited use of permanent access easements to serve second tier and third tier lots. No more than four (4) lots shall be served by a permanent access easement.

2. Subdivisions with four (4) or fewer lots may be served by permanent access easements. New lots may not be created if their sole vehicular access easement shall serve more than four (4) lots. Permanent access easements shall be constructed and maintained in accordance with the standards outlined in Section 16.4.12.A.

3. To ensure compliance with provisions of this subsection the town requires that plats submitted for review show the types and locations of buildings on each lot served by a permanent access easement or that restrictive covenants limiting the use of the subdivided property in accordance with this section be recorded before final plat approval.

4. A final plat for a proposed subdivision, where lots are to be accessed by a permanent access easement, shall contain the following notation: “Further subdivision of any lot shown on this plat that is served by a permanent access easement may be prohibited by the Town of Topsail Beach Land Development Code.”

D. STREETS

1. Prior to approval of a major subdivision final plat, all streets and traffic control devices shall be constructed, unless the installation of permanent access easements are permissible.

2. All streets shall be designed and constructed for public use and dedication to the town. To support continued access to public trust areas by citizens and visitors, and in accordance with the public access provisions of the Town of Topsail Beach Comprehensive Land Use Plan, new private streets shall not be permitted.

3. The design of all streets and roads, including drainage, shall be in accordance with the minimum design and construction criteria for the most recent version of the NCDOT Subdivision Roads Minimum Construction Standards and NCDOT Guidelines for Drainage Studies and Hydraulic Design, unless this ordinance establishes a stricter standard.

4. Most streets will be constructed in accordance with standards provided for “Residential Local Subdivision Roads.” Where exceptions/alternative designs may be granted by the District Engineer, as specified in the NCDOT Subdivision Roads Minimum Construction Standards manual, instead the subdivider/applicant may submit plans prepared by a licensed professional engineer for an advisory recommendation by the Technical Review Committee and Planning Board prior
to approval or denial by the Board of Commissioners. The District Engineer does not have authority to approve alternative road designs in the town – that authority is under the purview of the Board of Commissioners following advisory recommendations as specified herein.

5. **Width and pavement.** Subdivisions consisting of 10 or fewer lots may install streets with a right-of-way width of 26 feet and pavement width of 20 feet, subject to all other requirements of the NC NCDOT Subdivision Roads Minimum Construction Standards manual. Subdivision streets of the state department of transportation. The requirements for residential subdivisions shall be such as the Board of Commissioners deems appropriate for the type of development and use contemplated.

6. **Streets.** Pavement widths and right-of-way shall not be less than the following table:

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<tr>
<td>Division I</td>
<td>2 acres or more with 300 feet</td>
<td>60-foot right-of-way</td>
</tr>
<tr>
<td>Division II</td>
<td>2½ – 3 acres with 200 feet</td>
<td>50-foot right-of-way</td>
</tr>
<tr>
<td>Division III</td>
<td>2 – 2½ acres with 150 feet</td>
<td>40-foot right-of-way</td>
</tr>
<tr>
<td>Division IV</td>
<td>1½ – 2 acres with 150 feet</td>
<td>26-foot right-of-way</td>
</tr>
</tbody>
</table>

7. **Grades.** Street grades shall not exceed one percent. No street will have a minimum grade of less than 0.5 percent.

8. **Tangents.** A tangent of at least 100 feet shall be introduced between curves on all streets.

9. **Intersections.** Street intersections shall be as nearly at right angles as possible and in no cases shall be less than 60 degrees.

10. **Cul-de-sacs.** Cul-de-sacs shall not be longer than 500 feet and shall be provided with a turnaround having a roadway diameter of at least 90 feet and a right-of-way of at least 100 feet. Temporary turnarounds shall be paved or graveled in accordance with the NCDOT Subdivision Roads Minimum Construction Standards minimum design and construction criteria for subdivision streets of the state department of transportation and only the right-of-way width shall be dedicated to the town.

11. **Alleys.** All alleys shall be constructed in accordance NCDOT Subdivision Roads Minimum Construction Standards with the minimum design and construction criteria for subdivision streets of the state department of transportation.

b. Minimum centerline radius when a deflection angle of more than ten degrees occurs: 35 feet.

c. Property line radius at alley intersections: 15 feet.

d. Pavement: 20 feet.

11. Blocks. Block lengths shall not exceed 1,500 feet nor be less than 400 feet. Where deemed necessary by the Planning Board a pedestrian crosswalk of at least ten feet in width may be required. Width Block size is to allow for two (2) tiers of lots of minimum depth.

12. Street names. Proposed streets, which are obviously in alignment with others existing and named, shall bear the assigned name of the existing streets. In no case shall the name of proposed streets duplicate or be phonetically similar to existing street names, irrespective of the use of the suffix, street, avenue, boulevard, drive, place, court, etc. Street names shall be approved by Pender County E-911/GIS.


14. The following requirements shall apply to all streets within the corporate limits of the town:

a) Grading. All major and collector streets shall be graded to their full right-of-way width. All other streets shall be graded to their full pavement width, and for an additional three feet on each side of the pavement width. Finished grade, cross section and profile shall be approved by the building inspector, except that such authority shall be vested in the town engineer or qualified person designated by the building inspector in his absence.

b) Paving. Road base and paving shall be installed in accordance with the provisions of the standards and specifications for streets as enacted by ordinance.

15. Sidewalks. Sidewalks, if constructed, shall be within the street right-of-way and installed in accordance with the town specifications and standards as established by ordinance.

E. ACCESS TO SOUND AND/OR OCEAN RECREATION AREAS

1. A subdivider shall not usurp, abolish, or restrict public access to the waters of the sound (Banks Channel), Atlantic Ocean, or other local bays, sounds, creeks, or canals to which public access has been historically provided.

2. Within proposed major subdivisions, all cross island street rights-of-way, including those rights-of-way perpendicular or nearly perpendicular, shall extend, full width, to the sound (Banks Channel) and/or ocean mean high-water marks.
3. In subdivision areas being developed, or to be developed in the future, where the approved major subdivisions of land contiguous to the sound and/or ocean shall provide public access to the sound and/or ocean streets do not provide a ready access to the ocean and/or sound, through a public right-of-way access lane area of not less than 20 feet in width. Such access shall occur at a maximum of 400-foot intervals to provide public access to the sound and/or ocean; these access lane areas public access rights-of-way are to be dedicated to the town by the subdivider.
   a) All dwelling units in the subdivision and residents in the immediate area shall have access to and from the dedicated land provided by means of streets and public walkways or trails.
   b) Rights-of-way for this access shall be shown on the preliminary and final plats.

E. UTILITIES
1. All utilities (including, but not limited to: electric power, telephone, gas distribution, cable television, potable water, sewer, etc.) located outside an existing street right-of-way and intended to serve new development shall be underground.
2. Whenever a subdivision includes water, sewer, electrical power, telephone, or cable television utilities intended for operation by a public utility or entity other than the subdivider, the subdivider shall transfer all necessary ownership or easement rights to enable the public utility or other entity to operate and maintain the utilities.
3. Every principal use and every buildable lot in a subdivision shall be serviced by a means of water supply that is adequate to accommodate the reasonable needs of such use or lot and that complies with all applicable health and NC Department of Environmental Quality regulations. Connection to the town water system shall be required in the event a town water main is available for use. Requests for extensions of the town water system to serve a proposed subdivision shall be approved by the Board of Commissioners.
   a) Water mains shall be installed in accordance with town specifications and standards and designed by a registered engineer.
4. Every principal use and every buildable lot in a subdivision shall be served by a wastewater system that complies with all Pender County Environmental Health, town, and/or NC Department of Environmental Quality standards.
   a) Should private sewage systems be provided, such shall meet the requirements of Pender County Environmental Health and/or the NC Department of Environmental Quality state department of environment, health and natural resources.

2. Utilities. Sanitary sewers and water mains shall be installed in accordance with town specifications and standards and designed by a registered engineer. Should private sewage systems be provided, such shall meet the requirements of the
Utility and drainage easements shall be provided as follows:

a) Utility and drainage easements shall be provided centered on or along rear or side lot lines, shall be provided where deemed necessary by the Planning Board, and by the Board of Commissioners, and shall be at least fifteen (15) feet in width on either side of the lot line.

b) A crosswalk easement of at least ten feet in width shall be provided if required by the planning board and the Board of Commissioners under subsection (3) of this section.

F. FIRE PROTECTION STANDARDS

1. All development serviced by the town water supply system shall include a system of fire hydrants sufficient to provide adequate fire protection for the buildings located or intended to be located within the subdivision. Fire hydrants shall be located in a manner that ensures hydrants are spaced a maximum of 1,000 linear feet apart and every portion of lot frontage is within 500 linear feet of a hydrant. The Fire Chief may authorize or require a deviation from this standard if, in the opinion of the Fire Chief, another arrangement more satisfactorily complies with the intent or standards in this ordinance.

2. Unless an alternative placement is specified by the state building code or the Fire Chief, fire hydrants shall be placed six (6) feet behind the curb or within 10 feet of the pavement edge of a street without curbing.
# Article 6: Wireless Communication

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16.6.1 PURPOSE AND LEGISLATIVE INTENT

A. The Telecommunications Act of 1996 affirmed the Town of Topsail Beach’s authority concerning the placement, construction and Modification of Wireless Telecommunications Facilities. This ordinance provides for the safe and efficient integration of Wireless Facilities. Necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless services to the public, government agencies and first responders, with the intention of furthering the public safety and general welfare.

B. The Town of Topsail Beach (Town) finds that Wireless Telecommunications Facilities (Facilities) and Complexes may pose significant concerns to the health, safety, public welfare, character and environment of the Town and its inhabitants. The Town also recognizes that facilitating the development of wireless service technology can be an economic development asset to the Town and of significant benefit to the Town and its residents. To assure that the placement, construction or Modification of a Facility is consistent with the Town’s land use policies, the Town is adopting a single, comprehensive, Wireless Telecommunications Facility application and permitting process. The intent of this Ordinance is to minimize the physical impact of Wireless Telecommunications Facilities on the community, protect the character of the community to the extent reasonably possible, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the Town.

16.6.2 SEVERABILITY

A. If any word, phrase, sentence, part, section, subsection, or other portion of this article or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this article, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

B. Any conditional use permit issued under this article shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the town Board of Commissioners.

16.6.3 DEFINITIONS

For purposes of this article, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.
**Article 6: Wireless Communication**

**Accessory facility or structure** means an accessory facility or structure serving or being used in conjunction with wireless telecommunication facilities and located on the same property or lot as the wireless telecommunications facilities, including but not limited to utility or transmission equipment storage sheds or cabinets.

**Applicable codes** means The North Carolina State Building Code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization together with State or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

**Antenna** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

**Applicant** means any wireless service provider submitting an application for a conditional use permit for wireless telecommunications facilities.

**Application** means all necessary and appropriate documentation that an applicant submits in order to receive a Conditional Use Permit for a wireless telecommunications facility.

**Base station** means a station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.

**Board** means the governing body of the town.

**Building permit** means an official administrative authorization issued by the city prior to beginning construction consistent with the provisions of G.S. 160A 417.

**Collocation** means the placement, installation, maintenance, modification, operation, or replacement of wireless facilities on, under, within, or on the surface of the earth adjacent to existing structures, including utility poles, city utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes. The term "collocation" does not include the installation of new utility poles, city utility poles, or wireless support structures.

**Conditional Use Permit** means the permit required prior to the issuance of a building permit.

**Commercial impracticability or commercially impracticable** means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be commercial impracticable and shall not render an act or the terms of an agreement commercially impracticable.

**Communications facility** means the set of equipment and network components, including wires and cables and associated facilities used by a communications service provider to provide communications service.
**Communications service** means cable service as defined in 47 U.S.C. § 522(6), information service as defined in 47 U.S.C. § 153(24), telecommunications service as defined in 47 U.S.C. § 153(53), or wireless services.

**Communications service provider** means cable operator as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider.

**Completed application** means an application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application.

**Conditional use permit** means the official document or permit by which an applicant is allowed to file for a building permit to construct and use wireless telecommunications facilities as granted or issued by the town in the course of the town's quasi-judicial process.

**DAS or distributive access system** means a technique using antenna combining that allows for multiple carriers or wireless service providers to use the same set of antennas.

**Eligible facilities request** means a request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment and does not include a substantial modification.

**Facilities**, unless the term is otherwise modified or limited in context of a particular provision in which the term appears in this article, means all and any forms of wireless telecommunications-related equipment, devices, buildings, structures and accessories in the broad sense of those terms and includes and is not necessarily limited to the terms "wireless telecommunications facility," "accessory facility or structure" and "wireless facility" and "wireless support structure" as defined in N.C.G.S. § 160A-400.51.

**FAA** means the Federal Aviation Administration, or its duly designated and authorized successor agency.

**FCC** means the Federal Communications Commission, or its duly designated and authorized successor agency.

**Height** means, when referring to a tower or structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna or lightning protection device.

**Micro wireless facility** means a small wireless facility that is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

**Modification or modify** means the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change-out of equipment for better or more modern equipment. Adding a new wireless carrier or service
provider to a telecommunications tower or telecommunications site as a co-location is a modification. A modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.

Need means anything that is technically required for the wireless service to be provided primarily and essentially within the town and creates the least physical and visual impact. This does not necessarily mean the internal design standards of the applicant, as companies' standards can vary greatly and normally reflect preferences. Rather, the term "need" relates to the ability of the user-equipment to function as designed.

NIER means non-ionizing electromagnetic radiation.

Person means any individual, corporation, estate, trust, partnership, joint stock company, association of two or more persons having a joint common interest, or any other entity.

Personal wireless services or PWS or personal telecommunications service or PTS shall have the same meaning as defined and used in the 1996 Telecommunications Act.

Repairs and maintenance means the repair or replacement of any component of a wireless facility where the component is effectively identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.

Search ring means the area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

Small wireless facility means a wireless facility that meets both of the following qualifications:

A. Each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than six cubic feet.

B. All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For purposes of this sub-subdivision, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, or other support structures.

State means the State of North Carolina.

Stealth or stealth techniques means to minimize adverse aesthetic and visual impacts on the land, property, buildings and other facilities adjacent to, surrounding, and in generally the same area as the requested location of a wireless telecommunications facility, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially
impracticable under the facts and circumstances. The term "stealth techniques" expressly includes such techniques as DAS or its functional equivalent.

Substantial modification means the mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.

A. Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.

B. Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.

C. Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

Telecommunications means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

Temporary means temporary in relation to all aspects and components of this article, something intended to, or that does, exist for fewer than 90 days.

Tower means any monopole or self-supporting structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal. Guyed towers shall not be permitted anywhere in the town.

Town means the town of Topsail Beach, North Carolina.

Town right of way means a right of way owned, leased, or operated by a town, including any public street or alley that is not a part of the State highway system.

Town utility pole means a pole owned by a town in the town right of way that provides lighting, traffic control, or a similar function.

Utility pole means a structure that is designed for and used to carry lines, cables, wires, lighting facilities, or small wireless facilities for telephone, cable television, or electricity, lighting, or wireless services.

Wireless Facility means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of
technological configuration. The term includes small wireless facilities. The term shall not include any of the following:

A. The structure or improvements on, under, within, or adjacent to which the equipment is collocated.
B. Wireline backhaul facilities.
C. Coaxial or fiber-optic cable that is between wireless structures or utility poles or city utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

*Wireless infrastructure provider* means any person with a certificate to provide telecommunications service in the State who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures for small wireless facilities but that does not provide wireless services.

*Wireless provider* means a wireless infrastructure provider or a wireless services provider.

*Wireless services* means any services, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using wireless facilities.

*Wireless services provider* means a person who provides wireless services.

*Wireless support structure* means a new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole or a city utility pole is not a wireless support structure.

*Wireless telecommunications facilities* means and includes without limitation the following in connection with wireless telecommunications:

A. A telecommunications site;
B. A personal wireless facility and any facility in connection with personal wireless services or PWS or personal telecommunications service (PTS);
C. A primary or accessory structure, facility or location of all types and kinds designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices, including, but not limited to towers, buildings, church steeples, silos, water towers, and signs.

### 16.6.4 General Policies and Procedures for Applications Under This Ordinance

A. In order to ensure that the location, placement, construction and Modification of a Facility or the components of a Complex do not endanger or jeopardize the Town’s health, safety, public welfare, environmental features, the nature and character of the community or neighborhood and other aspects of the quality of life specifically listed elsewhere in this Ordinance, the Town hereby adopts an overall policy and related procedures with respect to the submittal, review, approval and issuance of permits or
Administrative Approval granted authority for Wireless Facilities for the express purpose of achieving the following outcomes:

1. The Town shall not be required to issue a permit for a carrier to achieve its goal from a single location and facility only, and instead may require that multiple smaller and less intrusive facilities be used to achieve the Applicant’s goal.
2. Requiring a Conditional Use Permit for any new Complex, Facility or any Substantial Modification of a Facility or for a Collocated Facility;
3. Requiring Administrative Approval and a properly issued Building Permit for any co-location or Modification of a Facility that is not a Substantial Modification or Substantial Co-location.
4. Implementing an Application process and requirements;
5. Establishing a policy for examining an Application and issuing a Conditional Use Permit or Administrative Approval that are fair and consistent;
6. Promoting, and requiring wherever possible, the sharing and/or co-location of support structures among service providers;
7. Requiring, promoting and encouraging, wherever possible, the placement, height and quantity of attachments to a Facility in such a manner as to minimize the physical and visual impact on the community, including but not limited to the use of stealth siting techniques.
8. Requiring that the Facility and Complex shall be the least visually intrusive among those options that are not technologically impracticable given the facts and circumstances.
9. The Town Planning Board is the officially designated agency or body of the Town to whom applications for a Conditional Use Permit for a Facility must be made, and that is authorized to make recommendations with respect to granting or not granting or revoking Conditional Use Permits applied for under this Ordinance. However, the Town Board of Commissioners shall possess the sole right to grant or deny all Conditional Use Permits.
10. The Town hereby designates the Zoning Administrator as the authority for requests for all Administrative Approvals, i.e. for anything other than a Substantial Modification or a new tower or support structure.
11. Prior to the submission of an application there shall be a pre-application meeting for all intended applications. The pre-application meeting may be held either on site or telephonically as deemed appropriate by the Zoning Administrator. The purpose of the pre-application meeting will be to address i) issues that will help to expedite the review and permitting process; and ii) specific issues or concerns the Town or the Applicant may have. Costs of the Town’s consultant to prepare for and attend the pre-application meeting will be borne by the applicant and paid for out of a fee set forth in the Town’s Schedule of Fees, which shall have been paid to the Town prior to any site visit or pre-application meeting or any work related to an intended application preceding the site visit or per-application meeting in excess of one (1) hour related to the application.
12. If there has not been a prior site visit for the requested Facility within the previous six (6) months a site visit shall be conducted.

13. An Applicant shall submit to the Town the number of completed Applications determined to be needed at the pre-application meeting. If Town action is required, applications will not be transmitted to the Town for consideration until the application is deemed Complete by staff or the Town’s expert consultant.

14. If the proposed site is within one half (1/2) mile of another jurisdiction, written notification of the Application shall be provided to the legislative body of all such adjacent jurisdictions as applicable and/or requested.

15. The owner(s) of the support structure to which antennas or related equipment are to be attached must be an official Applicant of Record, unless the owner is the Town, in which case, to prevent a conflict of interest, the Town shall not be a party to the Application.

16. All Applicants shall closely follow the instructions for preparing an Application. Not following the instructions without permission to deviate from such shall result in the application being deemed incomplete and a tolling of the time allowed for action on an Application until a Complete Application is received.

17. Within thirty (30) days of the date of submission of an Application the Applicant shall be notified in writing of any deficiencies related to the completeness of the Application. Remediation of deficiencies in an Application shall be deemed an amendment of the Application that was received.

18. The Town may deny applications not meeting the requirements stated herein or which are otherwise not complete after proper notice and a reasonable opportunity to make the Application Complete has been afforded. Applications will be deemed abandoned if left incomplete for more than ninety (90) days after the date of notice of incompleteness.

19. No work of any kind on or at a Facility shall be started until the Application is reviewed and approved and the Conditional Use Permit or Administrative Approval, as applicable, has been issued, and a Building Permit has been issued in accordance with the Town’s Code.

20. Any and all representations made by the Applicant or that are made in support of the Application shall be deemed to be on the record, whether written or verbal, and shall be deemed to have been relied upon in good faith by the Town. Any verbal representation shall be treated as if it were made in writing.

21. Other than to remediate non-compliant situations related to matters of safety or the conditions of a permit, no permits for work at a Facility shall be issued where the Facility is not in full compliance with all applicable local, State and federal laws, rules, regulations and orders. A Facility not in full compliance with this Ordinance shall be required to be brought into full compliance before any Permit of any kind will be issued.

22. An Application shall be signed on behalf of the Applicant(s) by a person vested with the authority to bind and commit the Applicant attesting to the truthfulness, completeness and accuracy of the information presented
23. The Applicant must provide documentation to substantiate that it has the right to proceed as proposed on the site or at the Complex in the form of an executed copy of the lease with the landowner or landlord or a signed letter of agency granting authorization. If the applicant owns the Site, a copy of the ownership record is required.

24. Applications shall include written commitment statements to the effect that:

25. the applicant’s Facility shall at all times and without exception be maintained in a safe manner, and in compliance with all conditions of all permits, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable Town, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Town in writing; and the construction of the Facility is legally permissible, including, but not limited to the fact that the Applicant is licensed to do business in the State.

26. Where a certification is called for in this Ordinance, such certification shall bear the signature and seal of a Professional Engineer licensed in the State.

27. A support structure and any and all accessory or associated structures shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings. This shall include the utilization of stealth or camouflage or concealment technique as may be required by the Town.

28. All utilities at a Complex or site shall be installed underground and in compliance with all Laws, ordinances, rules and regulations of the Town, including specifically, but not limited to applicable electrical codes.

29. At a Facility needing vehicular access, an access road, parking and turn around space for emergency vehicles shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. If the current access road or turn around space is deemed in disrepair or in need of remedial work to make it serviceable and safe and in compliance with any applicable regulations as determined at a site visit, the Application shall contain a commitment to remedy or restore the road or turn around space so that it is serviceable and safe and in compliance with applicable regulations.

30. All work at a Facility shall be done in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, State, or United States, including but not limited to the most recent edition of the TIA ANSI Code, National Electric Safety Code, the National Electrical Code, the Occupational and Safety and Health Administration (OSHA) regulations, recommended practices of the National Association of Tower Erectors and accepted and responsible workmanlike industry practices. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land
use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

31. A holder of a Conditional Use Permit or Administrative Approval granted authority granted under this Ordinance shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.

32. Unless such is proven to be technologically impracticable, the Town requires the co-location of new antenna arrays on existing structures, as opposed to the construction of a new Complex or support structure or increasing the height, footprint or profile of a Facility beyond the conditions of the approved Conditional Use Permit for an existing Facility. In instances not qualifying as an Eligible Facility, the Applicant shall submit a comprehensive report inventorying all existing structures more than fifty feet (50’) in height within one-half (1/2) mile of the location of any proposed new Facility.

33. An Applicant intending to co-locate on or at an existing Facility shall be required to document the intent of the existing owner to permit its use by the Applicant.

34. Co-located equipment shall consist only of the minimum Antenna array technologically Needed to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown in the form of clear and convincing evidence.

35. A DAS system that is owned or operated by a commercial carrier and is part of a commercial wireless system, or are used for commercial purposes, is expressly included in the context of this Ordinance, regardless of the location or whether the Facility or any of its components is located inside or outside a structure or building.

36. The existence of a lease or an option to lease shall not be deemed justification for not complying with the siting priorities set forth in this Ordinance, as well as other applicable land use and zoning regulations. An Applicant may not by-pass sites of higher siting priority than the priority chosen solely because the site proposed is under lease or an option to lease exists. If a site other than the number 1 priority, or attaching to an existing structure is proposed, the applicant must demonstrate and explain to the reasonable satisfaction of the Town why co-location is technically or commercially impracticable. Contractual or Build-to-Suit agreements between carriers and a proposed Tower owner shall not be a valid basis for any claim of exemption, exception or waiver from compliance with the siting priorities.

37. Any technical information must be provided in such a manner, detail and form that the content and any conclusions are able to be verified by a third party using the information used and provided by the applicant.
38. All costs associated with the preparation and submission of an Application and/or necessitated by the requirements for obtaining and maintaining any and all Town permits shall be borne by the Applicant or Permittee.

39. Any new Wireless Facility shall be designed and constructed so as to be the least visually intrusive, create the least visual impact reasonably possible and have the least negative impact on nearby property values, provided that pursuant to 47 U.S.C. 332(c)(7)(B)(II) compliance with this requirement does prohibit or effectively serve to prohibit the provision of the intended service from one or more Facilities.

40. No new Facility or antenna array shall be identifiable, recognizable or discernable as a Wireless Facility or antenna by a typical lay-person from a distance of two-hundred fifty feet (250’) or more.

41. The fact that a proposed use satisfies all specific requirements for a Conditional Use Permit in a given type of zoning or land use district does not create a presumption that the use is compatible or in harmony with nearby properties within one thousand feet (1,000’) and, in itself, is not sufficient to require the grant of a Conditional Use Permit.

42. Inventory of existing sites. Each applicant for approval of an antenna and/or a tower shall provide to the Zoning Administrator an inventory of its existing antennas and towers that are within the jurisdiction of the Town of Topsail Beach, including specific information about the location, height and design characteristics of each tower or antenna. Applicants are encouraged to submit an inventory of potential future tower sites within the jurisdiction of the Town of Topsail Beach. The Zoning Administrator may share such information with other applicants applying for administrative approval under this section or other organizations seeking to locate towers or antennas within the jurisdiction of the governing authority; provided, however, that the Zoning Administrator is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

43. Vegetative buffering of the site shall be installed to screen and/or mitigate the impacts of the wireless facility on surrounding areas, properties, or rights-of-way. In order to provide spatial separation and create a visual block from adjacent properties and streets, a vegetative buffer shall be installed around the outside of all improvements on the site, including the tower, any ground buildings or equipment, and security fencing. Depending upon the specific situation for the location involved and the impact of such, ground-mounted equipment cabinets and buildings may be located outside the buffered area if they are constructed so the exterior appearance of the equipment cabinet or building has the appearance of surrounding structures. The applicant shall submit scaled elevations of such buildings to assist in the evaluation of compliance with this appearance criteria. For situations involving new support structures and/or above ground equipment in the Public Rights-of-Way, if above-ground location is allowed, the screening requirements shall be determined at
the time of the Pre-Application meeting or site visit and determined as appropriate for the situation at the location.

44. Given that wireless service is deemed primarily an essential service, all new towers or other vertical support structures containing wireless antennas shall be designed to an EIA-TIA 222 G Class III standard or any subsequently adopted more stringent standard.

16.6.5 RESPONSIBLE PARTY(S)
With the exception of the Town itself, the owner(s) of a Facility, any support structure used to accommodate wireless Facilities, and of the land upon which a Facility support structure is located, shall at all times be jointly and individually responsible for: (1) the clean, neat, non-littered and safe condition of the Facility, support structure and all components on the site related to the Facility; (2) assuring that all activities of owners, users, or lessees occurring on the site, and all components on the site related to the Facility, are at all times in compliance with all applicable laws, ordinances, rules, regulations, orders, and permits related to the Facility; and (3) assuring the proper permitting as required by this Article and other Town regulations by all lessees and users of the Facility, including but not limited to any upgrades and/or Modifications of equipment. Said owner(s) shall regularly and diligently monitor activities at the site to assure that the Facility is operated in compliance with this Ordinance, other Town regulations and any Conditional Use Permit.

16.6.6 FEES
All fees and charges, including but not limited to Application fees, Expert Assistance fees, Inspection fees and Permit fees, shall be as set forth in the Town’s Schedule of Fees and Charges. For new towers or other support structures or for substantial modifications, the Expert Assistance fee shall be as set forth in the Town’s Fee Schedule. The Town may choose to waive their application fee if the applicant locates on Town Owned property, not including in the Town’s public rights-of-ways.

16.6.7 EXISTING FACILITIES AND COMPLEXES
A. Any legally permitted Facility, Tower or other support structure that exists on the effective date of this Ordinance of the Town’s codes shall be allowed to continue as it presently exists, provided that i) all work was properly permitted; ii) the Facility is in compliance with all applicable local, State and federal laws, rules regulations, orders and permit conditions; iii) the Site is in compliance with the latest version of TIA ANSI 222 as regards the physical condition of the Site; and iv) a Certificate of Completion (COC) was issued for the most recent work performed;

B. Any work not properly previously permitted prior to the adoption of this Ordinance must be properly permitted within ninety (90) days of the effective date of this Ordinance or prior to any Modification of, on or at the site or Facility.

C. Any new Co-location and/or Modification of a Facility, Tower or other support structure or a Carrier’s equipment located on the Tower or Facility, must be permitted under this Ordinance and the entire Facility and any new Co-location or Modification shall comply with all applicable laws, rules and regulations, including obtaining a valid COC.
16.6.8 CERTIFICATE OF COMPLETION

A. No work shall be allowed to be done at or on any Facility, excepting normal repair and maintenance work as defined in this Ordinance, for which the owner cannot produce the COC for the most recent work, until a final inspection has been conducted and a COC has been issued. The owner of the Facility, Tower or other support structure shall pay for the actual cost of the required final inspection prior to the inspection being conducted. If the Facility does not pass the initial final inspection, the owner shall be required to pay for any subsequent re-inspection prior to the re-inspection being conducted. A passing final inspection is required prior to the issuance of a COC.

B. If no COC can be produced for previously done work, at the discretion of the Zoning Administrator, per day per violation fines and other penalties as allowed by law maybe imposed until the Facility is compliant and the required COC has been issued. The time used for the determination of the start date for such fines and penalties shall be thirty (30) days from the date the previously done work was permitted, unless the Applicant can prove to the contrary.

16.6.9 EXCLUSIONS

A. The following shall be exempt from this Ordinance:
   1. Any facilities expressly exempt from the Town’s zoning, land use, siting, building and permitting authority.
   2. Any reception or transmission devices expressly exempted under the Telecommunications Act of 1996.
   3. A Facility used exclusively for private, non-commercial radio and television reception and private citizen’s bands, licensed amateur radio and other similar non-commercial Telecommunications that is less than 50’ above ground level.
   4. Facilities used exclusively for providing wireless service(s) or technologies where i) there is no charge for the use of the wireless service; ii) the Facility does not require a new Tower or increase the height or profile of the structure being attached to; and iii) the service is not intended to be useable more than seventy-five feet (75’) from the Antenna.

16.6.10 NEW TOWER, NEW SUPPORT STRUCTURE, OR SUBSTANTIAL MODIFICATION - APPLICATION REQUIREMENTS

A. All Applicants for a Conditional Use Permit for a new Wireless Facility, including for a new Tower or other new support structure or that constitutes a Substantial Modification, shall comply with the requirements set forth in this Section. In addition to the required information set forth in this Section, all applications involving the construction of a new support structure or a Substantial Modification shall contain the information hereinafter set forth prior to the issuance of a Building Permit. Any technical information must be provided in such a manner, form and with such content that it is able to be verified by a third party using the information used and provided by the applicant:
   1. Ownership and Management.
a) The Name, address, phone number and e-mail address of the person preparing the Application;
b) The Name, address, phone number and e-mail address of the property owner and the Applicant, including the legal name of the Applicant. If the owner of the structure is different than the applicant, the name, e-mail address and all necessary contact information shall be provided;
c) The Postal address and tax map parcel number of the property;
d) A copy of the FCC license(s) applicable for the intended use(s) of the Wireless Telecommunications Facilities, including all FCC licensed frequency bands to be used;
e) The Applicant shall disclose in writing any agreement in existence that would limit or preclude the ability of the Applicant to share any new Telecommunication Tower or support structure that it constructs or has constructed for it;

2. Zoning and Planning.
a) The Zoning District or designation in which the property is situated;
b) The size of the property footprint on which the structure to be built or attached is located, stated both in square feet and lot line dimensions, and a survey showing the location of all property lot lines;
c) The location, size of the footprint and height of all existing and proposed structures, enclosures and cabinets on the property on which the structure is located and that are related to the subject of the Application;
d) A site plan to scale, not a hand drawn sketch, showing the footprint of the Support Structure and the type, location and dimensions of access drives, proposed landscaping and buffers in compliance with the Town’s Building or Development Code, including but not limited to fencing and any other requirements of site plans;
e) Elevation drawings showing the profile or the vertical rendition of the Tower or support structure at the Facility and identifying all existing and proposed attachments, including the height above the existing grade of each attachment and the owner or operator of each, as well as all lighting;
f) The type of Tower or support structure, the number of antenna arrays proposed to be able to be accommodated and the basis for the calculations of the Tower’s or support structure’s capability to accommodate the required number of antenna arrays for which the structure must be designed;
g) Pre-construction photos of the existing Facility and post construction landscaped photo simulations, both as directed at the time of Pre-Application meeting;
h) Disclosure in writing of any agreement in existence prior to the submission of the Application that would limit or preclude the ability of
the Applicant to share any new Telecommunication Tower that it constructs.

i) A certified statement of i) the total cost of construction for the work associated with the Application; and ii) the total cost of all equipment of the Applicant at the Facility. To verify the accuracy of the information, the Town reserves the right to require copies of applicable invoices or other clear and convincing corroborating evidence.

   a) the age of the Tower or support structure and Complex stated in years, including the date of the grant of the original permit;
   b) a description of the type of Tower, e.g. guyed, self-supporting lattice or monopole, or other type of support structure;
   c) for a tower, the make, model, type and manufacturer of the Tower and the structural design analysis and report, including the calculations, certified by a Professional Engineer licensed in the State, proving the Tower or support Structure’s capability to safely accommodate the Facilities of the Applicant without change or Modification.
   d) if a Substantial Co-location, change or Modification of a Facility is needed, a detailed narrative explaining what changes are needed and why they are needed;
   e) complete, unredacted copy of the foundation design and report for the Tower or other structure, including a geotechnical sub-surface soils investigation report and foundation design for the Facility;
   f) if Substantially Modifying or Co-locating on an existing Tower or other support structure, a Complete, unredacted and certified TIA ANSI 222 Report regarding the physical condition of the Complex and all of its components done within the previous six (6) months. If such report has not been done within the previous six (6) months, one shall be done and submitted as part of the Application. No Building Permit shall be issued for any Wireless Facility or related equipment where the structure being attached to is in need of remediation to comply with the requirements of this Subsection and other adopted standards of the Town regarding the physical condition and/or safety of the Facility, unless and until all remediation work that is deemed needed has been completed, or a schedule for the remediation work has been approved by the Zoning Administrator;
   g) In an instance involving a Tower with only a single array of antennas, or for the first antenna array to be attached to a Tower where the array will be thirty-three feet (33’’) or more above ground level, and not within 100 feet of areas to which the public has or could reasonably have or gain access to, in lieu of a full RF emissions study, if deemed appropriate by the Town, signed documentation in the form of the FCC’s “Checklist to Determine whether a Facility may be Categorically Excluded” may in
certain cases be allowed to be used and shall be provided to verify that the Facility and Complex with the proposed installation will be in full compliance with the current FCC's RF Emissions regulations;

h) In certain instances, the Town may deem it appropriate to have a post-construction on-site RF survey of the Facility done after the construction or Modification and activation of the Facility, such to be done under the direction of the Town or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance. Such study shall reflect the cumulative effects, readings or levels of all active RF equipment at the Site;

i) In the event the Town deems it necessary to determine compliance with the FCC’s Maximum Permitted Exposure (MPE) rules, and in lieu of the procedure contained in the preceding Subsection (g) of this Section, the Town expressly reserves the right to request the involvement of the FCC and/or OSHA (Occupational Safety and Health Administration) to determine or verify compliance with federal standards and guidelines that the Town, itself, may be prohibited from determining.

j) If not submitted in a previous application, a signed statement that the Applicant will expeditiously remedy any physical or RF interference with other telecommunications or wireless devices or services.

4. A written copy of an analysis completed by a qualified individual or organization to determine if the proposed Wireless Telecommunications Facility is in compliance with Federal Aviation Administration Regulation Part 77, and if it requires lighting, including any Facility where the application proposes to increase the height of the existing Tower or support structure.

5. New Towers shall be prohibited on private property in Residential Districts and areas officially deemed to be visual or sensitive scenic areas within the Town’s Corporate Limits.

6. All Applications for a proposed Facility applicable to this Section shall contain clear and convincing evidence that the Facility is sited and designed so as to create the least visual intrusiveness reasonably possible given the facts and circumstances involved. To achieve this goal the Town expressly reserves the right to require the use of Stealth or Camouflage siting techniques such as, but not limited to, DAS (Distributive Antenna System), a Small Cell Facility or a functional equivalent as regards size, and such shall be subject to approval by the Town.

7. If proposing a new Tower or support structure, or a Substantial Co-location or Modification of an existing structure, the Applicant shall be required to submit clear and convincing evidence that there is no alternative solution within the search ring of the proposed site that would be less visually intrusive and that not to permit the proposed new Tower or support structure, or a Substantial Co-location or Modification would result in the prohibition of service or the perpetuation of a significant gap in service.
8. An Applicant proposing a new Tower or support structure shall use the largest search ring technically possible and may be required to prove with certified technical/engineering documentation that the search ring used is the largest that could be used.

9. In order to better inform the public, in the case of a new Tower or support structure or Substantial Modification, the applicant shall hold a “balloon test” prior to the initial public hearing on the application. The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a ten (10) foot in length brightly colored balloon with horizontal stabilizers, at the maximum height of the proposed new Tower or support structure or Substantial Modification. Unless conditions at the time preclude it for reasons of instability vis-à-vis wind speed, the use of spherical balloons shall not be permitted.

10. At the option of the Zoning Administrator, a community meeting may be held concurrent with the balloon test, the notification of which shall be as set forth in the following §I(4).

11. At least fourteen (14) days prior to the conduct of the balloon test, a sign shall be erected so as to be clearly visible from the road nearest the proposed site and shall be removed no later than fourteen (14) days after the conduct of the balloon test. The sign shall be at least four feet (4”) by eight feet (8”) in size and shall be readable from the road by a person with 20/20 vision.
   a) Such sign shall be placed off, but as near to, the public right-of-way as is possible.
   b) Such sign shall contain the times and date(s) of the balloon test and contact information.
   c) The dates, (including a second date, in case of poor visibility or wind in excess of 15 mph on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the Town and as agreed to by the Town. The Applicant shall inform the Town in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four (4) consecutive hours between 10:00 am and 2:00 p.m. on the dates chosen. The primary date shall be on a week-end, but the second date, in case of poor visibility on the initial date, may be on a week day. A report with pictures from various locations of the balloon shall be provided with the application.
   d) The Applicant shall notify all property owners and residents located within one-thousand five hundred feet (1,500) of the nearest property line of the subject property of the proposed construction of the Tower and Facility and of the date(s) and time(s) of the balloon test. Such notice shall be provided at least fourteen (14) days prior to the conduct of the balloon test and shall be delivered by first-class mail. The Zoning Administrator shall be provided an attested copy of the list of addresses.
to which notification is provided. The Wireless Telecommunications Facility shall be structurally designed to accommodate at least four (4) Antenna Arrays, with each array to be flush mounted or as close to flush-mounted as is reasonable possible.

12. The Applicant shall provide certified documentation in the form of a structural analysis and report certified by a licensed Professional Engineer, including all calculations, showing that the Facility will be constructed to meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict the more stringent standards shall apply.

13. The Applicant shall furnish a Visual Impact Assessment, which may be required to include:
   a) A computer generated “Zone of Visibility Map” at a minimum of a one mile radius from the proposed structure shall be provided to illustrate locations from which the proposed installation may be seen, with and without foliage; and
   b) To-scale photo simulations of “before and after” views from key viewpoints inside of the Town as may be appropriate and required, including but not limited to state highways and other major roads, state and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided concerning the appropriate key viewpoints at the pre-application meeting. In addition to photographic simulations to scale showing the visual impact, the applicant shall provide a map showing the locations of where the pictures were taken and the distance(s) of each location from the proposed structure;

14. The Applicant shall provide a written description and a visual rendering demonstrating how it shall effectively screen from view at least the bottom fifteen feet (15’) of the Facility and all related equipment and structures associated with the Facility not located in the Public Rights-of-Way. For situations involving new support structures and/or above ground equipment in the Public Rights-of-Way, if above-ground location is allowed, the screening requirements shall be determined at the time of the Pre-Application Site visit and determined based on the situation at any given location.

15. A Building Permit shall not be issued for the construction of a new Tower or other support structure until i) there is an Application filed for or by a specific carrier that documents with verifiable technical evidence that the Facility is Necessary for that carrier to serve the community and that co-location on an existing Structure is not feasible, or ii) that no owner of an existing structure within the Applicant’s search ring will allow attachment to the owner’s building or other type of structure.
16. Co-location on an existing structure is not reasonably feasible if such is technically or Commercially Impracticable or the owner of the Structure is unwilling to enter into a contract for such use at a fair and reasonable price. If an Applicant feels the price is unreasonable, sufficient documentation in the form of clear and convincing evidence to support such a claim shall be submitted to determine whether co-location on a given existing structure is Commercially Impracticable or otherwise unreasonable.

16.6.11 SMALL FACILITIES - ELIGIBLE FACILITIES AND OTHER SMALL FACILITY INSTALLATIONS OR MODIFICATIONS – APPLICATION REQUIREMENTS

A. For a wireless facility that qualifies as an Eligible Facilities request under applicable law, the following information shall be contained in an application. Any technical information must be provided in such a manner, form and with such content that it is able to be verified by a third party using the information used and provided by the applicant.

1. Safety.
   a) Pre-construction photos of the existing Facility from at least 2 directions, and post construction landscaped photo simulations from at least 2 directions from a distance no further than fifty feet (50');
   b) the age of the Tower or other non-utility pole support structure in years, including the date of the grant of the original permit;
   c) a description of the type of Tower, e.g. guyed, self-supporting lattice or monopole, or a description of another other type of support structure;
   d) if attaching to a Tower or any type of non-utility pole structure, certified documentation in the form of a structural analysis and report done by a Professional Engineer licensed in the State of North Carolina. Said analysis and report shall include all supporting calculations, showing that the Facility, as it exists, will meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to, the North Carolina Building Code and all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict, the more stringent shall apply.
   e) If attaching to a utility pole in the public right-of-way, written evidence or certification by the pole owner that the pole is structurally rated to accommodate the new loading;
   f) a copy of i) the installed foundation design, including a geotechnical subsurface soils investigation report; and if necessary ii) a foundation remediation design and recommendation for the Tower or other structure;
   g) for an existing Wireless Facility, a certified, unredacted report and supporting documentation, including photographs, regarding the physical situation and physical condition of all equipment and facilities at the site in the form of a report based on an on-site inspection done pursuant to and in compliance with the latest version of TIA/ANSI 222.
The inspection shall be done by a qualified individual experienced in performing such inspections and the report shall be signed by an individual with authority to order any needed remediation or resolution of issues.

h) a copy of the FCC licenses for each frequency band applicable for the intended use of the Wireless Telecommunications transmission and/or receive equipment;

i) a list of all frequencies, to be used at the Facility;

j) the number, type and model of the Antenna(s) proposed, along with a copy of the manufacturer’s specification sheet(s), i.e. cut sheet(s), for the antennas;

k) certification from the owner of the Facility certifying that the Facility and all attachments thereto are currently in compliance with the conditions of the approved Conditional Use Permit or Administrative Approval or identifying any non-compliant situation.

2. Ownership and Management.
   a) the Name, address and phone number of the person preparing the Application;
   b) the Name, address, and phone number of the property owner and of the Applicant, including the legal name of the Applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided;
   c) the Postal address and tax map parcel number of the property;
   d) a copy of the FCC license(s) applicable for the intended use of the Wireless Telecommunications Facilities.

3. Construction.
   a) A certified statement of i) the total cost of construction for the work associated with the Application; and ii) the total cost of all labor and equipment of the Applicant at the Facility. To verify the accuracy of the information, the Town reserves the right to require copies of applicable invoices or other clear and convincing corroborating evidence.

4. In certain instances, the Town may deem it appropriate to have an on-site RF survey of the facility performed after the construction and activation of the Facility, such to be done under the observation and supervision of the Town or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance. Such study shall reflect the cumulative effects, readings or levels of all active RF equipment at the Site;

5. In the event the Town deems it necessary to determine compliance with the FCC’s Maximum Permitted Exposure (MPE) rules, and in lieu of the procedure contained in the previous Subsection (4) of this Section, the Town expressly reserves the right to seek the involvement of the FCC and/or OSHA (Occupational Safety and Health Administration) to determine or verify compliance with federal
standards and guidelines that the Town, itself, may be prohibited from determining.

6. Attachments to Existing Structures Other Than Towers.
   a) Attachments to Buildings: To preserve and protect the nature and character of the area and create the least visually intrusive impact reasonably possible under the facts and circumstances, any attachment to a building or other structure with a facade, the antennas shall be mounted on the facade without increasing the height of the building or other structure, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exposed cabling shall use camouflage or stealth techniques to match as closely as possible the color and texture of the structure.
   b) Utility poles and light standards: If attaching to a utility pole or light standard, no equipment may extend more than ten percent (10%) of the existing height beyond the top of the structure as originally permitted and no equipment other than cabling shall be lower than fifteen feet (15’) above the ground. Only one (1) increase of the height of a utility pole or light standard shall be allowed.
   c) Attachments to Water Tanks: If attaching to a water tank, in order to maintain the current profile and height, mounting on the top of the tank or the use of a corral shall only be permitted if the Applicant can prove that to locate elsewhere less visually intrusive on the tank will prohibit or have the effect of prohibiting the provision of service or that to do so would be technologically impracticable.
   d) Profile: So as to be the least visually intrusive and create the smallest profile reasonably possible under the facts and circumstances involved, and thereby have the least adverse visual effect, all antennas attached shall be flush mounted or as near to flush mounted as is possible, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.

16.6.12 LOCATION OF WIRELESS TELECOMMUNICATIONS FACILITIES

A. For structures not located in the public right-of-way, no new tower or other new support structure taller than fifty feet (50’) shall be permitted in any existing or planned (i.e. platted) residential neighborhood, nor within one-half mile of any existing or planned (i.e. platted) residential neighborhood. Said height limit shall not be as-of-right and shall be the maximum permissible height subject to the independently verifiable proof of technical Need for height information submitted.

B. If a new telecommunications support structure is proposed to be located within one-half mile of an existing or planned residential neighborhood and is proven by verifiable clear and convincing technical information to be a Technical Necessity for the Applicant’s service to be provided in the intended service area of the proposed facility, irrespective of the type of zoning, the support structure shall not be taller than the shorter of i) ten
feet (10’) above the tallest obstruction between the proposed support structure and a residential neighborhood; or ii) the shortest height that will not effectively serve to prohibit the provision of service to a substantial portion of the intended area.

C. Applicants shall locate, site and erect all Facilities and associated equipment in accordance with the following order of priority:
1. On existing structures outside the public right-of-way without increasing the dimensions or size of the structure;
2. On existing structures, more than one thousand feet from the nearest boundary of the public right-of-way without increasing the height or size of the profile of the Tower or structure by more than is allowed for an Eligible Facility.
3. On existing structures in the public right-of-way;
4. On existing structures outside the public right-of-way without increasing the height of the structure by more than is technically Needed, as such Need can be proven by clear and convincing verifiable technical evidence using information provided by the Applicant.
5. On properties in areas zoned for Commercial use.
6. In designated Renaissance, Historic Districts or sensitive viewshed areas in the public right-of-way without increasing the height or size of the profile of the support structure, and if Camouflaged or Stealthed to the satisfaction of the Zoning Administrator.
7. In areas zoned for Residential use in the public right-of-way, but without increasing the height of the size or dimensions of the support structure, and only if Camouflaged or Stealthed to the satisfaction of the Zoning Administrator.
8. In areas zoned for Residential use, in the public right-of-way if Camouflaged or Stealthed to the satisfaction of the Town.

D. If the applicant proposes and commits to locate on Town-owned property or structures, the Town reserves the right to waive the Town’s Application Fee that would otherwise be paid to the Town.

E. If the proposed site is not proposed for the highest priority listed above, then a reasonably detailed narrative technical explanation shall be provided as regards why a site from all higher priority designations was not selected. The person seeking such an exception must demonstrate to the satisfaction of the Town the reason or reasons why a Conditional Use Permit or Administrative Approval should be granted for the proposed Facility.

F. Notwithstanding anything else to the contrary, the Town may approve any site located within an area in the above list of priorities, provided that the Town finds that the proposed site is in the best interest of the health, safety and welfare of the Town and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood. The Town may also direct that the proposed location be changed to another location that is more in keeping with the goals of this Ordinance and the public interest as determined by the Town and that serves the intent of the Applicant.
G. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Town may disapprove an Application for any of the following reasons:

1. Conflict with safety and safety-related codes and requirements, including but not limited to setback and Fall Zone requirements;
2. Non-Compliance with zoning, land use or safety regulations;
3. The placement and location of a Facility would create an unacceptable risk, or the reasonable possibility of such, for physical or financial damage to any person or entity, or of trespass on private property;
4. The placement and location of a Facility would not be harmonious with or would result in a negative change in the nature or character of the adjacent and surrounding area, expressly including but not limited to loss in value of property as measured over the twelve (12) months preceding the Application having been filed;
5. Failure to submit a Complete Application within sixty (60) days after proper notice of an incomplete submittal and opportunity to make the Application Complete.

H. Notwithstanding anything to the contrary in this Ordinance, for good cause shown such as the ability to utilize one or more shorter, smaller or less intrusive Facilities elsewhere and still serve a substantial portion of the intended service area, the Town may require the relocation of a proposed site if relocation could result in a less intrusive Facility singly or in combination with other locations, including allowing for the fact that relocating the site chosen by the Applicant may require the use of more than one (1) Facility to serve substantially the same area.

I. New Telecommunication towers shall be permitted in the Commercial, and Open Space zoning districts only, and shall comply with the maximum permitted height requirements of this Ordinance.

16.6.13 TYPE AND HEIGHT OF TOWERS

A. No new Towers of a lattice or guyed type shall be permitted.
B. The policy decision has been made that more Facilities of a shorter and less intrusive height is in the public interest, as opposed to fewer but taller support structures. Therefore, spacing or the distance between Facilities shall be such that the service may be provided without exceeding the maximum permitted height.

C. Except in the public rights-of-way and in Residentially zoned areas, the maximum permitted total height of a new tower or other proposed support structure, shall be fifty feet (50’) above pre-construction ground level, unless it can be shown by clear and convincing verifiable technical evidence from a carrier who has committed to use the tower that such height would prohibit or have the effect of prohibiting the provision of service to at least a substantial portion of the intended service area within the Town. The maximum permitted height is permissive and is expressly not as-of-right.

D. If the Applicant chooses to provide evidence in the form of propagation studies, to enable verification of the Need for the requested height or location, such must include all modeling information and support data used to produce the studies at the requested
height and at a minimum of ten feet (10’) lower. The Town will provide the form that shall be used for providing the modeling information.

E. The Town reserves the right to require a drive test to be conducted under the supervision of the Town or its designee to verify the technical Need for what is requested.

F. At no time shall a Tower or other support structure be of a height that requires lighting by the FAA.

G. So the height can be increased if Needed, Towers shall be structurally designed to support a minimum of four (4) carriers using functionally equivalent equipment to that used by the first carrier attaching to a Tower or other support structure.

   1. Wireless installations shall be consistent throughout the Town limits and any extraterritorial jurisdiction (ETJ);
   2. Wireless installations shall be on non-conductive poles or structures;
   3. All antennas shall be unrecognizable as such by an average person;
   4. Wireless installations shall utilize a “concealed” design, including all cabling being inside a hollow pole;
   5. All radios, network equipment and batteries will be enclosed in a pedestal cabinet near the pole, in a pole-mounted cabinet or under a pole-mounted shroud;
   6. Cabinets should be consistent in size and no larger than standard DOT streetlight signal cabinets;
   7. Unless proven unfeasible by clear and convincing evidence, in lieu of installing new additional poles, any wireless installation in the public right-of-way shall replace a pre-existing utility pole or light standard;
   8. Wireless installations in the public right-of-way shall be on poles that meet or exceed current NESC standards and wind and ice loading requirements of the latest version of ANSI 222;
   9. Any new poles installed shall be environmentally “green” and not leach any volatile organic compounds or toxic materials into the ground; and
   10. To avoid unsightly rust and corrosion, any new or replacement pole installed shall not be of a corrodible type of metal or concrete.

16.6.14 VISIBILITY AND AESTHETICS

A. No Tower, nor any support structure that is not a building and is constructed after the effective date of this Section, shall be tall enough to require lighting by the Federal Aviation Agency (FAA).

B. Stealth: All new Facilities, including but not limited to Towers, shall utilize Stealth or Camouflage siting techniques that are acceptable to the Town, unless such can be shown to be either Commercially or technologically Impracticable.

C. Finish/Color: Towers and other non-building support structures shall be of an appropriate color to harmonize with the surroundings.
D. Lighting: Notwithstanding the prohibition against lighting, in the event lighting is subsequently required by the Federal Aviation Agency (FAA), the Applicant shall provide a detailed plan for lighting of as unobtrusive and inoffensive an effect as is permissible under State and federal regulations. For any Facility for which lighting is required under the FAA’s regulations, or that for any reason has lights attached, all such lighting shall be of the minimum wattage needed, and if required to be lighted by the FAA shall be affixed with equipment that enables the light to be seen as intended from the air, but that minimizes the ground scatter effect so that it is not able to be seen from the ground to a height of at least 20 degrees vertical for a distance of at least 1 mile in a level terrain situation. Such device shall be compliant with or not expressly in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA.

E. Retrofitting: In the event a Tower or other support structure that is lighted as of the effective date of this Ordinance is modified, at the time of the first Modification of the Facility the Town reserves the right to require that the Tower be retrofitted so as to comply with the lighting requirements of the preceding Subsection (D) of this Section or be reduced to a height that does not require lighting.

F. Flush Mounting: Except for omni-directional antennas, all new or replacement antennas, shall be flush-mounted, or as close to flush-mounted on the support structure as is functionally possible, unless it can be demonstrated by clear and convincing technical evidence that such would have the effect of prohibiting the provision of service to a substantial portion of the intended service area alone or in combination with another site(s), or unless the Applicant can prove that it is technologically impracticable.

G. Placement on Building: If attached to a building, all antennas shall be mounted on the fascia of the building, camouflaged to match the color and, if possible, the texture of the building, or in a manner that makes the antennas as visually innocuous and undetectable as is reasonably possible given the facts and circumstances involved. A false façade on the roof that is acceptable to the Town may be used to camouflage roof-mounted antennas and equipment.

16.6.15 SECURITY

A. All Facilities shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:
   1. All Facilities, including Antennas, Towers and other supporting structures, such as guy anchor points and guy wires, shall be made inaccessible to unauthorized individuals and shall be constructed or shielded in such a manner that they cannot be easily climbed or collided with and shall expressly include removing the climbing steps for the first ten feet (10') from the ground on a monopole; and
   2. Transmitters and Telecommunications control points shall be installed so that they are readily accessible only to persons authorized to operate or service them.
16.6.16 SIGNAGE
A. Facilities shall contain a sign no larger than four (4) square feet and no smaller than one (1) foot square in order to provide adequate warning to persons in the immediate area of the presence of RF radiation. A sign of at least two (2) square feet shall also to be installed bearing the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s).
B. The contact information sign shall be located on the equipment shelter or cabinet of the Applicant, must be visible from the access point of the Facility and must identify the equipment owner of the shelter or cabinet and contain a 24 hour/365 day emergency contact phone number. On Tower sites, an FCC registration sign, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.
C. For Wireless Facilities in the Public Rights-of-Way the RF Radiation Warning sign may be i) the standard warning symbol for RF Radiation; ii) be of a size no smaller than 6” x 6” and iii) placed no less than four feet (4’) nor more than six feet (6’) from ground level.

16.6.17 SETBACK AND FALL ZONE
A. All proposed Towers and any other proposed Wireless support structures not located in the Public Rights-of-Way shall be set back from abutting parcels, recorded rights-of-way and roads and streets by the greater of the following distances: i) a distance equal to the height of the proposed Tower or support structure plus ten percent, otherwise known as the Fall Zone; or ii) the existing setback requirement of the underlying zoning district.
B. For new support structures in the Public Right-of-Way, the setback shall be determined at the time of the Pre-Application Site visit and determined based on the situation at the location.
C. For any Facility located within a fenced compound, any Accessory structure shall be located within the compound as approved in the Conditional Use Permit and so as to comply with the applicable minimum setback requirements for the property on which it is situated. The Fall Zone or setback shall be measured from the nearest portion of the tower to the nearest portion of the public right-of-way and any occupied building or domicile and any property boundary lines.
D. The nearest portion of any private access road leading to a Facility shall be no less than ten (10) feet from the nearest property line.
E. There shall be no development of habitable buildings within the Setback area or Fall Zone.

16.6.18 RETENTION OF EXPERT ASSISTANCE COST TO BE BORNE BY APPLICANT
A. The Town may hire any consultant of its choice to assist the Town in reviewing and evaluating Applications and negotiating leases, provided the consultant has at least five (5) years of experience working exclusively for the public sector regulating Towers and Wireless Facilities and negotiating leases, and has not had a recommendation successfully legally challenged.
B. Since retail subscriber rates reflect all capital costs, including costs of permitting such as but not limited to payment of the cost of the Town’s expert assistance, and to prevent
taxpayers from having to bear the cost related to the issue of permitting and regulating a commercially used Wireless Telecommunications Facilities or negotiating agreements to lease or amend or modify a lease for any Town-owned property or structure, an Applicant shall pay to the Town fees as set forth in the Town’s Fee Schedule. The fees are intended to cover all reasonable costs of the expert assistance needed by the Town in connection with the review of any Application, including both the technical and non-technical review, and the permitting, inspection, construction or Modification requested, any Application pre-approval evaluation requested by the Applicant and any lease negotiations. The payment of the Expert Assistance fees to the Town shall precede any work being done that is related to the intended Application or lease, including a pre-application meeting or site visit.

C. The total amount of the funds needed for expert assistance for Substantial Modifications and new support structures may vary with the scope and complexity of the Application, the completeness of the Application and other information as may be needed to complete the necessary technical and non-technical reviews, analysis and inspection of any construction or Modification or the amount of time spent responding to an Applicant’s requests, questions, assertions or arguments as regards its Application with respect to the requirements of this Ordinance or applicable State or federal law, rule or regulation.

D. For a new Tower or other support structure or a Substantial Modification, to prevent taxpayer subsidization, the expert assistance fee shall be no less than $7,500.

E. The Town will maintain an accounting record for the expenditure of all such funds.

F. If an Application is Amended, or a waiver or relief is requested from any regulations at any time prior to the grant of the Certificate of Completion required under this Ordinance, the Town reserves the right to require additional payment for the review and analysis equal to, but not exceeding, the cost created for the Town by the Applicant or its Application. Such amount shall be paid to the Town prior to the issuance of the Conditional Use Permit or Administrative Approval or the Certificate of Completion, whichever is procedurally needed next.

16.6.19 PROCEDURAL REQUIREMENTS FOR A GRANTING A CONDITIONAL USE PERMIT

A. When a Conditional Use Permit is requested, the following procedures shall apply.

B. When deemed necessary or otherwise in the public interest, as part of the process for any new Towers or Telecommunications Support Structure, the Town may require a Neighborhood Meeting with area residents, the Applicant, a representative(s) from the Town staff and the Town’s consultant to discuss the proposed Facility and the effects of such.

C. The Town shall schedule any required public hearing(s) once it finds the Application is Complete and there are no issues of non-compliance or conflict with applicable law, rule or regulation. The Town shall not be required to set a date for a hearing if the Application is not Complete or if there are unresolved issues of non-compliance by the Applicant or a party to the Application. The Town may, at any stage prior to issuing a Conditional Use
Permit or Administrative Approval, require such additional information as it deems Necessary and that is not expressly prohibited from being required by applicable law as relates to the issues of the siting, construction or Modification of or at a Wireless Telecommunications Facility.

D. Upon Town approval, a Conditional Use Permit shall be issued for a new Tower or Substantially Modified Facility or Co-location that does not involve an Eligible Facility. Notwithstanding the preceding, the Building Permit for such shall not be issued until an Applicant has provided clear and convincing substantiating documentation governing the placement of the first antenna array of a carrier who has committed to use the structure prior to its construction and that carrier has been properly permitted under this Ordinance.

16.6.20 ACTION ON AN APPLICATION
A. The Town will undertake, or have undertaken, a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities and applicable law, and shall act within the time required by applicable law.
B. The Town may refer any Application or part thereof to any advisory committee and/or consultant for a non-binding recommendation.
C. Either after the public hearing if a hearing is required, or after Administrative review for a non-Substantial Modification or an Eligible Facility Application, the Town may i) approve; ii) approve with conditions; or iii) deny for cause a Permit or Administrative Approval Application. Nay decision to deny a permit shall be in writing and shall be supported by substantial evidence contained in a written record, which record may be the minutes of any or all official meetings. Throughout the Application and permitting process, the burden of proof with respect to compliance with this Ordinance or the need for a waiver or relief shall always be upon the Applicant.
D. An Applicant shall not be permitted to refuse to provide information needed to establish the substantial written record required under federal law and applicable case law. Refusal for more than sixty days without agreement by the Town to a different deadline shall result in denial of the Application or the Application shall be deemed abandoned.
E. Approval Notification: If the Town approves the Conditional Use Permit or Administrative Approval, then the Applicant shall be notified of the approval of its Application, including any conditions, within 30 calendar days of the Town’s action. The Conditional Use Permit or Administrative Authorization shall be issued within thirty (30) days after such approval.
F. Denial Notification: If denied, the Applicant shall be notified of the denial of its Application at the Town Meeting at which action was taken, and in writing within 30 calendar days of the Town’s action, which notice shall contain the reason or reasons for the denial.

16.6.21 TRANSFER OR ASSIGNMENT
A. The extent and parameters of a Conditional Use Permit or Administrative Authorization for a Facility shall be as follows:
1. Such Conditional Use Permit or Administrative Authorization shall not be assigned, transferred or conveyed without the express prior written notification to the Town, such notice to be not fewer than sixty (60) business days prior to the intended assignment, transfer or conveyance.

2. A transfer, assignment or other conveyance of the Conditional Use Permit or Administrative Authorization shall require the written commitment of the proposed new holder of the Conditional Use Permit or Administrative Authorization to abide by all applicable laws, rules and regulations, including but not limited to this Ordinance.

16.6.22 VIOLATIONS
A. Following written notice of violation and an opportunity to cure, any Permit or Administrative Approval granted under this Ordinance may be revoked, canceled, or terminated for a violation of the uncured conditions and provisions of the Conditional Use Permit or other applicable law, rule, regulation or order, and if warranted the payment of a fine(s) as is permissible.

B. If not cured within the time frame set forth in the Notice of Violation, a hearing shall be held upon thirty (30) days prior notice to the Applicant citing the violation and the date, time and place of the hearing, which shall be provided by registered mail to the last known address of the holder of the Conditional Use Permit.

C. Following the original notice and an opportunity to cure, subsequent or repeated violations of a substantially similar nature shall not require an opportunity to cure prior to the imposition of fines or penalties.

16.6.23 REMOVAL AND PERFORMANCE SECURITY
A. Removal and Performance: The Applicant and the owner of record of any proposed new Tower or other support structure shall, at its sole cost and expense, be required to execute and file with the Town a bond or other form of security that is acceptable to the Town as to the type of security and the form and manner of execution, in an amount of at least $75,000.00 for a Tower or other support structure and with such sureties as are deemed adequate by the Town to assure the faithful performance of the terms and conditions of this Ordinance and the conditions of any Conditional Use Permit issued pursuant to this Ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the Conditional Use Permit and/or, if abandoned, until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Conditional Use Permit. The amount of the Bond is, in part, determined by the current cost of demolition, removal and site restoration multiplied by the compounding or cumulative effect of a three percent (3%) annual cost escalator over a thirty (30) year projected useful life of the structure.

B. Performance: The owner of any equipment attached to a support structure or located in a Complex shall be required to execute and file with the Town a performance bond or other form of performance security that is acceptable to the Town as to the type of security and the form and manner of execution, in the amount of $25,000.
16.6.24 RESERVATION OF AUTHORITY TO INSPECT WIRELESS TELECOMMUNICATIONS FACILITIES

A. In order to verify that the holder of a Conditional Use Permit for a Facility and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, places, constructs and maintains such facility in accordance with all applicable technical, safety, fire, building codes, zoning codes, laws, ordinances and regulations and conditions of any permit granted under this Ordinance, the Town or its designee shall have the right to inspect all facets of said permit holder’s, renter’s, lessee’s or licensee’s placement, construction, Modification and maintenance of such facilities, including, but not limited to, Towers, Antennas, buildings and equipment and connections contained therein, or other structures constructed or located on the permitted site.

B. Refusal to allow or grant access to the Town’s representative upon reasonable notice shall be deemed a violation of this ordinance.

16.6.25 LIABILITY INSURANCE

A. A holder of a Conditional Use Permit for a Wireless Telecommunications Support Structure shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Conditional Use Permit in amounts as set forth below:
   1. Commercial General Liability covering personal injuries, death and property damage: $2,000,000 per occurrence/$5,000,000 aggregate; and
   2. Automobile Coverage: $1,000,000.00 per occurrence/ $3,000,000 aggregate; and
   3. A $5,000,000 Umbrella coverage; and

B. For a Facility located on Town property, the Commercial General Liability insurance policy shall specifically name the Town and its officers, Boards, employees, committee members, attorneys, agents and consultants as additional insureds.

C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with an AM Best’s rating of at least A.

D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.

E. Renewal or replacement policies or certificates shall be delivered to the Town at least fifteen (15) days prior to the expiration of the insurance that such policies are intended to renew or replace.

F. Before construction of a permitted Wireless Telecommunications Facility is initiated, but in no case later than fifteen (15) days prior to the grant of the Building Permit, the holder of the Conditional Use Permit shall deliver to the Town a copy of each of the policies or certificates representing the required insurance in the required amounts.

G. A Certificate of Insurance that states that it is for informational purposes only and does not confer rights upon the Town shall not be deemed to comply with this Section.
16.6.26 INDEMNIFICATION
A. Any application for Wireless Telecommunication Facilities that is proposed to be located on Town property or in the Town-owned or managed right-of-way shall contain a signed statement fully and completely indemnifying the Town and to at all times defend, indemnify, protect, save, hold harmless and exempt the Town and its officers, Boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, Modification, location, product performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility. Notwithstanding the preceding, there shall be no claim of indemnification with respect to any act attributable to the negligent or intentional acts or omissions of the Town, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys’ fees, consultants’ fees, and expert witness fees are included in those costs that are recoverable by the Town.
B. Notwithstanding the requirements noted in Subsection A of this section, an indemnification provision will not be required in those instances where the Town itself, or an agency or department of the Town, applies for and secures a Conditional Use Permit for a Wireless Telecommunications Facility.

16.6.27 FINES
A. In the event of a violation of this Ordinance, or any Conditional Use Permit or Administrative Approval issued pursuant to this Ordinance, the Town may impose and collect, and the holder of the Conditional Use Permit or Administrative Approval for a Wireless Telecommunications Facility shall pay to the Town, fines or penalties as set allowed by State law or as otherwise established by the Town.
B. Notwithstanding anything in this Ordinance, the holder of the Conditional Use Permit or Administrative Approval for a Facility may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Section or any section of this Ordinance. An attempt to do so shall subject the holder of the Conditional Use Permit to termination and revocation of the Conditional Use Permit in addition to the payment of fines. The Town may also seek injunctive relief to prevent the continued violation of this Ordinance without limiting other remedies available to the Town.

16.6.28 DEFAULT AND/OR REVOCATION
If a support structure, Facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Ordinance or of the Conditional Use Permit or Administrative Approval, then the Town shall notify the holder of the Conditional Use Permit or Administrative Approval in writing of such violation. A Permit or Administrative Approval holder found to be in violation may be considered in default and subject to fines as permitted under applicable State law, and if a violation is not corrected to the satisfaction of the Town in a reasonable period of time the Conditional Use Permit or Administrative Approval shall be subject to revocation.
16.6.29 MOVING OR REMOVAL OF CO-LOCATED FACILITIES AND EQUIPMENT

A. If attached to an existing tower or other support structure, unless the Town deems doing so to be in the public interest, it shall be impermissible for a wireless service provider’s or carrier’s equipment to be relocated from one structure to another without verifiable clear and convincing evidence that not to do so would, for technical reasons, prohibit or serve to prohibit the provision of service in a substantial portion of the intended service area.

B. If the lease for the existing attachment and use expires and is not renewed, thereby forcing the facility to be moved, such move shall be allowed upon i) the provision of clear and convincing evidence satisfactory to the Town of the need to move or relocate the facility; and ii) clear and convincing evidence satisfactory to the Town of the lack of impact on the neighborhood or area of the intended new location. Cancellation or abandonment of a lease by a lessee or refusal to agree to terms of a lease that are not Commercially Impracticable shall not be deemed a permissible reason for relocating.

C. The owner of any Facility shall be required to provide a minimum of thirty (30) days written notice to the Town Clerk prior to abandoning any Facility.

D. Under the following circumstances, the Town may determine that the health, safety, and welfare interests of the Town warrant and require the removal of Facilities.

1. a Facility that has been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety (90) consecutive days or a cumulative total of one hundred-eighty (180) non-consecutive days in any three hundred-sixty-five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall be completed within 90 days of abandonment;

2. A Support Structure, Facility falls into such a state of disrepair that it creates a health or safety hazard or is deemed an attractive nuisance or a visual blight;

3. A Support Structure or Facility has been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Conditional Use Permit, or Administrative Approval, and the Conditional Permit or Administrative Approval may be revoked.

E. If the Town makes a determination as noted in Subsection D(2) or D(3) of this Section, then the Town shall notify the holder of the Permit or Administrative Approval for the Facility that said Facility is to be removed.

F. The holder of the Conditional Use Permit or Administrative Approval, or its successors or assigns, shall dismantle and remove the Facility and all associated structures and equipment from the site and restore the site to as close to its original condition as is reasonably possible, such restoration being limited only by physical or Commercial Impracticability. Restoration shall be completed within ninety (90) days of the receipt of a written notice from the Town. However, if the owner of the property upon which the Facility is located wishes to retain any access roadway to the Facility, the owner may do so with the approval of the Town.

G. If a Facility has not been removed, or substantial progress has not been made to remove the Facility, within ninety (90) days after the permit holder has received notice, then the
Town may order officials or representatives of the Town to remove or have removed the Facility at the sole expense of the owner or Conditional Use Permit holder.

H. If the Town removes, or causes a Facility to be removed, and the owner of the Facility does not claim and remove it from the site to a lawful location within ten (10) days, the Town may take steps to declare the Facility abandoned and sell all remaining equipment and materials.

I. Notwithstanding anything in this Section to the contrary, the Town may approve a temporary use permit/agreement for the Facility, but for no more than ninety (90) days duration, during which time a suitable plan for removal, conversion, or re-location of the affected Facility shall be developed by the holder of the Conditional Use Permit, subject to the approval of the Town, and an agreement to such plan shall be executed by the holder of the Conditional Use Permit or Administrative Approval and the Town. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the Town may take possession and dispose of the affected Facility in the manner provided in this Section and may utilize the bond in Section 16.6.23 of this Ordinance.

16.6.30 RF EMISSIONS

A. As may be deemed appropriate from time to time, to assure the protection of the public health and safety, the Town expressly reserves the right under its Police Powers to require i) that a user of a Facility or the owner of the Facility, verify compliance with the FCC’s regulations regarding cumulative RF emissions at the Site under the observation of a qualified staff member or the Town’s consultant; and ii) that all users of the Facility cooperate in a prompt and timely manner with the party responsible for such testing or verification. Failure to cooperate shall be deemed a violation of this Section and subject the non-cooperating party to all applicable and permissible fines and penalties.

B. In the event the Town deems it necessary to determine compliance with the FCC’s Maximum Permitted Exposure (MPE) rules, and in lieu of the procedure contained in the preceding Subsection (A) of this Section, the Town expressly reserves the right to request the involvement of the FCC and/or OSHA (Occupational Safety and Health Administration) to determine or verify compliance with federal standards and guidelines that the Town, itself, may be prohibited from determining.

C. With respect to Support Structures other than Towers, if any section or portion of the structure attached to or to be attached to is not in compliance with the FCC’s regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC’s regulations, and be marked off with brightly colored plastic chain or striped warning tape, as appropriate, as well as placing RF Radiation signs as needed and appropriate to warn individuals of the potential danger. As deemed warranted by the Town at any time, the right of the Town is expressly reserved to do itself, or order done, an on-site RF emissions survey.

16.6.31 RELIEF

A. Any Applicant desiring relief, waiver or exemption from any aspect or requirement of this Ordinance shall address and identify such at the Pre-Application meeting. The relief or exemption must be contained in the submitted Application for either a Conditional Use
Permit or Administrative Approval, or in the case of an existing or previously granted Conditional Use Permit or Administrative Approval, a request for Modification of the Facility and/or equipment. Such relief may be temporary or permanent, partial or complete.

B. The burden of proving the need for the requested relief, waiver or exemption shall be solely on the Applicant to prove.

C. The Applicant shall bear all costs of the Town in considering the request and the relief, waiver or exemption.

D. No relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant effect on the health, safety and welfare of the Town, its residents and other service providers.

16.6.32 ADHERENCE TO STATE AND/OR FEDERAL RULES AND REGULATIONS

A. To the extent that the holder of a Conditional Use Permit or Administrative Approval for a Wireless Telecommunications Facility has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Conditional Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

B. To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Conditional Use Permit or Administrative Approval for Wireless Telecommunications Facilities, then the holder of such a Conditional Use Permit or Administrative Approval shall conform the permitted Facility to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

16.6.33 CONFLICT WITH OTHER LAWS

Where this Ordinance differs or conflicts with other Local Laws, rules and regulations, unless the right to do so is preempted or prohibited by the Town, State or federal government, the more stringent shall apply.

16.6.34 AUTHORITY

This Ordinance is enacted pursuant to applicable authority granted by the State and federal government.